uals to what was on offer in the establishment rather than a more sophisticated assessment of risk and a plan to reduce the likelihood of reoffending.

Provision across the resettlement pathways was reasonably good despite limited offending behaviour work, and the prison was confident in its use of temporary release to support resettlement. There was also some effective through the gate mentoring support for a number of released prisoners. As indicated on our last inspection, Thorn Cross continues to be a high performing and effective prison. In three of our four healthy prison assessments, we have awarded our highest marking, and managers and staff should be commended for this. This report highlights a small number of important issues requiring improvement and our recommendations will, hopefully, assist in that process. Nick Hardwick, HM Chief Inspector of Prisons

Bent Bars Project - P.O. Box 66754, London, WC1A 9BF

The Bent Bars Project is a letter-writing project for lesbian, gay, bisexual, transgender, transsexual, gender-variant, intersex, and queer prisoners in Britain. The project was founded in 2009, responding to a clear need to develop stronger connections and build solidarity between LGBTQ communities inside and outside prison walls.

LGBTQ people have a long history of being policed and criminalised (and of resisting that criminalistion) yet there are relatively few community resources to support LGBTQ prisoners. Although there are many LGBTQ community groups in Britain, most do not specifically address the issues of LGBTQ prisoners. Likewise, many prisoner support groups do not address the specific issues faced by LGBTQ people behind bars.

Although most overtly homophobic and transphobic laws have been overturned in Britain, the criminal justice system continues to target and criminalize queer, trans and gender non-conforming people. We don't know exactly how many LGBTQ people are currently behind bars, but we do know queer, trans and gender non-conforming people, particularly those from poor backgrounds and communities of colour, are disproportionately funneled into the prison system as a result of systemic discrimination, inequality and social exclusion. We also know that queer, trans and gender non-conforming people are often subject to increased isolation, harassment, violence and assault when in prison.

Bent Bars aims to work in solidarity with prisoners by sharing resources, providing mutual support and drawing public attention to the struggles of queer and trans people behind bars. The project also collects and distributes information for LGBTQ prisoners on a range of issues, including harm reduction practices (safer sex, safer drug-use), HIV and HepC prevention, homophobia, transphobia, coming out in prison, etc.

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 380 12/07/2012)

Five Cleared of Murder 'after Police Hid Key Report' *Paul Peachey, 05/07/12*

The murder convictions of five men for a gangland-hit were quashed after damning reports were withheld detailing how police handlers took a key witness out drinking to nightclubs and turned a blind eye to his criminal behaviour, the Appeal Court said yesterday 04/07/12. Three judges said that the defence teams of the alleged killers were denied an important report that showed that members of Staffordshire police were part of a "dysfunctional" team fractured by in-fighting, whose honesty and integrity were open to question and whose paperwork could not be trusted. The report was ordered by one of four senior police officers currently under criminal investigation over allegations that key material was withheld from the court which led to the quashed convictions.

Five men were given sentences of more than 135 years for murdering the drug dealer Kevin Nunes, 20, following a trial in 2008 based largely on the evidence of Simeon Taylor, who allegedly drove the alleged killers and the victim to the scene of the hit. Mr Nunes, an amateur footballer once on the books of Tottenham Hotspur, was found dead in a country road in Staffordshire following a drugs feud. The convictions of the five were quashed in March after the manager of the Sensitive Policing Unit of Staffordshire Police claimed that there was "corruption, falsification and dishonesty" within the team, and clashed with other members as he tried to make it more accountable and transparent.

The inspector claimed that Mr Taylor was being kept on the witness protection programme "at any cost" and there was an understanding that he would get £20,000 reward money. Officers were accused of turning a blind eye to alleged wrongdoing by Mr Taylor including him claiming back £320 for an unused hotel room paid for by police to keep him onside before he gave evidence. One officer with access to key documents in the case was accused of having an affair with one of the witness handlers at the same hotel where he was being kept before the trial. A management review found that the officers' conduct was "totally unprofessional" but details of the relationship were not handed to defence teams who could have questioned whether key information was passed to Mr Taylor, the court found.

Lord Justice Hooper said that the defence was never told that the inspector was in a position to give evidence that "would have seriously undermined both the credibility of Simeon Taylor" and the integrity of his handers. The judge said that if the information had been available at the trial, the judge might have stopped the proceedings "on the grounds that there had been gross prosecutorial misbehaviour". An inquiry is being carried out under the auspices of the Independent Police Complaints Commission over allegations that material was withheld from the court. Four senior police officers from three forces are under criminal investigation including Northamptonshire Chief Constable Adrian Lee and his deputy Suzette Davenport – who ordered the management review – and who both served in the Staffordshire force.

Begum v West Midlands Police [2012] Divisional Court 3rd July 2012

The appellant had kept over £7,000 in her handbag, in the knowledge that it would affect her entitlement to benefits if it were to be placed into her bank account, in an attempt to deceive the Department of Work and Pensions. The court allowed her appeal against its forfeiture (POCA, s 298(2)) by a magistrates' court on the grounds the cash was not intended to be 'used in unlawful conduct'.

Preston Prison Officers Admit Charges After Cell Death BBC News, 05/07/12

Christopher Oldham was found hanged in his cell in HMP Preston on 21 April. He was on remand after being accused of perverting the course of justice. Two married prison officers have admitted misconduct and perverting the course of justice after the death of a 36-year-old inmate. At Preston High Court, Shaun Percy, 50, of Walton-le-Dale, admitted misconduct in a public office. His wife Lisa, 50, pleaded guilty to perverting the course of justice. Shaun Percy failed to carry out mandatory cell checks on prisoners who were assessed as feeling suicidal and falsely recorded he had carried out these checks. Lisa Percy, the senior officer on the night of his death, was charged with making entries in her husband's name falsely recording that he made two further checks on Mr Oldham. The pair are due to be sentenced on 11 September

Chicago: Andre Davis freed from Jail after 32 Years as Murder Conviction Quashed

A Chicago man who spent 32 years behind bars before DNA evidence helped overturn his conviction for the rape and murder of a three-year-old girl has been released from prison.

