date, overcrowded and, in far too many cases, insanitary and inadequate.

Officer who Challenged Racism In Police Cleared Of Sexual Assault Charges

Vikram Dodd, Guardian: A retired Asian officer who fought racism in the police has been cleared of sexually assaulting a prisoner almost 30 years ago after claiming the charges against him were part of a vendetta by Scotland Yard. A jury took 50 minutes on Friday to acquit former Det Sgt Gurpal Virdi of all charges over the incident which was alleged to have happened in 1986. The trial judge, His Honor Judge Andrew Goymer, said a conspiracy may have been behind the case against Virdi. Virdi alleged the case was brought to destroy his reputation and to punish him for speaking out. He told the Guardian a section of the Met had a "licence" to act as it wanted and had brought the case as part of a vendetta spanning 17 years.

Speaking from his home in west London, Virdi said: "The Met has not moved on, it's going backwards." He added: "It's the same department, the directorate of professional standards, they've always been after me since 1998 and the employment tribunal. That department is a cancer of racism that needs to be cut out and nobody has the courage to do it." Virdi said a particularly vicious element was the allegation he had sexually assaulted a minor: "It was done to keep me quiet and then to make me look bad in the community, and people did avoid me. It was meant to destroy me." He said his case documents disappeared and that his experience was similar to that of PC Carol Howard who won an employment tribunal for race discrimination against the Met, during which it emerged that reports damaging to the Met had been deleted. Virdi said: "It's still the ongoing campaign against me, as it has been, since 1998. It just shows that all the reports done into racism and fairness, are ignored. Senior officers provide lip service, recommendations are not implemented and some people have a licence to do want they want in the Met."

Virdi won 2 tribunal cases against the Met, one claiming to have been framed by colleagues, the other after claiming to have been victimised. The way the Met has treated him is one of the most high-profile cases against its record on race. Virdi believes he has been hounded for 17 years because he spoke out about racism within the force, which it claims to be committed to tackling.

In the latest case he was charged with indecent assault of a prisoner and misconduct in public office after an incident nearly 30 years ago in south London when he detained a young person. Virdi was alleged to have racially abused the black prisoner and to have prodded him in the anus with a collapsable baton while in the back of a police van. Originally Virdi was charged with attacking a minor only for the Met to realise the alleged victim was over 16 at the time of the incident. The collapsable batton Virdi was alleged to have had was not being used at the time by the Met police. During the trial at Southwark crown court, Virdi alleged that police tried to discredit him after he gave evidence to the 1998 Stephen Lawrence inquiry about racism within the force. He told jurors: "This is a typical reaction from a department that has hounded me since 1998, inves-

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 541 (06/08/2015) - Cost £1

Prisoners Advice Service and Howard League Win Legal Aid Challenge

Two charities have today (Tuesday 28 July) won the right to challenge legal aid cuts for prisoners after the Court of Appeal ruled there was a risk that the system could be unfair and unlawful. The Howard League for Penal Reform and the Prisoners' Advice Service (PAS) have been inundated with requests for help from children and prisoners since the cuts were introduced in December 2013. The cuts have coincided with an unprecedented deterioration of safety standards in English and Welsh prisons and a rise in suicides, compounded by staff shortages. A challenge by the Howard League and PAS was blocked by the High Court in March 2014 – but that decision was today overturned by Court of Appeal judges Lord Justice Leveson, Lord Justice Tomlinson and Lady Justice Sharp. The Court of Appeal's decision means that the case can now proceed to a full trial.

The charities argued in court that there were seven key areas of work cut from the ambit of legal aid that carry an unacceptable risk of unfairness. These included: • cases where prisoners appear before the Parole Board about their suitability for a move to open prison (but not release); • cases about pregnant prisoners being allocated to mother and baby units; • segregation; • access to offending behaviour work; • having a suitable home to go to on release from prison.

Unlike other cuts to legal aid, where a safety net was introduced to allow people to apply for legal aid in exceptional circumstances, the cuts for prisoners were absolute: there is no lifeline for even the most vulnerable or incapacitated prisoner to apply for legal aid for prison law matters. In its detailed decision, the Court of Appeal recognises the risk of systemic unfairness as a result of the legal aid cuts to prison law. Lord Justice Leveson concludes: "The question of inherent unfairness concerns not simply the structure of the system which may be capable of operating fairly, but whether there are mechanisms in place to accommodate the arguably higher risk of unfair decisions for those with mental health, learning or other difficulties which effectively deprive them of the ability effectively to participate in, at least, some of the decisions to which [the applicants' counsel] Ms Kaufmann refers." Lord Justice Leveson adds in the judgment that the Howard League and PAS are "pre-eminent in this field" and have "the very highest reputations".

In the year following the cuts, calls to the Howard League's advice line increased by 45 per cent. The legal team, which provides the only dedicated legal service for children and young people in prison in the country, is overwhelmed with requests from young people with nowhere else to turn. Prisoners' Advice Service (PAS) represents adults (over-21s) and receives thousands of letters and calls each year. The charity simply does not have the physical or financial resources to deal with the large amount of requests that it now receives for pro bono assistance and representation.

The first key point of the case argues that the removal of legal aid for a small number of important Parole Board cases is unlawful. These cases affect prisoners on life sentences and imprisonment for public protection (IPP) sentences who can only progress to open conditions if the Parole Board advises that it would be safe for them to do so. This is important because, once in open conditions, prisoners can apply to work and receive education in the community. This step is key for prisoners' rehabilitation and public safety. Making prisoners go through this stage without legal advice and representation is counter-productive and increases the risk to the public.

The second argument concerns the removal of legal aid for prisoners facing particular dif-

ficulties such as mothers threatened with separation from their babies, children and disabled prisoners who need a support package so they can be released safely, and mentally ill prisoners held in isolation. Managing people through long prison sentences is a skilful business which needs to be handled with extreme care so that they can resettle safely into the community.

Frances Crook, Chief Executive of the Howard League for Penal Reform, said: "We welcome today's decision, which offers hope to children and young people in prison. The Howard League's legal team has represented many hundreds of children in prison and we want them to thrive inside and on release. Legal aid gets them the best help to achieve that."

Deborah Russo, Joint Managing Solicitor at the Prisoners' Advice Service, said: "We are delighted with the outcome of today's hearing. The legal aid cuts to prison law have resulted in prisoners' access to justice being severely curtailed with the consequence of further isolating an already very marginalised sector of our society. We therefore welcome today's judgment, which now allows for a full hearing of the case and are thrilled to be now given the opportunity to put forward our case for legal aid for the most deprived and disadvantaged of prisoners."

1. The Court of Appeal heard oral argument on 7 July 2015. The case was before Lord Justice Leveson, Lord Justice Tomlinson and Lady Justice Sharp. 2. The seven key areas of cuts to legal aid under challenge are: (1) Cases before the Parole Board about a move towards open conditions, otherwise known as pre-tariff reviews and return to open condition cases; (2) Prisoner eligibility for one of the few available places in mother and baby units; (3) Prisoner segregation and placement in Close Supervision Centres; (4) Category A reviews; (5) Access to offending behaviour courses (6) Resettlement and licence conditions (7) Disciplinary proceedings (where no additional days may be awarded)

3. The Justice Committee's year-long inquiry into the impact of the Government's programme of reforms and efficiency savings across the prison estate raised concerns about the deterioration in safety. The report was published in March 2015.

4. The Howard League for Penal Reform is the oldest penal reform charity in the world. It is a national charity working for less crime, safer communities and fewer people in prison.

5. The Prisoners' Advice Service is an independent registered charity which provides legal advice and information to prisoners in England and Wales regarding their rights, the application of the Prison Rules and conditions of imprisonment.

6. The Howard League for Penal Reform and the Prisoners' Advice Service were jointly represented in these cases by Simon Creighton of Bhatt Murphy Solicitors, Phillippa Kaufmann of Matrix Chambers, and Martha Spurrier and Alex Gask of Doughty Street Chambers.

Segregation After First 72 Hours Without Legal Authorization - Unlawful

In their judgment handed down Wednesday 29th July the Law Lords found that the segregation of prisoners beyond an initial period of 72 hours without proper authorization was unlawful. R (Application of Bourgass and Anor) (Appellants) v Secretary of State for Justice (Respondent) [2015] UKSC 54 On appeal from [2012] EWCA Civ 376. Justices: Lord Neuberger (President), Lady Hale (Deputy President), Lord Sumption, Lord Reed and Lord Hodge

Reasons for the Judgment: There are two issues: whether the segregation was lawfully authorised, and whether the procedure followed met the requirements of fairness under the common law and, if applicable, article 6(1) of the European Convention on Human Rights.

On the first issue, the decisions taken under rule 45(2) were not taken by the Secretary of State, but by the senior prison officer or "operational manager" chairing the SRB, in accor-

police another for Joe/Jane public.)

'Sobriety Tag' Pilot Scheme to be Extended Nationwide *Peter Walker, Guardian:*

A scheme targeting binge drinkers who commit minor crimes by fitting them with ankle tags that monitor alcohol consumption is to be extended nationwide after a small-scale pilot was hailed as a success. The trial run, which saw 111 offenders in four south London boroughs fitted with the so-called sobriety tags, saw just over 90% of them reach the mandated 120-day period without drinking, according to the office of the city's mayor, Boris Johnson. The mayor's office said this was significantly better than the compliance rate for traditional community orders. The Ministry of Justice now says it will expand the scheme nationwide.

