Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

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Free Sally Challen

On the 1st March a judge at the Criminal Appeal Court will decide whether Sally Challen can appeal her conviction for the murder of her abusive husband, for which she is currently serving a minimum term of 18 years in prison.

Justice for Women: Sally killed Richard in 2011 after years of being controlled and humiliated by him. At the time of her conviction, 'coercive control' was not a crime in England and Wales, only becoming recognised in law as a form of domestic abuse in 2015. Coercive control is a way of understanding domestic violence which foregrounds the psychological abuse and can involve manipulation, degradation, gaslighting (using mind games to make the other person doubt their sanity) and generally monitoring and controlling the person's day-to-day life such as their friends, activities and clothing. This often leads to the abused becoming isolated and dependent on the abuser. It was dramatised very well in Helen's storyline in Radio 4's The Archer's back in 2016.

Sally was only 16 when she met 22-year-old Richard. At first he was charming but gradually the abuse began. He bullied and belittled her, controlled their money and who she was friends with, not allowing her to socialise without him. But, whilst he forced strict restrictions on her behavior, he himself, would flaunt his money, have numerous affairs and visit brothels. If she challenged him, he would turn it back on her and make her feel she was going mad. Although Sally did manage at one point to leave Richard, even starting divorce proceedings, she was so emotionally dependent on him that she soon returned, even signing a 'post nuptial' agreement he drew up that denied her full financial entitlement in the divorce and forbade her from interrupting him or speaking to strangers.

It was not long after this reunion, that Richard the offence took place. Sally, so utterly dependent on Richard, wanted to believe that they could be together, but his behaviour towards her was increasingly humiliating. The final straw was when he sent Sally out in the rain to get his lunch so that he could phone a woman he had been planning to meet from a dating agency. Sally returned suspicious and challenged him, he commanded her not to question him and she struck him repeatedly with a hammer.

Her defence at trial was diminished responsibility, the legal team downplayed the abusive behavior of her husband, Sally was convicted of murder and sentenced to life imprisonment with a minimum tariff of 22 years, reduced to 18 at appeal. Despite the death of their father, Sally's two sons and all those who knew Sally and Richard well have supported her recognizing that she was completely controlled by Richard.

In 2017, Justice for Women submitted new grounds of appeal to the Criminal Appeal court highlighting new psychiatric evidence and an expert report showing how coercive control provides a better framework for understanding Sally's ultimate response in the context of a history of provocation. Unfortunately, permission to appeal was refused by a judge who read only some papers. Sally's last chance is a renewed oral application for appeal before three court of appeal judges. If this application is unsuccessful, Sally who is now 63, will have to spend at least another 12 years in prison. Messages of Support/Solidarity to:

Sally Challen, A1260CL, HMP Send, Ripley Rd, Ripley, Woking, GU23 7LJ

Challenge to Parole Board Prioritisation Policy and Systemic Delays

No 5 Barristers Chambers: On 2 February 2018 the Court of Appeal has granted permission for a challenge to be made, amongst other things, to: (1) The Parole Board's current policy to determining the listing of parole hearings; and (2) Systemic fault in the scheme requiring the timely delivery of parole hearings. The faults and delays are in breach of public law duty and/or of the state's duty under Article 5(4) of the European Convention on Human Rights 1950 to maintain and operate a system for speedy and prompt parole. That requires to be remedied given the delays to liberty that it is producing, and has produced in the individual's case. The continuing general lack of capacity or membership, including specialist members, is a breach of duty, with serious consequences. It deprives people of their liberty despite rehabilitation, and it adds cost and burden to the prison system which is avoidable and costs taxpayers the unnecessary cost of prolonged detention. These important questions will now be considered by the Administrative Court.

The National Audit Office on 23 February 2017 published the results of its Investigation into the Parole Board, following on from its 2008 investigation. This investigates the backlog of outstanding parole cases which has led to increased delays. The report of the Comptroller and Auditor General records that: (1) Ninety-eight percent of cases are completed late: after their target date has already passed; (2) In September 2016 the number of outstanding cases (beyond due date and still unlisted) was 2,093; (3) A total of around 1300 prisoners received their hearings more than six months' late in the period April-September 2016; (4) The listings queue is more than double the number of hearings able to be listed each month.

The problems with the parole system and the IPP prisoners stuck in the system remain a stain on British justice. They were made the subject of comment in the press by a previous Lord Chancellor on 6 February 2018.

Correct Meaning of the Phrase 'Acting on Instructions'

R v Ulcay [2007] EWCA Crim 2379

'The correct meaning of the phrase 'acting on instructions', as it applies to the professional responsibility of the advocate in any criminal court, is sometimes misunderstood, even by counsel. Neither the client, nor if the advocate is a barrister, his instructing solicitor, is entitled to direct counsel how the case should be conducted.

The advocate is not a tinkling echo, or mouthpiece, spouting whatever his client 'instructs' him to say. In the forensic process the client's 'instructions' encompass whatever the client facing a criminal charge asserts to be the truth about the facts which bring him or her before the court.

Those instructions represent the client's case, and that is the case which the advocate should advance. In practical terms, that will often mean that prosecution witnesses will be cross-examined on the basis that they are lying or mistaken, or have misunderstand or misinterpreted something said or done by the defendant; however, there is almost always some evidence advanced by the prosecution which, on the basis of the client's instructions, is not in truth in issue at all, either directly, or indirectly.

Some decisions, of course, must be made not by the advocate, but by the defendant personally, for example, and pre-eminently, the plea itself, and in the course of the trial, the decision whether or not to give evidence.

'The advocate must give his best professional advice, leaving the ultimate decision to the client. It is however always improper for the advocate to seek to challenge evidence which is accepted to be true on the basis of the facts agreed or described by the client, merely because the lay-client, or the professional client, wishes him to do so. He may not accept or act on such Instructions.