The Illinois department of corrections said 50-year-old Andre Davis had left the super-maximum security prison in Tamms in far southern Illinois at about 7.30pm on Friday 6th July 2012, hours after the local state's attorney agreed to drop the case against him. An Illinois appeals court ordered a new trial in March. Tests found that DNA taken from the scene of the 1980 killing of Brianna Stickle in Rantoul was not his.

According to the Center on Wrongful Convictions at Northwestern University, Davis is among 42 former inmates who have been exonerated by DNA evidence in Illinois. Of those, he served the most time behind bars. Associated Press, guardian.co.uk, 07/07/12

Serco Shackling Detainee for 8 days Breached Article 3

High Court judgement - FPG (Liberty, Hugh Southey) - Decison effects prisoners

FPG was restrained and attached to security staff at all times, 24/7, during nearly 9 days hospiatlisation. This included while showering and using the toilet, as well as during medical consultations and treatment and while asleep. There was nothing in FGP's history to suggest he would abscond from custody.

The high court judge found that Serco, the private company that runs Colnbrook, acted in violation of the detainee's right not to be subjected to inhuman and degrading treatment. The judgement notes that "... nor were there any requests from medical staff to remove restrains".

Summary by Liberty: "Our client 'FGP' was detained in an immigration detention centre pending his removal to Algeria, which he was trying to challenge. He already suffered with depression, having lost a wife to cancer, having suffered the death of a baby girl and the death of his teenage son in a drowning accident. In immigration detention he developed severe abdominal pain which resulted in his emergency hospitalisation for almost 9 days. At all times he was restrained by either ratchet cuffs or closet chains – which are handcuffs at the end of a chain which is then attached to a security officer. The security company running the centre and which was responsible for his treatment was Serco.

During his hospitalisation FGP was restrained and attached to security staff at all times, 24/7. This included while showering and using the toilet, as well as during medical consultations and treatment and while asleep. This was despite the fact that FGP was in a separate room on the 6th floor of the hospital and any security concerns could have simply been addressed by posting officers at the door of his room. In any event there was nothing in FGP's history to suggest he would

Report on an announced inspection of HMP & YOI Thorn Cross

Inspection 13–17 Feb 2012 by HMCIP, report compiled Apr 2012, published 06/07/12

Inspectors were concerned to find that:

- in some cases, formal disciplinary procedures were too easily invoked;
- arrangements to promote diversity were mixed, and the persistent negative perceptions held by some black and minority ethnic prisoners required more attention;
- view of a significant minority that staff were often petty in their attitudes towards some prisoners
- there was a needless and excessive practice of segregating foreign national prisoners when they first arrived in order to check their status again; and
- offending behaviour work was limited.

Introduction from the report: This is the latest in a series of good inspection reports of the open establishment, HMP & YOI Thorn Cross, near Warrington. In recent years, the population profile of the establishment has altered and it now holds young adult prisoners from the age of 18 up to 25. Change, however, does not appear to have effected performance and our findings suggest that this is one of the better establishments in the prison estate.

Thorn Cross continued to be a safe prison. Prisoners reported feeling safe and levels of violence were low and were reducing further still. Far from there being any sense of complacency about this, instances of anti-social behaviour were properly challenged with a number of meaningful interventions or options to address violent or bullying behaviour. Incidents of self-harm were similarly low, but again, those in crisis were well cared for.

Security was appropriate and proportionate to the requirements of an open prison environment and abscond rates were low. However, the application of some rules was unnecessary and, in our view, formal disciplinary procedures were too easily invoked. The segregation unit was a good facility, and although the level of throughput was high, stays were not excessive.

The general environment was reasonably good, although some facilities could have benefitted from refurbishment. Overall, our assessment of the quality of staff-prisoner relationships was positive, but it was the repeated view of a significant minority that staff were often petty in their attitudes towards some prisoners. Arrangements to promote diversity were mixed with some aspects being weak. The persistent negative perceptions held by some black and minority ethnic prisoners, required more enquiry and attention. We were also concerned about the needless and excessive practice of segregating foreign national prisoners when they first arrived in order to check their status again, which were issues that should have been dealt with prior to allocation.

Prisoners' complaints and applications were dealt with adequately but quality assurance arrangements could have been better. Provision of health care was good. Prisoners' perceptions about the food were poor despite some reasonable menus and opportunities to dine in association.

The provision of activity was very good. Learning and skills management was effective, with a clear focus on resettlement. There was sufficient activity to occupy all and recent increases in the amount of vocational training on offer.

The number of prisoners able to work out in the community had also increased significantly with up to 60 working out daily. The majority of prisoners were engaged in some form of learning and skills, and the quality of what was on offer was good with an increase of just under a third in the number of learners achieving qualifications.

Resettlement provision seemed to have improved since our last visit. There was a reasonable strategic focus on resettlement despite an only partial analysis of specific prisoner need.

All prisoners had a sentence plan, although these concentrated more on matching individ-

in open court. There are likely to be further arguments in that case about the evidence which Azelle's family may hear. If the Bill goes through, the danger is that there will be many more cases where victims of police misconduct – whether it is repeated stops and searches, assaults, wrongful detention or pre-emptive orders such as those issued to keep suspected trouble-makers away from the Olympic stadium – who are denied redress on the basis of evidence they are not allowed to hear and cannot challenge.

Wider impact: But the encroaching secrecy for government officials in our courts has more wide-reaching and profound effects. Security service and police agents engaged in sensitive operations, knowing there is no risk of public scrutiny of their actions, inevitably cut corners and gradually a culture of impunity develops, a contempt for the rule of law. And those subjected to that abusive culture will have it confirmed, once again, that there is no redress for them in the courts – a knowledge which can only lead to more 'justice by other means' on the streets.

