Wenerski v. Poland (no. 2) (no. 38719/09)

The applicant, Ernest Wenerski, a Polish national who was born in 1970 and lives in Kluczbork (Poland). Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), he complained that, despite his epilepsy and personality disorder, he had been kept in overcrowded prison cells for different periods totalling four years between 2004 and 2010. Violation of Article 3 - Just satisfaction: EUR 5,000 (non-pecuniary damage).

Report on an Announced Inspection of HMP Ranby

Inspection 5/9 March 2012, report compiled May 2012, published 25th July 2012

Inspectors were concerned to find:

- About half the prisoners had literacy and numeracy skills below level 1 - what you would expect of an 11-year-old
- Too many prisoners turned away from workshops or did not take up optional education places
- Prison offered 936 activity places - but at anyone time 300 or so of these were not used
- Laundry facilities were disorganised, prisoners had problems getting enough clean clothes that fitted them
- Concerned to find that there appeared to be an unofficial cap on the number of prisoners attending religious services.
- Significant numbers of prisoners reported being victimised and this was often linked to gang and debt issues
- There were generally insufficient efforts to reduce levels of violence
- There were high levels of drug and alcohol availability
- Drug finds indicated that prisoners were using substances like 'Spice', a synthetic cannabinoid, which did not show up on the tests
- 1 in 1 a of the population - amounting to about 100 prisoners - said they had developed a problem with diverted medicines that had been administered by the prison itself
- Poor prescribing practice was one element of very poor health care commissioned by NHS South Yorkshire and Bassetlaw

. a third of prisoners were on potentially abusable medication

- Staff had to judge whether a prisoner who complained of being unwell at night should be taken out of the prison to hospital with all the disruption that entailed, or told to wait until the next morning when a nurse or doctor would be available to see him. In our view, this seriously compromised prisoner safety.
- For a minority there is an undercurrent of victimisation, frustration sorting out some of the practical necessities of prison life

Hostages: 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, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, 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, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 382 26/07/2012)

'Warehouse' Prisons Falling Short of Kenneth Clarke's Rehabilitation Pledge

Prisons and probation chief inspectors say jails still failing to tackle entrenched attitudes of sex offenders and other criminals The Guardian, Thursday 19 July 2012

Tens of thousands of prisoners in England and Wales are being "warehoused" without any meaningful work being done to challenge their criminal behaviour, according to a joint report by the chief inspectors of prisons and probation. The watchdogs say that two years after the justice secretary, Kenneth Clarke, promised a "rehabilitation revolution", there are still not enough places on recognised programmes to tackle criminal "thoughts and attitude" and many that are available are not of high enough quality. Chief inspector of prisons, Nick Hardwick, said it was "particularly scary" and a significant failure that a third of imprisoned sex offenders could not get on sex offender treatment courses, and that many who did failed to complete them. "What's happening on the ground now in terms of offender management is too poor in too many places and needs to be galvanised. On the face of it, it is just really disturbing. Sex offenders are being released without adequate interventions to reduce the risk they will reoffend. However you juggle the priorities, that ought to be near the top."

One recent prison inspection report on Maidstone jail, in Kent, which is a regional hub for the treatment of convicted sex offenders and holds 480, revealed that there were only 36 places available on one course, with a waiting list of 92 prisoners at the time of the inspection. The joint inspection report was based on examining the records of 220 prisoners in 11 jails across England and Wales that hold long-term prisoners, and interviews with 178 "offender managers" – prison staff charged with drawing up a sentence plan in the case of each inmate.

The inspectors found many prisons took care of prisoners' resettlement needs such as education, employment and health, but failed to underpin that with work to sustain changes in their behaviour to cut their reoffending rates on release. "A period of incarceration offers an opportunity to tackle a prisoner's entrenched behaviour and attitudes, and moreover to observe and capture on a day-to-day basis whether the necessary changes are taking place prior to release," said Liz Calderbank, chief inspector of probation. "Failure to capitalise on that opportunity is a waste of an expensive resource."

The report showed that in 148 of 220 cases, the prisoners had been assessed as needing to go on an accredited offender management programme, but there was no plan for this in a quarter of the cases. Reviews of sentence plans were undertaken in fewer than half the cases. Too often, sentence plans were based on the interventions available in the prison, rather than what was required in the individual prisoner's case. Out of the 148 sample cases, 82 prisoners required a transfer to take specific courses but only 34 had been moved and a further 19 were awaiting a transfer. No move was planned for the remaining 29.

Hardwick said: "They are not being followed up, not being reviewed, nobody's really on the case.Of course it is important that people are held securely, of course going to prison is a punishment, of course it's important that they are in safe and decent conditions. But if that is all you do, then you are just warehousing people, as Ken Clarke has said. It may be a decent warehouse, but it is a warehouse nonetheless." Michael Spurr, chief executive officer for

the national offender management service, said: "Despite a challenging operating environment reoffending has been reduced by five percentage points since 2000. This reflects much better case management both in prison and the community. We are targeting resources to reduce risk to the public. More than 1,000 sex offenders completed programmes in custody last year and we will continue to prioritise work on the basis of risk. "Transforming offender management is a significant challenge. We have made real progress but accept there is more to be done to break the cycle of reoffending. We are committed to improving rehabilitation in prisons and will use this report to help accelerate change."

Justice minister Crispin Blunt said: "I asked the inspectorate to look at this area as it is essential that we have the effective offender management and rehabilitation those in custody. I therefore welcome this report which provides clear recommendation for further improvement."

Grand Chamber of ECtHR to hear Jeremy Bamber Appeal

Jeremy has won the right for the Grand Chamber of ECtHR to hear his appeal that keeping him in jail for the rest of his life breaches his human rights.

ECtHR had earlier this year rejected Bamber's appeal but there were three dissenting opinions (judges Garlicki, David Thór Björgvinsson and Nicolaou) of the seven judges who determined the case. This was a very narrow decision and a spur for Jeremy to appeal the decision and ask for a hearing before the Grand Cahmber.

