Miscarriage of Justice Body CCRC Workload Doubled Despite Severe Cuts

The miscarriage of justice watchdog has suffered the "biggest cut" of any part of the criminal justice system since 2010 and its caseload has more than doubled over the same period, according to a parliamentary investigation. MPs also found examples of political interference in the work of the Criminal Cases Review Commission Two years ago the all-party parliamentary group on miscarriages of justice commissioned an inquiry into the Criminal Cases Review Commission (CCRC) after the number of cases of people claiming to be wrongly convicted sent to the court of appeal crashed – from an average of 33 referrals a year to just a dozen in 2017 or less than 1% of the people who applied to the body every year.

The inquiry, known as the Westminster Commission, heard concerns that the CCRC's independence had been undermined by "unlawful interference" on the part of the government. The body was set up in 1997 on the recommendation of a royal commission after a series of miscarriage of justice scandals involving the Birmingham Six, the Guildford Three, the Cardiff Three and Stefan Kiszko. Its task was to examine the cases of people who were potentially wrongly convicted and send them to the court of appeal for review. The Westminster Commission, co-chaired by the conservative peer Lord Garnier QC and cross-bencher Lady Stern, heard that the body received just £5.93m in 2019 compared with £9.24m in 2004. Its report, which was published on Friday, revealed that the average workload for case review managers climbed from 12.5 in 2010 to 27 in 2017. The CCRC's chair told the Westminster Commission that the Birmingham-based group ideally needed 45 case review managers but had 31.

As well as calling for more funding, the Westminster Commission said the CCRC "needs to demonstrate its independence from government". Speaking to the Guardian, Garnier said: "At the start the CCRC took on its new role with great enthusiasm but over 25 years it's suffered from funding problems. It's not an organisation that's high in the political stratosphere, it doesn't command attention from ministers and budget-setters. We need to re-instil that sense of independence in the CCRC and its leadership, which the originating legislation envisaged,' added Garnier, a former solicitor general. "It has become something of a Cinderella public body, [metaphorically] stuck right at the end of some dark corridor within the Ministry of Justice. It needs to be out there punching above its weight."

Garnier pointed out that the CCRC was "operating in a completely different way" from that envisaged when it was set up almost 25 years ago. The report shines a light on what a 2020 court judgment called a "dysfunctional relationship" with the Ministry of Justice (MoJ). The CCRC is obliged by statute to have 11 commissioners and until 2012 those commissioners were on salaries with holiday, sick pay and a pension; however, in 2017 commissioners were recruited on minimum one-day-a-week contracts with none of the benefits. The inquiry refers to CCRC board minutes that recorded commissioners being told by a senior civil servant that if the ministry's recommendations were not introduced their appointments "might be terminated or not renewed".

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, 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, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.

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MOJUK: Newsletter 'Inside Out' No 838 (17/03/2021) - Cost £1

John Porch Convictions for Blackmail and Assault Quashed

John Porch (34) has had his convictions for blackmail and assault in 2016 overturned on appeal after fresh mobile phone evidence was uncovered. The Court heard how, during the investigation, a police officer considered the phones to be "all very old and appeared broken, or had SIM cards or batteries missing" and decided they would contain no "relevant material".

The officer appeared to have sustained this view even though Crown Prosecution Service (CPS) staff said the phones should be "interrogated". The Judges concluded that evidence contained in mobile phone messages would have "severely undermined" the credibility of the accuser. In the written ruling, Lady Justice Andrews said "The assumption should not have been made that the seized phones contained nothing of relevance. The officer in the case should not have taken that decision without discussing the matter with the CPS, especially after she knew that the CPS had advised that the seized phones should be interrogated."

She added: "It is hoped that lessons will be learnt." The Appeal Judges considered the mobile phone evidence to be so undermining that they said: "Indeed, faced with those messages it is questionable whether, on reflection, the CPS would have decided to continue with the prosecution." The Prosecution is not seeking a retrial. R v John Porch (Neutral Citation Number: [2020] EWCA Crim 1633, Case No: 201901854 C2.)

EDM 1548: Women Prisoner Leavers and Homelessness

That this House notes official statistics showing that 42 per cent of women released from prison in 2019-20 were discharged into unsettled accommodation; further notes that the Safe Homes for Women Leaving Prison initiative estimates that as many as six in ten women leave prison with nowhere safe to go; highlights that women released into homelessness are more likely to offend and are at increased risk of returning to harmful behaviours, possibly including having to return to abusive relationships; welcomes the recent announcement of government funding to house prison leavers in temporary accommodation, but expresses concern that people will only be housed for a maximum of 12 weeks; expresses further concern that the initiative is only being launched in five of the 12 probation regions in England and Wales, seemingly with no specific measures to address the particular needs of women; and urges the Government to expand this initiative nationwide and introduce specific measures to end completely the practice of releasing women from prison into homelessness.

Victory for Muner Al-Jaryan Against the CPS

1 On 19 March 2020 the conviction of Muner Al-Jaryan for possession of a prohibited firearm contrary to s.5(1)(aba) of the Firearms Act 1968 was quashed and a retrial was ordered by this court (myself, Goss J and the Recorder of Sheffield). Judgment was handed down the following day. An order preventing reporting of the judgment until the conclusion of the trial was made under s.4(2) of the Contempt of Court Act 1981. We shall refer to Mr Al-Jaryan as the defendant.

2 The order of this court was that the indictment should be served within one month and that the defendant should be re-arraigned within two months. The indictment was promptly served

and uploaded to the Digital Case System. However, the defendant was not arraigned on that indictment within the two-month period specified, and it was not until 14 October 2020 at a PTPH in respect of a fresh matter that the mistake was appreciated by HHJ Connell who conducted that hearing. He correctly observed that the case would have to return to this court. The consequence is that the prosecution now apply for permission to arraign the defendant just under nine months after his conviction was quashed by this court. The application is made pursuant to sections 8(1) and 8(1B)(a) of the Criminal Appeal Act 1968 (the 1968 Act). The application is opposed by the defendant who seeks an order that we set aside the order for retrial and direct a verdict of not guilty, pursuant to section 8(1B)(b) of the 1968 Act on the indictment.