Life Imprisonment Nick de Bois: To ask the Secretary of State for Justice how many prisoners serving life sentences are held in (a) closed prisons and (b) open prisons. [115363]

Mr Blunt: As at 31 March 2012 there were 7,819 prisoners serving life sentences, of which 7,226 were in closed prisons and 593 in open prisons in England and Wales. The figures for open prisons include those held in open prisons/YOIs and the relevant parts of multi-site establishments. It does not include those held in semi-open prisons or in small (under 50 place) open units at closed prisons. These figures have been drawn from administrative IT systems which, as with any large scale recording system, are subject to possible errors with data entry and processing. The numbers of such prisoners held in category D/open conditions will depend on how many of those prisoners pass the necessary robust risk assessment and the availability of spaces in the open prison estate at any one time. All murderers will be serving indeterminate sentences. Depending on the minimum sentence or "tariff' and the risk they pose, such prisoners, move through their sentence via a series of progressive transfers into lower security establishments in the closed prison estate. The decision to transfer indeterminate sentenced prisoners (ISPs) to open conditions is a categorisation decision which is a matter for the Lord Chancellor and Secretary of State for Justice, my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke). The Secretary of State may take this decision after seeking advice from the Parole Board or executively where the prisoners have demonstrated exceptional progress in closed conditions.ISPs are normally considered for recategorisation to open conditions no earlier than three years before the end of their tariff. Moving ISPs to open conditions is an important part of the offender's rehabilitation. It tests their suitability for eventual release while still maintaining many of the restrictions of a closed prison. Should the offender's behaviour in open conditions give rise to concerns, he/she can be returned to closed conditions.

Nick de Bois: To ask the Secretary of State for Justice what account is taken of the views of the family of the victim in deciding to transfer a person convicted of murder to an open prison.

Mr Blunt: Under the statutory victim contact scheme operated by Probation Trusts, by virtue of Section 35 of the Domestic Violence, Crime and Victims Act 2004, victims of certain serious sexual or violent crimes, including victims bereaved by murder, where the offender has been sentenced to 12 months imprisonment or more may elect to receive information about key developments in the offenders sentence. This includes notification that a prisoner is being considered for a move to an open prison and the outcome.

When a prisoner is being considered for allocation to open conditions, where the victim lives is one of the factors taken into account in determining to which open prison he should be transferred, if a transfer is approved.

abscond from custody. FGP found the experience humiliating and distressing – he described walking in front of other patients in handcuffs, the degrading experience of having to use the toilet in front of security staff and the lack of sleep because officers would talk all night. He described pleading with the staff and pointing out that he was not a criminal.

The Court found that to have restrained FGP in this way throughout his admission to hospital was a violation of his right not to be subjected to inhuman and degrading treatment and was therefore in violation of Article 3 ECHR. The judge noted that FGP was co-operative and very concerned for his own health. It must have been clear, he said, the FHP was a vulnerable man. The judge accepted the evidence that FGP was degraded and humiliated by the treatment meted out to him by Serco staff and that they had failed to consider whether an alternative way of dealing with the matter might be found. The judge added "The officers presence in, or if it was possible to see into the room, outside the door was surely all that was needed".

The judge was also critical of the Secretary of State's policy regarding restraint during medical treatment. He noted that the policy had been criticised before for being "over zealous" and was concerned to note that "little seems to have been done to meet those concerns." He added, "I can only express the hope that those observations will not only be noted but applied."'

Mairi Clare Rodgers, Director of Media Relations, Liberty, 020 7378 3656

New Law to Tackle Child/Vulnerable Adult Harm in Force

Domestic Violence, Crime and Victims (Amendment) Act 2012 is fully in force as of 2 July 2012. The 2012 Act extends the offence of causing or allowing the death of a child or vulnerable adult in section 5 of the 2004 Act ("the causing or allowing death offence") to cover causing or allowing serious physical harm (equivalent to grievous bodily harm) to a child or vulnerable adult ("the causing or allowing serious physical harm offence"). It also inserts a new section 6A into the 2004 Act. Section 6A contains procedural and evidential provisions, similar to those at section 6 of the 2004 Act, which apply where a defendant is charged with the causing or allowing serious physical harm offence and with an offence against the person or an offence of attempted murder arising from the same serious physical harm.

Justice? Not if defendants can't engage fully with the trial

The criminal justice system isn't doing enough to support those who struggle to communicate fluently or follow the court process *John Podmore, guardian.co.uk, Saturday 30 June 2012*

The basic tenet of a fair trial is that the defendant must understand what he or she is charged with, what the process entails and how they can best defend themselves. We currently breach this important aspect of our legal system in a number of ways.

The first is with the criminal age of responsibility. In England, Wales and Northern Ireland it is 10 years, lower than many other countries and to the eternal shame of a civilised society. In China it is 14 for serious crimes and 16 for all other offences. In South Africa there is a rebuttable presumption that a child between the ages of 10 and 14 lacks criminal capacity. Even in Iran it is 15 for boys (but 9 for girls). However "child friendly" a court attempts to be I would contend that no 10-year-old child would have the remotest idea what was going on in any court case, let alone one involving grave crimes.

Even if we raised the age of criminal responsibility, the Prison Reform Trust has pointed out problems with the huge numbers of people with learning difficulties who populate our criminal justice system. They are supplemented by those with mental health, drug and alcohol prob-

lems, all of which impinge on an individual's ability to defend themselves.

And we should not forget the many foreign nationals we prosecute. Brits abroad tend to get a sympathetic press when struggling in foreign judicial systems but the sympathy is not replicated at home, as translation services are contracted out and increasingly difficult to access.

There are also those with basic communication problems. The Royal College of Speech and Language Therapy has been working tirelessly to bring these issues to public attention. Their work has shown that more than 60% of young people in the criminal justice system have a communication disability and 46% to 67% of these have poor or very poor skills. These young people therefore struggle to understand and convey thoughts, feelings and anxieties. Many are unable to understand their own actions, let alone convey any reasoning behind them to a judge and jury in forbidding settings.