Hümmer v. Germany (no. 26171/07) Unable to examine witnesses Violation of Article 6

The applicant, Lars Hümmer, is a German national who was born in 1978 and lives in Bayreuth (Germany). Placed in a psychiatric hospital for two counts of assault occasioning grievous bodily harm by a court decision of February 2005, he complained that neither he nor his counsel had been able to examine the main witnesses against him at any stage of the proceedings. The witnesses, family members of the applicant, had made use of their right not to testify in court. Their pre-trial testimonies were, however, introduced at the trial by the testimony of an investigating judge who had heard the witnesses at the investigative stage in the absence of the applicant and counsel. Mr Hümmer relied on Article 6 §§ 1 and 3 (d) (right to a fair trial; right to obtain attendance and examination of witnesses).

Prisons: Use of Force [Spedial Accommodation HMP Woodhill]

Baroness Stern to ask Her Majesty's Government what progress they have made in reviewing the monitoring and governance of the use of force and the use of special accommodation at HMP Woodhill to achieve a reduction in their use, following the report by HMCIP published on 29 June.

Minister of Justice (Lord McNally): HMP Woodhill has taken a number of steps to improve monitoring and governance of use of force and special accommodation since the inspection including: increasing the frequency of use of force review meetings; increasing the seniority of the manager who presides over these meetings to governing governor level; weekly checks of all use of force paperwork; and the use of formal staff meetings to focus on the issues around special accommodation.

As a result there has been a year-on-year reduction in the use of force from 187 incidents in January to June 2011 to 159 in the same period of 2012; use of special accommodation has also declined from 16 instances in the period September 2011 through January 2012 to only six instances between February and June this year.

ernment seems to have painted itself into a corner through the last few years. The ruling does not require states to give all prisoners voting rights but [depriving prisoners of the vote] has to be linked to the nature of their crime."

Britain has repeatedly argued for what is called a "'margin of appreciation", allowing states some leeway in interpreting ECHR judgments. "Now they have it and the deadline to make the changes ends in November," Muiznieks said. "If they don't it will weaken the whole system and set a very bad example for other states. "In general the UK has been a good citizen within the human rights system. It would be a huge shame and weaken the UK's influence if they delayed [the decision].

Aidan O'Neill QC, who appeared for McGeoch at earlier hearings, told a Commons select committee investigation into prisoners' voting rights, recently: "This is not about giving the prisoners the right to vote. It is setting out circumstances in which that right may lawfully be taken away. It is not giving enough respect for the importance of the right to vote simply to say: 'You are in prison for four years and automatically you lose the right to vote for four years'. There has to be an element of individual decision-making."

The attorney general, Dominic Grieve, has argued that a complete ban on prisoners voting is accepted by other Council of Europe states and is an issue to be determined by national parliaments. The Cabinet Office, which is co-ordinating the government's response to the ECHR ruling, said that it was considering the implications of the Strasbourg decision.

Prisoners Waiting to Move to Open Conditions Gain ROTL Victory

One of Rrisoners Advice Service (PAS) clients, D, serving a mandatory life sentence, had been waiting for a transfer to open conditions since his approval for this transfer in mid-2011. PAS represented him in the matter of his application for Release on Temporary Licence (ROTL), while he awaited the transfer.

This application was denied by the prison, and so PAS sought to judicially review this decision, arguing that either D should not suffer a delay in moving to open conditions, or that he should be considered for ROTL immediately. Permission was granted to go to a full hearing.

Following this, government ministers agreed that the ROTL policy in this situation could be relaxed, to allow prison governors in the closed estate to assess and, where appropriate, release on temporary licence, those Indeterminate Sentence Prisoners whom they had approved transfer to open conditions.

Visits case settled

PAS had taken on a client in a Category A prison, F, who was refused visits from his nephew, G, on the grounds that the nephew himself was an ex-prisoner with a drugs conviction, who was on licence at that time. The relationship between F and G was a particularly close one.

PAS argued that this was a breach of Article 8 of the European Convention of Human Rights, enshrining the right to respect for a private and family life, and that no sound or lawful reasons had been advanced by the prison regarding the denial of visits. The Prison Service Instructions themselves explicitly state that visits should not be curtailed simply because a visitor has been on custody or is on licence.

PAS applied to have the decision taken to Judicial Review on behalf of F, and permission was granted by the High Court. However, in the end the prison eventually reconsidered its decision when the nephew’s licence period ended (having been unable to provide substantive reasons for its original decision), and approved F’s nephew under the Approved Visitors Scheme.

isation, we prosecute about a million defendants year on year. There will be errors. My job is to reduce the number of errors and deal with them honestly when we get them and that means looking into why something went wrong and apologising when we get it wrong."

The CPS has 3,000 prosecutors specially trained in dealing with domestic violence cases and 800 trained rape specialists. When it came to the conviction rate in England and Wales for domestic violence it was 73% but for rape it was lower. The CPS said there was 62.5% rate where a suspect had been charged with rape and was convicted of rape, a serious sexual assault or a crime of violence. The conviction rate for rape alone was 40%.

The Refuge charity welcomed the increase but said it represented only "the tip of the iceberg".” Sandra Horley, chief executive of Refuge, said: "In London alone there were almost 52,000 domestic violence offences recorded in one year, so the 66,860 cases successfully prosecuted nationally barely scratch the surface. "We are concerned that the British Crime Survey tells us that there are an estimated 1.2 million women who experience domestic abuse each year in the UK. Some of these cases may not be reported to the police for a number of reasons, including women being too frightened to come forward. This leaves a huge number of domestic abuse cases that never reach the police and therefore the courts. For those who do report domestic violence the police response is often woefully inadequate."

Romania Must Compensate Prisoners Exposed to Poor Detention Conditions

Chamber judgment in the case of Iacov Stanciu v. Romania (application no. 35972/05), which is not final, the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The case concerned the conditions of Mr Stanciu’s detention in several Romanian prisons, in particular overcrowding, bad hygiene conditions and inadequate medical treatment.