The year-long test was the first in which offenders were compulsorily fitted with the tags, which measure alcohol levels in perspiration and transmit the readings to a base station at the person's home. If alcohol is detected or the tag is tampered with, it sends an alert to probation officers. Repeated breaches can bring prison sentences. Northamptonshire police previously ran a voluntary scheme with the same tags, made by an American company whose technology has been used for more than a decade in the US, but this involved just three people. Johnson said alcohol-fuelled crime placed "a massive strain on frontline services", and the tags had been shown to work well. He said: "It's now time to bring this exciting new crime fighting technology to the rest of the capital, and help remove the scourge of alcohol-fuelled criminal behaviour from all of London's streets." The Conservatives promised in their election manifesto to consider using the scheme nationally. Andrew Selous, the junior justice minister, said the initial results were "very encouraging".

The tags are based around a 2012 law which allows courts to order offenders to abstain from alcohol for up to 120 days. They are aimed mainly at binge drinkers who commit offences such as drink driving, resisting arrest, assault and criminal damage while under the influence of alcohol. While tag wearers are also offered advice and treatment over drink, the scheme is not intended for those dependent on alcohol, for whom a 120-day abstinence period would be unrealistic. It is also not aimed at drinkers who commit domestic violence, where more specialist interventions are seen as more effective. Those fitted with a tag are required to be at home at certain times of the day so the base station can read alcohol measurements from the tag. If no readings are received for 48 hours this is seen as a breach of the order. Offenders are warned to avoid perfume or spray tans, which can trigger the tag, and cannot immerse it in water. When the test scheme was launched last year, the charity Alcohol Concern welcomed the initiative but said it must be used in conjunction with effective treatment and other measures.

Official Figures Show Prison Killings At Record Level

There were a record number of murders or manslaughters in prisons in England and Wales in the last year, according to Ministry of Justice figures. The department said seven inmates had been killed in the year to June - four more than in the previous 12 months. It is the highest level of prison homicides since records began in 1978, when there were five such cases. Prisons Minister Andrew Selous said the figures were "sobering" and "urgent work" to reduce violence was under way. Assaults and incidents of self-harm have also reached their highest levels in at least nine years. Assaults on inmates and staff increased to 16,885 in the year to the end of March, up from 15,051 in 2013/2014. The number of self-harm incidents rose to 27,315, up almost 4,000 from 23,529 the year before. There were 551 attacks by prisoners on staff which were classified as "serious assaults" - more than double the number two years ago.

Mr Selous said: "As the justice secretary said a fortnight ago, our prison estate is out of

properly deal with people with mental health concerns or substance abuse issues; poor liaison between police and other agencies I welcome the revised guidance on detention and custody being issued shortly by the College of Policing, which our recommendations have contributed to. Police forces need to ensure that all staff working in a custody environment are trained on its content, to help make sure those in custody are kept safe. It is also encouraging to see more joint working between policing and healthcare providers including the introduction of street triage, and liaison and diversion schemes. We also welcome the plan to transfer responsibility for healthcare provision in police custody in England to the NHS."

The IPCC has raised a number of issues concerning the treatment of those detained by police, including: An assessment of vulnerability should inform the initial response and all further actions of the police, including decisions on whether a person needs to be taken to custody, a healthcare setting or a place of safety

Every person who enters custody should be risk assessed. If someone is unable to interact with the risk assessment process then this is a sign that custody may not be the most appropriate place for them It is essential that checks and rousing are carried out at the frequency and standard expected. During a rousing check a grunt or a snore is not an adequate response to determine any change in an individual's consciousness level. Rousing is only adequate once a comprehensive verbal response has been heard. Those who are drunk and incapable should be treated medically, and those who are under the influence of alcohol or drugs should be placed on rousing checks and their condition assessed. Taser should only be used in custody in exceptional circumstances as it is a confined space, and drive stun mode should not be used purely as a means of pain compliance. Use of force should be proportionate, lawful and only carried out for as long as is necessary. Alternatives to restraint should be used as far as possible, but where used this should be recorded to determine whether it is being used disproportionately. Appropriate equipment must be used and vital signs monitored throughout any restraint.

Police Officers Avoid Jail After Unprovoked Attack on Innocent Civilian

Two Peterborough police officers who dragged an innocent man to the ground and stamped on his hand after mistaking him for a missing dementia suffer escaped immediate jail terms. PCs David Littlemore and John Richardson were out looking for a man in his 70s with Alzheimer's who had disappeared from his home. They saw victim John Morgan, 59, who was sitting on a park bench as he was out with his Jack Russell Winston. Littlemore, 35, approached him and Mr. Morgan, who has poor sight and diabetes, told him he was not the right man but refused to give his name and address. Mr. Morgan told the court he was then 'dragged to the floor' by Littlemore and Richardson, 50, who twisted his arms behind his back. His phone and glasses fell to the ground and he said Richardson repeatedly stamped in his right hand. Mr Morgan was only released when Littlemore confirmed via his radio that the missing man's dog was a Staffordshire Bull Terrier type - not a Jack Russell.

District Judge Susan Holdham sentenced both PCs to three months in prison suspended for two years and fined them £1,030 each. She said: "I have heard a lot about how stressful and difficult this time has been for the officers. You have both lost good character and probably whatever the sentence you will lose your employment.

(Now if this had been the other way round and John Richardson had attacked the police officers in the manner and way that they attacked him.He would have been been charged with Actual Bodily Harm (ABH) and given a jail sentence up to five years. As ever one law for the

dance with PSO 1700. The argument was that the decision of the operational manager was the decision of the Secretary of the State, by virtue of the Carltona principle. [44-46, 58, 60, 72] Under the Carltona principle, a decision of a departmental official is constitutionally the decision of the minister himself. [48-49] However, the relationship between governors and other prison officers on the one hand, and the Secretary of State on the other, is the subject of specific legislation: this is not readily reconciled with the idea that prison governors and other officers are constitutionally indistinguishable from the Secretary of State. [55] Prison governors are the holders of an independent statutory office. In both the 1952 Act and the Rules there are provisions imposing duties specifically on the governor or prison officers and provisions that confer separate powers on the Secretary of State. It is clear that the relationship between the governor, or his officers, and the Secretary of State bears no resemblance to the relationship between a minister and his officials. [58-60, 64] Neither can perform the functions properly belonging to the other. Rule 45(2) is intended to provide a safeguard for the prisoner against excessively prolonged segregation by the local prison management. It can only operate as a safeguard if it ensures that segregation does not continue for a prolonged period without being considered by officials who are independent of the prison. It follows that the Carltona principle cannot apply to rule 45(2) so as to enable a governor to take the decision on the Secretary of State's behalf. [88-89]

That is sufficient to allow the appeals, but it is also appropriate to consider the second issue, procedural fairness: first, the prisoner's right to make representations and second, the scope of judicial review of decisions under rule 45(2), and its compatibility with article 6(1) ECHR. [91] Common law fairness requires that a prisoner should normally have a reasonable opportunity to make representations before a decision is taken to authorise continued segregation. He must therefore normally be informed of the substance of the matters on the basis of which the authority of the Secretary of State is sought. In the present cases, more could and should have been said. [98, 100] As to whether the decisions to authorise continued segregation fall within article 6(1), so that the prisoner is entitled to a hearing before an independent and impartial tribunal, this depends on whether the decision involves the determination of a civil right recognised by English law. [117] A prisoner does not possess any private law right to association, or any precisely defined entitlement as a matter of public law. Article 6(1) therefore does not apply. In any event judicial review could meet the requirements of article 6(1) in this context. [122-126] References in square brackets are to paragraphs in the judgment

Background to the Appeals: The question raised in these appeals is whether decisions to keep the appellant prisoners in solitary confinement (also known as segregation) for substantial periods were taken lawfully. The decisions were made under the Prison Act 1952, rule 45 of the Prison Rules 1999 and "PSO 1700", a non-statutory document issued by the Secretary of State. Rule 45, paragraph (1) enables the governor of the prison to arrange for the prisoner to be segregated. Paragraph (2) provides that the prisoner shall not be segregated under the rule for more than 72 hours "without the authority of the Secretary of State" and that "authority given under this paragraph shall be for a period not exceeding 14 days."