Passing the Justice Parcel

What are the consequences for the rule of law, judicial independence and court reform, asks Andrew Walker QC: Clarke 28; Grayling 32; Gove 14; Truss 11; Lidington 7. The names are familiar. In some cases, the change was welcome. The numbers are rather too reminiscent of recent Ashes scorecards for the England top batting order. They are no more impressive in their true context: the number of months in office as Lord Chancellor and Secretary of State for Justice. The average for the preceding 70 years was at least 56 months: over 4½ years. The trend is far from welcome.

The contrast with the office of Lord Chief Justice is stark. Candidates to succeed Lord Thomas had to be able to serve for at least four years. Lord Justice Beatson has recently endorsed this as right in principle, because 'continuity and stability are important components in underpinning the independence of the judiciary'. Does this not apply to the office of Lord Chancellor too, as an important component in underpinning the effective defence of the independence of the judiciary, and in upholding the rule of law in cabinet and in government? Short-term appointments can only make it harder for those in office to fulfil their crucial role as champion of the constitution and the rule of law, even for those who have the qualities required; harder still if they must have their political futures well in mind.

What are we to make of this? On any view, it raises serious questions over the commitment of recent governments and prime ministers to ensuring that the rule of law has powerful protection at the heart of government, and over the ability of our constitutional arrangements to withstand attacks on the rule of law from wherever they may come. Even in times of political stability and measured public debate we would ask those questions. Our new Lord Chancellor has a task on his hands to provide convincing and reassuring answers, and to give us confidence in the future of his office. I am sure he will understand our concerns. It remains to be seen whether he will be able to address them.

All this flows from the new constitutional relationship created by the then government, with little prior thought, in 2005. We are starting to see its effects on the judiciary too.

One consequence is that the senior judiciary is becoming identified more closely than ever with the process of making and implementing proposals to reform our justice system: reforms that affect us and matter to us. The 'pass the [justice] parcel' of frequent re-shuffles can only exacerbate this. I am not the first Chair of the Bar to express concern about the implications for the judiciary of becoming so closely aligned with reforms which are dependent on a 'deal' with government, particularly one requiring substantial annual costs savings, and of becoming policy-makers or managers rather than judges. Not only could this lead to changing perceptions about their independence, but will it also be judges who are seen as responsible for the success (or failure) of the reforms, at least in some degree? Does responsibility require accountability and, if so, in what way? If the judiciary is driving the current reforms, then I see dangers ahead.

But who is it, in truth, who will be making the critical decisions about where the programme takes us? The answer matters. We are already alarmed by the so-called 'flexible operating hours' proposal, and have made our views known. At some point, decisions will need to be made about it.

We are troubled by other proposals too, such as so-called 'virtual hearings' (or perhaps 'smart hearings'?). Many important questions remain about this part of programme. What hearings are to become 'smart hearings'? With the (current) exception of criminal trials, no limit seems to have been identified. Modest procedural hearings are one thing: full trials (in any jurisdiction), with contested oral evidence, are another altogether. HMCTS seems to

be trying to 'enable' this for every type of hearing, its only limit being what is feasible within the budget. We need a proper and informed debate as to where to strike the balance between the possible and the desirable, in the interests of justice; but with whom should we be having that debate? Is a debate even intended? Is anyone being asked for their views, or to carry out research into the implications? A decision surely needs to be made about what is right, never mind what is workable, and can be kept working for the future. And what if we, first instance judges, or academics who understand the implications, do not agree with the final destination? What happens, too, if we find that 'smart trials' diminish the quality of justice in more significant hearings, but the promised £250m in savings cannot be delivered without them? I will be asking all these questions. I can only hope that we will be happy with the answers.

It does not strike me, though, that we should be spending first, and talking later. The judiciary, HMCTS and the profession have a shared interest in ensuring that our system is fair, accessible, efficient and effective. We ought to be able to work cooperatively in pursuing reforms, and our support will be crucial if they are to work, but it still feels that this is all being done to us, not with us.

One area in which I hope we may yet see a more cooperative approach is listing. I cannot remember a time when listing in county, family and crown courts worked well for clients, victims, witnesses or the profession. We now know that listing has now been included in the court reform programme. How ambitious are the plans? Will they address the real issues, in a way that works for everyone? Most of all, will our views be sought from the outset so that they can actually influence plans before decisions have been made, and will they be listened to? You can be assured that I will be asking all of those questions too, and trying to ensure that workable reforms are made that do not focus solely on maximising judicial time in court. To whom must we look to direct on this, though, and who will make and implement any decisions? As listing is guarded jealously as a judicial function, is it the judiciary? Either way, I hope the answers and decisions will be ones we wish to hear.

Police/Detention Officers Face Gross Misconduct Action: Death of Thomas Orchard

INQUEST: The Independent Office for Police Conduct (IOPC) have directed Devon and Cornwall Police to bring disciplinary action against six of the seven officers involved with the detention and restraint of 32 year old Thomas Orchard, who died in October 2012. The question of whether these hearings will be held in private or public will now be considered. Thomas was a fit and physically healthy 32-year-old living independently in supported accommodation at the time of his death. He had a history of mental illness and a diagnosis of schizophrenia. He was arrested and detained by Devon & Cornwall officers in Exeter City Centre following reports of his bizarre and disorientated behaviour. He was transported by police van to Heavitree Road Police Station. Upon arrival, in addition to the triple limb restraints applied, an Emergency Response Belt (ERB), made from a tough impermeable webbing fabric, was put around his face. The ERB remained held around his face as he was carried face down to a cell where he was left lying unresponsive on a cell floor. By the time officers re-entered his cell, Thomas was in cardiac arrest. He was transferred to hospital and pronounced dead on 10 October 2012.

Thomas's family said: "Since the trial a year ago, in which one of the officers and the two custody officers were found not guilty of manslaughter, our family has been shocked and outraged by the Force's persistent refusal to hold disciplinary hearings to establish if their staff seriously breached professional standards. We now urge Devon and Cornwall Police to: hold the hear-

ings swiftly and without further dispute; to consider asking another force to present the case; and to open the proceedings to the public. Only by holding open, honest and transparent hearings can our family's confidence be restored and the public interest be served. We hope that the media and public will join us to demand rigour and fairness from this process."