The Court found, taking into account the cumulative effect of those shortcomings, that the prison conditions to which Mr Stanciu had been exposed had amounted to inhuman and degrading treatment. The Court pointed out that his case reflected a common problem in Romanian prisons and that, despite efforts to improve the situation, Romania had to take further steps, including a compensation scheme. There are 80 similar applications against Romania concerning this issue currently pending before the Court.

Never Ending Story; UK Dithering over Prisoners' Voting Rights

Europe human rights commissioner says coalition painted itself into corner as supreme court confirms fresh challenge over ban *Owen Bowcott, guardian.co.uk, Sunday 15 July 2012*

The criticism came as a fresh legal challenge was being mounted at the supreme court opposing the blanket ban on inmates participating in elections. The government has to announce by November how it intends to implement a requirement by the European Court of Human Rights (ECHR) that, at least, certain categories of prisoners should be allowed to vote. The new legal challenge comes from George McGeoch, 40, who is serving a life sentence for murder. In 2010, he tried, unsuccessfully, to add his name to the electoral register. McGeoch's lawyers maintain his rights as an EU citizen to take part in elections are being denied, a different legal approach from previous challenges that led to ECHR judgments concluding that a blanket ban breached inmates' human rights.

Officials in Strasbourg are frustrated by the UK letting the issue fester. Nils Muiznieks, the new human rights commissioner at the Council of Europe, told the Guardian: "A blanket and indiscriminate ban is not in line with the European convention on human rights. The UK gov-

Winston Green 8 - Not Guilty

After a 14 week trial it took the jury only four hours to find all the defendants not guilty.

On the Friday 1st June, Justice Flaux in the absence of the jury acquitted Everton Graham and Aaron Parkins; he thought that in both cases there was no case to answer. Crown Prosecution Service appealed to the High Court and this was heard on Tuesday 12th June the appeal was upheld. Court resumed on Wednesday 13th June, with acquitted back on the indictment; jury was not told that two of the defendants had been acquitted.

Non-disclosure, the senior investigating officer Chief Inspector Anthony Tagg, did not disclose to either the CPS or the defence legal teams that witnesses had been offered immunity from any prosecution for any criminality they might have committed before coming forward to give statements. This only came out 10 weeks into the trial, when the second senior police officer informed the court. Mr. Tagg when questioned about this non-disclosure was untruthful so untruthful that the judge said Mr. Tagg was "seriously at fault" for having failed to inform counsel (prosecution & defence) of the deal. West Midlands Police ask to comment on the actions of Mr. Tagg said, 'It is correct that the judge found the senior investigating officer had lied under oath. Our understanding is that it related to a very specific issue at a very specific time and didn't have a wider application around the integrity of the trial. Whatever the officer/s are alleged to have done, had it been so serious as to require the halt of the trial, then that's what the judge would have ordered and he specifically did not do that." Not quite correct, when this issue came to light, defence claimed abuse of due process and again the jury was removed from the court. There followed three days of arguments from the defence for a mistrial. Judge was quite clear at the end that the non-disclosure was extremely serious and that defence could recall witnesses if they wished to do so. That the trial would resume and the jury would be cautioned as to the evidence given against the defendants that it was seriously tainted. Trial resumed with the jury so advised.

Expert witness gave evidence on video evidence of the cars involved, stating emphatically where and at what times the cars were seen. Much of this evidence was destroyed by the defence, the expert had wrongly identified one of the cars, had said another car was at the scene of the incident at an exact certain time, when it was nowhere near the scene. My recollection of the judges direction on law to the jury, said the expert witness was aware before getting into the witness box that some of her evidence was untenable.

MOJUK Comment: All in all the Crown Prosecution Service case against the defendants was put together with blue tack. The CPS opening statement was highly emotive with only one purpose to paint a picture of the defendants as a collection of thugs; on the streets that night with only one purpose to rob and loot and that they all conspired to murder the deceased. However the diligence of the defence barristers and the defendants themselves, completely rubbished the CPS opening statement, rubbished so well that even the judge commented that the CPS opening statement that the defendants were out to rob and loot, was completely with out foundation.

All of the media with out exception upon hearing of the acquittal, concentrated their sympathies for the families of the deceased. Not a word of sympathy for the families of the defendants who for the last eleven months had been torn apart by a seriously corrupt police investigation.

Once again non-disclosure raised its' ugly head, only this time it was not just non-disclosure by the police but to my mind the non-disclosure to the jury by the judge. The jury should at all times be in the presence of the judge, no legal arguments should be heard in their absence, no information given in court should be withheld from them.

Last but not least, congratulations to the jury for a quick and judicious decision.

Prisons: Escorts - HMP Woodhill

Baroness Stern to ask Her Majesty's Government what action they are taking to improve the performance of the escort provider in prisons following the report by HM Chief Inspector of Prisons on HMP Woodhill of 22 June, which noted an increase in the percentage of escort vans arriving late.

Minister of State, Ministry of Justice (Lord McNally): The report reflects a degree of concern on the part of the prison about the times at which vehicles collecting prisoners for transport to court arrived at the prison. We have noted this concern and are taking action to address it. However, it may be noted that performance as measured by the time of reception at the court has improved significantly over recent months. A performance improvement plan is in place to secure enhanced performance in relation to the whole of the escort journey. The plan is being closely monitored by the National Offender Management Service.

Early Day Motion 422: Criminal Injuries Compensation Scheme

That this House gives full support to the blameless victims of violent criminals who suffer physically, emotionallyand financially from the injuries inflicted on them; supports the Criminal Injuries Compensation Scheme as the only means of recompense for almost 40,000 seriously or fatally injured victims every year; and calls on the Government to withdraw proposals to abolish compensationfor half of the victims, to cut the awards of a further 41 per cent and to slash payments for loss of earnings made to the most seriously injured, who are unable to return to work after more than 28 weeks and to the dependants of fatally injured victims.