In 2010 the first appellant, Kamel Bourgass, was serving a life sentence in HMP Whitemoor. On 23 April 2010 a prisoner who had previously assaulted Bourgass was himself assaulted. Bourgass was not present. He was segregated under rule 45(1) on the orders of the "challenging prisoners' manager", Mr Colley. The reason given was investigation into a serious assault. He remained in segregation for seven months. His continued segregation after 72 hours was purportedly authorised under rule 45(2), in accordance with PSO 1700, by various prison officers

chairing the prison's "Segregation Review Board" ("SRB"), including Mr Colley. Authority for his segregation was accompanied by the same reason on a number of occasions, i.e. investigation of the assault. In May 2010 the police indicated that they did not regard Bourgass as a suspect in connection with the assault. After that another reason given for continued segregation was that the prison was referring Bourgass to the Close Supervision Centre ("CSC"). Bourgass's representatives initiated judicial review proceedings. In his response of June 2010 the Secretary of State said that Bourgass was segregated not only because of the assault but because "he is considered to pose an unacceptable risk on normal location". It was alleged that he had been "intimidating other prisoners to change faith". On 2 August 2010 the Secretary of State filed detailed grounds of defence to the judicial review claim, disclosing that on the morning prior to the assault, Bourgass had been seen on CCTV speaking to the perpetrator. This had not been disclosed previously. The Secretary of State also filed a witness statement repeating the suspicions about the assault and intimidation. In September 2010 the CSC decided not to accept Bourgass, stating that there was insufficient evidence to support the allegations. Segregation continued to be authorised until Bourgass was transferred to HMP Woodhill in November 2010.

The second appellant, Tanvir Hussain, was serving a life sentence in HMP Frankland. On 26 April 2010 he was placed in segregation under rule 45(1) on the orders of the "residential governor" Mr Greener, following an incident in which another prisoner was seriously injured. He remained in segregation for six months. His continued segregation after 72 hours was purportedly authorised under rule 45(2), in accordance with PSO 1700, by various prison officers chairing the SRB, including Mr Greener. The reasons given were the assault, police and prison investigations into it, and, later, the risk of reprisals from other prisoners. Judicial review proceedings were initiated. On 30 July 2010 the Secretary of State submitted detailed grounds of defence and a witness statement of Mr Greener, stating that Hussain was initially segregated because of the assault and the risk he posed to others. Another reason was intelligence linking Hussain with converting other prisoners in segregation to his interpretation of Islam (an allegation which the prison subsequently withdrew). In October 2010 Hussain was transferred to HMP Wakefield.

The applications for judicial review focused on issues of procedural fairness. They were dismissed by the High Court. Appeals to the Court of Appeal were dismissed.

HMP Wandsworth - No Longer Fit for Purpose

Overcrowding and severe staff shortages meant that almost every service at HMP Wandsworth was insufficient to meet the needs of the prison. It was unacceptably overcrowded. It held 1,630 adult men, more than any other in the UK, and almost 70% more than its certified normal accommodation of 963. The population had grown and changed since the prison's last inspection in 2013. The prison had been designated a foreign national prisoner hub and held over 700 foreign nationals. The category B prisoners were typical of inner city local prisons, with a high incidence of mental health and substance abuse problems. Category C prisoners had needed work, education and training opportunities. Severe staffing shortages compromised the prison's ability to meet the needs of either group. Since the last inspection, staffing levels had been reduced by about 100 across all grades. This was compounded by difficulty in recruiting and retaining staff. Inspectors identified 94 specific problems that need immediate attention, there was only on example of good practice. 31 previous recommendations had not been achieved - Nick Hardwick HMCIP

Our last inspection of HMP Wandsworth in June 2013 described how the determined efforts of staff and managers had made significant improvements in the prison, which then offered reason-

developed a programme for turning round the lives of youngsters, which he terms the "social deprivation mindset". But earlier this year he was told he would have to be vetted again. This time he failed, although he says his circumstances are the same. "So after changing my life, now they tell me I can't come in. They wouldn't give me a reason. What have I done all this work for?

"I have a programme that seems to work. People get into gangs and believe that society owes them a living. I was a mentor in schoools for two years. You can't get through to these people unles you change their minds. This is important. They are making this man, who has changed his life, look like an idiot. Now they are saying 'you can't do it' and they are going to do it." Hercules, who advised former justice secretary Chris Grayling and whose work has been supported in the past by his local MP, the Conservative minister Justine Greening. Another former offender, who did not want to be identified, claimed that he had also recently had his security clearance withdrawn.

Juliet Lyon, director of the Prison Reform Trust, said: "Allowing former prisoners back inside to share their knowledge of how they turned their lives around is an important part of aiding rehabilitation. Whilst security should not be compromised, prisons should enable mentors to draw on their own experience and help others to stay out for good." A prison service spokesperson said: "Those working with offenders in prisons are required to undertake a number of checks beforehand. Anyone who fails to meet the required level of vetting will be denied access."

17 Deaths During or Following Police Contact During 2014/2015

There were 17 deaths in or following police custody. This is an increase from 11 last year (the lowest number since our recording began in 04/05), but is broadly in line with the average number of such deaths over the last six years. This has remained at less than half the number recorded when the IPCC was first set up.

There was one fatal police shooting, the first in three years.

14 road traffic fatalities, continuing a downward trend, particularly in relation to pursuit-related deaths,of which there were 7.

69 apparent suicides following custody, continuing the rise in recent years, which may be related to improved identification and reporting.

IPCC also investigated 41 other deaths following contact with the police in a wide range of circumstances, including 26 people who died after concerns were raised with the police about their safety or well-being. As in previous years, mental health and links to drugs or alcohol were common factors among many of those who died.

Eight of the 17 people who died in or after police custody and half of those apparently committing suicide after custody had mental health concerns. Nearly all of those who died in or following police custody (16 of 17), and over a third of those who apparently committed suicide following custody, had links to drugs or alcohol.

IPCC Chair Dame Anne Owers said: "The police face particular challenges in dealing with people who are mentally ill, or under the influence of alcohol or drugs. I welcome the efforts being made to ensure that those who need medical assistance do not end up in police cells but are dealt with in an appropriate healthcare setting. One of the IPCC's most important functions is to investigate deaths in or following police custody, to make sure that lessons are learned and future deaths prevented wherever possible. It is essential for the families of those who died that they know and understand what happened and why. Regrettably, our investigations have too often exposed the same issues: inadequate risk assessments; token checks on a person in custody; insufficient handovers between custody staff; a failure to recognise or

will be supported to address their complex needs in prison and on release."

Jenny Earle, the director of the trust's programme to reduce women's imprisonment, said: "We need to listen to women with experience of the justice system and take seriously the mounting evidence that short periods of imprisonment are particularly destructive for women and the families who rely on them." Dawn Austwick, the chief executive of the Big Lottery Fund, said: "This project builds on a strong body of evidence, looking at interventions to help women at risk of offending address underlying issues and improve their lives." Nancy Loucks, the chief executive of the charity Families Outside, said: "The impact on children when a family member goes to prison is significant and enduring, particularly when a mum goes to prison. Their housing may be at risk, their schooling may suffer, their care arrangements may mean they're separated from siblings and other family. Up to a third develop serious mental health issues, and they are at higher risk of offending themselves in later life."

Case study: 'A tenuous grip on family life was made ever more precarious by my imprisonment' I am a mother of two and I had a profession. I had never been in any kind of trouble before. I was put into an untenable financial position and I was at risk of losing everything. I tried to put it right through legitimate measures which, it transpired, made the situation worse. I stole from my employers in desperation and mental turmoil and life has not, nor ever will be, the same again. This was my first and only offence. I confessed, repaid the money, and had lost the family home and my career. Most importantly, I was the sole carer of my children. Despite this, I was sent to prison. The long waiting time between arrest and sentencing was the worst kind of purgatory, a surreal and tortuous period not lightened by reassurances from the police, probation and legal advisers that I would not get a prison sentence. When the verdict was announced, despite being terrified for my children, it was a relief. I could get through prison, fully pay for what I'd done and emerge to rebuild my life. This wasn't to be the case.

My children narrowly missed being put into care. A tenuous grip on family life was made ever more precarious by my imprisonment. This was only compounded following my release. I had started feeling nothing but remorse and shame, this was now heavily overlaid by anger. The prison sentence didn't make sense – I don't know what was achieved by it and it seemed to me to be vindictive and pointless in the extreme. I wasn't expecting to get away with anything, but at the same time I didn't expect to be kicked while I was already well and truly down.

It took six months from my release from prison to find paid work. I still cannot get insurance and it's a struggle every month to make ends meet. I try to tell myself that I can come out of this one day, but it is a long game and requires extreme levels of tenacity, patience and mental fortitude. In reality, I don't expect to outlive the consequences of my conviction, nor its impact on my children.

Ex-prisoner Barred From Helping Young Offenders Change Their Lives

Trevor Hercules, who spent more than a decade behind bars, has been blocked by the Ministry of Justice from delivering talks to young offenders. The decision, made on the grounds that he failed a vetting procedure, comes amid growing concern about the radicalisation of young black prisoners and the need to improve rehabilitation procedures. Hercules maintains that the decision to exclude him was made despite requests from prison governors that he should participate in training sessions inside jails. "I went into the Mount prison [in Hertfordshire] in 2013," Hercules explained. "The first time I went in they gave me about 30 prisoners. It was wonderful and the governor asked me back again. I'm used to working with kids."

Hercules, 60, was then told he had to be validated by the National Offender Management Service (Noms). He passed and returned to do more sessions with prison staff. He had

ably good outcomes for prisoners in all areas. This inspection found that for reasons largely outside the prison's control, outcomes had deteriorated significantly and it faced severe problems.