Deborah Coles, director of INQUEST said: "The IOPC's decision to direct misconduct action over the shocking facts of Thomas' death is welcome. But the fact that Devon & Cornwall police required direction and were not willing to take this step themselves is reprehensible. Their resistance to taking action and the extra delay this has generated is yet another reason why Thomas' family are losing faith in the justice process. It undermines any confidence that there is a desire to learn and be accountable after needless and preventable deaths like those of Thomas. With still no end in sight, repeated calls for expedited processes seem to go unheard."

Unexplained Wealth Orders: How They Work And Who Can Be Caught Up In the Legal Process

Barrister - Philip Rule: From 31 January 2018 newly in force in England & Wales are civil powers for the High Court to make an Unexplained Wealth Order (UWO). This is introduced by section 1 of the Criminal Finances Act 2017, inserting new provisions to the Proceeds of Crime Act 2002. It is the latest addition to a now considerable armoury given to prosecution and investigation authorities that enables orders to be made without criminal prosecution (thus avoiding the process of trial and the safeguards of such criminal process in seeking to establish whether there has been any criminality). No jury trial or verdict is necessary of course as the power is exercised in the civil courts process. The supposed purpose of such order however is to assist in the confiscation of the proceeds of crime. The orders may be made without prior notice being given to the person subject to the order. The question remains as to whether legitimate international businessmen and businesswomen will find themselves facing such orders, and whether adequate due process will be observed in the operation of such orders so that the safeguards of the criminal law are not ignored whilst people may have their assets stripped from them. Nor, despite media reports suggestive of a discriminatory attitude to Russian nationals, is the power necessarily to be limited to oligarchs or the super-wealthy.

The "enforcement" authorities that will be able to use this power and apply to the court will include the Director of Public Prosecutions, the National Crime Agency, Her Majesty's Revenue and Customs, the Financial Conduct Authority and the Director of the Serious Fraud Office. The order requires a person to explain and account for the origins of their assets. They will be used where the assets owned by the person are suggested to be inconsistent with their income level. To apply the statutory test the order may be made where the conditions are satisfied that: 1) There are reasonable grounds to believe that the person holds the asset; 2) And reasonable grounds to believe that the value of that asset is greater than £50,000; 3) There are reasonable grounds for suspecting the known source of the person's lawfully obtained income would have been insufficient for the purposes of enabling him or her to obtain the property (NB. A number of assumptions and considerations are applied to this test – see below); and that 4) The person is either: (a) a politically exposed person (meaning someone entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State; and any family member; and any "known" close associate; and anyone "otherwise connected" with that person, as defined for the purposes of the Corporation Tax Acts); Or there are reasonable grounds for suspecting that (b) person is, or has been involved in serious crime (in the UK or elsewhere), or (c) a person connected with him or her is, or has been, so involved.

What is obvious from this of course is that the person does not need to belong to the

super-rich, as the asset need only be worth £50,000 to enable the authorities to shift the burden of explanation of its origins onto the owner. It is also immaterial whether or not there are other persons who also hold the property, and does not matter whether the property was obtained by the person before or after this new law came into force.

It is equally obvious that such an order may be issued with far less evidence than would be necessary to even commence a criminal prosecution. Rather than the authorities having to consider whether there is a realistic prospect of conviction based upon evidence that could demonstrate to a jury that it may be sure of a criminal act (or, to put it another way, 'beyond reasonable doubt' finds a crime to have occurred), instead all that is required here are "reasonable grounds" for a suspicion.

The assumptions made and considerations had for the purposes of deciding whether there are reasonable grounds for suspecting the person's lawful income would not have been sufficient to obtain the property, are: (1) regard is had to any mortgage or other kind of security that it is reasonable to assume was or may have been available to the person to obtain the property; (2) it is assumed that the person obtained the property for a price equivalent to its market value; (3) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises; (4) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order; (5) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

Most notable from this are: (i) the income is lawful if it was lawfully obtained according to the law of the country where it was generated; and (ii) "known sources" of the respondent's income are the sources of income (arising from employment, assets or otherwise) that are "reasonably ascertainable from available information at the time" of applying for the order. This second consideration would therefore seem to suggest that the less enquiry the authorities make before applying for an order into sources of wealth of the individual, the greater prospect that the burden shall be shifted by the making of the order. That might seem unfair and contrary to good investigative practice. It is suggested that an objective test as to what is "reasonable ascertainable" at the time should require authorities to take reasonable steps to investigate the person's wealth sources before making an application. Where all the conditions are satisfied the court has a power but not a duty to make the order sought.

Freezing of assets: Another new power allows for the making of an interim freezing order when the court makes an Unexplained Wealth Order. This may be made if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated. Such a freezing order prohibits the person, and any other person with an interest in the property, from in any way dealing with it (subject to some exceptions). If a freezing order is made there is provision for application to be made by the person for the variation or discharge of that order. Where the asset is believed to be located outside of the UK (and the UWO has been made) and it appears that there is a risk of any recovery order that might subsequently be obtained being frustrated, a request for assistance may be made by the Secretary of State to the government of the other country to prohibit the person from dealing with the asset, and for assistance in connection with securing its detention, custody or preservation.

Failure to explain the wealth: The order requires a statement of information be provided, and may also require the production of documents. The consequences of a failure to comply with

an Unexplained Wealth Order include: (1) the enforcement authority may commence enforcement or investigatory proceedings, and for the purposes of any civil confiscation proceedings taken in respect of the asset (under Part 5 of POCA 2002, for the civil recovery of the proceeds of unlawful conduct) it will be presumed that the asset is recoverable, unless the contrary is shown. (2) If in purported compliance with the order a person recklessly or knowingly makes a false or misleading statement, they commit an offence which may result in a sentence of up 2 years' imprisonment or a fine, or both. (3) the High Court may make or may continue an Interim Freezing Order, if it considers it necessary to avoid the risk of the respondent disposing of the asset concerned before complying with the terms of the order.