29 In simple, terms it seems to us that nothing was done beyond 2 April 2020 by the Crown Court or the CPS, or indeed the defence, to secure a date for arraignment in court. Even when 18 May 2020 approached, it appears that nothing was done to alert the court to the fact that an important deadline was imminent. Even after the deadline passed, nobody sought to remedy the situation. Months passed before the problem was noted by a judge who was dealing with a new and unconnected case which happened to be in the same crown court and involving this defendant.

30 We appreciate that Isleworth Crown Court and all the parties in this appeal were labouring in difficult circumstances, as we have observed, during the early stages of the response tothe COVID-19 pandemic. That may account for some ofthe failings, but simply to overlook the deadline and thus a mandatory order of the Court of Appeal is unacceptable, and we have concluded that it cannot be characterised as anything approaching reasonable speed on the part of the prosecution. Accordingly and for these reasons, we are not satisfied that the mandatory requirement within section 8(1B)(b)(i) is met. We are not satisfied that the prosecution acted with all due expedition. In our judgment, the prosecution should have taken urgent and purposeful steps to call the attention of the court to the absence of a firm date for arraignment well before 15 May 2020, but at the very latest on 15 May 2020. The conduct after that date reveals the absence of any semblance of urgency.

31 Given that conclusion, it seems to us that we do not have to consider whether there is good and sufficient cause for a retrial within section 8(1B)(b)(ii), and since any conclusion we express would be academic, we prefer to express no view in relation to this hurdle.

32 Accordingly, we refuse leave to arraign the defendant outside the two months permitted by section 8(1) of the 1968 Act. Furthermore, we grant the application made by the defendant, pursuant to section 8(1A) of the 1968 Act to set aside our order for a retrial dated 19 March 2020. We direct Isleworth Crown Court to enter judgment and verdict of acquittal on count 2 of the original indictment, which is the count upon which he was to be retried.

33 Finally, we consider it might be helpful for us to give some guidance as a means of endeavouring to avoid any repetition of the delay that has occurred in this case and that has led us to accept the submissions of the defendant. Firstly, we emphasise that it is the duty of the CPS to upload the new indictment to the Digital Case System at the first reasonable opportunity after the decision of the Court of Appeal Criminal Division. Secondly, once the notification from the Registrar of Criminal Appeals arrives at the crown court, usually within a very short time after the conclusion of the case, and usually accompanied by the order of the full court, the crown court should list the case before a judge for directions or pre-trial review on a fixed day within one month of the order of the Court of Appeal Criminal Division to enable arraignment to take place. Thirdly, the date so fixed should not be altered or adjourned without the express permission of the Resident Judge, and only then to a date within two months of the order of the Court of Appeal. It is recommended this be no later than several days before the expiry of the dead-

The United Families and Friends Campaign (UFFC), which supports families of people who have died in police custody, prisons and secure medical units, has welcomed the support of Black Lives Matter UK, which will be active partners in the tribunal. UFFC said the tribunal will invite international human rights experts to investigate what they describe as the failure to successfully prosecute those responsible for deaths in custody. A 2017 government report on deaths in custody stated that every prosecution over a death in custody in the last 15 years had ended in an acquittal. The tribunal will hear evidence from families and other relevant parties. UFFC is leading the initiative with Migrant Media and 4WardEverUK.

Janet Alder, whose brother Christopher Alder, a former British paratrooper, died in custody in a Hull police station in 1998, said: "Through the years we've fought through every arena of the state and we've all been failed. We believe it's a catalogue of failures that mirrors each and every case." She added that the families were keen for the public to see what they have gone through over the years.

Tippa Naphtali, whose cousin Mikey Powell died while in the custody of West Midlands police in 2003, said: "We need to make it clear that this isn't just about police institutions. It's about a whole variety of state and statutory institutions failing our loved ones often in the run-up to the incident itself. They may not have been present at the time when Mikey died, for example, but the mental health trust failed him for years, which is why he ended up in the state that the police found him in. For us, this is about taking a number of key statutory and government agencies to task."

Marcia Rigg, whose brother Sean Rigg died in Brixton police station in 2008, said the tribunal would give the families the opportunity to speak the truth as to what happened to their loved ones. "It's a powerful message that says the families have not given up and they will not give up because they have the truth on their side. We just want somebody to listen to the real truth. And, at the end of the day, what we want is accountability. We have not been afforded that by the current system."

The families of Komang Jack Susianta, Kingsley Burrell, and Adrian McDonald are among several planning to take part in the tribunal. Adam Elliott-Cooper, an academic who was one of three individuals to register Black Lives Matter UK as a community benefit society in September under the name Black Liberation Movement UK, said: "We've been working with UFFC for a number of years, supporting their annual protests and marches and other things to uplift their important work. We wanted to continue that by supporting this particular initiative."

Met officer Who Tasered Black Man Jumping Over Wall May Face Charges

Prosecutors are to consider charges against a Metropolitan police officer who fired a Taser at a young black man as he jumped over a wall in north London, leaving him paralysed from the waist down. Jordan Walker-Brown, 24, said he had his back to police and was running away because he was carrying a small amount of cannabis when he was shot with the stun gun on 4 May last year. He is now paraplegic. The police complaints watchdog, the Independent Office for Police Conduct (IOPC), has referred a file of evidence to the Crown Prosecution Service after determining there was an indication that the officer may have committed grievous bodily harm. The CPS is responsible for deciding whether the officer should be charged. The IOPC investigated the incident in Burgoyne Road in Finsbury Park after a mandatory referral from the Met. The IOPC regional director Sal Naseem said: "Following thorough and careful analysis of the evidence we have decided there is an indication an officer may have committed grievous bodily harm (GBH) in relation to their use of Taser, and a file has been sent to the CPS. "It is important to note that a referral to the CPS does not necessarily mean that criminal charges will follow.

restraint, including pressure to his back and neck, compromised Jack's breathing and increased his metabolic acidosis which led to his cardiac arrest and subsequent death. Since the conclusion of the Inquest, Greater Manchester Mayor, Andy Burnham, has conveyed his sympathy to the family and vowed action to ensure that similar incidents do not happen again. It is understood that this is one of if not the first occasion that a coroner has returned a conclusion of unlawful killing following the change to the civil standard of proof established by the Supreme Court in R (Maughan) v HM Senior Coroner for Oxfordshire [2020] UKSC 46.