HMP Wandsworth in south London is a Victorian category B local prison with a category C resettlement unit. The prison was unacceptably overcrowded. It held 1,630 adult men, more than any other in the UK, and almost 70% more than its certified normal accommodation of 963. The population had grown and changed since the last inspection. Trinity unit, which in the past had held vulnerable prisoners, and was closed for refurbishment at the last inspection, had now re-opened to hold category C prisoners, which meant that the population had increased by about 400 men. The prison had been designated a foreign national prisoner hub and held over 700 foreign nationals - about 40% of the population. Our survey suggested that over 100 of them could not speak English.

The prisoners on Heathfield, the category B side, were typical of prisoners in other inner city local prisons, with a high incidence of mental health and substance abuse problems. There were about 300 referrals to the mental health team each month. Almost 500 prisoners were on the caseload of the prison's drug services. One in three reported housing problems when they first arrived, one in four reported money worries, and one in five said they felt depressed or suicidal. Category C prisoners on Trinity generally had different needs: good quality work, education and training opportunities, and interventions to address their behaviour to reduce the risk they would reoffend when released. Severe staffing shortages compromised the prison's ability to meet the needs of either group of prisoners. Since the last inspection the prison's budget had been reduced by about 25% and staffing levels had been reduced by about 100 across all grades and roles. This was compounded by difficulty in recruiting and retaining staff in the posts that remained. Turnover among senior staff was particularly high and this severely undermined the prison's ability to consistently implement some important processes. In one 24-hour period during the inspection, 40 officers were out of the prison on bed watches - supervising prisoners during external hospital stays.

Despite the efforts of staff, processes to keep prisoners safe lacked resilience. Reception and early days processes vividly illustrated the pressures the prison was under. There was an average of about 2,000 movements through reception each month. Reception processes were generally efficient but at busy times prisoners went to the wings without retrieving their property or telephone numbers from their phones; and they might wait for more than a week before they were able to do so. Prisoners generally went to well-prepared first night cells and the prison relied heavily on a team of prisoner insiders to help new prisoners, including non-English speakers, to settle in. However, there were risks that new prisoners who needed extra support would not be identified. Some cell sharing risk assessments were not fully completed and staff on the first night unit did not know where new prisoners were located. Not all new arrivals who needed substance misuse treatment received appropriate monitoring and observation.

Ten prisoners had died since the last inspection. Four of the deaths were self-inflicted. The Prisons and Probation Ombudsman had published his report into one of these deaths but the recommendations it contained were not yet fully embedded in practice. We were notified of two further deaths as this report was being prepared: one was self-inflicted and the other an apparent homicide. Levels of self-harm and the number of prisoners identified as being at risk of suicide or self-harm were relatively low, but the quality of support processes was inconsistent and management checks were inadequate. A valuable daily complex needs meeting reviewed the management of the most complex prisoners, but this process would have been improved by the attendance of key residential staff. Prisoners on Heathfield had difficulty

accessing Listeners (prisoners trained by the Samaritans to provide confidential emotional support) and the Listener suite on Trinity was dirty and blood-splattered.

About one in five prisoners told us they felt unsafe at the time of the inspection. The excellent arrangements to identify, manage and reduce violence that we found at the last inspection had lapsed and neither we nor the prison were able to accurately identify the scale and pattern of violent incidents in the prison. Processes to address perpetrators and support victims were very weak. Prisoners told us, and we observed, that landings were unstaffed for long periods and this created potential for violence to take place unnoticed and unchallenged. Vulnerable prisoners were kept safe in a gated-off section on one of the wings but no attention had been given to the risks some of them posed towards the few vulnerable young adults who were also held there.

Security measures were mainly proportionate and measures to restrict the supply of illegal drugs were more effective than we have seen recently in comparable prisons. Substance misuse services had deteriorated since the last inspection but were generally adequate. The use of force had increased and governance was poor. Throughput in the segregation unit was high, and the environment and regime in the unit were poor. Nevertheless, segregation staff managed some very challenging prisoners well.

In some prisons we have inspected recently, a filthy and dilapidated environment has been the surest indication the prison has almost given up under the pressures it faced. The external environment at HMP Wandsworth was clean and in good repair, a sign of the efforts the prison was making. Nevertheless, overcrowding and staff shortages had a severe impact. Most prisoners were doubled up in small cells designed for one, with an unscreened, shared toilet close to the beds. Prisoners struggled to obtain sufficient clothing, bedding and cleaning materials. Call bells went unanswered for long periods. The application process which prisoners used to make simple requests was ineffective. The third of prisoners who were unemployed - more than 500 men - usually spent 23 hours a day locked in their cells, and the frequent curtailment of activities meant that many more were frequently confined to their cells for most of the day. Daily exercise periods might be as little as 15 minutes and staff shortages meant that association periods were restricted and inconsistent so prisoners were unable to use the phones or showers.

We observed mostly courteous relationships between staff and prisoners but staff shortages severely reduced the capacity of staff to interact with prisoners. Prisoners we spoke to were, for the most part, sympathetic to the pressure that staff were under. Equality and diversity work had sharply deteriorated but prisoners with protected characteristics generally reported more positively than the population as a whole about their treatment by staff, though more negatively about their ability to get their practical needs met. Provision for the large number of foreign national prisoners was inadequate. Prisoners who did not speak English largely relied on other prisoners to make themselves understood and many were frustrated and anxious about their inability to get advice about their complex extradition or other immigration issues. Support for prisoners with disabilities was very poor; there was no formal care planning and many struggled to make their way around the prison. The chaplaincy played an important part in prison life, but worship facilities were inadequate for the size and make up of the population.

Health services had deteriorated since the last inspection mainly because of staff shortages. The quality of nursing care by some nurses was poor. Medicine management was also weak. The regime in the Jones unit - the inpatient unit for patients with physical health needs - was very poor. Mental health care was much better but the capacity of the Addison unit, which provided inpatient care for men with complex mental health needs, was insufficient to meet

make a record of some of the very challenging circumstances police officers are asked to deal with on a daily basis and then demonstrate, more effectively, the reality of policing our capital and our officers' professionalism," he said. The decision to roll out the cameras follows two trials in 2012 in Lambeth and Haringey, and 121 of 129 vans have already been fitted, with the remainder of the fleet due to follow suit in the coming months. However, it does not cover police cars, which also transport detainees to custody. All future vans commissioned by the Met to transport detainees to custody will have the CCTV system fitted as standard. The system turns on when the car is started and continues for 30 minutes after the engine is switched off.

Cameras record outside the vehicle at the front and rear, while there are three cameras inside providing views of the cell area and the officer escort section. A rear display monitor provides images of the cell area, allowing continuous monitoring of the detainee. Recordings are captured on a digital video recorder fitted inside the vehicle. All data will be automatically overwritten after a minimum of 22 days, but if it is required for a criminal investigation or other policing purpose it will be downloaded from the system and stored.

80% of Female Inmates Jailed For Trivial Crimes - Their Families Pay the Price

Nigel Morris, Independent: More than 80 per cent of female prisoners have been locked up for non-violent offences such as shoplifting, new figures show, as a drive is launched to clear jails of women who pose no danger to the public. At least 17,000 children are separated from their mothers every year because of the "devastating impact" of imprisonment and are more likely to suffer homelessness, family problems and trouble at school, the Prison Reform Trust (PRT) warned. Arguing that women are treated more harshly than men by the criminal justice system, it announced it had secured a £1.2m lottery grant to mount a three-year campaign to cut the number of female inmates.

About 4,230 women are currently serving sentences in UK prisons, including around 3,890 in England and Wales, 300 in Scotland and 40 in Northern Ireland. The numbers have fallen slightly in recent years, but are still twice as high as 20 years ago. Penal reformers have drawn encouragement from a recent commitment from the Ministry of Justice to reduce the number of women in prison. However, the continuing disparity between the background of male and female prisoners and the offences for which they are jailed is underlined by fresh research published by the PRT.

It found that 81 per cent of women are being imprisoned for non-violent offences, including shoplifting and handling stolen goods, compared with 70 per cent of men. As a result they are disproportionately more likely to be jailed for less than 12 months, the sentence with the highest reoffending rate. More than half (53 per cent) of female prisoners reported suffering sexual, physical or emotional abuse as a child, against 27 per cent of male inmates. They are nearly twice as likely to suffer depression, and account for 26 per cent of self-harm incidents in England and Wales despite only representing 5 per cent of the prison population.

The PRT said three-fifths of female inmates have dependent children and one-fifth are single mothers. Very few youngsters whose mothers are locked up are cared for by their father, whereas most children with a jailed father remain with their mother. Its campaign will focus on areas of the UK where large numbers of women are jailed in an effort to identify alternatives to prison. It will urge courts to consider the greater use of non-custodial sentences for female offenders and press for better mental health services and social care for vulnerable women.

A Ministry of Justice spokeswoman said: "Crime is falling and fewer women are entering the justice system. We want to see even fewer women offending but they need the right support to break away from crime. Our reforms will mean for the first time virtually all female offenders

Pill," a spokeswoman for the force told Wales Online. "One of these solutions includes a designated place away from residential areas that prostitutes can use. It has been shown that this initiative has enabled police and local agencies to provide prostitutes with opportunities to access support services including health, welfare, addiction and housing. We have a fundamental responsibility to protect communities from the nuisance caused by prostitution, but also to protect individuals involved in prostitution from harm themselves."