The problems of these groups are accentuated as court processes embrace plea-bargaining as a way of "speeding up" justice and reducing costs. For the emotionally and intellectually adept who can afford a lawyer and have the benefits of advocacy it can be a win-win situation between them and the law.

For the vulnerable it can simply be another component in a bewildering process where not only might the penalties be disproportionate but the innocent may not go free.

Once a trial is over and the sentence begins the system continues to punish disproportionately. Interventions in prison to deal with offending behaviour, drug misuse, anger management, sexual dysfunction and everything else which the system should address are primarily geared towards white, English-speaking 30-something men who can read and write. There are too few of them but virtually none for those who are unable to engage and co-operate and lack the advocates outside to argue their case.

In an adversarial justice system we need to ensure we protect the vulnerable – and yes, that must begin with the victim. But trust and respect for the law are the main factors that encourage people to accept and follow the law. People will obey the law if they think the system is fair. As we sweep ever more people into the criminal justice system, we should ask ourselves if we are losing that ideal of fairness.

How Many Wrongly Convicted over Secret Work of Police Spies? guardian.co.uk, 06/07/12

Police and prosecutors are coming under more pressure over the secret activities of undercover police officers. The long-running police operation to infiltrate political groups continued to unravel this week, after the Director of Public Prosecutions disclosed that a second group of environmental campaigners may have wrongly convicted.

On Tuesday Keir Starmer, the DPP, announced that a senior prosecutor may have withheld vital evidence about police spy Mark Kennedy from another trial of activists. As we reported here, Starmer has invited the 29 activists convicted in 2009 over a protest at the Drax power station to challenge their convictions at the court of appeal.

This is potentially a significant development that begins to undermine the official line that the first case, the Ratcliffe-on-Soar miscarriage of justice, was a one-off, isolated failure by police and prosecutors. Starmer's announcement may be the beginning of the end for the "one rogue prosecution" argument propagated by the authorities. It in effect concedes that the controversy over the undercover policing of protest groups could be bigger than police and prosecutors have so far been willing to admit.

To recap, the court of appeal last year quashed the convictions of 20 campaigners who

The main provisions: The Bill says that in civil proceedings, a court must order a closed material procedure (CMP – where evidence is heard in the absence of one party, his lawyers, the press and the public) at the request of a government minister if disclosure would damage national security. The decision will be taken by a judge, a point which the Lib Dems claim as a huge victory which enables them to support the Bill (in the Green paper, the closed procedure was at the minister's dictation).[5] But their celebration is disingenuous – if there is any potential damage to national security, the judge has no discretion to allow disclosure in the public interest or in the interests of justice or fairness. Nor can he or she consider alternative ways to protect national security, such as redaction, anonymity orders, 'confidentiality rings' (where the material is disclosable to parties and their lawyers on confidentiality undertakings, but not to outsiders), or public interest immunity (where sensitive material is excluded altogether). In reality, the judges' hands are to be securely tied.

Although closed material procedures are to apply only where national security is at stake, on the face of it a narrower range of circumstances than under the Green Paper (which would have allowed CMPs in any case where it was 'in the public interest' not to disclose evidence), the Bill's failure to define national security allows the term to be stretched to infinite elasticity. The minister has said that CMPs would not be issued where the evidence related to non-terrorist crime and other government responsibilities, but a minister's word is not binding. As Justice points out in its briefing,[6] the government's own national security strategy document covers a huge range of risks, ranging from cyber-attacks to flooding, epidemics, organised crime, disruption to energy and food supplies – a list likely to be used by government lawyers seeking to expand the range of material which can be kept secret. In national security, it is well known that 'exceptional' measures soon spread and become normal.he Bill also rules out any disclosure of 'sensitive' material sought by someone in legal proceedings involving a third party (the Binyam Mohamed situation). Again, the judge has no discretion, and material does not have to impact on national security to be concealed. It can just be embarrassing, as the material the security services sought to conceal in Binyam's case was, revealing misconduct and collusion with torture.

The Bill does not subject inquests to the same rules, although this was proposed in the Green Paper (the third attempt in recent years to subject state killings to secret evidence regimes, following the parliamentary defeat of similar provisions in the 2008 Counter-Terrorism Bill and the 2009 Coroners and Justice Bill). But once again, there is a sting in the tail of this victory: the Bill would allow ministers to add inquests (and any other types of proceeding) by regulations, thereby avoiding full parliamentary debate. There is no guarantee in the Bill that this wouldn't happen.

The impact: If the Bill becomes law, it is the over-policed Muslim and black communities which will once again be most directly affected, and it is not only attempts to hold the security services to public account which will be blocked. Policing of black communities is already almost wholly unaccountable, as the families of Azelle Rodney and Mark Duggan, both victims of police shootings well know. The Duggan family have no answer to their questions as to why Mark was tracked across London by thirty-one officers before his fatal shooting in Tottenham on 4 August 2012. Azelle Rodney's family are no wiser about the operation leading to his killing at point blank range over seven years ago in April 2005, since his inquest was abandoned when officials withheld crucial evidence. The counsel for the public inquiry into his death which is to begin hearings in September has rejected the government's claims that the evidence must be kept secret. Following legal arguments, the judge has ruled that the officers are to remain anonymous but that all except the one who fired the fatal shots must give evidence

completed a “wrong-doing report” raising concerns about the safety of the boy’s cousin. A professional standards officer then examined his work and he was told he had made his position untenable. He resigned in 2011. The hearing continues. Telegraph, 04 Jul 2012

Justice and Security Bill will Diminish Accountability *Frances Webber for IRR*

A bill currently going through parliament threatens to close off justice from those at the sharp end of policing by extending secret evidence to civil proceedings. On the face of it, the provisions of the Justice and Security Bill appear eminently reasonable. In civil proceedings (such as claims for damages), judges must withhold evidence from claimants if disclosure would damage national security. What is wrong with that? Surely only terrorists and their sympathisers could object.