Possible challenges to an UWO: The new powers are likely to face some challenge, and require some interpretation by the courts. Some issues to be considered may include: (1) Compataibility with human rights legislation: these order place the burden of proof in respect of the question as to legitimacy of the assets upon the asset owner rather than investigators. The low threshold of information (rather than evidence) upon which Unexplained Wealth Orders are sought raises a question as to the presumption of innocence. The balancing required for the protection of the right to privacy and private life, the protection of possessions and property rights (including of companies, corporate persons, as well as biological individuals) from unnecessary or disproportionate interference, and whether an order might amount to a retrospective "penalty" in its operation to assets held prior to this new law; (2) If applications are made without notice, in the person's absence and without he or she being legally represented, in a similar way to present production orders or warrants, the orders may be challenged on ground of a material non-disclosure or that the criteria for such an order have not been properly met. (3) Potential abuse of process may arise if this process is to be used to thwart due process rights protecting individuals subject to criminal prosecution. Whilst the statement provided to comply with the UWO may not itself be used in a criminal prosecution, there may be concern as to the privilege against self-incrimination being undermined if there remains a prospect of criminal prosecution in relation to any information contained with the statement forming a basis of the criminal investigation.

No Fair Trial in Russia: Extradition Warrant Discharged

Bindmans Solicitors: A 3 year extradition battle concluded on 9 February 2018 when the Russian Federation confirmed it would not seek permission to appeal to the Supreme Court and the extradition warrant issued against a vulnerable Chechen man in 2014 was finally discharged. The extradition request arose from the depths of the Chechen/Russian war in the late 90's. Having escaped the horrors of this brutal war and serious abuse whilst in detention, the appellant escaped to Belgium where he was granted asylum under a false name. Some years later his true identity was established and he was arrested on an extradition warrant for a murder allegedly committed in 2001 in the Chechen Republic.

The appellant failed in his fight against extradition in the Belgium courts and in Strasbourg but managed to escape to the UK where he was promptly arrested and extradition proceedings commenced. He initially failed in his bid to resist extradition but was successful after we obtained vital new evidence: statements from the Chechen woman who committed the murder (now an asylum seeker in Germany); and the original Russian trial papers.

The trial papers (which had always been in the possession of the Russian Federation) proved essential elements of the appellant's case which had never been disclosed by the Russian

Federation during proceedings in Belgium, Strasbourg or Westminster magistrates court. Senior District Judge Emma Arbuthnot accepted that extradition would violate Article 6 of the ECHR as the appellant could not have a fair trial in Chechnya where the acquittal rate is 0%. However, despite compelling and uncontested evidence of the horrific conditions during prisoner transit SDJ Arbuthnot was not convinced that these violated Article 3 of the ECHR.

The whole basis of the extradition scheme is one of mutual cooperation. It is of concern that in this case essential disclosure was not made by the Russian Federation and they acted with impunity. If the appellant did not have the benefit of the assistance of a tenacious Chechen lawyer the vital evidence from the Russian trial would have never come to light and he may well be on his way to detention in Chechnya where he feared his chances of survival would be few.

New 'Stop and Scan' Powers to Fingerprint Criminals and 'Illegal Immigrants'

"The Verge": Police in the UK are trialling a new "stop and scan" power, which lets them check the fingerprints of unknown individuals against national criminal and immigration databases. Officers will be able to stop anyone when an offense is suspected and scan their fingerprints using a mobile device if the individual cannot otherwise identify themselves. The scanners will check fingerprints against 12 million biometric records held in two databases: IDENT1, which contains the fingerprints of people taken into custody, and IABS, which contains the fingerprints of foreign citizens, recorded when they enter the UK.

Speaking to Wired UK, project manager Clive Poulton, who is helping oversee the trials for the Home Office, said: "[Police] can now identify the person in front of them whether they are known to them or not known to them, and then they can deal with them." The Home Office and police forces involved say stop and scan is simply a way to speed up checks that officers would otherwise have to make at police stations. But privacy and human rights advocates warn that the mobility of the technology and the lack of oversight in its deployment means it could foster abusive policing tactics.

Martha Spurrier, director of UK advocacy group Liberty, said the technology could exacerbate problems associated with current stop and search powers, which are disproportionately used to target minorities and are often cited as a cause of tension between police and local communities. "The problem with these mobile applications is that there's nothing to stop an individual officer acting on their worst prejudices," Spurrier told The Verge. "With taking fingerprints or interviewing subjects, there's a really good reason people have to take suspects to the station, because it [allows for oversight]. These are safeguards to make sure a police officer isn't wandering around an estate, fingerprinting people at random."

There is a legal framework in place for collecting this sort of information, the Police and Criminal Evidence Act, or PACE, which was passed in 1984. But, says Spurrier, PACE is outdated and has been amended over the years to keep up with new technology without proper debate, public or otherwise. "How can we say this is policing by consent when there is no parliamentary scrutiny?" she says. Other worries about the new technology include how biometric data might be shared between different enforcement agencies. For example, police officers might collect fingerprints from individuals without proper cause and then hand this data over to the Home Office where it might be stored indefinitely without the individual's knowledge.

The Home Office has long promised to publish a comprehensive overview of its biometric data policies, but this has been delayed since 2012. In the meantime, it's been criticized repeatedly for holding onto data for too long, and failing to inform individuals of their rights.

The veracity of the fingerprint databases that underpin these scans was also called into

question recently. In January, a parliamentary committee tasked with investigating government policy on immigration found a 10 percent error rate in the Home Office's list of "disqualified people." This, said the committee, has fed into a string of injustices, from individuals being denied bank accounts because of their supposed immigration status, to citizens being held in detention centers only to be later released without apology or explanation.

The new stop and scan power is currently being trialled in West Yorkshire, with 250 mobile scanners issued to officers. After that, reports Sky News, the system will be rolled out nationwide.