Alex Bryce, of the sex work support group UKNSWP, believes the Holbeck scheme has had a positive impact, in contrast to a scheme in Hull in which sex workers have been given anti-social behaviour orders. Holbeck is "an area where sex workers operate from – somewhere where they won't be arrested, and away from residential areas," he told The Independent. "Generally, pure enforcement policing is counter-productive. What they have in Hull at the moment is the worst example I'm aware of... In communities where police and local authorities pursue a populist approach and cave in to 'not in my back yard' attitudes, sex workers can be put at serious risk of harm." But Newport resident Sarah Allen said: "There are girls who walk the streets of Pill already who are as young as 14 and are charging £2 for sex." She added that if police bring in the safe zone, "there will be riots". David Davies, the Conservative MP for Monmouth, said: "I don't think anyone wants a situation where parts of Pill are being turned into something like you see in Amsterdam... I lived close to a brothel in Newport for quite a long time. I didn't make use of it and it did not cause any problems, and that was that."

Mr Bryce, who sits on the board for the National Police Chiefs Council and is part of a group that looks at the safety around the sex trade, said there were no plans to roll out specified locations for sex work across the country, and that it was up to local authorities to implement them.

The Home Office has refused to comment!

Met Police Detainee Transport Vans to get CCTV *Jamie Grierson, Guardian*

Police vans that transport detainees to cells in London are to be fitted with CCTV, Britain's most senior police officer has announced, following pressure from families bereaved by deaths in custody. Sir Bernard Hogan-Howe, the Metropolitan police commissioner, said every borough will have at least one van with five video cameras, three microphones and two monitors, in an attempt to increase transparency in his force. Hogan-Howe's announcement comes less than a week after Theresa May, the home secretary, announced a review of deaths in custody, which will investigate restraint methods used by officers and how incidents are scrutinised. The number of people dying in police custody has reached its highest level in five years, increasing to 17 people in 2014-15 from 11 the previous year. The commissioner said the decision was influenced by concerns raised by a number of bereaved families, including relatives of Sean Rigg, who died in 2008 of a heart attack at Brixton police station, London.

Rigg's sister, Marcia Rigg-Samuel said: "I am so pleased that the commissioner has responded positively to what I, and many families, have called for when faced with unanswered questions about what happens to a member of the public who disappears into the back of a police van and emerges with unaccounted-for injuries or in ill health. "If there had been cameras in place back in August 2008 when my brother was detained in Brixton then the footage would have answered many key questions which remain under investigation by the IPCC (Independent Police Complaints Commission) to this day."

Hogan-Howe said the CCTV in vans was part of a wider rollout of new technology to front-line officers, which also includes body-worn cameras. "This equipment will be able to

demand; some of these very ill men had to be cared for on the wings. There were unacceptably long delays in transferring men out of the prison to secure mental health facilities.

There were insufficient activity places for the population and attendance at those available was poor. Under A4e, the previous learning and skills provider, the leadership of learning and skills and the quality of provision had declined considerably. Manchester College, the new provider, was beginning to address this as the inspection was underway but the provision should not have been allowed to deteriorate in this way. Ofsted, our partner inspectorate, declared the provision inadequate. Some teaching and learning - such as in the radio and motorcycle workshops - was good, but too much required improvement. Too few prisoners completed courses. It was a great concern that no extra activity places had been provided for the 350 category C prisoners who had been taken on when the Trinity unit opened in 2014. Many ofthese men were nearing the end oftheir sentence and provision to prepare them for future employment, education or training was inadequate - a surer way of undermining their rehabilitation was hard to imagine. The library and gyms were good, but too few prisoners could access them even when staffing shortages did not mean they were closed.

HMP Wandsworth was in the process of becoming a resettlement prison and was piloting a new arrangement for working with the relevant Community Rehabilitation Company (CRC), MTC Novo, which would provide most resettlement services from May 2015. It was early days but we were not assured that the new arrangements would be fully in place for when the CRC took over. Offender management was in disarray, with severe staff shortages and disorganisation creating a backlog of risk assessments, inconsistent quality, and weaknesses in public protection arrangements. Throughout the inspection we were inundated by prisoners with concerns about delays to the categorisation process, without which they could not progress their sentences. Their concerns were justified: out of 847 prisoners who should have had a security category set, only 53 I had been completed. Probation and prison offender management staff worked in separate offices and used their own system rather than P-Nomis (the electronic case work system) to record their work, which was consequently inaccessible to other staff.

Practical resettlement needs were very mixed. About 140 prisoners were released every month. St Giles Trust worked with peer mentors to help prisoners find accommodation but often only a temporary solution was available. A number of agencies assisted prisoners with employment and training issues but their work was poorly coordinated and sometimes duplicated. Health care arrangements were generally satisfactory but foreign nationals being deported to their country of origin were not given appropriate medication. Substance misuse services were good but there was insufficient help for prisoners with financial issues. Our survey indicated that about 700 prisoners had children under 18. Fewer men than in comparable prisons said they had help to maintain contact with them. Visit facilities were reasonable but the booking system was in disarray: there was a backlog of over 1,000 email requests despite vacancies for visits throughout the inspection.

Overcrowding and severe staff shortages had led to deteriorating outcomes at HMP Wandsworth. It was not simply a matter of prisoners spending practically all day confined in shared cells the Victorians had designed for one - unacceptable though that was. Overcrowding, combined with severe staff shortages, meant that almost every service was insufficient to meet the needs of the population. There were not enough staff on the wings to engage with prisoners; sometimes they were absent altogether. Essential safety processes were inconsistently applied. The needs of foreign national prisoners were inadequately met. There was not enough space for all prisoners who wanted to attend religious services to do so and there were insufficient activity places. Some essential

processes that enabled prisoners to progress and reduce the risk they would reoffend had long backlogs, and procedures to protect the public were not sufficiently robust. Anxious family members could not get an answer from the visits booking service.

Managers and staff in the prison deserve credit for preventing the prison from deteriorating further, but it was not a surprise that some managers and staff were demoralised and others were clearly exhausted. Not all the problems at Wandsworth were a result of the population and resource pressures and this report identifies important areas the prison itself can and should address. Nevertheless, the Prison Service nationally will need to address the mismatch between a prison's available resources and the size and needs of its population. Unless this is addressed, prisons will struggle to hold men safely and decently and to reassure the public that effective work has been done to reduce the risk that prisoners will reoffend and create more victims after release.

Discussion and Update - Justice for the Craigavon Two and JENgBa

St. Mary's University College, Falls Road, Belfast, BT12 6FE - 7th August, 7:00 - 9:00 pm

Justice For The Craigavon Two Campaign (JFTC2), seeks to highlight the case of Lurgan men Brendan McConville and John Paul Wootton who were sentenced in a Diplock Court to life imprisonment using the Joint Enterprise principle for the killing of PSNI Constable Stephen Carroll in 2009. Speakers will include Janet Cunliffe, mother of Jordan, a 'registered blind' 15 year old who was abused by the Joint Enterprise principle and a campaigner for JENgBa (Joint Enterprise: Not guilty By Association), a grass roots campaign launched in 2010 that seeks to highlight the abuse of the Joint Enterprise principle. Other speakers will also include case legal representatives, as well as family and JFTC2 committee members.

Admission Free - Organised by: Justice For The Craigavon Two

Schedule 7 Terrorism Act 2000 Incompatible with Articles 5, 6 & 8 ECHR!

Beghal (Appellant) v Director of Public Prosecutions (Respondent): Mrs Beghal had brought proceedings against the DDP arguing that the Schedule 7 powers breached her Article 5 (right to liberty), Article 6 (privilege against self-incrimination) and Article 8 (right to respect for private and family life) rights under the European Convention on Human Rights. Appeal dismissed but strong dissenting opinion from Lord Kerr, paras 93 through 128, found Schedule 7 of the Terrorism Act 2000 incompatible with articles 5, 6 and 8 of ECHR.

The appellant is a French national, ordinarily resident in the UK. Her husband is in custody in France in relation to terrorist offences. She arrived in the UK at East Midlands Airport on 4 January 2011 with her three children following a visit to her husband. On arrival she stopped by border officials. She was searched by officers from Leicestershire Constabulary who subsequently conducted an examination of the appellant under Schedule 7. The officers made clear that they would not delay the examination pending the arrival of her lawyer. The appellant did not answer most of the questions put to her. She was subsequently convicted of offences under Schedule 7, namely failing to answer questions. She now appeals against her conviction. The issue in this case is whether the examination or detention of an individual under Schedule 7 engages Article 5 (right to liberty), Article 6 (privilege against self-incrimination) and Article 8 (right to respect for private and family life) of the ECHR. Additionally the appeal considers whether s.78 of the Police and Criminal Evidence Act 1984 represents a sufficient safeguard against any interference with Art.6 and the appellant's privilege against self-incrimination. The Supreme Court dismissed the appeal by a majority of 4-1.

rationale. In my view, no reasoned justification has been proffered for investing examining officers with a power to stop, search, question and detain anyone passing through a port and for making those who refuse to answer questions amenable to the criminal law.