But the Bill has attracted strong opposition, not only from organisations concerned with justice such as Liberty and Justice, but also from government-appointed lawyers who might be expected to support it. Special advocates, who act on behalf of those denied sight of evidence against them in national security-linked deportation cases and in proceedings where terrorist prevention and investigation measures (TPIMs) are challenged, are among those who say the Bill’s provisions are unnecessary, inherently unfair, will diminish confidence in the justice system and could lead to gross miscarriages of justice such as people being sentenced to death abroad for want of exculpatory evidence from the British security services. Their opinion carries weight, not only because they know closed material procedures from the inside and so are better qualified than most, including ministers, to assess their impact on the justice system, but also because they are presented by the government as the solution, the way justice can be done when national security prevents full disclosure to claimants and their own lawyers.

The Joint Parliamentary Committee on Human Rights has also been strongly critical of the proposals to extend secret evidence regimes to ordinary civil claims. Responding to the Green Paper which foreshadowed the Bill, the Committee accused the government of not providing evidence to justify closed material procedures, which were inherently unfair and would have profound and unconsidered effects on media freedom and democratic accountability.

The background to the Bill: The government decided it needed to extend so-called closed material procedures to civil proceedings because of two cases involving Muslims held at Guantánamo. Binyam Mohamed faced capital charges on the basis of confessions he claimed were obtained by torture in US custody. He sought disclosure to his security-vetted US lawyer of Foreign Office files which proved his claims true. But the files, which included intelligence material from US sources, also proved active complicity in his torture by British intelligence. Government lawyers tried hard to resist disclosure, which ministers claimed would irreparably damage UK-US intelligence relations and could put lives at risk as the US intelligence agencies would refuse to pass on material pointing to terrorist threats to the UK. Judges rejected the argument, largely because by the time they heard Binyam’s application for disclosure of the documents in 2010, the evidence had already emerged in the US courts and been accepted as true.

The following year, the Supreme Court rejected the government’s plea for secrecy when Binyam, now released, and other former Guantánamo detainees sued the government for damages for their wrongful detention, rendition and complicity in their torture and mistreatment abroad. Responding to government claims that the procedures would be fair because the judge would see all the evidence even if claimants wouldn’t, the law lords pointed out that ‘evidence which is unchallenged can positively mislead’. The closed procedures sought by the government breached fundamental common-law principles of open justice and fairness, they ruled.[4]

had been plotting to occupy the Ratcliffe-on-Soar power station in Nottinghamshire in 2009. The judges ruled that basic principles of justice had been ignored as prosecutors and police withheld key evidence which could have acquitted the campaigners. That evidence consisted of secret recordings made by Kennedy of the activists' private meetings. The appeal court judges said they shared the "great deal of justifiable public disquiet" about the case.

Activists have been demanding a comprehensive inquiry to establish whether key evidence gathered by undercover officers has been concealed from other trials of activists, causing other miscarriage of justices.

As we blogged in more depth here and here, the government and Starmer have been rejecting this demand. But that position is now looking a bit shakier, after the second (so far potential, although it would be surprising if the court of appeal does not clear the Drax activists) miscarriage of justice emerged this week. To many, the practice of withholding crucial evidence begins to look much more routine.

So far, the public only knows about the two cases - at Ratcliffe and Drax - primarily through the efforts of the activists and their legal representatives to uncover the activities of one of the undercover policeman who had infiltrated their ranks (Kennedy).

The question is - how many other times since 1968 have police/prosecutors kept secret key evidence gathered by other undercover police officers, whose identities and activities remain secret?

Mike Schwarz, the lawyer for the Drax activists, called for police and prosecutors to be more open with the public and to "do a lot more to make amends" for past failings.

It is noticeable that Starmer took some time before making his decision over the Drax activists. Schwarz, of the Bindmans law firm, raised the Drax case with Starmer in March last year. The DPP took several months before commissioning the first of two reviews. The results of the second review were sent to Starmer in April.

It's worth reading this analysis from the Bristling Badger blog of why the Ratcliffe and Drax cases may only be the tip of the iceberg. As ever, the question is whether, in the face of accusations of a sustained cover-up, the approach taken by the police and prosecutors is inspiring public confidence and trust.

Courts should take note of Strasboug’s doctrine of deference by Rosalind English

R(on the application of S and KF) v Secretary of State for Justice

This case about prisoner’s pay provides an interesting up to date analysis of the role of the doctrine of “margin of appreciation” and its applicability in domestic courts.

Margin of appreciation is a doctrine of an international court: it recognises a certain distance of judgment between the Strasbourg court’s overall apprehension of the Convention principles and their application in practice by the national authorities. In theory it has no application in domestic disputes but ever since the Human Rights Act introduced Convention rights into domestic law there has been an ongoing debate about its applicability at a local level. This case demonstrates the importance of its role in the assessment, by the courts, of the compatibility of laws and rules with Convention rights.

Background facts: Two prisoners sought to challenge by way of judicial review part of the prison rules which allowed the prison governors to make certain deductions from their earnings to pay into a victims’ support fund. They invoked the right to peaceful enjoyment of possessions under Article 1 Protocol 1 and in the case of KF, a female prisoner, the right to enjoy Convention rights without discrimination; Article 14 was said to be engaged because the

levy had a disproportionate effect on women's ability to earn an income. It was also argued that the rules violate Article 7 because they have the effect of imposing a heavier penalty than the one applicable at the time the criminal offence was committed.

The Prisoners Earnings Act 1996 Act applies to prisoners doing work they are not required to do in accordance with the prison rules and for which they earn an enhanced rate of pay. Implementing the Act was part of the Government's drive to make prisoners pay their debt to society and to victims of crime in particular. Deductions or levies are taken or imposed, after tax, National Insurance and other court-ordered payments, from earnings over £20 per week, subject to a 40% maximum rate. These deductions or levies are then provided to Victim Support. Because the Act stipulates that governors may impose a levy it is open to governors to decide not to do so in a particular case. Guidance is given in the Prison Rules for the exercise of that discretion, for example where the imposition of a levy would lead to the prisoner or their family suffering severe financial hardship, or where their travel costs to work are substantial in proportion to their earnings.