Bloody Sunday: Family Launch Soldier Prosecution Legal Challenge

BBC News: The family of a man shot dead on Bloody Sunday have lodged a legal challenge against a decision not to charge a former soldier with his murder. Bernard McGuigan, known as Barney, was one of the 13 people killed when the Army opened fire on civil rights demonstrators in Londonderry in 1972. His family are challenging the decision not to prosecute an ex-paratrooper known as Soldier F. He has been charged with murder over two deaths, but not Mr McGuigan's. In 2019, the Public Prosecution Service determined Soldier F would be prosecuted for the murders of James Wray and William McKinney. That decision was challenged by a number of victims' families, but last year the PPS said there would be no further prosecutions. The McGuigan family said they have issued judicial review proceeding after "an exhaustive process between our solicitor and the Public Prosecution Service (PPS) over the last two years". Challenge Based on Widgery Evidence: They said the PPS has now confirmed that an undertaking by the attorney general, which meant testimony given to the most recent inquiry into Bloody Sunday cannot be used in criminal investigations, did not apply to oral evidence given by Soldier F to the earlier Widgery Tribunal, held in 1972. "While we welcome that formal confirmation at last, the PPS still contend, in effect, that F was acting "under orders" to give evidence at Widgery," the family statement said. Widely regarded as a whitewash, the 1972 Widgery Tribunal sat for three weeks, with the final report published on 18 April of that year. Lord Widgery concluded that the soldiers had been fired on first and there was "no reason to suppose" that the soldiers would have opened fire otherwise. But in 2010, the Saville Inquiry into the events on Bloody Sunday established the innocence of all those killed and wounded. Lord Saville's 5,000-page report stated none of the casualties posed a threat of causing death or serious injury and that soldiers had lost their self-control. The McGuigan family statement added: "As far as we are concerned the evidential test is more than met in respect of the murder of our father in such callous well-known circumstances, witnessed by many including other soldiers." Mr McGuigan was a painter and decorator. He was shot at the Rossville Flats area as he went to the aid of 31-year-old Patrick Doherty, who was also shot dead on the day. The 41-year-old had been waving a handkerchief or towel when he was hit in the head by a bullet, killing him instantly.

Black Lives Matter UK to Fund 'People's Tribunal' for Deaths in Custody

Aamna Mohdin, Guardian: BLMUK has announced £45,000 of funding to the United Families and Friends Campaign to set up a "people's tribunal" for deaths in custody. The coalition group of family members who have lost loved ones in state custody, formed in 1997, is so far the largest recipient of Black Lives Matter UK's initial round of funding. Black Lives Matter UK announced last month its plan to release more than £100,000 to black-led organisations across the country. The campaign group received £1.2m in donations via a GoFundMe appeal, following widespread protests last summer.

line. If the above regime is adopted, that will mean that there is proper judicial oversight and control of the date for arraignment and will lead to securing the earliest reasonable trial date. Should there be any lack of expedition on the part of either party, it can be corrected by the intervention of the court at an early stage. The second and third stages are pivotal to the efficient operation of the retrial process when that is what has been directed by the Court of Appeal.

34 In conclusion, for the reasons we have given, we refuse the application by the CPS to allow arraignment nine months after we ordered a retrial. We grant the application of the defence to direct an acquittal of the defendant. We lift the order made under s.4(2) of the Contempt of Court Act 1981, and this will enable our judgment handed down on 20 March 2020 to be reported.

Priti Patel U-Turn on End to Detention For Refugee Women

A new network of immigration detention units for women is being quietly planned by the Home Office, contrary to previous pledges to reform the system and reduce the number of vulnerable people held. An initial detention centre, based in County Durham on the site of a former youth prison, will open for female asylum seekers this autumn. In addition to the facility near Consett, Home Office officials told asylum groups last week they were considering a number of "smaller capacity detention units" for women around the UK, though it is unclear if the notorious Yarl's Wood immigration removal centre in Bedfordshire would be among them. Alphonsine Kabagabo, director of the charity Women for Refugee Women, called the creation of a detention centre in the north-east a "betrayal of previous commitments made by ministers". Separately, a pioneering pilot scheme to ensure vulnerable women could live in the community instead of being detained appears to have quietly been wound down by the Home Office and will close next month.

Police Officers Under Investigation Following Death of Brian Ringrose

Brian Ringrose from Milton Keynes died in hospital after he was arrested by Thames Valley Police (TVP) officers at an address on the morning of Wednesday 27 January. The officers had medical concerns for Mr Ringrose and requested an ambulance, which took him to Milton Keynes University Hospital. Evidence gathered so far indicates that after being medically discharged from hospital, officers restrained Mr Ringrose in the hospital before taking him to a police van in order to transport him to police custody. While being taken to the van concerns were raised regarding Mr Ringrose' health and he was returned to the hospital where he was placed in an induced coma. Mr Ringrose sadly died in hospital on Tuesday 2 February 2021. A post-mortem has been conducted and the cause of death was given as inconclusive pending further investigation.

One of the areas our investigation is looking at is the use of a piece of equipment – a Flexible Lift and Carry System (FLACS)- used by officers to assist with carrying Mr Ringrose to the police van after his initial restraint with handcuffs and limb restraints. The force has suspended its use as a precautionary measure while our investigation progresses, and we are exploring with the National Police Chiefs Council with regards to its use by other forces. From the evidence gathered so far, five officers have been advised they are under investigation for alleged gross negligence manslaughter and unlawful act manslaughter. One of the officers is also being investigated for alleged common assault. The officers have also been served with gross misconduct notices for potential breaches of professional behaviour related to use of force and duties and responsibilities.

The decision to inform officers they are under criminal investigation means evidence indicates a criminal offence may have been committed. This does not necessarily mean criminal charges will follow. Likewise, the serving of misconduct notices does not mean disciplinary proceedings

will necessarily follow. A decision on whether or not to refer the matter to the Crown Prosecution Service will only be made once our investigation is complete. IOPC Regional Director for the South East Graham Beesley said: "Our thoughts are with Mr Ringrose's family and all of those affected by his tragic death. This is a significant development in our investigation and is based on evidence we have gathered to date. We have updated Mr Ringrose's family and will now seek to interview the officers under criminal caution. It is our role to independently investigate all of the circumstances when someone dies in police custody."

