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**Robson, R (On the Application Of) v Crown Prosecution Service**

The claimant seeks judicial review of the decision of the Crown Prosecution Service ("CPS") to prosecute her for criminal damage rather than to offer her a conditional caution as an alternative disposal. • The material facts relate to an incident which occurred on 5th May 2015, when the claimant damaged the offside panel and bonnet of a silver Vauxhall Sportive van, and the offside panel of a Smart car, belonging to Daniel Alder, her former domestic partner. The damage was caused by etching the letters "cunt" into the paintwork of both vehicles. There was also criminal damage to Mr Alder's coat. The total damage was quantified at £3,406.99. The claimant and Mr Alder were no longer living together and there were no children from the relationship. • The CPS decided that the claimant should be prosecuted for an offence of criminal damage, contrary to section 1(1) of the Criminal Damage Act 1971. • The claimant does not deny the charge. She has admitted it and has paid the sum of the quantified damage. • Her case is that, in the circumstances of the case, she should have been offered the opportunity to accept a conditional caution, as defined in Part 3 of the Criminal Justice Act 2003. • But for the fact that CPS regarded the offence as falling within a definition of domestic violence (or "DV"), the claimant might otherwise have been conditionally cautioned. Four of the five requirements of section 23 of the Criminal Justice Act 2003 either were or would have been satisfied. The final statutory requirement is that the relevant prosecutor decides that a conditional caution should be given: see section 23(2)(b).

In an email dated 19th August 2015, the District Crown Prosecutor explained the CPS's decision to the claimant's solicitors: "This matter has been referred to me in the absence of my colleague who determined that this case should go forward. I see the record from the last hearing which required we explain why the case was not dealt with by way of caution/conditional caution. The police ruled out the former on the grounds that such [a] disposal was disproportionate to [the] circumstances of the offence given its extent/value. The police passed the matter to the CPSD given its domestic character. The reviewing prosecutor did not disagree with that police decision and given that a conditional caution cannot be applied in DV matters authorised the charge. I see from the papers that Mr Alder has given conflicting views as to the merit of proceeding with the prosecution. I have tasked the witness care officer with speaking to Mr Alder this morning to determine his position in this matter. I am told that he is fully supportive of the case going ahead. I further enquired as to whether any compensation had been paid and if so how much. I am advised that £4,000 has been paid."

It is this decision which is challenged. Three points may be noted. First, the crucial words in the present context are "a conditional caution cannot be applied in DV matters". Secondly, there is an issue as to whether Mr Alder was "fully supportive of the case going ahead". Although it is not central to the argument, his statement of 8th July 2015 said that he was not supportive of the prosecution, although this preceded the information which was said to have come from the witness care officer. Thirdly, the responsibility, or at least the prime responsibility for the decision not to deal with the offending by a simple caution was taken by the police. That decision has not been challenged; the police have not been made a defendant to the claim and the victim has not been made an interested party. This case concerned only the decision on a conditional caution taken by the CPS.

It is not necessary to interpret the Guidance and Guidelines in so inflexible a way as to make them unlawful, particularly as the DPP does not herself interpret them in that way, as the pilot schemes show. They must be interpreted as including, by necessary implication, words which permit of exceptions. Outside the wider exceptions represented by the pilot schemes, there is every reason to interpret them, reflecting the limited scope for exceptions, as containing at least the same language as is found in the guidance for simple cautions in domestic violence cases: namely, as rarely appropriate where the evidential test is satisfied. The offering of conditional cautions of itself will bring into play additional factors, such as the effect of a condition on contact between the victim and the defendant.

For this reason it seems to us that there is no question of declaring the policy unlawful, and nothing in this judgment should be taken as undermining the general approach to cases of domestic violence set out in the Guidance and the Guidelines. It is plain that those who have drafted these documents have thought very carefully about how to address a serious social problem. In most cases the application of the policy in the Guidance that a conditional caution may not be offered in cases of domestic violence will be entirely appropriate. However, there may be exceptional cases where a different outcome should be considered and where the exercise of the discretion may result in the offer of a conditional caution.

It is clear, however, that the decision maker in the present case has interpreted the Guidance as possessing no flexibility at all, and as permitting no exceptions. It follows that no consideration was given to whether a conditional caution might as a rare exception be offered. That decision was based on what we have concluded is a misinterpretation of policy. The decision to prosecute, therefore, falls to be quashed, and a further decision must be taken, recognising that the Guidance does permit of exception.

It is of course impossible for us to say what the outcome of that further consideration should or will be. That will be for the decision maker in the exercise of a discretion in what are likely to be a very small number of cases. What we can say is that Mr Caldwell has persuaded us that it is possible that the decision maker, aware of the existence of a discretion, could decide that this case was one of the rare exceptions where a conditional caution should be offered. There are many circumstances to be considered, not least the true attitude of the victim, the effect of the payment of compensation, which would have been the obvious primary restorative requirement, resource costs, and the desirability of an out-of-court disposal to avoid any unnecessary criminalising of a defendant. There are also other factors in this case to which it is unnecessary to refer.

Although the types of cases in which the discretion might be exercised was canvassed during the argument, it is not for this court to articulate general principles, beyond observing that the Guidelines themselves identify the type of case which may properly be regarded as at the margins in terms of the harm and culpability identified in the Guidelines. It will be for the DPP to decide whether the expression of the discretion requires further elaboration and, if so, in what terms. Although the decision not to offer a simple caution is one, at least primarily, for the police and has not been challenged here, this judgment does not mean that it is not open to the police or the prosecutor, as appropriate, to reconsider that decision as well.

Conclusion: Accordingly, we quash the decision contained in the email of 19th August 2015, and require the CPS to reconsider its decision on the prosecution decision in the light of this judgment. We invite the parties to agree on the form of order which should be made in the light of this judgment.

**Drug Dealer to Appeal 'Miscarriage of Justice'**

A drug dealer caught with £870 worth of ecstasy at T in the Park will have his appeal against the length of his prison term heard at the High Court. Conor McAteer was jailed for 28 months in February, with co-accused Paul McGee receiving a 20 month sentence. McAteer says he has suffered a miscarriage of justice in terms of comparative sentencing after McGee's term was cut to eight months on appeal. McAteer also claims the length of his sentence was excessive. The two men were caught with the class A drug at the festival at Balado in 2013. The Scottish Criminal Cases Review Commission has now referred the case to the High Court of Justiciary in Edinburgh. The independent body was established in 1999 to review alleged miscarriages of justice in Scottish convictions and sentences.

**Child Abuse Pediatrician (CAP) – Just Another Term for Medical "Cop"**

Phil Locke, Wrongful Convictions Blog: A new paper has recently been published by George Barry and Diane Redleaf of the Family Defense Center in Chicago. The paper, titled Medical Ethics Concerns in Physical Child Abuse Investigations, explores and reveals the extent of breeches of medical ethics by child abuse medical investigators (CAP's). This paper is a prodigious work, including five detailed case studies.

The title of Section I of Part III conveys the theme of the paper: "Physicians Have an Ethical Obligation Not to Become Law Enforcement Officers." And here is an excerpt from the Executive Summary: "We submit, in this Paper, that this system of child abuse investigation and medical assessment is failing the children and families. We also submit that the failings are due at least in part to practices that are ethically questionable at best, or plainly unethical at worst. The harm of these practices occurs because, while the child may quickly recover from a toddler fracture, nursemaid's elbow or subdural hematoma that is called in to child protection authorities as suspicious, the trauma families have experienced at the hands of the child protection system does not fade quickly or ever entirely disappear. Moreover, the Center is able to represent only a tiny fraction of the wrongly accused family members in medically complex cases and resources like the Center provides are not available to the vast majority of family members who encounter the child protection and medical care establishment in these cases. Unfortunately, we see little sign that the child protection and medical care establishment are addressing in a meaningful way the harmful impact of erroneous child abuse reports that have resulted from questionable ethical practices that this Paper documents. Indeed, for reasons this Paper documents, we believe that the medical profession has turned a blind eye to the treatment of children and families who are the victims of misplaced child abuse allegations and we are concerned about developments in the handling of medically complex allegations that make these problems worse, not better."