Because there is a discretion, not an obligation, to impose this levy, any prison governor deciding whether to exercise that discretion or not in the case of a prisoner is obliged, as a public authority (section 6(1) of the HRA), to act in a way that is compatible with the prisoner's Convention rights under that Act. Accordingly, if following the guidance in the prison rules would involve the prison governor in a violation of the prisoner's rights under A1P1 or Article 14, the governor would have to disregard the guidance.

The claimants submitted that the effect of the guidance and the rules was to create very tight limitations on governors' discretion to relieve prisoners from having deductions made from their enhanced earnings. They contended that the deduction out of prisoners' earnings, subject only to allowing relief in exceptional cases, and the payment to victim support (rather than, say, to support the prisoners' own families) involved breaches of their Convention rights.

The judgment: The challenge was dismissed on all grounds. In Sales J 's view, the deductions proposed to be made from prisoners' enhanced earnings were closely analogous to a tax to be levied on them, hypothecated to the purposes of victim support. They reflect social and economic judgments made by Parliament and the Secretary of State as to whether and what reparation payments should be made by prisoners, and as such, there was a wide margin of appreciation which the Strasbourg Court applies in such cases under A1P1. That court will only find that the state has acted in violation of A1P1 if it proceeded on the basis of a judgment in relation to action taken to promote a legitimate public interest which was "manifestly without reasonable foundation": James v United Kingdom (1986) 8 EHRR 123.

In this case, in light of the wide margin of appreciation which is applicable, the judge considered that there was "a reasonable relationship of proportionality between the means employed and the aim sought to be realised and that a fair balance is struck between the general interests of the community and the requirements of the protection of the individual prisoners' fundamental rights". Working outside prison is an entirely voluntary matter for a prisoner, so it is their choice whether, knowing of the deductions regime, they will wish to continue to do so.

The judge rejected the claimant's submission that the court was not entitled in these domestic proceedings to take the benefit of the margin of appreciation which would be afforded by the ECtHR to the United Kingdom as an ECHR Contracting State in proceedings in Strasbourg. It is not so easy to separate out the content of the rights from the application of the margin of appreciation; for example the margin of appreciation may be central to deter-

been brought to English courts over the last 11 months. More than two-thirds of cases related to the riots in London. Of those defendants, 27% were aged 10-17 and 26% 18-20. Only 6% of those appearing before the courts for the disorder were aged 40 or over. Exactly half of the cases were for the offence of burglary, indicating the extent to which the disorder was characterised by widespread looting.

The CPS said in a statement: "The disorder last summer brought unprecedented circumstances for the criminal justice system. The CPS has been pleased to take part in what is likely to become an important piece of historical research into the reasons, the reactions and the criminal justice system's swift response in a very challenging environment."

Reading the Riots, a study sponsored by the Open Society Foundations and Jospeh Rowntree Foundation, has interviewed almost 600 people directly affected by last summer's riots, including 270 rioters and 130 police officers. The project, a unique collaboration between the Guardian and LSE involving a diverse team of researchers, academics, analysts and journalists, has been the largest and most detailed study into the England riots.

Detective ordered to rewrite report that criticised child abuse investigationhears

Robert Krykant was accused of "airing our dirty washing in public" by the assistance chief constable and was made to take out the criticism. Asst Chief Constable Andy Taylor, who was last week awarded the Queen's Police Medal, told his detective sergeant there was "no need to self-flagellate" by publishing criticism of Thames Valley Police. Details of the order were disclosed at an employment tribunal where Mr Krykant, a former detective sergeant, is suing the force for constructive dismissal as a result of protected disclosures he made.

The 57-year-old said that after writing the review he was victimised and harassed by managers. He said he was pressured to change reports, asked to leave his department and then told to find a new job. He said in his witness statement: "I was restricted in my duties from carrying out my role, without any proper justification, given a performance action plan and had my professional status and judgment seriously undermined with my staff and with colleagues. "Ultimately, I was left with no option but to resign from a job to which I had successfully devoted 35 years of my life."

In 2009 Mr Krykant, who was detective sergeant on the Oxfordshire Child Protection and Sexual Crimes Unit, was reviewing a case involving a four-month-old boy who died from head injuries having been shaken by his uncle. Concern was raised for the welfare of the child's 15-month-old cousin, and daughter of the uncle, who was believed to have been present when the baby was injured.

The tribunal, in Reading, heard that it was a statutory requirement to produce an Individual Management Review after cases involving the death or serious harm to a child to see what lessons could be learnt. In his report, Mr Krykant claimed that his colleagues had failed to check the welfare of the boy's cousin and officers had not responded to phone calls from social workers the next day, trying to establish her whereabouts.

He said that there was a lack of information being shared between police and social workers which resulted in the girl being left with a possible suspect. He also claimed that an officer, when obtaining search and arrest warrants, falsely claimed on oath that the boy's uncle had indecent images of children on his mobile phone. But it turned out that the uncle, who was living with his daughter, only had images of adults on his phone and was released on bail after the error. He was eventually jailed for six years for manslaughter of his nephew.

Mr Krykant was later pressured to change his report to suggest that the necessary welfare checks were carried out but just not recorded, the tribunal heard. In May 2010 Mr Krykant

Rapid Riot Prosecutions more Important than Long Sentences, says Keir Starmer

Director of public prosecutions challenges received wisdom that heavy sentences for rioters worked as an effective deterrence Fiona Bawdon, Paul Lewis and Tim Newburn, guardian.co.uk, 03/07/12

Britain's most senior prosecutor has questioned whether heavy sentences given to last summer's rioters worked as an effective deterrence, challenging the received wisdom from senior judges and politicians. Keir Starmer QC, the director of public prosecutions, said the speed with which rioters and looters were brought before the courts was far more powerful in preventing reoffending than the severity of sentences. Senior figures ranging from court of appeal judges to David Cameron have strongly endorsed the tough message conveyed by handing down significantly longer sentences to rioters than they would have received for similar offences committed at other times.