Court Dismisses Gerry Adams' Appeal Against Conviction

The Northern Ireland Court of Appeal has dismissed an appeal by Gerry Adams against his convictions in the 1970s for attempting to escape from internment. Gerard Adams ("the appellant") was detained on 21 July 1973 on foot of an Interim Custody Order ("ICO") which was signed by the Minister of State at the Northern Ireland Office. His detention was continued by virtue of a Detention Order made by a Commissioner on 16 May 1974. The appellant first attempted escape from detention on 24 December 1973 and a second attempted escape occurred on 26 July 1974. He was sentenced to 18 months imprisonment in respect of the first attempt and three years imprisonment in respect of the second, consecutive to the earlier sentence. No appeal was lodged by the appellant against either conviction until over 40 years later when these appeals were prompted by the disclosure of Government papers. The appellant contended that the ICO made on 21 July 1973 was invalid as it had not been considered personally by a Secretary of State.

Legislation: The statutory powers for detention (or internment) without trial in Northern Ireland were contained in the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 ("the 1922 Act"). During "the Troubles" this power was exercised on 9 August 1971 and from time to time thereafter. Following the introduction of Direct Rule on 30 March 1972 new interim arrangements for detention were introduced by the Detention of Terrorists (NI) Order 1972. The power of arrest under the Special Powers legislation remained in force but the detention powers were now exercised under the 1972 Order. It was this legislation that was in force when the appellant's ICO was made on 21 July 1973.

Article 4 of the 1972 Order provides that "where it appears to the Secretary of State" that a person is suspected of being involved in terrorism he can make an ICO for that person's temporary detention. An ICO can be signed by a Secretary of State, Minister of State or Under Secretary of State. The detained person had to be released within 28 days unless the Chief Constable referred the matter to a Commissioner, in which event the detention continued. Under Article 5 of the 1972 Order, the Commissioner could make a detention order if satisfied that the person was involved in terrorism or his detention was necessary for the protection of the public.

The interim arrangements in the 1972 Order were replaced by the Northern Ireland (Emergency Provisions) Act 1973 with effect from 8 August 1973 but anything done under the 1922 Act or the 1972 Order was to have effect as if it had been done under the 1973 Act.

Release of Government Papers: The trigger for the appellant's late appeal was the disclosure of documents by the Government under the 30 year rule. Papers revealed that there had been debate among officials and Government legal advisors in 1973/74 about the need for the Secretary of State to consider personally the making of an ICO. This appears to have prompted a change of practice in 1974 to one where the decisions on ICOs were made by the Secretary of State alone. The papers state that this approach was born out of caution based on legal advice which suggested that "the safer construction of [the legislation] is that only the Secretary of State can make the order".

The Use of Parliamentary Materials for Interpretation: The Court of Appeal commented that while the materials released are of considerable interest they do not inform the court's interpretation of the statutory provision. The appellant, however, relied on two statements from Hansard as aids to interpretation. The first was a statement of the Lord Chancellor on 19 July 1973 when he said "the Secretary of State makes a temporary order only if (he) is personally satisfied that the person concerned" was involved in terrorism. The second was a statement of the Attorney General on 11 December 1972 who said that "under Article 4(2) [of the 1972 Order] an interim custody order can be made also by a Minister of State or by an Under Secretary of State". The appellant contended that the Attorney General was in error in making that statement. The Court was satisfied that the rule in Pepper v Hart on statutory interpretation could not assist the appellant in this case as the enactment was not ambiguous or obscure and in any event the statements relied on appear to be contradictory.

The appellant also relied on a note by an official dated 2 July 1975 stating that when drafting the 1972 Order it was considered that the Secretary of State should take the decision in relation to an ICO but as he would not always be present in person the signature on the order could be that of a minister. The Court of Appeal held that a statement of an official is not a Hansard statement and cannot therefore inform the interpretation of the legislation.

Ground of Appeal: The appellant contended that Article 4(1) of the 1972 Order required the Secretary of State to consider personally each ICO. He claimed that the prosecution failed to adduce proof that the ICO dated 21 July 1973 had been considered personally by the Secretary of State and was therefore invalid. The appellant also relied on a legal opinion dated 4 July 1974 which set out the arguments for and against personal consideration by the Secretary of State and concluded that the point was arguable and the outcome would not be certain but that a court would probably find that it was a condition precedent to the making of an ICO that it should be the decision of the Secretary of State personally.

The Carltona Principle: The Court of Appeal set out the case law developing the Carltona principle which states that the duties imposed on ministers are so multifarious that no minister could ever personally attend to them and that the duties are normally exercised under the authority of the ministers by responsible officials of the minister's department. The Court concluded that the starting point, if not the presumption, is that the Carltona principle applies and can only be displaced (or rebutted) by Parliament using express words or by necessary implication. The necessary implication that Parliament intended to exclude the Carltona principle may be derived from the wording of the legislation and the framework of the legislation and the context. The Court said the seriousness of the subject matter is an aspect of the context and may be taken into account in determining whether it is a necessary implication that Parliament intended to exclude the Carltona principle although it is not determinative.

The Wording, Framework and Context of the Legislation: The appellant relied on the wording of Article 4(1) of the 1972 Order which states that "where it appears to the Secretary of State" that the conditions for the making of an order exist "the Secretary of State may make an order" as requiring personal consideration by the Secretary of State. The Court of Appeal, however, said that these words are a common legislative formula and have not been found in previous cases to be the basis for any necessary implication of personal consideration. The appellant also relied on the wording and framework of Articles 4(1) and 4(2) of the 1972 Order where the former provides that the Secretary of State may make the order and the latter provides that the order may be signed by a Secretary of State, Minister of State or Under Secretary of State.

The Court said that a distinction had clearly been drawn between the making of the order and the signing of the order: "Clearly the making of the order is the more significant decision. The signing of the order is the authority on which officials act to detain the person subject to the order. The distinction indicates that the appropriate person who might act on behalf of the specified Minister may be more confined under Article 4(1) than under Article 4(2). It does not lead to the necessary implication that only the Secretary of State may make the order."