Sponsors: Blears, Hazel / Cooper, Rosie / Green, Kate / McDonagh, Siobhain / Rotheram, Steve / Ruddock, Joan   Houes of Commons - Date tabled: 17/07/2012

Huge Spike in use of Controversial new 'Deprivation of Liberty' Orders

More than 11,000 people were deprived of their liberty last year using controversial new legislation that critics have argued is “not fit for purpose”. Jerome Taylor, Indpendent, 18/0712

New figures released by the Department of Health reveal how local authorities and hospitals are increasingly relying on so-called Deprivation of Liberty Safeguard (DoLS) orders to detain people for their own safety. A total of 11,393 applications were made last year - a 27 percent increase on the previous year and a 59 percent rise since the powers were first introduced in 2009. But there is an enormous discrepancy across the country with some local authorities applying for hundreds of orders and others barely bothering to use the safeguards. The geographical disparity will raise concerns that thousands of people are being detained in hospitals and care homes without any legal checks at all.

DoLs were brought in as a provision within the recent Mental Capacity Act and are used by local authorities, care homes and hospitals to restrict the freedom of people who lack the ability to make key decisions about their lives. They are separate from powers that allow people to be sectioned under the Mental Health Act and are usually brought in when care workers believe someone could be at risk of harm. Elderly people with dementia and people with severe learning difficulties or behavioural problems are often detained using such powers. The idea is that a DoLS provide legal checks to make sure someone is only detained if it is “in their best interests” and for no longer than is necessary. But DoLs are notorious among lawyers, care and health professionals for being overcomplicated and deeply misunderstood. Both the Care Quality Commission and the Mental Health Alliance have criticised the legislation with the latter describing the entire DoLS system as “not fit for purpose”.

It is the latest in a string of incidents since February when the Ministry of Justice decided to replace the system under which interpreters were hired ad-hoc with a single private contract, awarded to ALS, in an attempt to slash the £60m annual bill by a third. In a burglary case at Snaresbrook Crown Court in east London, a retrial was ordered when it emerged that the Romanian interpreter had muddled the words "beaten" and "bitten". In another case a man charged with perverting the course of justice was told he was "a pervert", while a volunteer had to be pulled from the public gallery to translate for a Slovak defendant.

Both the CJS Committee and the NA Office have confirmed that they may investigate the new private contract. The MoJ insisted recently that it had seen "sustained improvement".

A spokesman for ALS said yesterday: "Any complaints are investigated thoroughly and, where necessary, the interpreter is suspended until the investigation is complete. At that point ALS will either remove them from its register, reinstate them or provide further training, as appropriate."

Profile: Dragon's Den star's vision got lost in translation: When Gavin Wheeldon went on Dragon's Den in 2007 with his new translating company, Applied Language Solutions, the Dragons were suitably impressed. None opted to invest their own cash, but Duncan Bannatyne predicted: "I think you'll prove all the Dragons wrong and I think you'll do tremendously well." He was half right. ALS went on to win a £300m contract to provide all translating services for the courts, but has been heavily criticised and blamed for a string of failed and delayed cases. Mr Wheeldon has nonetheless made a fortune, selling ALS in December for £7.5m.

Rise in Convictions for Violence Against Women *By June Kelll, BBC News, 23 July 2012*

Prosecutions and convictions for crimes of violence against women and girls have risen by 15,000 over four years. The figures come from the Crown Prosecution Service (CPS) which covers England and Wales. The Director of Public Prosecutions, Keir Starmer, said the rise was due to better training and a greater understanding of victims. Most victims of domestic violence suffer in silence - Mr Starmer said a woman would on average be assaulted 30 times before she sought help. In a speech he will highlight the progress he believes the CPS has made when it comes to all violent crime against women and girls. The DPP will tell his audience that last year in England and Wales there were 91,000 prosecutions and 52,000 convictions.

The CPS launched its Violence Against Women and Girls Strategy in 2008. It focused on a number of issues including domestic violence, rape, forced marriage and female genital mutilation. Four years on with an increase in both prosecutions and convictions, Mr Starmer told the BBC: "I don't want to overclaim this. There is still a significant problem in terms of encouraging people to come forward There are many women who do not have the confidence to come forward. And we must continue in the work we are doing to try and give them the confidence. But this is perhaps a milestone in the journey we are on to try and prosecute these cases." And he outlined the CPS approach: "The main planks of our strategy have been absolutely clear policy and guidance for our prosecutors dealing with, for example, victim issues - why might a victim not want to see a case through or want to withdraw?" He highlighted better training and use of specialist prosecutors, adding that "we have really tried to address myths and stereotypes which have bedevilled the criminal justice system for years. We have confronted them head on."

Mr Starmer acknowledged that some victims who had come forward had been let down and traumatised further because of shortcomings by CPS staff. Cases have collapsed and suspects have walked free because of incompetence by prosecutors. He said: "I don't pretend for one minute that we haven't made mistakes in the last few years. 'Barely scratch surface' We are a huge organ-

been noted during a previous stay in the punishment block some months earlier, and to alert the psychiatric services, for example. Nor had the authorities set in place any special measures, such as appropriate surveillance or regular searches, which might have found the belt he used to commit suicide.

The Court considered that the authorities had failed in their positive obligation to protect Kamel Ketreb's right to life. It followed that there had been a violation of Article 2.

Article 3: The assessment of whether the treatment or punishment concerned was incompatible with the standards of Article 3 had, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they were being affected by any particular treatment.

Although in the opinion of the experts Kamel Ketreb had no chronic mental disorder or acute psychotic symptoms, his history of suicide attempts, his psychological condition which the doctors diagnosed as "borderline", and his extremely violent behaviour called for special vigilance on the part of the authorities, who should at least have consulted his psychiatrist before placing him in the punishment block, and generally kept him under proper supervision during his stay.

The Court considered that the prisoner's placement in a disciplinary cell for two weeks was not compatible with the level of treatment required in respect of such a mentally disturbed person. Accordingly, there had been a violation of Article 3.