Starmer, who said the riots would go down in history as an example of how the criminal justice system coped with a unprecedented challenge, was the most senior of 65 prosecutors and defence lawyers who were interviewed for the Guardian and London School of Economics investigation into the civil unrest that spread across England. "I was not so persuaded the sentences in and of themselves were the real issue," he said. "For me it was the speed [of processing cases] that I think may have played some small part in bringing the situation back under control. I don't think they [rioters] would have thought: 'Oh well, am I going to get 12 months or 18 months?' I don't think people gamble on the length of sentence, particularly. They gamble on: 'Am I going to get caught? Am I going to get sentenced and sent to prison?' And if the answer is: 'I'm now watching on the television some other people who had been caught 24 hours or 48 hours after they were on the streets with us' - I think that's a very powerful message." The Crown Prosecution Service recently announced a scheme to fast-track the trials of people accused of offences linked to the Olympics, based on last summer's experience of quickly dealing with riot cases. A detailed insight into how courts coped with the surge in cases that followed the August riots is contained in the confidential testimony of lawyers on both sides of the justice system. Other findings in the final instalment of the Reading the Riots series include:

* The countrywide experiment in using night courts raised concerns, particularly among defence lawyers, who argued they were chaotic and disorganised, to the point where the safety of vulnerable prisoners was compromised. Starmer also raised questions over whether night court sittings should be repeated.

* Overall, most defence lawyers and prosecutors said the courts coped better than might have been expected after the riots. Many felt that the courts handled the logistical challenge of so many cases, not least because at the time there was no blueprint for dealing with an emergency of that kind.

* Many defence lawyers believed due process was sacrificed for expediency in the rush to process the first wave of riot cases, with complaints of "panicky" judges declining to assess cases on their individual merit, implementing what appeared to be a blanket policy of declining bail and, in the words of one lawyer, dispensing "conveyor-belt justice".

* Lawyers raised complaints about the treatment of their younger clients; one example was a 14-year-old held in police custody for 36 hours. More than a quarter of those prosecuted for riot-related offences were aged 17 or under. Young people were six times more likely to receive custodial sentences if the offence occured during the riots.

* Most prosecutors - in contrast to Starmer - fully endorsed the sentencing approach by judges that saw rioters receive an average sentence of 16.8 months, making the penalties four and half times longer than the average jail term for similar offences in 2010. Most defence lawyers objected strongly to the sentences given.

The Ministry of Justice announced last week that 3,051 riot-related cases had

mination whether a state owes a positive obligation under Article 8(1) – see Evans v United Kingdom (2008) 46 EHRR 36, para. [75] – or whether it has infringed the right to a fair trial under Article 6(1) – see Ashingdane v United Kingdom (1985) 7 EHRR 528, para. [57]).

Convention rights are so defined in the Human Rights Act that the Act effectively incorporates the concept of the margin of appreciation. Particularly so, when those rights fall to be applied under section 3(1) of the HRA in interpreting legislation and under section 6(1) of the HRA when determining the lawfulness of actions by public authorities.

. . . . In my view, this indicates that the domestic courts are required to interpret the Convention rights by applying the same margin of appreciation when assessing the lawfulness of conduct of public authorities under section 6(1) as the ECtHR would apply when assessing the lawfulness of conduct of the national authorities from the perspective of an international court.

Sales J was fortified in this view by Section 2 of the HRA which provides that any domestic court determining a question which has arisen in connection with a Convention right must take into account any judgment of the European Court of Human Rights. Since the concept of the margin of appreciation is so deeply embedded in the case law of the ECtHR, Parliament must have thus indicated that “an equivalent to the margin of appreciation should be applied by the domestic courts”

. . . . In the domestic cases, the equivalent principle is often described as a discretionary area of judgment, following the terminology employed by Lord Hope of Craighead in R v Director of Public Prosecutions, ex p. Kebilene [2000] 2 AC 326 at 381; and see AXA General Insurance Ltd at [32] (Lord Hope DPSC) and [131] (Lord Reed JSC).

As far as case law is concerned, the clear statement in para 48 of Pinnock regarding municipal courts’ obligation to follow clear and consistent case law of the ECtHR was intended by the Supreme Court to operate as guidance for itself and the lower courts to follow the ECtHR’s judgments, including where they apply a margin of appreciation. Parliament could not have intended that the domestic courts should be authorised to produce idiosyncratic interpretations of the “Convention rights” in the HRA so as to find an incompatibility between the ordinary meaning of legislative provisions and those rights in cases where the Strasbourg Court would have found no incompatibility. As Laws LJ said in SRM Global Fund LLP v Commissioners of HM Treasury [2009] EWCA 788, the rationale of the margin of appreciation is an international version of our local doctrine of “the margin of discretion”, or “deference”, which our courts will pay to the judgment of public decision-makers in matters of discretion or policy.

. . . . This “margin of discretion” is given on democratic grounds; it respects the elected arms of government. But this is also an element, and an important one, in the margin of appreciation. (Laws LJ, SRM Global, para 59)

Sales J was of the view that the court hearing this JR should apply the same margin of appreciation in favour of the Secretary of State (and in favour of prison governors who follow the guidance given by the Secretary of State) when assessing the lawfulness of the Prison Service Instructions as the ECtHR would apply if assessing their lawfulness in proceedings in Strasbourg.

there is nothing irrational in what the Secretary of State has done or in what he proposes prison governors should do; and there are no special circumstances whatever which would justify the Court stepping in to substitute its judgment for that of the Secretary of State [71]

The argument based on the prohibition of retrospective penalties under Article 7 was also rejected. There was no “requisite connection’ between the offence committed by a prisoner and the application of the deductions regime in relation to enhanced earnings; nor does the deductions regime have elements which indicate that it is punitive, in its object or effect,

in relation to the offence committed by the prisoner.