The appellant also relied on the gravity of an ICO which involved the loss of liberty of the subject. The Court of Appeal agreed that the factors to be considered in determining whether the Carltona principle has been displaced in a particular case include the importance of the subject matter but said it was not satisfied that a decision that results in loss of liberty was in itself sufficient to displace it. The appellant further relied on the reasons advanced in the 1974 legal opinion. The Court of Appeal was not satisfied that there is material or information available that displaces the Carltona principle and accordingly it was satisfied that the decision to make the ICO could have been made by an appropriate person on behalf of the Secretary of State. The Court added that the Minister of State was an appropriate person, being a Minister appointed by the Crown and answerable to parliament.

Conclusion: The Court of Appeal was satisfied that the ICO was valid having been made by the Minister on behalf of the Secretary of State. The Court was accordingly satisfied that the appellant's convictions are safe and dismissed the appeal.

Prison Service 'Should Review Procedures' After Death In Custody From Alcohol Withdrawal

The Irish Prison Service has been encouraged to review its procedures for assessing alcohol dependence after a homeless man died from alcohol withdrawal in custody, the Irish Examiner reports. Dublin Coroners' Court heard that rough sleeper Josef Gembicky, 58, died two weeks after being committed for breach of bail conditions to Cloverhill Prison, where staff did not know his history with alcohol. He was remanded in custody on 30 May 2015, found unwell on 2 June, and eventually died in Tallaght Hospital on 13 June 2015. Mr Gembicky was from Eastern Europe and his limited English caused problems with filling out forms, but the court heard he expressly denied a history of alcoholism in an interview with the prison doctor. His death was attributed to pneumonia due to brain damage due to epileptic seizures due to alcohol withdrawal, and inhalation of vomit. The jury at Dublin Coroners' Court returned a verdict of misadventure and recommended that the Irish Prison Service review its procedures on information exchange to review their effectiveness. Irish Legal News contacted the Irish Prison Service for comment but did not receive a response by time of publication.

UK High Court Refuses Turkey Extradition Due To Overcrowded Prisons

Owen Bowcott, Guardian: The high court in London has refused to return an absconding British prisoner to Turkey on the grounds that the country's jails are so overcrowded they are unsafe following the 2016 attempted coup. The decision – the latest in a series of extradition setbacks inflicted by British judges – is diplomatically embarrassing for a fellow member of Nato and sets a significant legal precedent. The latest ruling follows a direct request made during a visit last year by the Turkish prime minister, Binali Yıldırım, to Theresa May. He sought the extradition of fugitive businessmen and activists living in Britain who were allegedly involved in the 2016 failed military coup in Ankara and Istanbul, which the Turkish government estimates involved 60,000 conspirators. That plea received a muted response from Downing Street, which told Yıldırım that action would only

be taken if there was credible evidence of criminal wrongdoing by an individuals in the UK.

MPs on the foreign affairs select committee have condemned the Turkish president, Recep Tayyip Erdoğan, for using the failed July 2016 coup to purge opponents and suppress human rights. Tens of thousands of teachers, lawyers, police officers, judges and other officials and citizens have been removed from their posts or detained. The latest high court case involved a 41-year-old man who holds joint Iranian and British nationality. He came to the UK in 2002 to attend a kick-boxing tournament and was eventually granted asylum. His home is in London where he lives with his second wife and two children. In February 2011, returning from a family visit to Iran, he was stopped in his car at the Turkish border where 33kg (72.7lbs) of the synthetic drug MDMA was discovered concealed beneath the back seat. The man, who has been granted anonymity because of his poor mental health and his claim that he was subsequently raped by Turkish inmates, insisted he knew nothing about the drugs. He said they were hidden without his permission when he lent the car to a friend in Iran for a wedding.

BID Launches Legal Action to Ensure the Government Holds G4S to Account

Leigh Day Solicitors: Formal legal action has today Thursday 15th February 2018, been launched against the UK government in an attempt to force it to designate security company G4S a 'High Risk' strategic supplier in the wake of a number of catastrophic failings. Lawyers from Leigh Day, who are acting on behalf of charity Bail for Immigration Detainees (BID), have begun legal action to hold the government to account after its refusal to confirm whether G4S has been designated a 'High Risk' strategic supplier. BID argues that a catalogue of serious failings by G4S, many of which were highlighted in a Panorama documentary last year entitled: 'Britain's Immigration Secrets', should result in G4S being placed under increased scrutiny by being designated as 'High Risk' by the government.

G4S currently benefits from a number of multi-million pound contracts with the government, operating two immigration detention centres, five prisons and one secure training centre. As such, they are a 'strategic supplier' to the government. The Panorama documentary highlighted a series of failings at Brook House Immigration Removal Centre (IRC) in West Sussex including the maltreatment of detainees by staff, a widespread culture of disrespect and the falsification of incident reports in order to cover up misconduct. Panorama's revelations about Brook House IRC are the latest in a long line of allegations involving G4S in the running of detention facilities, including the very similar allegations made against staff at Medway Secure Training Centre in January 2016.

Celia Clarke, BID's Director, said: "Time and time again G4S's conduct in its management of government contracts has been found wanting. The mounting list of scandals must be seen as systemic failings by the government, not one-off incidents". We have seen evidence of serious maltreatment of detainees by staff at Brook House IRC and yet there appears to be no recognition of this by the government. Bringing a legal challenge against the Cabinet Office for failing to designate G4S a 'High Risk' strategic supplier will make it harder for the government to award G4S future contracts and, ultimately, help prevent the future maltreatment of detainees. We have sent a pre-action letter of claim to the Cabinet Office and are awaiting their response. BID is requesting a protective costs order to limit its costs in bringing this action but is hoping to fund those costs through CrowdJustice.

Under government policy, a strategic supplier can be designated 'High Risk' if there is evidence of repeated concerns regarding underperformance and mismanagement in the delivery of the services they are contracted to provide. However, the Cabinet Office refuses to even confirm if G4S has been designated 'High Risk' in line with that policy. That people are

subjected to immigration detention at all is abhorrent. That they are subjected to physical and verbal abuse while incarcerated is utterly unacceptable. It is time the government stopped rewarding a company with a record of failure and mistreatment with new contracts, and no increased scrutiny on their questionable practices," added Ms Clarke.