Don't get me wrong. Child abuse is a horrific thing, but equally, if not more, horrific is when when innocent parents and care givers get thrown into prison or separated from their children for a child abuse "crime" they did not commit, and that did not ever happen. This is a tragedy that occurs all too often when a medical diagnosis is made that does not recognize the new scientific understandings regarding symptoms that have traditionally (and wrongly) been attributed solely to abuse. And here's the scary part – the CAP's, who are basically a medical cop, as part of their training, have been indoctrinated with the American Academy of Pediatrics medical dogma concerning causation of certain symptoms (the triad and long bone fractures) that they insist are pathognomonic (exclusively indicating) of abuse. This is what the SBS Wars is all about.



"Chid Abuse Pediatrics" was established as a pediatric sub-specialty by the American Board of Medical Specialties in 2006. This definition of the discipline is from the website of the Council of Pediatric Subspecialties (ironically known as CoPS): "Child Abuse Pediatricians are responsible for the diagnosis and treatment of children and adolescents who are suspected victims of any form of child maltreatment. This includes physical abuse, sexual abuse, factitious illness (medical child abuse), neglect, and psychological/emotional abuse. Child Abuse Pediatricians participate in multidisciplinary collaborative work within the medical, child welfare, law enforcement, and judicial arenas as well as with a variety of community efforts. Child Abuse Pediatricians are often called to provide expert testimony in the court systems. This field offers the opportunity for involvement and leadership roles in community, regional and national advocacy, and in prevention efforts and public policy." (emphasis is mine).

I would contend the very existence of the child abuse pediatrician specialty becomes something of a self-fulfilling prophecy. "I'm here to diagnose child abuse, so that's what I'm going to do." This would be my advice. If you find yourself in the situation of taking your child to the emergency room, and you find yourself talking with a child abuse pediatrician (and they probably won't tell you they are one), consider that you are under suspicion, and you are talking to the police. How you choose to deal with that I must leave to you.

**Hate Crimes Prosecutions Fall Despite Rise In Reporting** *BBC News*

Hate crime prosecutions in England and Wales fell by almost 10% last year even though the number of recorded incidents increased, figures have suggested. Freedom of Information figures suggest hate crimes increased by 20% last year, to more than 60,000 - yet police referrals to prosecutors fell by 1,379. Experts say hate crimes are now at a more "predictable" level since a spike was reported around the EU referendum. The Home Office said it had published a new action plan to boost reporting.

However, concerns remain that prosecutions in England and Wales have failed to keep pace with increasing reports over the past two years. Data obtained by the Bureau of Investigative Journalism from 40 of 43 police forces in England and Wales suggested reported hate crimes had increased by 20% last year, from 50,288 reports in 2014/15 to 60,225 in 2015/16. According to the Office for National Statistics (ONS) Crime Survey for England and Wales there were about 52,000 in 2014/15. The crime survey has not published its figures for 2015/16. Based on responses to the survey, the ONS suggested there was actually an estimated 222,000 hate crimes per year. But the CPS hate crime report showed the number of racially aggravated and homophobic hate crimes referred by the police to prosecutors in 2014/15 was 14,376. That number decreased by 9.6%, to 12,997, in 2015/16.

The UK saw a spike in reported hate crimes before and after the EU referendum on 23 June - when the UK voted to leave the European Union. Abuse peaked on 25 June - the day after the result was announced - when 289 hate crimes and incidents were reported across England, Wales and Northern Ireland. A further 3,001 reports of hate crimes were made to police between 1 and 14 July - more than 200 a day. However, True Vision - the joint police and Home Office hate-crime reporting portal - told 5 Live Investigates that recorded levels of hate crime are now similar to the levels seen in 2015.

Dr Leander Neckles, from the Race Equality Foundation think tank, said: "These figures are saying you have a one in four chance if you report hate crime of someone being prosecuted."

New Home Office guidance is due to be issued to prosecutors on racially and religiously aggravated offences to encourage tougher sentences in hate crime cases and to boost reporting rates. However, Dr Neckles suggested it did not take a tough enough line. "It does not analyse why we're in the position we're in and it doesn't analyse what has worked and what hasn't worked in the past. It doesn't give a proper prescription for moving forward nor does it address the fact that race hate crime forms more than 80% of the hate crime reported to police." She suggested pressure on police resources could be one reason for under-recording by forces.

Paul Giannasi, from the National Police Chief's Council - which represents forces in England, Wales and Northern Ireland - admitted forces still had a long way to go in terms of recording and investigating hate crime. He said the gap could be the result of poor recording or because hate crime victims had not described their assault as a hate offence when they first spoke to police. "We will continue to examine that data to make sure if there is a shortfall in the police response to it then we will address that," he said. No victim should face hate crime and not have the protection of the criminal justice system." Home Office minister Sarah Newton told 5 Live Investigates a new hate-crime action plan - which was published in July - would boost the reporting of offences and support victims. "The government is absolutely committed to stamping out hate crime and making sure Britain is a country that works for everyone," she said. There is no place in this country for hatred targeted against any race, religion or community."

**Successful Appeal Against - Refusal to Revoke a Deportation Order Against a Foreign Criminal**

[Foreign National Offenders (FNOs) - Since 2010, the Government have deported over 30,000 foreign national offenders, including 5,692 in 2015-16—the highest number since records began. Many thousands of those deported, still have families in the UK and it is nigh impossible for them to revoke the deportation order and return to the UK. Stop 'Double Punishment' of Foreign nationals: Deportation after completing a prison sentence is a secondary or 'Double punishment'. 'Double punishment' has nothing to do with the concept of punishment fitting the crime as the crime has already been punished by the prison sentence. 'Double punishment' offends all rules of natural justice and is not simply unjust it is blatantly discriminatory/racist as it only affects foreign nationals. Double punishment, can also be used to punish the UK family of a convicted foreign national, even though they had nothing to do with the crime. There are approximately 12,000 foreign nationals in the UK prison system]

**IT (Jamaica) v SSHD** [2016] EWCA Civ 932 (02 September 2016) - Issue: Weight to be Given to the Public Interest in an Appeal Against a Refusal to Revoke a Deportation Order Against a Foreign Criminal

1. This appeal from the Upper Tribunal's determination dated 12 January 2015, dismissing an appeal from the determination of the First-tier Tribunal ("FTT") dated 5 September 2014, raises the question of the weight to be given to the public interest when a deportee applies for revocation of a deportation order made against him. On it depends the further question of what the deportee must show to displace that public interest and in turn what he must demonstrate to a tribunal to succeed on any appeal from the Secretary of State's refusal to revoke that order.

2. In this case, the appellant, A, was deported under section 32 of the UK Borders Act 2007 ("the Borders Act") in 2010 following his conviction for a serious criminal offence for which he was sentenced to 42 months' imprisonment. The Secretary of State has refused to revoke that order so that he can return to the UK to live with his wife and son. The FTT allowed A's appeal and the Upper Tribunal dismissed a further appeal. It is effectively common ground that,



under section 117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), the deportation order may only be revoked if its retention is determined to be "unduly harsh", but there is a dispute between the parties as to the weight to be given in that determination to the public interest in deporting foreign criminals who have committed serious offences and to whether the tribunals followed the right approach in this case.