Just satisfaction (Article 41):The Court held that France was to pay the applicants jointly 40,000 euros in respect of non-pecuniary damage.

Separate opinion: Judge Zupancic expressed a separate opinion, which is annexed to the judgment. The judgment is available only in French.

Court Interpreter Farce Halts Murder Trial *Independent, Saturday 21 July 2012*

A murder trial was brought to a sudden halt last week when the court interpreter confessed that he was simply an unqualified stand-in for his wife, who was busy. The trial had to be temporarily suspended at a cost of tens of thousands of pounds – the latest in a series of farcical episodes since court interpreting was contracted to a private firm earlier this year. Other recent incidents include a man who was charged with perverting the course of justice being told he was accused of being a "pervert", and solicitors using Google Translate.

The latest problem came to light as Mubarak Lone struggled to explain evidence in the trial of Rajvinder Kaur, who is accused of battering her mother-in-law to death with a rolling pin. He was supposed to be translating for Kaur's husband, Iqbal Singh, but could not even manage to get the oath right for the Sikh witness. Repeated attempts by the defence barrister Jonathan Fuller, QC, to question the witness at Winchester Crown Court failed as Mr Lone left out key words and phrases. Eventually another barrister, who spoke Punjabi, alerted the court to the problem. Mr Lone was forced to admit, in the absence of the jury, that it was in fact his wife who had been contracted by Applied Language Solutions (ALS) but that she had other commitments so he had taken her place. He told the judge he had taken the interpreter test set by ALS but had not received his results and was not accredited.

Mr Justice Barnett told the court: "This is extremely unfortunate, to use a classic understatement." But the problems continued when the trial recommenced with a new interpreter, who also failed to translate the evidence properly. The case was only able to continue with the assistance of Kaur's junior counsel, Sukhdev Garcha. The trial eventually ended on Thursday when Kaur was convicted and sentenced to life with a minimum term of 11 years.

Until recently few outside of the care community had even heard of deprivation orders. But last year The Independent led a media campaign to seek access to a Court of Protection case which concerned a severely autistic man who was removed from his father's care. In April 2011 a court ruled that Steven Neary, a 21-year-old from Uxbridge, had been unlawfully detained by Hillingdon council. The widespread media coverage surrounding the case is one of the factors behind the significant increase in DoLs as local authorities do more to make sure people only have their freedom restricted with adequate checks. But while some local authorities use the legislation to detain people, others seem to hardly ever use it.

A breakdown of the figures show that whilst a local authority like Leicester made more than 400 applications last year, Reading only made one for the whole year whilst Hull made just three. Lucy Series, a PhD student at Exeter University who studies DoLS, says the latest figures show a worrying discrepancy in how the orders are used. “To give you a sense of the scale of these differences, if Leicestershire's application rate were extrapolated out to the whole of England, we'd be seeing 37,200 applications per year,” she said. “If Reading's was, we would see 341 applications per year. These differences suggest there is a postcode lottery in the protection of right to liberty for disabled adults.”

Of the 11,000 applications made last year, just over half (56 percent) were granted leaving question marks over what happened to the care arrangements for the 44 percent that were waved through. The vast majority of applications (58 percent) were made for elderly people over the age of 74 – most of whom will suffer from some sort of dementia related illness. Given Britain's ageing population it is likely more and more DoLS will need to be granted in the coming years.

However another criticism of the DoLS legislation is that the orders can only be challenged in the Court of Protection, a costly exercise that prices most families out of taking such a route. Some professionals have begun urging the Government to adopt the tribunal system used to challenge and monitor those who are sectioned under the Mental Health Act which is widely believed to be cheaper and more efficient. Earlier this year The Independent revealed how appeals against deprivation of liberty orders in the Court of Protection had tripled in the wake of the Neary scandal, prompting concerns that the already struggling court system could be overwhelmed.

Asked whether they had confidence in the DoLS system, a Ministry of Justice spokesman said: “The Government is confident the law gives care providers, supervisory authorities, vulnerable people and their families the power and protection they need. A decision to apply for a deprivation of liberty safeguard ultimately rests with care providers based on individual circumstances."

A spokesman for Reading Borough Council gave no reason for why they had only authorised one DoLS last year but added: "We advise and support care homes to support vulnerable people, and only use DoLs as a last resort measure. We’d like to emphasise that the safeguarding of vulnerable people is of the highest priority for Reading Borough Council and our partners.”

Deprivation of Liberty System Riddled with Conflicts of Interest

John Hemming MP, Wednesday 18 July 2012

The report of a 27% increase in people subject to the Deprivation of Liberty Safeguards raises a flag. The basic question is whether people are being deprived of their liberty for the convenience of the local authority or whether it is necessary or even essential for their security. There is obviously a need to deprive some people of their liberty because of their mental condition. However, there has to be a system to independently scrutinize that process.

The Court of Protection suffers from the over judicialisation of what is essentially a ther-

apeutic decision. The DoLS process itself, however, is subject to a substantial conflict of interest. If someone is in the care of the local authority then the LA appoints both the person who assesses an individual and also the "independent" mental capacity advocate – who at times also acts as the litigation friend. As is the case in many situations the Local Authority controls the income of all of the participants. In essence, therefore, we end up with a system whereby there is a very complex and hence expensive system for reviewing a decision, but the local authority controls all of the participants in that process.

I had a case for one of my constituents where it seemed clear to me that the person was being imprisoned for the convenience of the local authority. I was banned from talking to her and she was compulsorily medicated when she asked to see her mother. Her sisters were warned by the judge not to talk to me and the whole process was dreadfully conflicted. It was clear that the assessments of capacity were substantially flawed, but that was not picked up by the system.

The senior judge Justice Jackson has pointed out that the Mental Health Tribunal system is a better system than DOLS. My own view is that we need to strengthen the case conferences by bringing in greater independence from whoever is responsible for the care decisions (local authority or PCT). This has to be accessible to family members for those people who are in care and should not be over judicialised. Conflicts of interest need to be taken out of the system.