Prisons Should Trial Free Cannabis

Mattha Busby, Guardian: Proposals for prisons to trial a free scheme providing cannabis to inmates to ascertain whether it reduces violence, overdose deaths and addiction to stronger drugs have been backed by the UK government's former chief drug adviser. Prof David Nutt, from Imperial College London, said he was fully supportive of the idea and that he was considering a study on reducing prisoners' drug dependence with cannabis in an ongoing trial. "The idea of drug testing in prisons was not at all thought through when it was introduced in 1996," said Nutt, chair of DrugScience, which advocates for evidence-based drug policy. "It was punitive and it pushed people from cannabis – which can be found in urine weeks after use – initially to heroin and GHB and then to synthetic cannabinoids which now kill many prisoners a year and are easily concealable for those prison officers who smuggle them in."

Last month, the police and crime commissioner for north Wales, Arfon Jones, told the Guardian that if justice authorities were serious about reducing harms and violence in prisons, "they should be addressing the causes" such as the cheap synthetic cannabinoid spice that is rife and can be deadly, as opposed to cannabis. "[Cannabis] would be an improvement on the illegal spice smuggled in by corrupt prison officers," he said, after more than 300 prison officers and outside staff were dismissed or convicted for bringing prohibited items, which can include drugs, tobacco and mobile phones, over the past five years.

Debate over the proposal has been growing. On Saturday 27th February 2021, the Conservative and Labour candidates in May's PCC elections for north Wales said they were opposed to the idea. The Tory candidate, Pat Astbury, told the BBC: "There may be other ways to treat prisoners, using alternative medicines which are legal and mimic illegal drugs. One can't be seen to break the law at the expense of the force you are representing." Labour's Andy Dunbobbin said: "There are lots of ways to prevent problematic drug use but this isn't one of them – prevention and treatment programmes in and out of prison should be strengthened and I'll work with partners, if elected, to do so." He also called for drug, alcohol and mental health services which have been "decimated" over the past decade due to cuts to be properly funded.

However, Ann Griffith, Plaid Cymru's candidate to succeed Jones, who is retiring, said a cannabis trial was "something I would be willing to cautiously explore" with criminal justice partners. "Any such initiative would need to consider any unintended consequences and would need to be based on sound evidence and robust evaluation," she added.

Anthony Lehane, spokesman for the Labour Campaign for Drug Policy Reform, backed by 16 MPs and four MSPs, said: "Through the lens of harm reduction and public health, regular cannabis would be less harmful to inmates than potentially lethal spice and those consuming it would be likely to be easier to manage for guards." In 2019, an inquest jury found that a "systemic failure" in stopping drugs from entering HMP Berwyn in Wrexham contributed to the death of former prisoner Luke Jones, 22, who died after smoking spice in his cell.

Scotland in 2018 and is due to commence in Wales at the end of next month but has not been effected in England, an omission the Runnymede Trust says must be remedied.

"If there were genuine intent to 'level up' society, our government would invest in jobs, education and training, and narrow the gap between the working class and the rest of society," said Dr Halima Begum, the trust's chief executive and author of Facts Don't Lie. "Implementing the section 1 public sector duty would be a decisive first step in that direction." She said it would also illustrate that the government was committed to supporting working class communities, irrespective of ethnicity.

Begum has been among the most vociferous critics of a speech by the minister for women and inequalities, Liz Truss, in which Truss claimed white working class children were being neglected because of a focus on protected characteristics such as race. The report says this is a "false equivalence … not least because a substantial number of the working class are BME [black and minority ethnic] people. While we may debate the underlying rationale of what is no doubt a calculated government strategy, whether or not limited to shoring up the red wall (northern seats formerly held by Labour), such rhetoric only pits one vulnerable community against another, while doing little to assist anyone to escape the shackles of their privation and poverty."

The government has been forced into a series of U-turns over free school meals during the pandemic after interventions by the footballer and anti-poverty campaigner Marcus Rashford and has also faced criticism over the lack of laptops available for some of the poorest and most vulnerable pupils. In January, it said children without access to devices could go to school for face-to-face learning, although this raised fears about crowded classrooms increasing the risk of Covid-19 spreading. The Runnymede Trust says there would have been an onus on authorities to tackle these and other issues, including the struggle of some health and social care staff to access adequate personal protective equipment, had the public sector duty regarding socio-economic inequalities been implemented.

A spokesperson for the government's equality hub said: "We are looking at how [to] open up opportunities to everyone, no matter their class, ethnicity or background. "We established the Commission on Race and Ethnic Disparities, which has been examining all aspects of continuing racial and ethnic disparities in Britain and is due to submit its report to the prime minister soon. "There are no plans to implement the socio-economic duty. This government wants to create real change and chance for individuals, not a tick-box exercise."

Jack Barnes Unlawfuly Killed by Manslaughter or Joint Enterprise

Doughty Street Chambers: On the night of 11 October 2016, following an incident at Manchester Victoria Station, Jack was chased over 1000 metres to Deansgate in Manchester City Centre by four 'Customer Safety Representatives' who were contracted to work on the Metrolink tram system. After a nine minute chase, in which two of the CSRs rode in a taxi, Jack was caught and restrained in a prone position for almost ten minutes. During that time, he told those restraining him that he could not breathe no fewer than seven times. One of the restraining individuals threatened put him out and stated that Jack would "go to sleep for a while". Jack suffered a cardiac arrest during the restraint and consequent severe hypoxic brain injury. He tragically died from the complications of that on 2 December 2016. No criminal prosecution was brought against any of the individuals involved in the restraint.

At the Inquest, the Coroner concluded that Jack was killed by unlawful act manslaughter by one of the CSRs or by joint enterprise. The Coroner stated that the use of force was "unnecessarily prolonged, grossly excessive and unreasonable", and found that the method of the

the Secretary of State's refusal of leave to enter the UK. It made its own assessment of the requirements of national security, and preferred it to that of the Secretary of State, despite the absence of any relevant evidence before it, or any relevant findings of fact by the court below. In particular, there was no evidence before the Court as to whether the national security concerns about Ms Begum could be addressed and managed by her being arrested and charged upon her arrival in the UK, or by her being made the subject of a Terrorist Prevention and Investigation Measure. The Court of Appeal's approach did not give the Secretary of State's assessment the respect which it should have received, given that it is the Secretary of State who has been charged by Parliament with responsibility for making such assessments, and who is democratically accountable to Parliament for the discharge of that responsibility.