3. For the reasons given below, in my judgment, the undue harshness standard in section 117C of the 2002 Act means that the deportee must demonstrate that there are very compelling reasons for revoking the deportation order before it has run its course. Section 117C is to be read in the context of the Immigration Rules which make that clear. The tribunals in this case recognised the role of the public interest but fell into error because they did not direct themselves as to the weight to be given to it in balancing it against the interests of the applicant and others.

*Counsel's Submissions And My Reasons For Allowing This Appeal*

31. The key submission of Mr Sarabjit Singh, for the Secretary of State, relates to the adequacy of the FTT's treatment of the public interest in the deportation of foreign criminals. Mr Singh submits that the FTT should have applied the approach recently identified by this Court in ZP (India) v Secretary of State for the Home Department [2016] 4 WLR 35, where the leading judgment was given by Underhill LJ, with whom Christopher Clarke LJ and Sir Timothy Lloyd agreed.

32. ZP (India) concerned a post-deportation revocation application made before 28 July 2014, when section 117C of the 2002 Act came into force. We understand that this appeal is the first time that this Court has considered the role of the public interest in appeals from determinations of the tribunals after that date.

33. Mr Singh relies on ZP (India) for four reasons.

34. First, this Court noted that each of the three subparagraphs of section 32(6) sets out a separate basis on which a deportation order can be set aside: see at [14] per Underhill LJ. This Court further noted that, while, on the face of section 32(6), the Secretary of State has a discretion to revoke a deportation order under paragraph (b) without reference to section 33, the weight to be given to the public interest when considering revocation of a deportation order could not in practice (or logically) be any less than when the original deportation order was made: see per Underhill LJ at [15]: 15…It is true that…the non-applicability of section 33 in a post-deportation case means that Parliament has not made any express provision about what the public interest requires in such a case, so that the Secretary of State's discretion is unfettered by statute. But if it has been established when the original order was made that none of the exceptions specified in section 33 applies, and accordingly that the public interest requires the making of a deportation order, that does not cease to be the case the moment the foreign criminal leaves the country: it will, for essentially the same reasons, be contrary to the public interest for them to come back. No doubt it may be right to put a limit on the period for which the public interest requires their continued exclusion, but that is another matter and is addressed in the Immigration Rules…

35. Second, Underhill LJ decided that paragraph 390A (see paragraph 8 above) applied to pre-deportation revocation applications and paragraph 391 (paragraph 3 above) applied to post-deportation applications ([22]-[23]). Although this Court did not decide the point, Underhill LJ (again at [22] to [23]) also appeared provisionally to have concluded that the new A398 (see A 398(b) set out in paragraph 8 above), which was introduced on 28 July 2014, did not apply to post-deportation applications to revoke deportation orders before they expired under paragraph 391 (set out at paragraph 8 above). Mr Singh relies on this conclusion as showing that the gap in section 32(6)(b) of the Borders Act is filled, in relation to post-deportation applications, by the Immigration Rules.

36. Third, Underhill LJ held at [24] of his judgment that in substance the approach in pre-deportation revocation cases under paragraph 390A and post-deportation revocation cases under paragraph 391 is broadly the same. This was made clear by Underhill LJ at [24] (with footnote references removed): 24…It does not, however, in my view follow that paragraph 391 requires a fundamental difference in approach in considering post-deportation revocation applications from that which is followed in considering pre-deportation applications under paragraphs 390A/398–399A. It is true that the structure of paragraphs 398 (at the relevant time) and 391 is different. In the case of the former the Secretary of State has set out herself to formulate the approach required by article 8, whereas in the case of the latter she has stated her policy but acknowledged that it should not apply where that would lead to a breach of the ECHR (in practice, article 8). It is also true that there are some minor differences of wording. But the difference in drafting structure does not require a different approach as a matter of substance, since we know from [MF(Nigeria) v SSHD [2014] 1WLR 544] that the exercise required by paragraph 398 is the same as that required by article 8. Likewise, while the use in the sweep-up exception of the phrase "other exceptional circumstances [involving] compelling factors" no doubt implies that it is only in such circumstances that the Secretary of State's general policy will be displaced by article 8, that too is consistent with the approach in MF. As for the differences in wording, they may be vexing to the purist but they are plainly not intended to reflect any difference of substance. The exercise required in a case falling under paragraph 391 is thus broadly the same as that required in a case falling under paragraph 390A or paragraph 398. Decision-takers will have to conduct an assessment of the proportionality of maintaining the order in place for the prescribed period, balancing the public interest in continuing it against the interference with the applicant's private and family life; but in striking that balance they should take as a starting point the Secretary of State's assessment of the public interest reflected in the prescribed periods and should only order revocation after a lesser period if there are compelling reasons to do so. (footnotes removed, paragraph breaks added)

37. So far as material paragraph 399 considered by Underhill LJ was in the same form as paragraph 399 in paragraph 8 above, but paragraph 398 as considered by him contained a different test.

38. Fourth, Underhill LJ thus concluded in [24] and again at [51] that in post-deportation revocation cases very compelling reasons for revocation were required: 51…. It is only where the tribunal is persuaded that, exceptionally, there are very compelling reasons which outweigh the public interest in the order continuing for the full prescribed term that such revocation may be allowed...".

39. Mr Singh submits that while circumstances satisfying Exceptions 1 and 2 in section 117C of the Nationality, Immigration and Asylum Act 2002 can constitute very compelling circumstances (see NA (Pakistan) v SSHD [2016] EWCA Civ 662 at [29]), those circumstances must meet the high threshold in paragraph 51 of the judgment of Underhill LJ.

40. Mr Singh goes on to submit that there is no trace in the FTT's decision of it applying a test comparable to the test identified by Underhill LJ in ZP (India). There is no indication in the FTT's decision that "exceptionally" it was persuaded that there were "very compelling reasons" outweighing the serious public interest in maintaining A's deportation. He describes the FTT's consideration of the public interest as simply "lip service".

41. Moreover, submits Mr Singh, the FTT did not identify what made the separation of A and R "unduly harsh". He submits that 'undue' harshness would require the effects of maintaining deportation to go significantly beyond the usual harshness of keeping a parent separated from his child. Moreover, what is due or undue harshness depends not merely on the impact on the child but also on the parent's immigration and criminal history (see MM (Uganda) v SSHD



[2016] EWCA Civ 450 at [24]). The expression "unduly harsh" requires the tribunal to balance the public interest against all the other circumstances in the case.

42. Mr Singh criticises paragraph 33 of the FTT's determination. The FTT there referred to his criminal conviction but then almost dismissed it by saying that he had served his sentence and was of good character. The fact that he had been convicted and served his sentence was not the crucial consideration. The crucial consideration was whether the public interest required him to remain out of the jurisdiction.

43. Mr Christian Howells, for A, submits that the decision of the FTT should be upheld. He submits first that there is no need in the case of revocation of a deportation order to show that there were very compelling reasons for it to be revoked: the concept of very compelling reasons is derived from the decision of this court in MF Nigeria, and not section 117C(5), which lays down a different test that the continuation of the deportation order is "unduly harsh". ZP India can therefore be distinguished.

44. MF Nigeria was concerned with paragraph 398 of the Immigration Rules as it stood at the time of ZP India. So far as material paragraph 398 provided that, where paragraph 399 did not apply, the public interest in deportation would be outweighed by other factors only in "exceptional circumstances". This Court (at [43] to [44]) held that those words required "very compelling reasons" to be shown, and moreover that the provisions of the Immigration Rules were a complete code so that the exceptional circumstances to be considered involved the application of the proportionality test required by Article 8.