The massive level of secrecy and lack of truly independent scrutiny has create a situation that is not necessarily any better than the Bournewood case. I am pleased that the Supreme Court has accepted a petition to appeal the Cheshire West judgment. However, what is essential is that case conferences are strengthened. My Family Justice Bill which has its second reading on 26th October 2012 aims to improve some of these issues. We also should allow the people subject to these constraints on liberty (secret prisoners) to speak out publicly if they wish.

Injustice Coming to a Court Near You in October 2012

A Defence Costs Order is something you get if you have been falsely accused of a crime, you pay for your own defence and you win your case. It's simply a branch of the concept that the loser pays, in other words, if you are in the wrong then you get to pay the costs. So, a convicted defendant can expect to pay towards the prosecution costs just as the prosecution get to pay toward the costs of an acquitted defendant. Sound fair? I think it is.

As of October, this is set to change. Defendants in the Crown Court must either accept legal aid (with contributions of up to £900 per month) or pay privately in the knowledge that following an acquittal they will not receive back a penny of the money that have spent on their case. Defendants in the magistrates court will only be able to recover costs at the same rate as legal aid payments, which means defendants who are not eligible for legal aid will have to pay a substantial amount of money to defend themselves - to give you an indication, you can expect a magistrates court trial in London to cost you around £1,500, whereas legal aid will pay the solicitor £378.46 in most cases. It's a bit more complicated that that because firms tend to charge clients fixed fees rather than hourly rates but when you seek a Defendant's Cost Order you have to claim at an hourly rate, for comparison, a fairly typical hourly rate in London will be between £120 - £180 depending on the level of experience you want from your solicitor. Legal aid will pay £49 per hour in London.

So an innocent defendant who is facing an allegation in the magistrates court can expect to pay a substantial amount to exercise their "right" to have equality of arms with the prosecution, who will be represented at trial by a proper solicitor or barrister.

Decision of the Court - Article 2: The Court had already emphasised in previous cases that persons in custody were in a vulnerable position and that the authorities were under a duty to protect them. There were general measures and precautions available to diminish the opportunities for self-harm without infringing on personal autonomy. Lastly, the Court reiterated that in the case of mentally ill persons it was necessary to take their particular vulnerability into consideration.

The Court observed that as early as 11 June 1998, the day after his arrest, Kamel Ketreb had seen a psychiatrist from the Regional Medical and Psychological Service (RMPS) at the prison, as well as a psychologist. The Court further noted that it had been mentioned that some months before he committed suicide, Kamel Ketreb had already tried to commit suicide twice while placed in the punishment block. On 13 January 1999 the psychiatrist had noted that he talked quite openly about his intention to kill himself.

The days leading up to his suicide had been marked by violent incidents that bore witness, if not to a serious psychological crisis, at least to an alarming deterioration in his state of health. According to the experts, it was likely that his transfer to the punishment block had occurred at a time when his mental balance was already fragile. In their opinion the conditions of detention in the punishment block and the pronouncement of the judgment sentencing him to five years' imprisonment were what spurred him to action and predisposed him to take his own life, in addition to his mental condition, which was one of depression or considerable distress.

The Court had to determine whether the authorities had done all that could reasonably have been expected of them to prevent the risk of a new suicide attempt.

The Court noted that from the time when he was remanded in custody Kamel Ketreb had had access to general practitioners and specialists. He had been monitored by the doctor in charge of the drug addiction branch of the RMPS. The consultations were more or less frequent, depending on his changing mood, and he had also seen a psychologist from the prison two or three times a week. It also appeared from the expert opinion and the second opinion commissioned by the investigating judge that the treatments prescribed were justified by his psychiatric condition and his state of agitation.

The Court also noted a number of shortcomings, however. No particular notification had been given to the competent medical service prior to or at the time of the decision to place the prisoner in a disciplinary cell, and no special surveillance instructions had been issued to ensure the compatibility of the disciplinary measure with Kamel Ketreb's mental health. The Court pointed out that Recommendation R(98)7of the Committee of Ministers of the Council of Europe recommended that the risk of suicide should be constantly assessed by both medical and custodial staff.

The Court noted that the mention of the two suicide attempts by hanging in January 1999 when Kamel Ketreb was in the punishment block, his self-mutilation and his behaviour at the origin of the disciplinary measure should have alerted the authorities to his psychological vulnerability. It saw no particular reason to justify the failure to consult the psychiatric branch of the prison's RMPS, which was actually responsible for monitoring the prisoner's mental health. In the days preceding the suicide, different duty doctors from the Outpatient Unit had examined Kamel Ketreb during his stay in the punishment block and found him unwell. Yet they had not informed the RMPS, or requested the urgent assistance of an outside psychiatrist, even though, as revealed by the investigation division's judgment, a psychiatrist from the Sainte Anne Hospital Centre had been on duty.

It must have been clear to both the prison authorities and the medical staff that Kamel Ketreb's state was critical, and placing him in a disciplinary cell had only made matters worse. That should have led the authorities to anticipate a suicidal frame of mind, as had already

French Authorities Fail in Duty to Prevent Suicide in Prison

Chamber judgment in the case of Ketreb v. France(application no. 38447/09), which is not final', the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 2 (right to life) of the European Convention on Human Rights; and,

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

Case concerned suicide in prison, by hanging, of a drug addict convicted of armed assault.

The Court found that the State had failed in its duty to show particular vigilance to prevent a vulnerable prisoner from committing suicide.

Principal facts: The applicants, Houria Serghine, nee Ketreb, and Noura Khiat, nee Ketreb, are French nationals who were born in 1969 and 1975 and live in Montigny-Ies-Cormeilles and Sannois (France) respectively. They are the sisters of Kamel Ketreb.