Thirdly, the Court of Appeal mistakenly believed that, when an individual's right to have a fair hearing of an appeal came into conflict with the requirements of national security, her right to a fair hearing must prevail. But the right to a fair hearing does not trump all other considerations, such as the safety of the public. If a vital public interest makes it impossible for a case to be fairly heard, then the courts cannot ordinarily hear it. The appropriate response to the problem in the present case is for the deprivation appeal to be stayed until Ms Begum is in a position to play an effective part in it without the safety of the public being compromised. That is not a perfect solution, as it is not known how long it may be before that is possible. But there is no perfect solution to a dilemma of the present kind. In those circumstances, Ms Begum's application for judicial review of the LTE decision was properly dismissed by the Administrative Court, as should be her cross-appeal in respect of SIAC's preliminary decision in the deprivation appeal.

Fourthly, the Court of Appeal mistakenly treated the Secretary of State's extraterritorial human rights policy as if it were a rule of law which he must obey, as opposed to something intended to guide the exercise of his statutory discretion. On a deprivation appeal, SIAC is not entitled to re-exercise the Secretary of State's discretion for itself. Rather, unless there is an issue as to whether the Secretary of State has acted in breach of his obligations under has the Human Rights Act, SIAC is confined to reviewing the Secretary of State's decision by applying essentially the same principles that apply in administrative law. In this case, having considered detailed assessments by his officials and by the Security Service, the Secretary of State was not satisfied that depriving Ms Begum of British citizenship would expose her to a real risk of mistreatment within the meaning of his policy. SIAC decided that that conclusion was not an unreasonable one. There was no defect in SIAC's reasoning in that regard. Ms Begum's application for judicial review of SIAC's preliminary decision in the deprivation appeal is therefore dismissed.

Failure to Enact Public Duty Law 'Has Worsened England Inequality in Pandemic'

The failure of successive governments to enact part of the Equality Act, which would have imposed a duty to address socio-economic disadvantage, has exacerbated inequalities in England during the coronavirus pandemic, a thinktank has claimed. The Runnymede Trust's report, Facts Don't Lie, says that the public sector duty provision would have imposed a legal obligation on education authorities in England to ensure working class children on free school meals were fed properly while schools were shut and had access to laptops for remote learning.

Section 1 of the Equality Act 2010 requires authorities, also including local councils, the police and most government departments, to carry out their functions having "due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage". The section was activated in

A Prison Service spokesperson said: "We have a zero-tolerance approach to drugs and work closely with healthcare to support offenders through treatment and recovery." About 13% of men across the England and Wales prison estate reported during a recent official survey that they had developed issues with illegal drugs while incarcerated. Jones has previously said it was a national scandal that people were "dying needlessly" because governments refused to embrace a radical new approach to drug policy, such as legal regulation to reduce harm.

ECtHR Orders Russia to Release Alexei Navalny From Prison

Joanna Curtis, Uk Human Rights Blog: On 16 February 2021, the European Court of Human Rights (ECtHR) granted further interim measures against Russia in relation to political opposition figure Alexei Navalny, requiring that Navalny be immediately released from prison due to the risk to his life and health. This is not the first time that the Court has granted Navalny's request for interim measures against Russia. In August 2020, Navalny was the victim of a chemical poisoning whilst on a domestic flight, and the Court ordered Russia to deliver up information about his medical treatment in Russia and to grant access to the patient to assess his fitness for transport (see here for our previous post on this). Navalny was subsequently transferred to hospital in Germany, where he recovered, and where the poison was confirmed to be the Russian nerve agent Novichok. The Russian state has not accepted responsibility for the poisoning, even though Navalny himself released recordings in December of a telephone call with one of the FSB operatives allegedly involved in the poisoning, who discussed details of the operation (thinking that Navalny was a senior member of the FSB).

In mid January 2021, Navalny returned to Russia. Immediately on arrival at the airport, he was arrested and detained. His sentence has now been confirmed for 2 years and a half year's imprisonment, for breach of the terms of his probation over a 2014 money laundering conviction – a conviction which the ECtHR ruled in 2017 was "arbitrary and manifestly unreasonable" (Navalnyye v Russia, Application no. 101/15). According to Bloomberg, Navalny received the sentencing for failing to check in with the Russian authorities while he was in Germany in August 2020, recovering from the poisoning. His sentencing has been internationally criticised, and in Russia thousands of people joined nationwide protests over the end of January and the beginning of February. Navalny had applied to the ECtHR on 20 January 2021 for interim measures under Rule 39 of the Rules of Court. The Court first requested information from Russia on the following questions: Did the risk to the applicants life persist? If so, what measures were being taken by the Russian authorities to safeguard his life and wellbeing, particularly while in custody? Were the conditions of detention and treatment of the applicant subject to regular independent monitoring in line with European standards?

Russia responded that Navalny was being held in a "properly guarded cell" which was under video surveillance, described the material conditions in the cell, said that Navalny had access to electronic communications via the prison system, was allowed to make phone calls, and had been visited on several occasions by his lawyers and by members of the Russian public monitoring commission for prisons. Navalny submitted that these arrangements could not provide sufficient safeguards for his life and health. The ECtHR, having regard to the nature and extent of risk to the applicant's life, demonstrated prima facie for the purposes of applying the interim measure, and seen in the light of the overall circumstances of the applicant's current detention, decided to grant the interim measures requested and indicated that Russia should release Navalny immediately.

Rule 39 measures: he Court has broad powers under Rule 39 to grant interim measures, but will only do so where there is an imminent risk of irreparable harm. In detention cases, the Court has previously exercised its power under Rule 39 in order to request that a detainee be medically assessed or transferred to a hospital (see the examples discussed under 'Health and Conditions of Detention' in the ECtHR's factsheet on Interim Measures). February's ruling would appear to be the first time the Court has ordered that an applicant be released from detention entirely due to the state's inability to protect his/her life and health.