126. On the issue of whether a proper balance has been struck between the rights of the individual and the interests of the community, the degree of interference with rights is self-evidently relevant. And it is unquestionably true that in many cases, the interference with the Convention rights may be relatively unobtrusive. It is also undoubtedly relevant that members of the public expect to be questioned at ports of entry to and exit from the United Kingdom and that many raise no objection to the use of Schedule 7 powers. Again, the scourge of terrorism and the need to take effective measures against it loom large in this context. But the potential reach of the Schedule 7 powers must also be clearly recognised.

127. A person stopped under this provision is required to answer questions even though they may not have had the benefit of legal advice. Individuals may have many reasons why they do not want to answer questions as to their movements and activities. These reasons are not necessarily or invariably discreditable. Some may be apprehensive about answering questions without a lawyer being present or may lack a full understanding of the significance of refusing to answer. The fact that they are open to criminal sanction, which could include imprisonment, for failing to answer questions, renders the exercise of these powers a significant interference with article 8 rights, in my opinion.

128. Again, the absence of any articulated reason for the need for a suspicion-less power to stop, detain, etc makes its justification on the basis that it strikes the right balance problematic. The safeguards outlined by Lord Hughes in para 43 of his judgment do not bear on this anterior question, and, in fairness, he does not suggest that they do. Whatever may be said about the efficacy of those safeguards (and there is, at least, ample scope for debate about, for instance, the effectiveness of judicial review) they do not supply the necessary justification for allowing examining officers to exercise the powers under Schedule 7 without any suspicion whatever. For that fundamental reason, I cannot accept that the particular form of interference which Schedule 7 represents has been shown to be justified.

Conclusion: 129. I would allow the appeal and declare that Schedule 7 of the Terrorism Act 2000 is incompatible with articles 5,6 and 8 of E C H R.

'Safe Zone' for Sex Workers in Leeds a Success *Josh Barrie, Indpendent*

Police are considering plans to make a part of Newport, in Wales a designated area for sex workers to operate without fear of being moved on or arrested to ensure their safety. The move comes despite fears that girls as young as 14 are operating as prostitutes in the Welsh town. Gwent Police are expected to pilot the initiative, which will see prostitution "managed", in the Pill area of Newport. The project, which would aim to help prostitutes leave sex work, improve safety on the streets and encourage more people to report violence, has been inspired by a similar scheme in Leeds. There, the Holbeck area of the city was placed under controls to give prostitutes a safer place to work last year. There is also a drop-in centre for sex workers to report incidents and liaise with police. Although not popular with all residents, communication between the force and those on the streets is said to have dramatically improved.

Gwent Police confirmed that it was looking at adopting a similar scheme. "Officers have looked at pilot initiatives implemented by police forces in the North of England and are in the very early stages of looking to see what, if any, solutions can be applied to the issues in

those rights on the question of justification. To establish justification, it is necessary to satisfy a trilogy of tests: the interference must pursue a legitimate aim; it must be in accordance with law; and it must be necessary in a democratic society. An aspect of the last of these is proportionality.

120. As Lord Wilson in R (Aguilar Quila) v The Secretary of State for the Home Department (AIRE Centre intervening) [2012] 1 A C 621, para 45 and Lord Sumption and Lord Reed in Bank Mellat v HM Treasury (/l/o 2) [2014] AC 700, 770-771,789, paras 20 and 70ff explained, this normally requires that four questions be addressed: (a) is the legislative objective sufficiently important to justify limiting a fundamental right?; (b) are the measures which have been designed to meet it rationally connected to it?; (c) are they no more than are necessary to accomplish it?; and (d) do they strike a fair balance between the rights of the individual and the interests of the community?

121. The objective of the Schedule 7 powers (counteracting terrorism) can be readily acknowledged as a legitimate aim. And obtaining information about whether a person appears to be a terrorist is rationally connected to that aim. As is usually the case, the real debate centres on the third and fourth issues: is the breadth of the powers no more than is necessary to achieve the aim; and has a fair balance been struck between the rights of the individual and the interests of the community.

122. The fact that a power has been successful in promoting the aim of the interference with a Convention right does not supply the complete answer to the question whether it is no more than is necessary to achieve the aim. Nor does the endorsement of the usefulness of the power by the independent reviewer. Valuable though the independent reviewer's opinions are, the question whether this undoubted interference with an individual's Convention rights is no more than is necessary is one for the courts. And the courts should be mindful that the proven success of the use of the power does not establish that no lesser form of interference would be just as efficacious. Nor does it, indeed, address the question whether, even if somewhat less effective, a more unobtrusive interference would be sufficient to fulfil the aim of the measure.

123. While the state enjoys an area of discretionary judgment as to what measures are needed to pursue a particular aim, this does not relieve it of the obligation to produce some evidence that the specific means chosen to bring that about are no more than is required. There is no evidence that a suspicion-less power to stop, detain, search and question is the only way to achieve the goal of combatting terrorism. The fact that the measure has been successful does not establish that proposition. Indeed, to take the example of detention, it is clear that the measure goes beyond what is necessary. As Lord Hughes has pointed out in paras 54 and 55, detention beyond what is necessary to complete the process should be justified by objectively demonstrated suspicion. The fact that the appellant was not detained for more than was necessary does not establish that the breadth of the power available to examining officers is proportionate. Plainly, it is not.

124. Li kewise, the fai lure or refusal of Pari iament to enact a provision making answers or information obtained by use of Schedule 7 powers inadmissible in proceedings disposes of any possible argument that this measure goes no further than is required to meet its aim. The opinion of the independent reviewer and the Divisional Court that this enactment should be made has not been challenged. While the provision remains in force, that aspect of the Schedule 7 powers is not only not in accordance with law (for the reasons earlier given) but also, ipso facto, more than is necessary to fulfil the objective of the interference.

125. Of course it is true that the threat of terrorism is substantial and should not be downplayed. But that undoubted truth should not mask or distort the obligation to dispassionately examine the aptness of measures taken to deal with it. If they are to be seen as no more than necessary, the powers under Schedule 7 must be capable of withstanding scrutiny of their

Dissenting Opinion of Lord Kerr:

93. The opportunity to exercise a coercive power in an arbitrary or discriminatory fashion is antithetical to its legality. The primary question in this case is whether the powers under Schedule 7 to the Terrorism Act 2000 can be used in this way or whether there are in place sufficient safeguards to prevent them from being exercised in such a manner. It is not enough that they have not in fact been used arbitrarily or in a discriminatory way. If they can be used in such a way, they will not be legal. Moreover, powers which can be used in an arbitrary or discriminatory way are not transformed to a condition of legality simply because they are of proven utility.

94. The most important authority in this area is the Strasbourg decision in Gillan v United Kingdom (2010) 50 E H R R 1105 and probably the most important passage from the judgment (in relation to the issues in the present case) is that contained in para 83, quoted by Lord Hughes in para 36 above. There are important earlier passages, however. In paras 76 and 77, the court said this: "76. . .. the words, 'in accordance with the law' require the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention and inherent in the object and purpose of article 8. The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual - if need be with appropriate advice - to regulate his conduct. 77. For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. The level of precision required of domestic legislation - which cannot in any case provide for every eventuality - depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed".

95. As E CtH R acknowledged, eleven constraints on the exercise of the powers at issue in the Gillan case had been identified by Lord Bingham when the case had been before the House of Lords (R (on the application of Gillan) v Comr of Police of the Metropolis [2006] UK H L 12; [2006] 2 A C 307). These were set out in para 14 of Lord Bingham's speech: " ... First, an authorisation under section 44(1) or (2) may be given only if the person giving it considers (and, it goes without saying, reasonably considers) it expedient 'for the prevention of acts of terrorism'. The authorisation must be directed to that overrid ing objective. Secondly, the authorisation may be given only by a very senior police officer. Thirdly, the authorisation cannot extend beyond the boundary of a pol ice force area, and need not extend so far. Fourthly, the authorisation is limited to a period of 28 days, and need not be for so long. Fifthly, the authorisation must be reported to the Secretary of State forthwith. Sixthly, the authorisation lapses after 48 hours if not confirmed by the Secretary of State. Seventhly, the Secretary of State may abbreviate the term of an authorisation, or cancel it with effect from a specified ti me. E ighthly, a renewed authorisation is subject to the same confirmation procedure. Ninthly, the powers conferred on a constable by an authorisation under sections 44(1) or (2) may only be exercised to search for articles of a kind which could be used in connection with terrorism. Tenthly, Parliament made provision in section 126 for reports on the working of the Act to be made to it at least once a year, which have in the event been made with commendable

thoroughness, fairness and expertise by Lord Carlile of Berriew OC. Lastly, it is clear that any misuse of the power to authorise or confirm or search will expose the authorising officer, the Secretary of State or the constable, as the case may be, to corrective legal action."