The challenge with regard to discrimination between male and female prisoners also failed. The judge found, “as a matter of practical reality and justice,” that female prisoners are not in a significantly different position from male prisoners for the purposes of assessment under Article 14 in light of the objective of the deductions scheme. Applying the wide margin of appreciation which is appropriate in relation to the female prisoner’s complaint under Article 14, the unified deductions rules applicable to male and female prisoners were objectively justified`;

. . . . The proportionality of the deductions rules (or, putting it another way, the absence of any improper or excessive disproportionate effect upon female prisoners) is underwritten by the width of the margin of appreciation to be applied in assessing their compatibility with Article 14

R v Thompson [2012] EWCA Crim 1431

The appellant pleaded guilty to five counts of conspiracy to supply a controlled drug of class A to another and a single count of transferring criminal property. His brother, the appellant Thomas Thompson, pleaded guilty to one count of conspiracy to supply a controlled drug of class A to another.

Following the arrest of each of the appellants, they gave no comment interviews to the police.

In her sentencing remarks, the judge had explained that the only defendants who were entitled to a reduction of one-third for a plea were those who had admitted the offence at the police station, but none of them had done so. Her view was that the discount for the plea of guilty should be one of 25 per cent. The court found it noteworthy that the appellant did not plead guilty on the occasion when the matter came in front of the judge, but attached importance to the fact that at that stage all the relevant documents had not been served on him and that it was after those documents had been served and when the matter came back before the court, that he pleaded guilty. The court took the view that on the facts of this case that he did so at what was the first reasonable opportunity. Accordingly in his case there should have been a reduction of one-third.

The court added the following comments: “Before parting with this case, we must stress how important it is for a judge carrying out a sentencing exercise to carry out the exercise that ascertains whether or not the plea was in fact entered at the first reasonable opportunity. It cannot be an invariable rule that that must be when the defendant is interviewed at the police station, because in many cases that will be at a later time depending on when documents have been served and a number of other factors.”

R v Rowley [2012] EWCA Crim 1434 - The Appellant was Convicted of Murder.

The principal question for the court on this appeal was whether the evidence before the judge was capable of supporting his findings that a text message sent by the appellant to the witness ‘Taylor’ caused him to go into hiding abroad in a place from which, if he could be found at all, it was not reasonably practicable to obtain his return and had been sent in order to prevent him from giving oral evidence at the trial.

The sole ground of appeal was that the conviction was unsafe because the judge wrongly ruled that the statements made by Taylor in interview were inadmissible under section 116 of the Criminal Justice Act 2003. The appellant applied for the evidence of Taylor’s police interview to be adduced, in the belief that it offered support to his case. After holding a 8voir dire, in the course of which he heard evidence from Taylor's mother and two of the police officers who had been involved in the investigation, the judge dismissed the application. He did so because he was satisfied that by sending the text message mentioned earlier the appellant had frightened Taylor and had caused him

to leave the country in order to avoid being called as a witness at the trial.

It was submitted that the judge's ruling was wrong because the evidence before the court was incapable of supporting the judge's finding that Taylor's unavailability was caused by the appellant's text message. Moreover, that even if that message was the cause, or one of the causes, of his absence, it had not been sent in order to prevent Taylor from giving oral evidence in the proceedings, since there were no relevant proceedings in existence at the time it was sent.

In dismissing the appeal the court held: “....we are unable to accept the submission that, even if the appellant's threat did cause Taylor to leave the country, it was not made in order to prevent Taylor giving oral evidence in the proceedings, because at the time it was made no proceedings had been instituted in relation to the death of Mr. Kerr. The purpose of the text message was to warn Taylor that he should not give an account of the events of that night that might incriminate the appellant and that, if he did so, the appellant would take his revenge. That was not limited to any account he might give to the police but was intended to be understood, and we have no doubt was understood, as extending to giving evidence against the appellant in any proceedings that might ensue. Although the reference to "the proceedings" in subsection (5) must refer to the proceedings in which it is sought to adduce the evidence, we see no reason to interpret the subsection as limited to steps taken after the commencement of the proceedings. If, as we think, the purpose of the provision is to prevent the person who is responsible for the absence of the witness from adducing his evidence in the form of hearsay, it is of no relevance whether the proceedings had or had not been started at the time when the relevant acts were performed. The only question of importance is whether the acts were done in order to prevent the attendance of the witness at the proceedings. In the present case the judge was entitled to find that the text message was sent for that purpose and that its effect persisted up to and indeed beyond the time when Taylor left the country. For those reasons we are satisfied that the judge's findings of fact cannot be impugned and that he was right to hold the statements made by Taylor to the police in interview were not admissible in support of the appellant's case.” **Voir Dire: preliminary examination on oath by a judge*

Pentonville Prison Escapee John Massey Recaptured

John Massey, 64, serving life for murder, scaled the walls of Pentonville prison in London on Wednesday 27th June 2012 but was captured by police in Faversham in Kent on Friday 29th June 2012. A police spokesman said Massey was arrested at a house by detectives from the Metropolitan police. He has been taken into custody at a north London police station. A second man was also arrested on suspicion of aiding and abetting an absconder.

It was Massey's third escape or breach of conditions of liberty in the 36 years since he was sentenced to life for a pub murder in Clapton, east London. Massey was released on parole in June 2007 after spending the last 18 months of his life sentence in an open prison in Derbyshire preparing for freedom, it is understood. Under his parole terms, he was ordered to live in a bail hostel in Streatham, south London, under a curfew. After several months, he broke his curfew to spend a number of days living with his dying father. He was recalled to prison but decategorised after two-and-a-half years before being sent to Ford open jail in West Sussex. Massey reportedly walked out of the prison after hearing news that his sister was gravely ill. He was rearrested 10 months later and taken to Pentonville before his latest escape.

The Prison Service said it was still investigating the circumstances of Massey's escape and "would press for the heaviest penalties for those who escape or attempt to escape".