45. Mr Howells further submits that the FTT therefore correctly directed themselves as to the law and their decision discloses no error. Mr Howells submits that the correct approach is to be found in the following paragraphs from the judgment of Laws LJ, with whom Vos and Hamblen LJJ agreed, in MM (Uganda) v SSHD [2016] EWCA 450: 22. I turn to the interpretation of the phrase "unduly harsh". Plainly it means the same in section 117C(5) as in Rule 399. "Unduly harsh" is an ordinary English expression. As so often, its meaning is coloured by its context. Authority is hardly needed for such a proposition but is anyway provided, for example by VIA Rail Canada [2000] 193 DLR (4th) 357 at paragraphs 35 to 37. 23. The context in these cases invites emphasis on two factors, (1) the public interest in the removal of foreign criminals and (2) the need for a proportionate assessment of any interference with Article 8 rights. In my judgment, with respect, the approach of the Upper Tribunal in MAB ignores this combination of factors. The first of them, the public interest in the removal of foreign criminals, is expressly vouched by Parliament in section 117C(1). Section 117C(2) then provides (I repeat the provision for convenience): "The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal." 24. This steers the tribunals and the court towards a proportionate assessment of the criminal's deportation in any given case. Accordingly the more pressing the public interest in his removal, the harder it will be to show that the effect on his child or partner will be unduly harsh. Any other approach in my judgment dislocates the "unduly harsh" provisions from their context. It would mean that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation in the particular case. But in that case the term "unduly" is mistaken for "excessive" which imports a different idea. What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal's immigration and criminal history.

46. As Mr Howells points out, the MM Uganda decision was followed by this Court in R (o/a) MA(Pakistan) v SSHD although Elias LJ, with whom King LJ and Sir Stephen Richards agreed, expressed some doubts about the introduction of the public interest into the test of undue harshness.

47. Mr Howells cited further authorities, but they do not appear to me to assist. He relies on LC (China) v Secretary of State for the Home Department [2014] EWCA Civ 1310 at [14]-[17] and [24]. Moore-Bick VP considered the case of a foreign criminal who had been sentenced to less than four years in the context of a materially different situation, namely the person to be deported was the sole carer for a child who could not be expected to leave the UK. Mr Howells also relies on SSHD v AQ (Nigeria) [2015] EWCA Civ 250 at [70], but this does not seem to me to assist him. In it, this Court made it clear (among other matters) that "national policy as to the strength of the public interest in the deportation of foreign criminals is a fixed criterion against which other factors and interests must be measured."

48.In reply Mr Singh referred to NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662, [29]. It became clear that there were complications in this case which do not arise in the appeal before us, and I have not found it helpful on this appeal.

49. I now state my conclusions on this aspect of the case. The relevant question is whether the continuation of the deportation order is unduly harsh, and whether very compelling reasons have to be shown to establish undue harshness.

50. I have reached the same conclusion as Underhill LJ did in relation to the provisions under which he considered that very compelling reasons have to be shown and I reach that conclusion by the following process.

51 As this Court held in MM (Uganda), to answer that question, the public interest must be brought into account. Therefore, the court must know what that public interest is in any particular circumstance in order to give appropriate weight to it.

52.The function of section 117C is to set out the weight to be given to the public interest to be taken into account in the proportionality exercise to be carried out under Article 8 of the Convention in the case of a foreign criminal. Section 117C(1) states that the deportation of foreign criminals is in the public interest. In this context, and indeed in the other uses of the word "deportation" in this section, the word "deportation" is being used to convey not just the act of removing someone from the jurisdiction but also the maintaining of the banishment for a given period of time: if this were not so, section 117C(1) would achieve little.

53. To understand the length of the deportation in any particular case, the tribunal hearing the case has to examine the Immigration Rules. From that the tribunal is bound to observe that those Rules proceed on the basis that, in the absence of undue harshness, the appropriate period of absence from this jurisdiction in a case such as A's is ten years (paragraph 391 of the Immigration Rules). That is a very long period in anyone's life and so it is an indicator of the gravity of the effect on the community which the offence is considered to have. That is the period for which the deportee is expected to be removed from the jurisdiction. As has been said before, removal from the jurisdiction inevitably entails separation from people and places previously enjoyed here, and the pain, inconvenience and hardship which that separation entails.

54. Moreover, it is clear from section 117C (2) that the nature of the offending is also to be taken into account. The tribunal will have access to the circumstances of the offence and to the length of the sentence and so on.

55. Subsection (1) and (2) of section 117C together make manifest the strength of the public interest. In order to displace that public interest, the harshness brought about by the continuation of the deportation order must be undue, i.e. it must be sufficient to outweigh that strong public interest. Inevitably, therefore, there will have to be very compelling reasons. That conclusion is consistent with the MF Nigeria and ZP India even though those authorities



are based on different Immigration Rules and statutory provisions.

56. The undue harshness test in section 117C(5) has been inserted by primary legislation and it was not in force at the time of the Immigration Rules considered in ZP India. Mr Howells in effect argues that the undue harshness test substitutes some new and lower test for that which preceded it under the Immigration Rules. Underhill LJ there held that paragraphs 398 and 399 of the Immigration Rules applying before the commencement date of section 117C meant that in a post-deportation revocation application compelling reasons had to be shown (see above, paragraph 38). By the process of reasoning that I have just set out, I reach the same conclusion in relation to a post-deportation revocation application after the commencement of section 117C to D. I therefore accept the submission of Mr Singh that the same conclusion as Underhill LJ reached in relation to a post-deportation revocation application made before the date on which section 117C(5) came into force must similarly apply in relation to the same application made after that date, namely that very compelling reasons must be shown to displace the public interest in deportation.

57. I therefore reject Mr Howells' submission that undue harshness can be determined on any other basis. I conclude that the commencement of section 117A to D of the 2002 Act does not mean that a different and lower weight is to be given to the public interest in applications to revoke a deportation order following deportation than in other deportation situations. As I have explained, the result is that the same standard must apply in this case as in a pre-section 117A to D case like ZP (India).

58. MM (Uganda) does not mandate a different conclusion. In the passage cited above, on which Mr Howells relies, this Court was dealing with the elements which have to be taken into account in performing the proportionality exercise required by Article 8 of the Convention and not with the discrete question of the weight required to be given to the public interest. The last sentence of the citation from Underhill LJ's judgment at [24] in paragraph 36 above demonstrates that this is a separate question.

59. Mr Howells realistically accepts that A would have to show a material change of circumstances between the dismissal of the appeal against the deportation order and the revocation application. As Underhill LJ held in ZP India, the starting point must be that the assessment of what was in the public interest at the date on which the deportation order was made cannot be of any less weight at the later stage when revocation is sought. This means that objections to the making of a deportation order which were unsuccessful at the time it was made are unlikely to be successful grounds for obtaining the revocation of a deportation order after removal from the jurisdiction.

60. Turning to the FTT's judgment, I find that there is little evidence that the FTT attributed appropriate weight to the public interest. I accept that they adverted to the question of the public interest, in particular in paragraph 28 of their determination (see paragraph 22 above). I also accept that the FTT exercised a critical judgment in rejecting the effect of the deportation order on the Sponsor as grounds for revocation. But that was a plain case.