Benjamin Burrows from law firm Leigh Day, who is representing BID, said: "The question of whether it has been designated as 'High Risk' has important consequences for G4S as well as for those other private companies seeking government contracts to run detention facilities. It is an important tool in providing accountability and ensuring the welfare of detainees and prisoners matters. Such a designation will mean G4S's existing contracts with the government will be subject to closer monitoring and review. Furthermore, it will have the effect that G4S is less likely to be awarded future contracts by the government. It will also act as a warning to other companies that the welfare of detainees must be taken seriously and failures will carry serious consequences."

Two Members of ETA Sustained Inhuman and Degrading Treatment After Their Arrest

In today's Chamber judgment1 in the case of Portu Juanenea and Sarasola Yarzabal v. Spain (application no. 1653/13) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, in its substantive and procedural aspects.

The case concerns allegations of ill-treatment sustained by Mr Portu Juanenea and Mr Sarasola Yarzabal when they were arrested in 2008 by officers of the Guardia Civil and at the beginning of their incommunicado police custody. The Court found in particular that the injuries described in the certificates presented by Mr Portu Juanenea and Mr Sarasola Yarzabal had been caused while they were in the hands of the Guardia Civil. It took the view that neither the national authorities nor the Government had provided any convincing or credible arguments to explain or justify those injuries, which it also found to constitute inhuman and degrading treatment. The Court then observed that the Supreme Court had confined itself to dismissing the applicants' version without considering whether the use of physical force by the officers during their arrest had been strictly necessary and proportionate, or whether the most serious injuries subsequently sustained by Mr Portu Juanenea were attributable to the officers responsible for his detention and supervision. Those omissions had prevented the domestic court from establishing the facts and all the circumstances as fully as it should have done.

Ulay v. Turkey Unfairness of Proceedings

The applicant, Soner Ulay, is a Turkish national who was born in 1984 and lives in Gebze (Turkey). The case concerned the fairness of the proceedings in which he had been convicted for murder. Mr Ulay was found guilty of murder and robbery in 2004. His conviction was essentially based on a confession he had made during a reconstruction of events carried out at the pre-trial stage. Throughout the proceedings before the domestic courts he repeatedly denied his previous statements, alleging that he had confessed in the absence of a lawyer and only because of coercion. His appeal was rejected and he was ultimately sentenced to 21 years' imprisonment in 2007. He relied in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance of own choosing), complaining inter alia that he had been convicted on the basis of a confession made in the absence of a lawyer and that he had been coerced into making such self-incriminatory statements. Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Ulay.

Wanker Convicted of Multiple Counts of Cow Molestation

Scottish Legal News: A pensioner has been banned from every single farm in the UK after he inserted his fist into a cow's rectum while performing a sex act. John Curno, 80, was found guilty of outraging public decency following a spate of bovine molestations. Uxbridge Magistrates Court heard that Curno was seen a number of times talking to a herd of 150 cows and masturbating in fields which belonged to Park Lodge Farm in Uxbridge. After two sisters at nearby house saw him visit the cows a third time they called the police. He was discovered on a nearby footpath, where he told police: "I'm not a violent person, I have a weakness with animals." Farmer's wife Mrs Howie said: "It was 8.30pm and we were running a bit late with the milking. It was the same field as before, this time he had had his whole hand in the cow. He grabbed his trousers and boxers and he ran for the stile and he actually fell over the stile because his trousers fell down when he was trying to get over it. I was disgusted, we gave nobody permission to touch or interfere with our cows, it might seem funny to you but they are family they are not just cows." Judge Michael Akers, Chair of the Bench, adjourned sentencing and imposed bail conditions.

Getting Out Of Jail Interest-Free

Natalie Cargill, UK Police Law Blog: When a person convicted in the Crown Court has an additional prison term enforced by the Magistrates for having only part paid of a confiscation order, he is entitled to a reduction in that term proportionate to the money that has been paid. R (Gibson) v Secretary of State for Justice [2018] UKSC 2; [2018] 1 WLR 629 confirmed that the starting point for calculating this reduction is the original sum ordered by the Crown Court, and not the larger sum including interest that had accrued by the date of the Magistrates' enforcement. In 1999, Mr Gibson was convicted of drug trafficking offences and sentenced to twenty-five years' imprisonment. In March 2000, he was made subject to a confiscation order of a little over £5.4 million. This sum was payable within twelve months, with a six-year prison term in default.

Perhaps unsurprisingly, Mr Gibson failed to pay the £5.4m on time. From March 2001, interest began to accrue on the outstanding amount at a rate of 8% per annum. By the time the Magistrates' Court committed Mr.Gibson to prison under the default sentence, he had only paid £90,370 in total. Meanwhile, interest had been adding up on the original £5.4m and the total sum outstanding had grown to £8.1m. It was uncontroversial that Mr Gibson was entitled to some reduction in his sentence on account of having paid the £90,370. The issue was how the reduction should be calculated: whether by reference to the total amount outstanding, including interest, at £8.1m or by reference the principal sum that was payable under the confiscation order, at £5.4m. Originally, the calculation had been based on the £8.1 million. That meant Mr. Gibson's term was reduced by twenty-four days. But Mr Gibson wanted the calculation to be based on the original £5.4 million, which would have meant a further reduction of eleven days. His case fell to be decided upon legislation that is now repealed but the issue raised by the appeal remains live under the current legislation, the Proceeds of Crime Act 2002. Lord Reed and Lord Hughes, in a joint judgment with which the other members agreed, helpfully outlined the tangled statutory regime for the enforcement of confiscation orders: 1. Section 9 of the Drug Trafficking Act 1994 made the confiscation order enforceable as if it were a fine imposed by the Crown Court. 2. That lead to the Powers of Criminal Courts (Sentencing) Act 2000, which provided that a fine imposed by the Crown Court was treated, for enforcement purposes, as if it had been

imposed by the Magistrates. 3. Unfortunately, the Magistrates' powers in relation to their own