96. Notwithstanding the existence of these constraints, ECtHR considered that the safeguards provided for in domestic law did not "constitute a real curb on the wide powers afforded to the executive so as to offer the ind ividual adequate protection against arbitrary interference" para 79. The reasons for this conclusion were given in para 83 of the court's judgment cop ci~ and in the following passages from paras 80-82: "80. The court notes at the outset that the senior pol ice officer referred to in section 44(4) of the Act is empowered to authorise any constable in uniform to stop and search a pedestrian in any area specified by him within his jurisdiction if he, 'considers it expedient for the prevention of acts of terrorism'. However, 'expedient' means no more than 'advantageous' or 'helpful'. There is no requirement at the authorisation stage that the stop-and-search power be considered 'necessary' and therefore no requirement of any assessment of the proportional ity of the measure. The authorisation is subject to confirmation by the Secretary of State within 48 hours. The Secretary of State may not alter the geographical coverage of an authorisation and although he or she can refuse confirmation or substitute an earlier time of expiry, it appears that in practice this has never been done. A lthough the exercise of the powers of authorisation and confirmation is subject to jud icial review, the width of the statutory powers is such that applicants face formidable obstacles in showing that any authorisation and confirmation are ultra vires or an abuse of power.

81. The authorisation must be I imited in time to 28 days, but it is renewable. It cannot extend beyond the boundary of the pol ice force area and may be limited geographically within that boundary. However, many police force areas in the United Kingdom cover extensive regions with concentrated populations. The Metropolitan Police Force Area, where the applicants were stopped and searched, extends to all of Greater London. The failure of the temporal and geographical restrictions provided by Pari iament to act as any real check on the issuing of authorisations by the executive are demonstrated by the fact that an authorisation for the Metropolitan Pol ice District has been continuously renewed in a "roll ing programme" since the powers were first granted.

82. An additional safeguard is provided by the independent reviewer. However, his powers are confined to reporting on the general operation of the statutory provisions and he has no right to cancel or alter authorisations, despite the fact that in every report from May 2006 onwards he has expressed the clear view that, 'section 44 could be used less and I expect it to be used less'."

97. Drawing on the description of the section 44 powers in this passage, it is possible to contrast them with the powers contained in Schedule 7 in a variety of different ways. These illustrate the greater ambit of the Schedule 7 powers. No authorisation, whether from a senior police officer or otherwise, is required for the examining officer to have resort to the Schedule 7 powers. The exercise of those powers is not dependent on the examining officer (or anyone else) considering that it is expedient to do so for the prevention of acts of terrorism. Since no authorisation is required, there is no question of it being subject to review by the Secretary of State. There is no geographical or temporal limitation on the exercise of the powers (other than, of course, that they are to be used at a port of entry into or exit from the United Kingdom). There is no provision for automatic lapse of the powers nor is there any question of their renewed authorisation being subject to confirmation.

98. Certain features are common to both sets of powers. The width of the powers is similar in both instances and challenges to their use on conventional judicial review grounds both face the same difficulty as was identified by ECtHR in Gillan. Both are subject to review by the independent

tion 40 or who is or has been concerned in the commission, preparation or instigation of acts of terrorism, why should those answers not form the basis of a prosecution? It seems to me inescapable that there is a real and appreciable risk of prosecution if the answers to the questions posed prove to be self-incriminating. The fact that, in this case, it was not suspected that the appellant was a terrorist is nothing to the point. If, as she should have been, she was asked questions designed to establ ish whether she appeared to be a terrorist, the potential of her answers to incriminate her if they were of an inculpatory character, is indisputable.

116. I n the Divisional Court [2014] Q B 607 there was some discussion as to whether the Director of Public Prosecutions might be prepared to give an undertaking that answers to questions asked in the exercise of Schedule 7 powers would never form part of a subsequent prosecution case. Unsurprisingly, to me at least, the Director declined to give that undertaking. It would be a startling policy decision to give an assurance that evidence of terrorism elicited by Schedule 7 questioning would not be used to prosecute someone implicated by such evidence. The independent reviewer and, incidentally, the Divisional Court and Lord Hughes in his judgment in this case, have recommended that Parliament should enact a provision making answers or information obtained inadmissible in proceedings, except where there has been a breach of paragraph 18 of the Schedule (wilful failure to comply with a duty under Schedule 7) or for an offence of deliberately giving false information when questioned. The plain fact is, however, that self¬incriminating answers given in response to questions posed under Schedule 7 can form the basis of a prosecution.

117. It is suggested, however, that such a prosecution would not be viable by reason of section 78 of the Police and Criminal Evidence Act 1984. True it is that the exercise of the power to exclude evidence under this provision must be exercised in accordance with article 6 of E C H R and that this has the effect that any use in a criminal prosecution of answers obtained under compulsion of law will generally be a breach of the right to a fair trial. But two caveats to that must be entered. In the first place, answers to questions posed under Schedule 7 can prompt inquiry which might lead to the obtaining of evidence independent of the material which the responses have suppl ied. Second ly, it is by no means clear that evidence of those answers will automatically be excluded if there is other evidence which directly implicates the person responding. So, for instance, if there is significant other evidence which, alone, might be sufficient to establ ish the gui lt of the accused, is it inevitable that evidence of responses given during a Schedule 7 investigation which corroborates or reinforces that evidence, would be excluded? I do not believe that it is.

118. Of greater importance, however, is the consideration that the protection afforded by the privilege against self-incrimination is against the risk of prosecution rather than conviction. In this context the significance of the DPP's understandable refusal to confirm that there will never be any circumstances in which responses to a Schedule 7 questioning will not be used in a prosecution comes fully into play. There is, currently, no guarantee that someone who gives a self-incriminating answer in the course of a Schedule 7 inquiry will not be confronted by those answers in a subsequent criminal trial. He may succeed in having evidence of those answers excluded but he cannot ensure that he will not be prosecuted on foot of them. I consider therefore that the requirement in Schedule 7 that a person questioned under its provisions must answer on pain of prosecution for fai l ing to do so is in breach of that person's common law privilege against self-incrimination. On that account it is incompatible with article 6 of ECHR.

Articles 5 and 8 - 119. It is accepted that the exercise of Schedule 7 powers constitutes an interference with article 5 and article 8 rights. This throws the focus of the discussion about

trol by the local council, an elected representative body. It is important to understand, therefore, that the court's reference to the effectiveness of the measure (in paras 94 and 95 of its judgment) was made in the context of the justification of the interference with the article 8 right, rather than as an assessment of the "accordance with law" requirement.

111. The fact that a measure may be effective in pursuit of the aim of counteracting terrorism does not mean that its use in accordance with law is to be assumed. If the measure is not effective to achieve its avowed aim, this is, of course, a reason to find it disproportionate. But the converse does not hold true. The proportionality of a measure is not to be determined by its efficacy in fulfilling its objective.

The privilege against self-incrimination and article 6

112. The venerable history of the privilege against self-incrimination and its place at the centre of our system of criminal justice have been described by Lord Hughes in para 60 of his judgment. The importance attached to this right is such that it is not to be I ightly set aside. As Lord Griffiths said in AT & T Istel Ltd v Tully [1993] A C 45, 57 the privilege is "deeply embedded in English law and can only be removed or moderated by Pari iament" and in Gray v /I/ews Group /I/ewspapers Ltd [2013] 1 A C 1, para 18 Lord Neuberger of Abbotsbury M R said that it was for the legislature and not the judiciary to remove or cut down the privilege against self-incrimination.

113. Two particular features of the right should be noted. It is engaged when compliance with a legal obligation to answer questions would create a "real and appreciable risk" of criminal proceedings being brought - In re Westinghouse Electric Corpn Uranium Contract Litigation MDL Docket /I/o 235 (/I/os 1 and 2) [1978] AC 547, 574 per Lord Denning MR. Secondly, the relevant risk is of prosecution, not conviction: Sociedade /I/acional de Combustiveis de Angola UEE v Lundqvist[1991] 2 OB 310; JSC BTA Bank v Ablyazo v (/I/o 13)[2014] EWHC 2788. So, if answering the questions put to her by examining officers would expose Mrs Beghal (or, for that matter, her husband) to an appreciable risk of prosecution, the privilege against self-incrimination is in play. It is not necessary to show that criminal proceedings are likely. The privilege arises unless the risk is "so far beyond the bounds of reason as to be no more than a fanciful possibility": - Westinghouse [1978] A C 547,579 per Roski II LJ.

114. It is suggested that the powers under Schedule 7 would be ineffective if the privilege against self-incrimination was held to apply to them. The premise on which this is based appears to be that those stopped and questioned under Schedule 7 would be unlikely to answer without there being in place the prospect of prosecution if they refused to respond. It must therefore be assumed that Pari iament intended that the privilege should be abrogated in relation to the use of these powers. For my part, I would be reluctant to make the assumption that those who were questioned under Schedule 7 would indeed refuse to answer unless faced with the possibility that they would be prosecuted in consequence. But I have a more fundamental reason for disagreeing with the conclusion that the privilege against self-incrimination does not arise in relation to the exercise of Schedule 7 powers. I am therefore prepared to proceed on the hypothetical basis that Parliament did indeed intend that the privilege should be abrogated.

115. It is suggested that Schedule 7 powers are not aimed at obtaining information for the purpose of prosecuting the person questioned or her spouse. I do not understand why this should be so. The purpose of questioning under the schedule is to determine whether the person questioned appears to be a terrorist within the wide definition contained in section 40(1)(b) of the 2000 Act. If answers to the questions posed suggest that the person questioned is indeed someone who has committed an offence under one of the sections specified in sec-

reviewer but, as in Gillan, so in this case, this is a post-hoc review. The independent reviewer cannot restrict the exercise of the powers. He may merely make recommendations as to their future use and, as we have seen in this case, his recommendations are not always followed.