On 10 June 1998 Kamel Ketreb was remanded in custody in La Sante prison (Paris) on a charge of armed assault, as a reoffender, against his partner, resulting in her total unfitness for work for more than eight days. The following day, having been a polydrug addict for several years, he was allowed to see a psychiatrist from the prison's Regional Medical and Psychological Service (RMPS), and subsequently continued to see the psychiatrist once or twice a month.

From July 1998 onwards he saw a psychiatrist between once and three times a week. On 4 October 1998 he was placed in the punishment block following an incident with a prison guard. On 8 January 1999 he was given a ten-day disciplinary sanction for insulting and jostling a member of staff, and on the same date a doctor prescribed him Mogadon and a Valium injection, and scheduled a consultation for him with a psychiatrist. The doctor mentioned in writing in the medical file that, according to the guards, Kamel Ketreb had already made two attempts to commit suicide. On 13 January 1999 a psych iatrist from the RM PS observed that he was not at a II well a nd seemed "capable of putting his suicidal inclinations into effect".

On 16 March 1999 Kamel Ketreb was sentenced to five years' imprisonment.

On 20 May 1999 he was brought before the disciplinary board for having wounded a fellow prisoner with a broken glass and insulted two prison officers. He was also accused of hoarding medicinal drugs. He was given two weeks in a disciplinary cell.

On his first day in the disciplinary cell he had to be moved to another cell after breaking a Plexiglas window. In the new cell he partly dislodged the concrete table, broke the sanitary fittings and hurled chunks of concrete at the window.

On 21 May 1999 Kamel Ketreb broke the window in the visiting room door when one of his sisters went to visit him, cutting his forearm and hand in the process. After that incident he was examined by a doctor from the Outpatient Unit, who gave him an anxiolytic. On 23 May 1999 a doctor from the Outpatient Unit found him unwell.

On 24 May 1999 the guard who did his round between 8 and 8.20 p.m. said that he had seen Kamel Ketreb standing in the middle of his cell. At 9.15 p.m. the same guard found him hanging from a bar of the inner door of his cell by a fabric belt fastened with a metal buckle. The prison medical staff and the emergency medical team attempted to revive him, but to no avail. His time of death was recorded as 9.30 p.m.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that the authorities had failed to take proper steps to protect their brother's life when he was placed in the disciplinary cell in La Sante prison.

Relying on Article 3 (prohibition of inhuman or degrading treatment), they complained that the disciplinary measure applied to their brother was unsuitable for a person in his state of mind.

Just so you know, the Legal Services Commission (LSC) guarantee you funding if your income is less than £12,475 p.a. or if you are on certain benefits. If your income is between £12,476 and £22,325 then you may or may not get funding depending on a number of factors and in the Crown Court you are likely to have to pay a contribution toward your defence, if your income is over £22,325 then you get nothing in the magistrates court and will have to pay a contribution of up to £900 p/m toward your defence in the Crown Court.

Is it fair that a completely innocent person is accused of a crime they didn't commit, refused legal aid and then prevented from recovering the fees they had to pay to prove themselves innocent?. The argument for bringing about this change in the Crown Court seems to be that legal aid is available (albeit with contributions) therefore all defendants should utilize it. That argument clearly doesn't hold up in the magistrates court where legal aid is not universally available. I cannot fathom the reasons for only allowing the innocent to recoup a fraction of the costs they spent defending themselves, other than it being a cynical and underhand ploy to make more people plead guilty on the basis that the fine is less than the cost of defending themselves Many defendants will be pleading guilty with no chance of appeal due to the fact they cannot afford to pay for a decent defence.

Closure of Forensic Archive A 'shambles', Experts Warn *Angus Crawford BBC News, 18/97/12*

Closure of the forensic science archive in England/Wales will cause miscarriages of justice and stop police solving crimes, senior politicians/scientists/lawyers have warned. The archive has been closed to save money, meaning forces will have to create individual storage systems. The Home Office said proper access to forensic records would be maintained. Archive of the Forensic Science Service (FSS) holds more than 1.7m case files - some more than 30 years old. The records are regularly used to investigate unsolved crimes, as well as for appeals against unsafe convictions. But in March, the government closed the FSS from taking on more material, arguing that it had been losing money. Now, each of the 43 police forces across England and Wales must arrange its own storage of future forensic records.

'Shallow decision': Responding to the move, the Association of Chief Police Officers said: "The closure of the FSS has encompassed issues related to the archive. "Acpo believes the consolidated FSS archive provides a safe, secure and efficient facility. "The FSS has worked very closely with Acpo, criminal case review commission, Crown Prosecution Service and the Ministry of Justice to ensure that continuity of service, security and probity of the archive remain paramount."

Yet the decision has drawn criticism from experts and campaigners. Alastair Logan -a member of the Law Society's Human Rights Committee who helped overturn the convictions of the Guilford Four, who were wrongly imprisoned for an IRA bombing in the 1970s - said the closure was an act of vandalism by the government. “I genuinely fear for justice - both in terms of victims and the Speaking to the BBC, Mr Logan also said the move would create a two archive "lottery" - one old and centralised, the other new and fragmented. You now have 43 forces keeping their own bits and pieces, in so far as they decide to keep them at all," he said. If a perpetrator of a rape, rapes in London and then Manchester, how will it be possible for the London people to know about the Manchester offence?"

Andrew Miller MP, chair of the science and technology select committee, also hit out against the change. He said: "They have destroyed a very valuable resource. They have put nothing in it's place and miscarriages of justice will occur," he warned. I genuinely fear for justice - both in terms of victims and the accused". Mr Miller said the closure was "a shallow decision, poorly thought out," and driven by a short-term policy to save money. "It really is

just another Home Office shambles." He also underlined the potential set-back to scientific advances: "Unless we get this right, the chances of exploiting new advances in science will be diminished and so justice will be the loser." 'Absolutely horrendous'

A Home Office spokesman said: "Police and criminal justice system continue to have proper access to forensic records to enable them to protect the public and bring criminals to justice". "The archive is under the guardianship of the Home Office and provides materials on request to authorised users. TCosts are kept under review to ensure value for money and we will consider the longer term approach to protecting archive materials with criminal justice partners."