No judgment text is currently available regarding the ECtHR's February decision, and the court's press release does not give any further reasoning. However, conditions of detention in Russia have long been a matter of concern. In 2018 the UN Committee against Torture published its Concluding observations on the sixth periodic report of the Russian Federation, which raised a number of concerns in relation to the Russian prison system. The Committee observed, in particular: (a) that fundamental legal safeguards, such as access to lawyers and independent medical examination, often do not apply for detained persons, (b) that there were concerns over the effectiveness and independence of the Russian public monitoring commissions, and (c) that there were numerous reliable reports of the practice of torture and ill-treatment in Russia, including as a means to extract confessions.

Next steps: Russia has so far refused to comply with the ECtHR's instruction to release Navalny, saying that it is an over-interference with national sovereignty. On 20 February Navalny lost his appeal against the prison sentence. So what next? The US and the EU have now imposed asset-freezing and travel ban sanctions against seven senior Russian officials and 14 entities involved in chemical and biological production. There may also be a route for the ECtHR to impose a final judgment on Russia for failure to comply with Rule 39: in a number of previous cases the ECtHR has found this to constitute a violation of Article 34 of the Convention, under which states "undertake not to hinder in any way the effective exercise" of an individual's right to apply to the ECtHR. Navalny and his lawyers have previously brought a number of cases to the ECtHR: this is clearly part of his political as well as his legal strategy. No doubt he will pursue every avenue available.

Legal Aid Arrangements for Immigration Detainees in Prisons Unlawful

Duncan Lewis, Solicitors: In a landmark judgment of the High Court, Mr Justice Swift declared that the arrangements for immigration detainees held in prisons to access immigration and asylum legal aid are unlawful. The Claimant, represented by Duncan Lewis Solicitors, was detained in prison and was unable to access a legal aid lawyer for nine and a half months. In that time he represented himself in his asylum claim with dire consequences and was unable to successfully challenge the lawfulness of his detention. He challenged the legal aid arrangements for immigration detainees held in prisons on the basis that they are less favourable than the arrangements in place for those held in immigration removal centres (IRCs). Individuals detained in an IRC have access to an advice surgery that guarantees access to 30 minutes' legal advice regardless of means or merit. Those detained under immigration powers in a prison do not. Bail for Immigration Detainees made a powerful intervention in the claim. Mr Justice Swift held that immigration detainees in prisons are less well placed to access legal advice in IRCs, and that the Lord Chancellor had failed to justify the difference in treatment of these two groups. He declared that the Lord Chancellor had breached the Claimant's right not to be discriminated against under article 14 ECHR, read with articles 2, 3, 5, 6 and 8.

Ms Begum was, at that time, and still is, being held at a camp in Syria by the Syrian Democratic Forces. On 3 May 2019, she made an application for leave to enter the UK, in order to be able to pursue an appeal against the deprivation decision, and to avoid the risk of mistreatment. On 13 June 2019, the Secretary of State refused that application ("the LTE decision"). The Secretary of State certified that this decision had also been taken partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest.

Appeals in three separate sets of proceedings brought by Ms Begum reached the Supreme Court. The first set of proceedings arose from Ms Begum's appeal to the Special Immigration Appeals Commission (SIAC) against the deprivation decision. As preliminary issues in that appeal, SIAC determined that the Secretary of State did not depart from his extraterritorial human rights policy when he made the deprivation decision ("the policy issue") and that, although Ms Begum could not have an effective appeal against that decision in her current circumstances, it did not follow that her appeal should succeed ("the fair and effective appeal issue").

Her appeal against the deprivation decision not having been finally determined, Ms Begum did not have a statutory right of appeal to the Court of Appeal. Instead, she challenged SIAC's determination of the policy and fair and effective appeal issues by means of an application for judicial review. On that application, the Divisional Court found in Ms Begum's favour on the policy issue, but not the fair and effective appeal issue. The Secretary of State appeals to the Supreme Court on the basis that the Divisional Court was wrong to conclude that SIAC had erred in determining the policy issue by applying principles of administrative law. Ms Begum cross-appeals on the basis that the Divisional Court was wrong to reject her argument that her appeal against the deprivation decision should automatically be allowed if it could not be fairly and effectively pursued as a consequence of the refusal of her application for leave to enter the UK.

The second set of proceedings relate to the LTE decision. Ms Begum had a statutory right of appeal against that decision only so far as she claimed that the decision was unlawful under the Human Rights Act 1998. She made such an appeal, but it was refused by SIAC at first instance. Ms Begum then successfully appealed to the Court of Appeal. The Secretary of State appeals to the Supreme Court, on the ground that the Court of Appeal was wrong to conclude that leave to enter must be granted to Ms Begum because she could not otherwise have a fair and effective hearing of her appeal against the deprivation decision.

The third set of proceedings concern the LTE decision, other than in respect of its compliance with the Human Rights Act 1998. Not having a statutory right of appeal to SIAC in that respect, Ms Begum sought to challenge the LTE decision by means of an application for judicial review. Her application was dismissed by the Administrative Court but then granted by the Court of Appeal. The Secretary of State appealed to the Supreme Court. The issue arising in that appeal is, again, whether the Court of Appeal was wrong to conclude that leave to enter must be granted to Ms Begum because she could not otherwise have a fair and effective hearing of her appeal against the deprivation decision.

Reasons - Lord Reed identifies four principal errors in the judgment of the Court of Appeal. First, the Court of Appeal misunderstood the scope of an appeal against a decision of the Secretary of State to refuse a person leave to enter the UK. Ms Begum's appeal against the LTE decision could only be brought on the ground that the decision was unlawful under section 6 of the Human Rights Act 1998. As Ms Begum did not advance that argument before the Court of Appeal, her appeal against the LTE decision should have been dismissed. Secondly, the Court of Appeal erred in its approach to the appeal against the dismissal of Ms Begum's application for judicial review of

½ by an experienced trial judge (Sweeney J), seeking to contend that by reason of the Terrorist Offenders (Restriction of Early Release) Act 2020 and the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 the starting point should now habitually be 2/3. Both defendants were convicted under s5 of the Terrorism Act, and both had been given discretionary life terms, and each had a minimum term to serve of one half of the notional determinate sentence had they not been found to be dangerous. The Court of Appeal rejected the argument of statutory interpretation (see para 50) relied upon by the Solicitor General, that s 247 of the CJA 2003 meant that the Terrorist Offenders (Restriction of Early Release) Act 2020 required the court to have regard to the length of time served by those serving determinate sentences. But it stated (obiter at para 52) that its "conclusion entails that the legislative structure of the 2020 Act (creating a new early release regime in section 247A and then removing those subject to that regime from the operation of section 244(1)) has a different effect so far as the setting of minimum terms is concerned to that adopted by the 2020 Order (which amended the definition of "relevant custodial period" in section 244(1) itself).