fines were not in the 2000 Act. They were to be found in the Magistrates' Courts Act 1980. 4. Section 76 of the Magistrates' Courts Act 1980 gave Magistrates a power to commit a person to prison if they failed to pay a fine. Section 79(2) dealt with part-payment. It required that the term set in default of payment of "any sum adjudged to be paid" had to be reduced in "the same proportion as the amount so paid bears to so much of the said sum . . . as was due at the time the period of detention was imposed". The courts below had held that the reference to a period of imprisonment's having been "imposed" in default of payment was a reference to the Magistrates issuing the warrant of commitment. But in the case of a Crown Court confiscation order, the period of imprisonment in default was "imposed" when the Crown Court fixed the (anticipatory) term in default. In Gibson, the Secretary of State argued that the reference in section 79(2) to "any sum adjudged to be paid" had, by a necessary statutory fiction, to be references to the sum fixed by the original order plus interest. This strained reading, the Supreme Court held, did more than a "little violence" to the language of section 79(2); at the time that the Crown Court imposed the default term, no interest had accrued at all. Ultimately, this statutory fiction could not be justified where it would increase the amount of time someone would have to spend in prison. Penal legislation had to be construed strictly and particularly where the penalty involved deprivation of liberty. Accordingly, the court decided in Mr Gibson's favour. There are two immediate, practical consequences of this decision, Mr Gibson's eleven days out of prison aside. First, there will be slightly more generous reductions in default sentences where there has been part payment. Second, it appears that a default sentence can no longer be activated where the due remaining balance is less than the total interest that has accrued. The second point is likely to cause some concern, so be on the lookout for the government introducing new legislation in this area.

Ross MacPherson: Self-Defence is No Offence

On the 24/1/2018, in Guilford Crown Court, I was wrongfully convicted of 'Unlawfully' wounding a prison offer at HMP Highdown in February 2017, and sentenced to two years for GBH Section 20. This was made to run concurrent to my six-year Extended Determinate Sentence (EDS) Sentence. The jury refused to accept that I was acting in self-defence, despite being shown footage of prison officer charging into my cell in full riot gear. Having been threatened earlier in the evening by prison officers, I armed my-self with a broken piece of sink in order to defend myself, when the officers came back to carry out their threats to 'Come in and break my arms'. Having been previously assaulted by prison staff I took these threats seriously, as far as I was concerned it was not a case of if, but when they would come. The only reason I was not seriously assaulted that evening was because of the action I took to defend myself. This did not stop prison officers from assaulting me at HMP Highdown a few days before they sent me to HMP Belmarsh. On that occasion I suffered a split eyebrow, two black eyes, numerous bruises over my body and a swollen testicle.

Whilst under cross-examination the jury sent a question to the judge asking why I did not report the threats to the 'Authorities', which show just how little the public understand about the situation prisoners face. I am locked in a cell, to whom and how do I report it? The whole week the jury would not look at me, but when they came back from their deliberations, they all looked at me smiling: which proves to me that their verdict was not an honest one, based on the evidence, but based on the contempt, so-called upper middle-class people surrounding Guilford have for people like me.

I have been told I have no grounds for appeal, however I will continue to maintain my innocence and fight against the injustices and inequality of the so-called Justice system.

In Struggle, Ross MacPherson, A6791AD HMP Belmarsh Western Way Thamesmead London SE28 0EB

Early Day Motion 926: Unlawful Imprisonment for Not Paying Council Tax

That this House notes that between 9.5 and 18 per cent of people each year are imprisoned unlawfully for having failed to pay Council Tax despite the fact that they had not committed a criminal offence; further notes that from 2010 to 2017, between 66 and 125 of the 692 people imprisoned for non-payment of Council Tax were imprisoned without lawful reason, and that these figures are an underestimate as they do not take into account many other reasons as to why such orders have been deemed unlawful by the Administrative Court following Judicial Review Proceedings; notes that this is one of the largest mass miscarriages of justice in British legal history; calls upon the Secretary of State for Housing, Communities and Local Government to urgently remove the provision which allows imprisonment for failure to pay Council Tax; and notes that those wrongfully imprisoned should be informed and supported to seek redress for having their lives irrevocably and detrimentally affected by their incarceration which adversely impacts upon them, their children and minor dependents and, in addition, puts a considerable and unnecessary burden on public resources which is entirely disproportionate to the amount being claimed for non-payment of Council Tax.

NI: Pat Finucane Campaigners Call for Questioning of British Intelligence Chief

Scottish Legal News: Long-standing campaigners for justice for murdered solicitor Pat Finucane have called for a key British Army officer to be questioned. Brigadier Gordon Kerr was named by the Sunday Herald in Scotland in November 2000 as commander of the Force Research Unit (FRU), which had responsibility for high-level paramilitary informers. Following reports that alleged FRU double-agent "Stakeknife", first named as Freddie Scappaticci by the Sunday Herald in May 2003, was arrested and questioned by police in Bedfordshire last week, campaigners have called for Mr Kerr to be questioned too. Pat Finucane's son, solicitor John Finucane of Finucane Toner Solicitors, told the Sunday Herald: "Given the unit Kerr ran has led to the deaths of so many people we have always found it strange that there hasn't been any scrutiny of what Kerr was doing. Gordon Kerr is very much at the centre of the actions of the FRU ... Kerr's role in all of this needs to be examined. We may not necessarily get justice, but we want the truth. Those who were in charge tend to be protected. I don't have confidence in a process that doesn't directly involve the families. A police investigation will only gather evidence and submit that to the prosecution. It is a fundamentally flawed process from the outset. I wouldn't be optimistic that Kerr will be questioned or prosecuted. Allegations of collusion deserve a process where those directly affected have the ability to examine documentation and ask questions, and for people like Kerr to be represented too, because they may well say they were directed under orders by the minister responsible at the time." Paul O'Connor, director of the Pat Finucane Centre, added: "In respect of Kerr, we would be of the view that he and others in the chain of command, both within FRU and the wider security community, have questions to answer regarding their handling of agents such as Brian Nelson and the murder of Pat Finucane and others.

Hostages: Sally Challen, 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.