However, BBC News has learned that no new funding or facilities have been made available to police forces to set up and maintain future storage. Instead, it will be up to individual forces to arrange for a contract with a private provider, or to store it themselves.

The old FSS archive is expected to receive £2m a year to sustain its operation and 21 staff. But Dr Peter Bull, an expert in forensic sedimentology from the University of Oxford, said the measures would be totally inadequate. "That's ludicrous - that's two sites. They've got to be like Fort Knox. Two million pounds a year won't pay for the paint to keep the walls clean."Dr Bull also warned the new archive system could lead to major miscarriages of justice, with innocent people being kept behind bars and some criminals remaining at liberty. "The one in prison will see his sentence out, the one who could have been detected will go scot-free," he said. "It's horrendous, absolutely horrendous."

Forensic Science Service (FSS) contains 1.78m case files. Some files date back more than 30 years. FSS Files are now stored at two sites in the West Midlands. The annual projected cost of storage and maintenance is £2m. FSS Archive employs 21 staff.Some 43 police forces in England and Wales are now responsible for future records

Tomlinson Case: Met Tried to Hide PC Harwood's Disciplinary Record

Files contained multiple assault allegations but police lawyers said disclosing them would have breached officer's privacy *Paul Lewis, guardian.co.uk, Friday 20 July 2012*

The Metropolitan police attempted to keep the disciplinary record of PC Simon Harwood secret from the family of Ian Tomlinson, the newspaper seller he struck with a baton and pushed to the ground at G20 protests, it can now be reported. Lawyers for the force tried and failed to argue that disclosing the litany of complaints about Harwood's conduct would have breached his privacy, saying the officer's disciplinary history did not have "any relevance" to Tomlinson's death. Harwood, 45, who was found not guilty of Tomlinson's manslaughter on Thursday 19th July 2012, had repeatedly been accused of using excessive force during his career, including claims he punched, throttled, kneed and unlawfully arrested people.

The jury in the trial were not told about the history of complaints, despite a submission from the Crown Prosecution Service, which argued that in two of the disciplinary matters he was accused of using heavy-handed tactics against the public "when they presented no threat". The application was rejected by the judge, Mr Justice Fulford, who said: "The jury, in effect, would have to conduct three trials." The inquest jury – which concluded last year that Tomlinson was "unlawfully killed" by the police officer – was also prevented from hearing the details of the complaints. The conclusion of the trial means it is now possible to report details of a pre-inquest hearing in February last year at London's Old Bailey.

The Met, represented by Samantha Leek QC, played down the significance of Harwood's disciplinary files, and argued they should not be shown to lawyers for the family, who at the time suspected they might be of relevance to his inquest. Arguing the files should be kept secret, the force said: "Disciplinary records concern the private employment data of an individual." Eventually, the Met was instructed to share the files with interested parties. When lawyers from Tomlinson's family were able to inspect the disciplinary records – which filled five lever-arch folders – they discovered detailed complaints containing several allegations of physical assaults.

In one case, a fellow police officer complained that Harwood grabbed a suspect by the throat, punched him twice in the face and pushed him into a table, causing it to break. In another, Harwood was accused of assaulting a driver after a road rage incident, and then altering his notes afterwards. In a third, a member of the public reported seeing Harwood kneeing a man in the kidney while he was handcuffed to the ground. Nine of the complaints were dismissed or unproven, but one, in which Harwood admitted he had gone into "red mist mode" before unlawfully accessing the police national computer, was upheld. Harwood was able to avoid disciplinary action by retiring from the Met, rejoining the force three days later in a civilian role and then reapplying to enter uniformed ranks – a move the police watchdog has said was "staggering".

Jules Carey of Tuckers solicitors said: "The Metropolitan police and PC Harwood's lawyers argued that the Tomlinson family should not be able to see PC Harwood's records as they said that they were not relevant 'to any issue to be investigated by the inquest' and that they were private. "It was surreal being forced to argue about the potential relevance of records without being permitted sight of them. When Ian's family did finally learn of the content of the records, they were shocked at the number of allegations and complaints that had been made about this officer." He added: "Their view remains, that if the disciplinary and vetting procedures actually worked in the forces that employed Harwood he would not have been on duty at the G20."

The Met said in a statement: "At the pre-inquest hearing into the death of Mr Tomlinson, the MPS was invited by the Coroner to offer a submission on the issue of disclosure of PC Harwood's disciplinary record. The MPS expressed a view that this should not be disclosed as it was not relevant to determining the cause of Mr Tomlinson's death and could potentially impact on any future criminal proceedings. The MPS further submitted, however, that the balance would lie in favour of disclosure if the Coroner determined that it was of relevance to establishing the cause of death."

Deborah Coles, co-director of INQUEST said: “This verdict is a damning reflection of the systemic problems inherent in the current investigation system where deaths following police use of force are not treated as potential crimes. This failure has profound consequences on the proper functioning of the justice system in relation to such deaths. It is vital that the rule of law is upheld and applies equally to all, including police officers, and that they do not believe that they can act with impunity. For too long there has been a pattern of cases where inquest juries have found overwhelming evidence of unlawful and excessive use of force or gross neglect and yet no police officer either at an individual or senior management level has been held responsible.”

Tomlinson Family statement: In April 2009, along with everyone else, we saw the shocking video of Ian being violently assaulted by PC Harwood just minutes before he died. After the unlawful killing verdict at the inquest last year - we expected to hear a guilty verdict today 19th July 2012. The NOT guilty verdict really hurts. But this is not the end, - we are not giving up on justice for Ian. There has to be one formal and final answer to the question “who killed Ian?”. And we will now pursue this in the civil court. The last three years have been a really hard uphill battle. We have had to deal with many obstacles, set backs and emotions on the way. It has been hard to keep going sometimes, it feels hard to keep going today. We do take strength from the support that we receive from so many members of the public.