At paragraph 53 the court: "also accept that our conclusion gives rise to the anomaly identified in Burinskas that the minimum term for a prisoner sentenced to a life sentence to which the 2020 Act applies may in some cases be lower than the requisite custodial period for a prisoner sentenced to a determinate sentence for the same offence, and that, for the same reason, there is an anomaly when comparing the minimum terms with the requisite custodial period for the determinate sentences in the Guideline"

The troubling outcome is that whilst courts sentencing terrorist prisoners to discretionary life sentences should take ½ of the determinate equivalent in assessing the minimum term, courts sentencing dangerous sexual and violent offenders to discretionary life sentences, are likely now to be justified in taking 2/3. The sun, it would appear, is rapidly setting upon the assumption that the taking of ½ is the norm. Should sentencing practice not change, legislation is likely soon to follow. Those representing defendants likely to receive discretionary life sentences would be wise to move rapidly to secure a sentencing hearing, for it would appear the days of receiving by way of tariff only ½ of the notional determinate sentence are rapidly fading, and likely to shortly be extinguished by legislative or judicial changes requiring the minimum term to be assessed at 2/3 of the fixed term sentence.

Supreme Court: Shamima Begum Cannot Return to UK

Shamima Begum, the woman who travelled to Syria as a child and aligned herself with ISIS, has failed in all her appeals to the Supreme Court and cannot return to the UK to argue her citizenship case. The court unanimously allowed the Secretary of State's appeals and dismissed Ms Begum's cross-appeal. The result is that Ms Begum's appeal against the LTE decision is dismissed, her application for judicial review of the LTE decision is dismissed, and her application for judicial review of SIAC's preliminary determination in her appeal against the deprivation decision is dismissed.

Lord Reed gave the sole judgment, with which Lord Hodge (Deputy President), Lady Black, Lord Lloyd-Jones and Lord Sales agreed. On 19 February 2019, the Secretary of State for the Home Department notified Ms Shamima Begum that he intended to deprive her of her British citizenship ("the deprivation decision"). The stated reason for the decision was that Ms Begum is "a British/Bangladeshi dual national who it is assessed has previously travelled to Syria and aligned with ISIL", and that "[i]t is assessed that [her] return to the UK would present a risk to the national security of the [UK]." The Secretary of State certified that his decision had been taken partly in reliance on information which, in his opinion, should not be made public in the interests of national security and in the public interest.

Jeremy Bloom, the Claimant's solicitor, said: We are delighted with the outcome of this case for our client. We also hope that the judgment will lead to an improvement in the access that immigration detainees held in in prisons have to legally aided immigration and asylum representation. The current arrangements are not fit for purpose; they obstruct access to legal aid for some of the most vulnerable individuals and prevent them from effectively challenging the lawfulness of their detention and from advancing their asylum and human rights claims. At present, many of these individuals find it almost impossible to secure legal aid representation.

Before trial, the litigation had already led the Lord Chancellor to announce a wide-ranging review of the legal aid arrangements, with the aim of identifying the best way to provide equal access to high quality specialist immigration and asylum advice to immigration detainees across the detention estate. Mr Justice Swift held that the review was evidence of the Lord Chancellor's acceptance that the difference in treatment is a significant matter that needs to be addressed, and that this reflects the position at law. The Lord Chancellor has not clarified when this review will be completed and when necessary changes will be implemented. Duncan Lewis thanks Bail for Immigration Detainees for referring the Claimant to the firm, providing a wealth of evidence which supported the claim and for their intervention in the claim. The Claimant was represented by Toufique Hossain, Jeremy Bloom and Jonah Mendelsohn in the Public Law Department of Duncan Lewis Solicitors. Chris Buttler at Matrix Chambers and Ali Bandegani at Garden Court were counsel instructed in the case.

DLS– Minimum Term – Likely To be Increased From ½ to 2/3 of Notional Determinate Sentence

James Wood QC, Doughty Street Chambers: Discusses recent sentence appeals on minimum terms in *Discretionary Life Sentences* (DSL). He assesses the likely impact of the recent statutory changes increasing the minimum term to be served by some prisoners serving determinate sentences from ½ to 2/3. He identifies prosecutorial appeals to increase minimum terms in discretionary life sentences by the Attorney General, and warns that the judicial and statutory drift appears to be towards a similar lengthening from ½ to 2/3 of the minimum term to be served by those sentenced to discretionary life sentences on grounds of dangerousness. (Notional determinate term is the determinate sentence that would have been passed in respect of the offence if the court had not been required by the need to protect the public and the potential danger of the offender to impose a non-fixed life sentence.)

Recent changes to the release provisions made by the Terrorist Offenders (Restriction of Early Release) Act 2020 (passed in response to the London Bridge atrocity in January 2020) and the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (passed in April 2020) require prisoners serving fixed term sentences for terrorist offences or serious sexual or violent offences serve 2/3 of their sentence before being considered for release, have led to calls for a corresponding uplift in the minimum terms to be served by discretionary life prisoners. The initial assumption upon the introduction of the statutory discretionary life sentence was that the minimum term to be served by such prisoners would be one half of the notional determinate save in exceptional circumstance (see Szczerba [2002] EWCA Crim 440). That was based upon the assumption that this was the norm for prisoners serving determinate terms.

The drift away from the one half assumption started in 2012 when the Legal Aid, Sentencing and Punishment Act amended the Criminal Justice Act of 2003 by creating the extended sentence regime in sections 226A and 226B for dangerous offenders. Prisoners sentenced to an extended sentence were required to serve 2/3 of their sentence before being considered for parole. It was

argued in A-G's Reference (No 27 of 2013) (R v Burinskas) [2014] 2 Cr App R (S) 45 that this created an anomaly with discretionary life sentence prison ers, who habitually required to serve ½ of the notional determinate term fixed as their minimum time to serve, before being considered for parole. The suggestion by the defence in Burinskas was that the court should reduce the length of extended sentences to achieve parity. The Crown responded by saying that the minimum term for discretionary life sentence prisoners should (by contrast) be increased to remedy the disparity. This argument was roundly rejected by Lord Thomas the LCJ stating at para 36 and 37.