61. As regards R's case, the FTT did not apply the equivalent critical judgment. For instance, the FTT did not consider alternative ways in which R's care needs could be met (whereas the Upper Tribunal judge giving permission to appeal to that tribunal referred to the ability for R to access the care he required through a statement of educational needs). Nor did the FTT critically examine whether R's phobia about flying ruled out other contact between A and R. So they do not consider any other way in which R could see his father outside the jurisdiction on a basis which did not involve air travel, for instance if his father travelled to some other part

of Europe which R could access by boat or train. On the other hand, as the FTT said, since R is a British citizen, he could not be expected to relocate outside the jurisdiction. That factor does not answer this matter in A's favour as he still has to show that the continuation of the deportation order causes undue hardship.

62. I conclude that the FTT did not demonstrate that they had given appropriate weight to the public interest. Paragraph 34 of the FTT's determination (paragraph 28 above) contains the FTT's summary of their reasons for allowing the appeal, but it makes no reference to any element of the public interest. If the FTT indeed considered that the circumstances were very compelling, it was for them to demonstrate this in the reasons they gave.

63. In my judgment, this point disposes of this appeal. It is therefore unnecessary to deal with the remaining grounds of appeal. A objects to some of them in any event on the grounds that they were not argued in the Upper Tribunal but I need not express any view either way on those points.

64. The balancing exercise in this case has to be performed again. The FTT did not seek to analyse whether there were very compelling reasons why the deportation order should be revoked. In those circumstances, if my Lord and my Lady agree, the appropriate order is that the appeal should be allowed and that the matter should be remitted to the Upper Tribunal for further consideration in accordance with the judgment of this Court.

**Jail Staff Lacked Compassion For Prisoner David Smith Who Took His Life**

The inquest into the death of David Smith concluded today 31/08/2016, with the jury finding a multitude of failures by HMP Highpoint. David died at HMP Highpoint, aged 38, following an incident of serious self-harm on 23 May 2014. David was a vulnerable prisoner who had been sentenced to three and a half years in prison on 14 May 2014. He had a long standing history of anxiety, depression and self-harm. He was transferred from HMP Chelmsford to HMP Highpoint on 23 May 2014. Later that evening he hanged himself from a ligature in his cell and died the following day in hospital. The jury found that the following failures were contributory factors in David's death: • lack of training of prison officers • insufficient staff on duty • lack of awareness of protocols by prison staff • failure to follow protocols to check logs and wing books • lack of compassion for prisoners • failure to open earlier a suicide and self harm procedure (Assessment, Care in Custody and Teamwork (ACCT) ); • failure to properly complete and implement the ACCT when opened.

Julie, Tony, Adam and Wayne David's parents and brothers said: "David should be with us today. Our son was calling out for help, but no one helped him and he should not be dead. If they had done their job he would still be here today. We'd like to thank the jury for their hard work and being for our family. We got the justice that David deserved. Thank you to Sara, Anna and Sam, our brilliant team at Bindmans. Also thank you to Jesse, Tamiour and INQUEST for their help. David will be deeply missed"

Deborah Coles, INQUEST Director said: "This jury finding encapsulates the crisis within our prison system. This is yet another jury finding of failures at HMP Highpoint relating to the death of a vulnerable prisoner with unmet mental health needs. HMP Highpoint is not learning from its own failures or improving the care and support provided to prisoners. The failures identified by this inquest must be responded to by the Prisons Minister Sam Gyimah".

Sara Lomri, family solicitor "The inquest into David's death uncovered multiple failings on the part of HMP Highpoint. The jury heard evidence from a range of sources and concluded that, in addition to failures of staff planning and training, those charged with the care of



David lacked a basic level of compassion. This inquest was the third of four linked inquests arising out of cluster of self inflicted deaths of young men at HMP Highpoint in 2013/2014. It is vital that lessons are learned by the management of the prison and steps are taken to ensure that the failings identified by David's inquest and by those of the other three prisoners are comprehensively addressed to ensure that further deaths can be avoided."

INQUEST has been working with the family of David Shane Smith since 2014. The family is represented by INQUEST Lawyers Group members Anna Thwaites and Sara Lomri from Bindmans LLP and Counsel Taimour Lay from Garden Court Chambers.

**McKinley v Secretary of State for Justice (CO/4061/2016** Duncan Lewis

The Applicant was detained on remand in Germany pending his extradition to the United Kingdom, following the issue of a European Arrest Warrant. Both domestic and European law require that remand days in Germany are to count towards a criminal sentence in the United Kingdom – this issue was agreed upon between both parties. The Respondent, despite being on notice of the fact that the sentence calculation of the Applicant did not take remand days into account, sought to ensure that the Applicant remained in prison until the end of his incorrectly calculated custodial sentence. The Respondent sought to argue that the time spent on remand in Germany was not brought to the attention of the Judge at sentencing, and as such, the High Court did not have adequate jurisdiction to determine this claim. The Respondent's position was that any issue taken with sentencing at this stage was for the Criminal Court of Appeal. The Applicant's position was straightforward: had the remand days in Germany been counted towards his criminal sentence in the United Kingdom, as required by law, he would no longer be imprisoned. In order to ensure that the Applicant was no longer deprived of his liberty, a writ of Habeas Corpus was sought. The Respondent was compelled to release the Applicant from prison following the decision of Holgate J to issue a writ of Habeas Corpus on 26 August 2016. Although rarely used nowadays, a writ of Habeas Corpus is still to be considered a fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action, as evidenced by this particular case.

**Northern Ireland: Urgent Progress Needed On Dealing With The Past**

The Lord Chief Justice, Sir Declan Morgan, has called on the NI Executive and the UK Government to make urgent progress on dealing with the past. The comment was made during his annual address to mark the opening of the new legal year which was attended by the Justice Minister, members of the judiciary and senior figures in the justice system.

The Lord Chief Justice said that addressing the significant backlog of legacy inquests was a matter of "real concern". He outlined the steps he has taken since being appointed President of the Coroners' Court on 1 November 2015 but said he had made it clear that that there would be a need for political agreement to an injection of additional resources and the full co-operation of other organisations before he would be in a position to deliver inquests which comply with the law as set out by the Supreme Court. The Lord Chief Justice had hoped it might be possible to secure agreement to proceed to implement the model he had proposed for legacy inquests pending political agreement being reached on the proposed new institutions for dealing with the past but "disappointingly, however, it now appears that a political resolution will be required on an overall legacy package before the resources required for legacy inquests will be released."

Sir Declan noted that a draft Bill to create the new institutions has not yet been published and that costings for the full package of measures for dealing with the past have not yet been provided by the Department of Justice: "It is impossible to see how the issue of legacy can be moved forward politically without progress having been made on the new legislation and in the absence of a clear assessment of the costs involved in implementing all of the elements of a legacy package. The overall picture is, therefore, hugely disappointing."

The Lord Chief Justice said the coroners have sought to make as much progress as is possible within the limited resources that are currently available to them but he anticipated they would only have the capacity to complete two further inquests during the remainder of this financial year. He said if the coroners were to continue in this vein, it would be "decades" before all of the outstanding cases would be completed and that this would not comply with the legal requirement to deal with the backlog of cases within a reasonable timeframe: "The coroner's courts will not be able to satisfy their legal obligation to deliver these inquests within a reasonable timeframe in the absence of the necessary resources. I do not want us to remain in that position since that would be yet another devastating blow to the families. The judiciary will be facing up to its responsibilities but this is not a matter on which the judiciary alone can deliver. I therefore call again on the local Executive and legislature, and on the UK Government, to play their part as a matter of urgency. We cannot move on while we remain under the shadow of the past. Nor should we. But time is not on our side."