99. Resort to the powers may be based on no more than a "hunch" or the "professional intuition" of the officer concerned. Indeed, the absence of any requirement of either reasonable or even subjective suspicion in both instances clearly contemplates that this is the basis on which the powers wi II in fact be exercised. The "sole provisa: as in Gillan is that the Schedule 7 powers should be exercised for the purpose of determining whether the person who is subject to them appears to be or have been concerned in the commission, preparation or instigation of acts of terrorism.

100. The same considerations affect the viability of a judicial review challenge and this in turn brings sharply into question the claim that judicial superintendence of the exercise of the powers is an effective safeguard against their being resorted to in an arbitrary, discriminatory or disproportionate fashion. If an examining officer does not have to form a suspicion, how is his exercise of the powers to be reviewed? At present, the only averment required of an officer whose use of the powers is challenged is that they were exercised for the statutory purpose. On the current state of the law that unvarnished statement will be sufficient to insulate the exercise of the powers from further investigation or challenge.

101. It is said that a distinguishing feature of the Schedule 7 powers is that, whereas the section 44 power was exercisable in relation to any person in the designated geographical area, the Schedule 7 powers may only be used in relation to those passing through ports of entry or exit. It is suggested that, while people in this country expect to be allowed to pass through the streets freely, they have traditionally accepted that they will be subject to border controls such as the requirement to identify themselves. Two points should be made about this. Firstly, being subject to border controls such as the requirement to provide proof of identity and entitlement to enter is an entirely different matter from being required to answer questions about one's movements and activities. As this case shows, these questions can be quite detailed and, more importantly, if they are not answered, the person of whom they are asked faces criminal sanction. Secondly, and more importantly, whether people in this country are accustomed to intrusion when they move through ports of entry or exit does not bear on the question of whether the circumstances in which the Schedule 7 powers may be exercised are too widely drawn to satisfy the test of "in accordance with law". Put shortly, an unfettered power which may be arbitrarily or capriciously used does not become legal just because people generally do not take exception to its use.

102. The significance of the restriction on the use of Schedule 7 powers to ports of entry should not be misunderstood. As the respondent has acknowledged, there are 245m passenger movements through United Kingdom ports every year. All are potentially subject to this power. The fact that it is exercised sparingly has no direct bearing on its legality. A power on which there are insufficient legal constraints does not become legal simply because those who may have resort to it, exercise self¬restraint. It is the potential reach of the power rather than its actual use by which its legality must be judged. Moreover, although the percentage of travellers who are subjected to the use of the power is small, in absolute terms the number is not inconsequential. On average 5 to 7 people each day are examined for more than an hour.

103. That there is the potential for arbitrary or discriminatory exercise of the power is apparent from, among other things, the provisions of the Code of Practice. It stipulates that selection should not be based solely upon the ethnic background or religion of the individual. This provision is

objectionable for two reasons. In the first place there is no clearly obvious means of policing the requirement that persons should not be stopped and questioned just because of their ethnic background or rei igion. As E CtH R held in Gillan at para 86 "in the absence of any obligation on the part of the officer [exercising powers of stop and search under T A section 44] to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised." Keeping records ofthe self-declared ethnicity of those subject to the Schedule 7 powers does not, of itself, provide a guarantee that the powers are not being exercised in a discriminatory way.

104. Secondly, the provision in the Code of Practice contemplates that ethnic origin or religious adherence can be at least one of the reasons for exercising the power. In so far as the perceived religious belief or ethnic origin of an individual (as opposed to his or her capacity to provide information about their possible involvement in terrorism) is the basis on which he or she is made subject to Schedule 7 powers, this constitutes direct discrimination. As Lord Nicholls of Birkenhead held in /I/agarajan v London Regional Transport [2000] 1 A C 501, 512H: "Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sale ground for the decision." Provided that race exerted a "more than trivial" influence on the decision to treat a person less favourably, the decision will constitute race discrimination (/gen Ltd (formerly Leeds Careers Guidance) v Wong [2005] I C R 931, paras 36-37). As M r Squires, for the intervener, the Equality and Human Rights Commission, submitted, if examining officers exercise Schedule 7 powers not because they have any particular suspicion or intelligence about an individual but on the basis of an "intuition" that a person "looks like" a terrorist, it is predictable that those of Asian or Muslim appearance will be disproportionately targeted. The startling reality that this legislation authorises the use of a coercive power, at least partly, on the grounds of race and religion should be starkly confronted. That not only permits direct discrimination, it is entirely at odds with the notion of an enlightened, pluralistic society all of whose members are treated equally.

105. The legality of a measure which interferes with a Convention right must also be vouched against its demonstrable proportionality. Limits to police powers must be prescribed in order to enable the necessary examination of whether the specific exercise of those powers is proportionate to take place and in order to demonstrate that a proper balance between individual rights and wider public interests has been struck. The majority in R (T) v Chief Constable of Greater Manchester Police (Liberty intervening) [2015] AC 49, held that ensuring that a particular provision was proportionate was an aspect of the "prescribed by law" requirement. This is, of course, distinct from the question whether an interference in a particular case was necessary (see per Lord Reed paras 114-115). In order to be "prescribed by law", the legal regime governing the exercise of police powers must include limitations capable of securing the proportionate exercise of those powers and of ensuring that the proportionality of any interference can be "adequately examined" (ibid para 114).

106. Where the stop, question and search powers can be exercised without any suspicion whatever, there is simply no material on which a judgment as to whether they are being used proportionately can be made. The examining officer does not have to explain why he or she chose a particular individual for the exercise of the Schedule 7 powers. Indeed, he or she does not have to have a reason (in the sense of a rationalised conclusion) for the exercise of the power, since it is unnecessary to have any form of suspicion. A purely instinctive impulse based on nothing more than a feeling that something relating to terrorism might be disclosed by the exercise of the powers is enough to permit recourse to them. In those circumstances, an

examination of whether the powers have been used proportionately is simply unfeasible. This crucial dimension of the prescribed by law requirement is missing from the Schedule 7 regime. On that account use of the Schedule 7 powers cannot be said to be "in accordance with law".

107. The utility of a provision - in this case, its effectiveness as a counter-terrorism measure - is, at least potentially, relevant to a claimed justification of interference with a qualified Convention right. So, for instance, if it could be shown that the exercise of Schedule 7 powers provided a tangible result in terms of reducing the risk of terrorist attack, this would sound on the question of pursuit of a legitimate aim for the interference and whether a proper balance had been struck between the rights of the individual and the interests of the community. But it is misconceived to assume that, because the possible utility of Schedule 7 powers is relevant to justification of an interference with a Convention right, it meets the requirement that the measure be "in accordance with law".

108. The distinction between the manner in which a power is exercised and the result that its exercise may achieve should be clearly recognised. It does not follow that, because a measure is an effective counter-terrorist tool, the way in which that tool is deployed is automatically proportionate and in accordance with law.

109. I n Colon v The /I/etherlands (2012) 55 E H R R S E45 a power of search in aid of public order, on foot of a designation by the Burgomaster, in the old centre of Amsterdam was held to meet the requirement of legality, although not grounded on any basis of suspicion. It is to be noted, however, that the applicant's complaint that the interference with his right to respect for his private life was not "in accordance with the law" was confined to what he claimed was the ineffectiveness of the judicial remedies available. In particular, he argued that an essential guarantee in the form of prior judicial control was missing. The European Court dealt with that claim in paras 75-78 as follows: "75. The court has accepted in past cases that prior judicial control, although desirable in principle where there is to be interference with a right guaranteed by article 8, may not always be feasible in practice; in such cases, it may be dispensed with provided that sufficient other safeguards are in place (see, mutatis mutandis, Klass v Germany (1979-80) 2 E H R R 214, para 56; and Rotaru v Romania, (2000) 8 B H R C 449 para 59). I n certain cases, an aggregate of non-jud icial remedies may replace judicial control (see, mutatis mutandis, Leander v Sweden (1987) 9 E H R R 433, paras 64-65).

76. In the Netherlands, all pertinent legal texts are in the public domain (compare and contrast para 30 of Gillan). Before the public prosecutor can order pol ice to carry out a search operation, a prior order designating the area concerned must be given by an administrative authority of the municipality, the Burgomaster. That order must in turn be based on a byelaw adopted by an elected representative body, the local council, which has powers to investigate the use made by the Burgomaster of his or her authority (see paras 34- 36 above).

77. Review of a designation order, once it has been given, is avai lable in the form of an objection to the Burgomaster, followed if necessary by an appeal to the Regional Court and a further appeal to the Administrative Jurisdiction Division of the Council of State (see para 40 above).

78. The criminal courts have a responsibility of their own to examine the lawfulness of the order and the scope of the authority of the official who gave it. It is a defence for anyone charged with fai ling to comply with a search order issued by or on behalf of the publ ic prosecutor to state that the order was not lawfully given; the criminal court must answer it in its judgment (see para 41 above)."

110. The emphasis of the legal ity debate was on the reviewabi l ity of the authorising agent's (the Burgomaster's) decision, rather than on any opportunity to examine the proportionality of the individual decision of officers as to who should be stopped and searched. The use which the Burgomaster made of his or her powers remained subject to review and con-