We understand the argument, but the position is more complex. A life prisoner is not entitled to release at the end of the minimum term. He must wait until the Parole Board consider that it is safe to release him. In some cases that date is years after the minimum term has expired. The prisoner serving an extended sentence is entitled to be released at the end of the custodial period without any further assessment of risk. Where the custodial term is less than 10 years the entitlement arises at the two-thirds point.

There is an argument that if the alternative to a life sentence is an extended sentence rather than a determinate sentence then it is the extended sentence, with its longer time to serve, that should form the basis of the calculation of the minimum term in a life sentence. That would reduce the notional determinate sentence by one-third rather than one-half and would lead to an increase in the minimum term to be served in life cases of one- third. There are four difficulties with that approach: an extended sentence is not necessarily an alternative to a life sentence under s.225; an extended sentence is not an alternative to a life sentence imposed under s.224A; the sentencing judge must compare the early release provisions at s.244(1)— which are concerned with determinate sentences; and a measure which increases minimum terms in life sentences by one-third is, in our judgment, a matter for Parliament

The passage last year of the amending provisions requiring fixed term prisoners to serve 2/3 has led to a spate of recent litigation. Section 247A of the CJA 2003 was amended by the Terrorist Offenders (Restriction of Early Release) Act 2020 to require terrorist offenders to serve 2/3 of their sentence before being considered for release, and the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 made similar provisions for those sentenced to more than 7 years for serious sexual or violent offences. The courts have had to address the impact of these provisions on the minimum terms to be served by discretionary life prisoners.

In R v Khan [2020] EWHC 2084 (Admin), in rejecting an human rights compatibility challenge to the 2/3 release regime introduced by Terrorist Offenders (Restriction of Early Release) Act 2020, the court (Fulford LJ and Garnham J) were persuaded in July 2020 to rely fairly exetensively upon a "helpful account provided in her witness statement by Mrs Niranda Wilkinson, Head of Counter-Terrorism and Strategic Projects at the Ministry of Justice"1 in summarising generally "Sentencing for Terrorist Offenders" the court stated (obiter): "30. In the context of discretionary life sentences, except where a whole life order is made, the court must take account of the seriousness of the offence or offences and the provisions with respect to crediting time spent on remand: Powers of the Criminal Courts (Sentencing) Act 2000, s.82A. Pursuant to s.82A(3)(c), the minimum custodial term shall also be set "such as the court considers appropriate taking into account… the early release provisions as compared with section 244(1) of the Criminal Justice Act 2003". In Attorney General's Reference (No. 27 of 2013) [2014] 1 WLR 4209, the Court of Appeal held that the effect of s.82A is to "require the sentencing judge to identify the sentence that would have been appropriate had a life sentence not been justified and to reduce that notional sentence to take account of the fact that had a determinate sentence

been passed the offender would have been entitled to early release" [33]. The application of s.82A(3)(c) will ordinarily, but not always, result in a reduction of the notional determinate sentence by half, but there may be exceptional circumstances in which more than half may be appropriate: R v Sczerba [2002] EWCA Crim 440; [2002] 2 Cr App R (S) 86, [33]; R v Jarvis [2006] EWCA Crim 1985, [19]. There is, therefore, no rule requiring that the custodial term for a discretionary life sentence is set at half of the actual or notional determinate term: R v Rossi [2015] 1 Cr App R (S) 15, [20-22]. 31. Since 1 April 2020, under the 2020 Order, sexual and violent offenders are not entitled to automatic release until the two-thirds point of their sentences. A court will be entitled to take this into account under s.82A(3)(c) when setting the minimum tariff period in respect of a discretionary life sentence." This assessment was promptly leapt upon by prosecutors, and attempts were made to increase (under the slip rule) cases in which ½ tariffs had been imposed by Sweeney J and have them increased to 2/3. These attempts were rejected.2

At the instance of the AG, the Court of Appeal came back to the issue in conjoined appeals in AG's Reference No 688 of 2019 (Joseph McCann and Sinaga) [2020] EWCA Crim 1676 in December of 2020 the Lord Chief Justice, together with the President of the QBD and Fulford LJ in a 5 judge court examined the sentencing regime, cited para 31 of Khan above, and noted at para 62 that from the 1st April 2020: "a defendant serving a fixed-term sentence of seven years or more for a relevant violent or sexual offence (an offence listed in Part 1 or 2 of schedule 15 to the 2003 Act for which a sentence of life imprisonment may be imposed) which was imposed on or after that date, the requisite custodial period is two thirds (not a half) (see the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 SI 2020/158"

The court then went on to say at para 66: "The position, therefore, is that the significant changes to the release provisions which have either been recently implemented or are awaiting implementation will have a considerable impact on the position of individuals convicted of a wide range of serious offences." The court then proceeded to use 2/3 of determinate terms as the approach for assessing the minimum terms, whilst rejecting the Solicitor General's appeal to increase the minimum terms to whole life, on grounds that the campaigns of rape involved in both cases were so egregious.

Reviewing the authorities they concluded at para 88: "The effect of these decisions is to leave open the possibility that a whole life term could be attached to a discretionary life sentence, but there is a principled reason for reserving the most serious sentences to cases of murder, save in the most exceptional circumstances." And at para 89: "A whole life order is the severest sentence available….We see no reason to depart from the longstanding approach approved over decades by this court not to attach a whole life tariff to a discretionary life sentence save in wholly exceptional circumstances."

The court though upheld (in McCann) and imposed (in Sanaga) a tariff of 2/3 of the notional determinate sentences of 60 years stating at para 95: "These two cases are paradigms of the circumstances which justify a departure from the usual position of fixing the requisite custodial period at a half of the determinate term. We agree with Edis J in McCann's case that a custodial period of two-thirds is necessary, but we express this step as being required for both offenders to ensure that the proper requirements of punishment are met for these unique crimes rather than by reference to the release provisions for an extended sentence."

Shortly after passing judgment in McCann, Fulford LJ and Edis J together with Foxton J heard argument in Attorney General's References (R v Safiyyah Shaikh and R v Fatah Abdullah) [2021] EWCA Crim 45, in which the Solicitor General sought to review the taking of a minimum term of