On other topics, the Lord Chief Justice welcomed the progress that has been made with the Review of Civil and Family Justice being led by Lord Justice Gillen. He noted that a preliminary report on family justice has been published on which views are sought by the end of October. The key recommendations include a move towards problem-solving courts and mediation, paperless courts and online dispute resolution, and better support for children, vulnerable adults and personal litigants. Sir Declan noted that a preliminary report on civil justice should be published in the very near future. This will again pick up the theme of digital working and propose new structures and governance arrangements for the oversight of the court system. The report will recommend the creation of a Non-Ministerial Department which would be led by the judiciary and would provide strategic direction and manage the fiscal challenges being faced by the courts. This model is already successfully operating in Scotland and the Republic of Ireland. The Lord Chief Justice said he has already established a Judicial Executive Group to plan for how such a model might work in Northern Ireland and to engage with the Department of Justice and other interested stakeholders about how the necessary legislation can be brought forward within this Assembly mandate.

**Care and Supervision Units - 'A Prison Within A Prison'** *Niall McCracken, The Detail*

Prisoners were held in solitary confinement for months and even years in Northern Ireland's top security Maghaberry Prison – despite a call from United Nations' inspectors for a worldwide ban on more than 15 days. Figures obtained by The Detail show that last year at least ten prisoners were held in solitary confinement in Maghaberry for over 100 days each, with four inmates held for over a year and in one case a prisoner was held for five years. The United Nations considers solitary confinement as the physical isolation of individuals who are in their cells for over 22 hours a day and it has called for a worldwide ban on durations of over 15 days. In Northern Ireland prisoners can be sent to solitary confinement for a number of reasons including as disciplinary action for breaking prison rules or for their own protection when they are deemed to be at risk in the normal prison population.



Reacting to The Detail's findings, the Prisoner Ombudsman Tom McGonigle raised concerns that inmates with complex mental health needs are among those being held long term in solitary confinement within Maghaberry prison. Mr McGonigle said: "These figures are particularly worrying because a lot of prisoners who end up in confinement are already damaged emotionally and psychologically before they go into prison. Often that leads to the misbehaviour that brings them into solitary and inevitably it becomes a vicious circle whereby their negative behaviour is reinforced by the time they spend there. I believe the solitary confinement figures highlight the wider need for co-operation between the Minister of Health and Minister of Justice to look at how mentally disordered offenders are dealt with." A separate prison oversight body has also today called for the creation of a mental health facility within Maghaberry to deal with some prisoners who might otherwise be sent to solitary confinement. A spokesperson for the Independent Monitoring Board said: "It is not acceptable in 2016 that prisoners in Northern Ireland are being kept in solitary confinement for such periods of time."

Each of Northern Ireland's three prison sites showed use of long-term solitary confinement in their Care and Supervision Units (CSU). In a statement to The Detail the Northern Ireland Prison Service (NIPS) said: "Every case is considered on an independent basis and there is a stringent and transparent process in place to manage and review all cases. Prisoners are only held in the CSU for such a time as it is considered to be absolutely necessary." The Detail sought to compare the solitary confinement levels with those in the Republic of Ireland (ROI). Monthly figures from the Irish Prison Service show a decrease of 211 prisoners on 22/23 hour lock up in July 2013 to 74 prisoners in July 2016. However, officials failed to respond to our request to release information on how long prisoners are spending in solitary.

Director of campaign group the Irish Penal Reform Trust (IPRT) Deirdre Malone said: "The published statistics in the Republic of Ireland do not tell us how long each of those prisoners actually spend in solitary confinement overall nor how often they are returned to solitary confinement as the periods may be simply renewed. Given that it is now five years since the UN Special Rapporteur on Torture proposed an absolute worldwide ban on prolonged solitary confinement for more than 15 days, the figures we have seen in respect of Northern Ireland are deeply concerning and renew our conviction that further progress in respect of this issue in the Republic is vital if we are to effectively protect the human rights of prisoners." The Detail has also interviewed one prisoner who spent five years in Maghaberry Prison's solitary confinement wing who said he experienced 23 hour lock up on a daily basis.

What is Solitary Confinement? In Northern Ireland prisoners are held in solitary confinement conditions in what is known as the Care and Supervision Unit (CSU). There is a CSU within each of Northern Ireland's three prison sites. Rules state that a prisoner's continued stay in the CSU must be reviewed at least every 28 days, but there is no restriction on the maximum length of time an inmate can be held there. The Detail previously reported on a case from February 2012 where an inmate was left severely brain damaged after hanging himself in Maghaberry Prison's CSU. Click here to read this story in full.

The Northern Ireland Prison Service (NIPS) disputes the use of the term 'solitary confinement' to describe the CSU. It said that inmates have daily access to showers, a telephone and can spend up to an hour in a small exercise yard or small gym. A spokesperson for NIPS said: "Every case is considered on an independent basis. Prisoners are only held in the CSU for such a time as is considered absolutely necessary."

However, Northern Ireland's Prisoner Ombudsman Tom McGonigle said: "The Care

and Supervision Unit was formerly known as the segregation block, and prisoners call it 'the boards', but they know what it is. I know what it is. It's solitary confinement for up to 23 hours a day. "When in the CSU prisoners are separated from the rest of the prison population and they can't go to work or take part in education. It is deliberately designed as a disincentive so that prisoners do not aim to go there; it is a very difficult place for prisoners to live."

Through a series of Freedom of Information requests The Detail obtained a breakdown of the top ten longest stays in the CSU across each of Northern Ireland's prisons. The figures show that since 2011 the longest stay by an inmate in Magilligan Prison's CSU was 138 days. The longest stay in the CSU in Hydebank Wood prison site - where female prisoners and the young offenders centre are based - was 46 days. The longest single stay for an inmate in Maghaberry Prison's CSU was five years. A breakdown of the top ten longest stays in Maghaberry's CSU as of 2015 showed that several prisoners had been there for six months while others had been there for a year and a half.

Each prison in Northern Ireland has an Independent Monitoring Board (IMB) made up of volunteers who report on prison conditions on an annual basis. They are also notified every time a prisoner's period within the CSU is extended.We also have a breakdown of the number of times prisoners were sent to the CSU. Last year in Maghaberry Prison one inmate was sent to the CSU on 44 separate occasions. Prisoners can be sent to the CSU under two main prison rules. The first allows an inmate to be held in the CSU for 48 hours. The second allows the prisoner to be sent to the CSU for up to 72 hours, but this can be extended to a maximum of 28 days before it must be reviewed again. The decision to extend a prisoner's time within the CSU beyond 28 days is taken by prison authorities and will also be considered by an official from the Department of Justice. The Independent Monitoring Board must also be notified of any extension of a prisoner's time in the CSU.

We asked the IMB for a response to our solitary confinement figures. A spokesperson said: "It is not acceptable in 2016 that prisoners in Northern Ireland are being kept in solitary confinement for such periods of time as highlighted by The Detail today. Unfortunately we have been aware of this problem for some time and have continually raised it with prison authorities and the South Eastern Health Trust. Our role is to monitor not manage, but under the current system we are only told about a prisoner entering the CSU when they are due for their first review. We feel it would be more beneficial if we were notified as soon as any prisoner first enters the CSU. We have continuously requested that we are made aware when someone is initially placed in CSU but despite raising it at every level it still does not happen."

In a statement to The Detail the South Eastern Trust said the location of prisoners within prisons is the responsibility of the Northern Ireland Prison Service. A spokesperson said: "All individuals located within the Care and Supervision Unit are seen daily by healthcare professionals in relation to both their physical and mental health care needs. Trust mental health professionals initiate referral processes to secure psychiatric facilities where this is clinically appropriate and in line with regional referral criteria. The trust is working with the International Committee of the Red Cross to ensure healthcare services provided to our patients located within the Care and Supervision Unit are in line with best international standards." In 2012 an enhanced healthcare landing in Maghaberry prison was closed, though some mental health and clinical addiction services were retained. The Detail recently reported that ambulances were called to Northern Ireland's prisons over 1,100 times in the last three years. This works out at an average of one ambulance call out per day for a total prison population of around 1,800 people.



Prisoners' psychiatric conditions, addictions and personality disorders have been a common thread in critical reports into prison life and individual incidents in jails in Northern Ireland in recent years, including suicides. Click here to read The Detail's previous coverage. The Prisoner Ombudsman said that it was important to remember that the Northern Ireland Prison Service dealt with inmates who could present very challenging behaviour and often had complex mental health needs. Mr McGonigle said: "Very often those prisoners who end up in the CSU are inmates who fall between several stools. These are people whose mental condition is not deemed as such that they require transfer to a secure psychiatric facility, but they have been sent to prison by a criminal court and have to be managed somewhere to keep themselves, other prisoners and staff as safe as possible. It's not good for anybody's mental health to spend so much time in isolation away from general population. Prison restricts the opportunities to interact with normal society in any event, so the CSU is essentially a prison within a prison. Unfortunately the CSU is really the last resort for those people and I do of course have concerns about prisoners' mental health if they are spending disproportionately long periods of time in the CSU. I believe the CSU figures highlight the wider need for co-operation between the Minister of Health and Minister of Justice to look at how mentally disordered offenders are dealt with."

A Department of Health (DoH) spokesman said: "DoH remains committed to working with the Department of Justice and the Prison Service to develop approaches to improve the way in which mental health arising in the prison environment are dealt with." In Northern Ireland, an individual cannot be detained and treated against their will in a psychiatric hospital if their only condition is a personality disorder. This is likely to change with the recently enacted Mental Capacity Act (NI) 2016, which will allow for the compulsory treatment and/or detention of people with personality disorder, although a date for commencement of the Act has not been agreed by Stormont.

The Ombudsman said he believed this was having an impact on vulnerable inmates entering the prison system who can often end up in solitary confinement. He said: "It really is a societal issue whereby we need to decide how we treat those very damaged people who commit offences. For example many of those prisoners who end up in the CSU can have personality disorders, but in Northern Ireland a personality disorder is not defined as a treatable condition. That causes serious difficulties because a lot of people who might previously have ended up in psychiatric institutions are now ending up in CSU in a prison. Yes they are a small part of the prison population, but they generate a disproportionate amount of concerns."

A review of mental health and the criminal justice system in Northern Ireland from March 2010 recommended an assessment of the need for a local high security hospital to which the most dangerous mentally disordered prisoners could be transferred for medical treatment. A spokesperson for the Independent Monitoring Board said: "We have stressed the need for an inpatient healthcare facility within Maghaberry as at the moment the prison does not have a functioning hospital wing. We would recommend that one of the houses within the site be converted into a secure healthcare unit with an emphasis on prisoners with serious mental health issues to be staffed by prison officers who are specifically trained along with mental health nurses, psychiatrists and other medical professionals. To date neither the Northern Ireland Prison Service or the South Eastern Health and Social Care Trust have expressed any interest, however we will continue to raise the matter."

In a statement the South Eastern Trust said: "We are commissioned to provide a Primary Care and Community Mental Health model of service provision on an equitable basis to that provided within the community. The commissioning of a mental health in-patient facility is a matter for the

Regional Commissioning Group in the Health and Social Care Board. The trust will continue to work with the Health and Social Care Board to secure resources for the appropriate care provision for prisoners." Prisoner Ombudsman Tom McGonigle said that the inmates held in solitary can include those with mental health issues, plus prisoners found to be at risk in the general prison population, but that some of those held for the longest terms in the CSU can be inmates jailed for paramilitary offences who might otherwise be held in separate loyalist or republican landings.

Prison authorities declined a request by The Detail to view Maghaberry's CSU stating that it would not be possible as the normal location was under refurbishment. In an effort to find out more about conditions in the unit we interviewed Gavin Coyle who was convicted for offences linked to dissident republican activity and spent five years in Maghaberry prison's solitary confinement wing. The 38-year-old from Omagh was given a 10-year sentence, five of which were spent in jail, after admitting possession of arms and explosives and membership of the dissident organisation calling itself the New IRA. While in prison he was also charged with the attempted murder of a police officer in Castlederg in May 2008. Prior to his release from jail earlier this year, he spent five years in Maghaberry's CSU under 23 hour a day lock up, despite a high profile campaign by his family to get him moved to Roe House where separated republican prisoners are held. His family had publicly rejected claims by the Northern Ireland Office that he would be "under threat" if he was transferred to Roe House.

In an interview with The Detail, Gavin Coyle said: "Speaking about this publicly is not about republican propaganda on my behalf, it's about highlighting what the CSU is like and highlighting the 23 hour lock up issue. The CSU held all sorts of prisoners when I was there. Being locked up 23 hours a day is bad enough but then when things would kick off with the other prisoners you could hear people shouting and roaring, this would mean you couldn't sleep. I actually think the sleep deprivation was one of the worst things." He added: "The only time I had the opportunity to see daylight when I was in the CSU was the one hour a day in the yard, but it's that small that all you could actually do is walk around in circles. Obviously there are going to be people out there that would say `serves them right and throw away the key', but it's hard to understand until you've spent time in solitary." While his five year period in the CSU was the longest revealed in the data, the figures showed many inmates across Northern Ireland's three prisons were held in solitary confinement for long periods.

Last November the Criminal Justice Inspectorate (CJI), which has responsibility for reporting on prison standards, published one of its most critical reports on Maghaberry Prison. The report said the overall governance of the CSU was "inadequate" citing that management meetings often did not take place and information about how regularly prisoners were segregated and their length of stay "was not analysed sufficiently." Inspectors said a few longer-stay prisoners could sometimes meet together for limited periods of association following risk assessments but that "at best, prisoners remained locked in their cells for at least 22 hours a day".

Prison inspectors have repeatedly raised concerns about the mental health needs and "psychological deterioration" of some prisoners within Maghaberry's CSU. Due to the refurbishment a separate CSU has been temporarily established in Foyle House within the prison grounds. However a follow up inspection by CJI in January this year said that, while it was positive that a major refurbishment of the CSU had begun, inspectors still felt that "conditions in some cells in the temporary unit were grim". Last week the head of the Northern Ireland Prison Service announced that she would be stepping down in October. Sue McAllister was appointed director general in 2012 and became the first woman to hold the most senior position within a Prison Service in the UK.



**Rate of Incarceration for Ethnic Minorities More Than 5 Times That Of Whites**

Black people in England and Wales were three times more likely to be prosecuted and twice as likely to be murdered than white people, according to a recent report by Britain's national equality body. The study from the Equality and Human Rights Commission report (Healing a divided Britain) suggested that the criminal justice system treated ethnic minorities as second class citizens. The watchdog argued that persistent disparities in their over-representation revealed that structural injustices, discrimination and racism continued to be a part of our society. Relative to the population, the rates of both prosecution and sentencing for black ethnic minorities in England and Wales were three times higher than for white people. The rate of incarceration for ethnic minorities was over five times that of white people. Ethnic minorities in police custody were significantly more likely to be physically restrained, and twice as likely to be stopped and searched. The report suggested that lack of diversity within the criminal justice system was a contributing factor, with only a small proportion of judges coming from ethnic minority communities, and police forces lacking an ethnic minority representation that matched their local demographic.

The chair of the ECHR, David Isaac CBE, said that the findings presented 'an alarming picture of the challenges to equality of opportunity that still remain in modern 21st century Britain'. The report called for a more comprehensive and coordinated response from the government to tackle race inequality in the justice system. It concluded that the disadvantages experienced by people from ethnic minorities in the criminal justice system couldn't be dealt with without adopting a holistic approach which recognised the interrelationship between different elements of people's lives. According to the Commission, addressing race inequality in Britain required a strategy that addressed the education attainment gap, considered the role of mental health services in providing support and acknowledged the relationship between socio-economic exclusion and political disengagement. The report also found that immigration detainees faced numerous barriers to finding legal help. Numbers of people entering immigration removal centres increased by 71% from 2009 to 2015, with increasing numbers being held beyond the maximum time limit of 18 months set by the EU Returns Directive. Longer term detainees, often with the greatest need for legal advice, were commonly left without help as a result of failings in the current legal aid system. The report noted that recent legal aid reforms have had a particularly adverse impact on access to justice for ethnic minorities. Mehdi Shakarchi, The Justice Gap

**West Midlands PC Convicted of Two Sexual Assaults**

A serving West Midlands Police officer has been convicted at Stafford Crown Court of sexually assaulting two women. It follows an investigation by the IPCC. Steven Walters, a 48-year-old police constable based at Sutton Coldfield, had previously denied two counts of sexual assault but changed his pleas to guilty when he appeared before the Crown Court today. He had also denied misconduct in a public office and the prosecution offered no evidence on that charge. The officer, who is currently suspended from duty, was bailed for sentencing on Thursday, 29 September. PC Walters' offences were committed against two women, while he was on duty, between February and April last year (2015). The IPCC began an investigation after a referral from the force which had received a complaint from one of the officer's victims. IPCC Commissioner Derrick Campbell said: "Walters completely abused his position of trust and targeted vulnerable victims of crime for sexual purposes. "I would like to praise the courage and bravery of the women who came forward to give evidence against him and hope that they can now move on with their lives in the knowledge that justice has been done. Such unprofessional and disgraceful conduct cannot go unchallenged and I hope that today's outcome reinforces the message that officers who behave in such a way will be exposed and brought before the courts where appropriate."

**Disappointing but Victory of Sorts for Joint Enterprise Test Case**

*Owen Bowcott, Guardian:* One of the leading test cases retried under revised "joint enterprise" rules has resulted in a man being acquitted of murder. Ameen Jogee, 27, was, however, convicted at Nottingham crown court of the manslaughter of former police officer Paul Fyfe in Leicester in June 2011. [Jogee has been given a 12-year custodial sentence for manslaughter, As he has already served five years in prison, Jogee will now only be required to serve another nine months before he is eligible for parole] The verdict represents a significant development for the grassroots organisation Joint Enterprise Not Guilty By Association (Jengba), which led the campaign to overturn convictions and secured the support of the House of Commons justice select committee, the playwright Jimmy McGovern and senior lawyers. Jogee, who has already served five years in prison, had originally been found guilty of murder and sentenced to 20 years in jail. The controversial criminal law doctrine permits two or more defendants to be convicted of the same offence, even where they had different levels of involvement. Critics have accused police and prosecutors of using it as a "dragnet" to target young people – often from black, Asian and minority ethnic backgrounds. This year, the supreme court ruled that for the past 30 years judges had been misinterpreting a key justification for obtaining convictions, confusing the fact that an outcome might be foreseeable with criminal intent. The court of appeal has begun considering a number of test challenges that could have implications for hundreds of prisoners convicted under joint enterprise rules.

In the case of Jogee, a retrial was ordered. On Friday, the jury in Nottingham returned a not guilty verdict to murder after more than 13 hours of deliberations. They returned the manslaughter verdict. Jogee was charged with murder and the alternative charge of manslaughter over the death of Fyfe, a 47-year-old father of three, who was stabbed at the home of his girlfriend. During a two-week retrial, the jury heard that Mohammed Hirsi, then 25, delivered the fatal blow to Fyfe's heart. The prosecution alleged Jogee "egged on" Hirsi while standing on the doorstep of the property. Jogee denied both counts. During the trial, William Harbage QC, prosecuting, told the jury it was accepted that Hirsi "wielded" the knife but added: "This trial concerns the part played by this defendant and his criminal responsibility." Felicity Gerry QC, defending, said Fyfe's death had been a surprise to Jogee, adding: "[He] is not a murderer. He was just in the wrong place at the wrong time."

Gloria Morrison, one of the leading activists in Jengba, said: "It's a significant victory. If the supreme court had not made the decision it did, he would still be in prison for murder. It means others can appeal to have their sentences reduced. It's really important that he will not be a convicted murderer now. His mother was in tears on Friday." Morrison said she was disappointed by the manslaughter conviction because she believed Jogee had been trying to persuade Hirsi to leave the house, not stab Fyfe.

Speaking after the verdict, the chief crown prosecutor for the East Midlands, Janine Smith, said she was "satisfied" justice has been done. She added: "Ameen Jogee actively encouraged Mohammed Hirsi in the violent assault against their victim. Although Mohammed Hirsi was responsible for inflicting the fatal injury that killed a former police officer, both were responsible for his death. The appalling nature of this crime has not lessened with time and we are satisfied justice has been done in this case." DI David Swift-Rollinson, the senior investigating officer in the case, said: "Today's result is the culmination of a lengthy legal process following Paul's death five years ago. While we are satisfied with the verdict that has been reached, this further trial has delayed the closure which Paul's family and relatives have been seeking."



**Violent Crimes Against Women In England And Wales Reach Record High**

Sandra Laville, Guardian: The number of prosecutions relating to violence against women and girls in England and Wales reached a record level last year, the director of public prosecutions said, as she warned of the increasing use of social media to threaten and control. Alison Saunders said the ease with which such crimes could be committed online was contributing to the increase in prosecutions. The number of offences against women, including domestic abuse, rape and sexual assaults, rose by almost 10% to 117,568 in 2015-6. Speaking to the Guardian as the Crown Prosecution Service published its annual report on violence against women and girls, Saunders said: "The use of the internet, social media and other forms of technology to humiliate, control and threaten individuals is rising and it is something that we will possibly see increase further. It is undoubtedly easier to commit a lot of these crimes online, people do it without thinking, it is more immediate and it is about the reach and ability to communicate to so many more people."

New offences such as the recently passed revenge porn laws were also adding to the caseload. Since the new law of disclosing private sexual images without consent was introduced in April 2015, there have been 206 cases of revenge pornography taken to court – with many individuals pleading guilty, according to the DPP. These include a defendant who sent intimate photos of a woman to members of her family via Facebook and threatened to post further pictures online. He was sentenced to 12 weeks' imprisonment suspended for 18 months after he pleaded guilty to an offence of disclosing private sexual images without consent. Another defendant posted intimate pictures of a woman, who was not aware the photographs had been taken, onto Facebook. He was sentenced to a 12 month community order, fined £110, ordered to pay court costs of £295 and given an indefinite restraining order.

However, 206 prosecutions reflect a tiny proportion of complaints of so-called revenge porn. More than 3,700 victims contacted a special helpline set up last year in its first 12 months. Other areas where online abuse is being used as a tool of harassment and intimidation are within the record numbers of stalking cases being taken to court. In 2015-16 the CPS prosecuted more cases of stalking and harassment – 12,986 – than ever before. Of those, almost 70% involved ongoing domestic abuse, and many perpetrators used the internet or other technology to carry out the offending. Such is the scale of the offending that special guidance is being issued to prosecutors about the growth of cyber stalking to improve prosecutions. Guidance is also being given to prosecutors on the use of false online profiles and websites which are being set up in the victim's name, containing false and damaging information intended to harass and intimidate.

Hostages: 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, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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, Thomas Petch, Vincent and Sean Bradish, 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.