Prisoners: Women

Baroness Corston to ask Her Majesty's Government what advice has been given to the NHS Commissioning Board concerning the provision of healthcare for women prisoners.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The mandate between the Government and the NHS Commissioning Board (NHSCB) issued on 13 November reaffirms the Government's commitment to better healthcare services for all. The mandate commits the National Health Service to developing better healthcare services for all offenders, including women offenders. The NHSCB is required to have in place appropriate commissioning mechanisms for healthcare by April 2013, including for women prisoners. The department has regular and ongoing discussions with the NHSCB in relation to this.

Prisons: Strip Searches [Redacted, information on cutting off, of clothes with scissors]

Baroness Corston to ask Her Majesty's Government what control and restraint techniques are deployed during the forcible removal of women prisoners' clothes at HMP New Hall.

The Minister of State, Ministry of Justice (Lord McNally): The policy on full searching of prisoners (i.e. searching that involves the removal of clothing) under restraint is contained within Prison Service Order (PSO) 1600, Use of Force.

Any full search under restraint must be carried out using approved techniques.

Control and restraint techniques have been developed specifically in order to provide a safe and effective means of applying force to prisoners where this is necessary. The techniques take account both of the safety of staff applying the techniques and that of the prisoner on whom the techniques are used. Safe and effective use of the techniques is reinforced further during annual refresher training and through the monitoring systems in place at all prisons.

The specific control and restraint techniques used during a full search under restraint are set out in the NOMS' Use of Force Training Manual2. This is a restricted document, and those parts describing application of such techniques are redacted from the publicly available version of the manual under the provisions of Section 31 (1) (f) and Section 38 (1) (a) of the Freedom of Information Act. The Information Commissioner upheld these redactions in March 2012.

Justice: Jury Checks *House of Lords / 27 Nov 2012 : Column WS13*

Ministerial Statement: I have today published revised guidelines on jury checks and the exercise by the Crown of its right of stand by. In 1988 the defence right to challenge jurors without cause was abolished, the prosecution right to do so was, however, retained. In effect, this means that the prosecution can object to a potential juror without giving any reason. It is, however, a right which should be used only sparingly and in exceptional circumstances.

Hostages: Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, 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, 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 400 29/11/2012)

Justice for Brendan McConville and John Paul Wooton

On the 9th March 2009 Police Constable Stephen Carroll was shot and killed while responding to an emergency 999 call in the Craigavon area. The following day police arrived at the home of Brendan McConville, a local republican, and placed him under arrest. Later that morning, John Paul Wootton, another republican from the area, was arrested in the Craigavon area and had his vehicle seized.

Both men were taken to Antrim for interrogation where they, along with a number of other individuals, were detained while the vehicle owned by John Paul Wootton was taken to Maydown Barracks in Derry for examination.

Some days later police recovered the weapon used in the shooting from the rear garden of a house in the Pinebank housing estate in Craigavon. Around the same time a brown jacket with traces of DNA from Brendan McConville amongst others, and a residue which was claimed might have come from a firearm, was taken from the boot of the vehicle owned by John Paul Wootton.

Based on this finding, and under intense pressure to get results, police focused their attentions on these two men and set about constructing a case against them. The reason the police were under so much pressure was that Constable Carroll was the first police officer to be killed since the Good Friday Agreement. Adding to the pressure was the fact that this shooting took place within days of an attack on Masssereen Barracks where two British soldiers were killed.

It later transpired that the car owned by John Paul Wootton had been subject to covert surveillance at the time of the attack by means of a tracking device which had been hidden either in or on the vehicle by the British Army. This device provided data on the movement of the vehicle around the time of the shooting. It would later come to light that data from this device was wiped while the device was still in the possession of the Army. No one could explain why this had happened. The remainder of the data was used to construct a circumstantial yet arguably weak case against the two men.

Witness 'M' the main witness identifying one of the defendants: Eleven months after the shooting a local man contacted the police in the middle of the night on Valentines night and, under the influence of alcohol, claimed to have seen Brendan McConville close to the area from which the shooting occurred on the night of the shooting. It should be borne in mind that in the eleven months from the shooting to this man's statement, Brendan McConville and John Paul Wootton had been charged with the shooting and their identities were widely broadcast throughout the media. Thereafter witness 'M' was seen to be evasive and confused about numerous aspects of his testimony. One issue the identification of one of the defendants raised numerous issues, he claimed his eyesight was perfect, however a defence lawyer asserted he was "as blind as a bat" and was on expert evidence seen to be defective.

Moreover he stated he was only 50% sure under cross examination if this person he claims he saw in the time before the incident was one of the defendants, a point which varied from a substantially higher ratio. However, most notably his partner did not corroborate his evidence nor did a local man near the scene on the night, whilst CCTV evidence clearly con-

tradicted some of his assertions. Furthermore it was asserted that witness 'M' was alleged to have been prone to heavy drinking and was alleged to have rung the police drunk on a number of occasions whilst it was suggested that he was benefiting financially from the witness protection scheme. (Witness 'M' is believed to be in receipt of a weekly income from the PSNI. He also receives an allowance for childcare and has had loans and overseas holidays facilitated for his children along with other financial benefits.)

At the conclusion of the case the single judge, relying heavily on circumstance and inference, found both men guilty. McConville was handed a sentence of at least 25 years, while 20-year-old John Paul Wootton was told he would serve a minimum of 14 years.

Shortly after Girvan LJ convicted Brendan McConville and John Paul Wotton of the murder of PSNI Officer Stephen Carroll, ACC Drew Harris, head of Criminal Investigations and Special Branch in the PSNI, made a point of walking over to the Chief Prosecution Lawyer Ciaran Murphy QC and shook his hand and congratulated him. Such an over zealous push for convictions at all costs and cries of Justice which emanated from the PSNI in the aftermath of the judgement appear to be a premature exultation of righteousness that hide a somewhat Kafkaesque style of justice.

The basis of such an assertion lies in the evidence adduced in the course of the trial, which appears deeply suspect and worrying from a human rights standpoint, and that does not appear to meet the required standard of proof necessary for a criminal conviction. Various aspects of the witness testimony, the forensic analysis and the fact that substantive weight was given to the inferences from the defendants failure to testify on their own behalf, whilst the remaining elements were made up of somewhat dubious circumstantial evidence.

While it is not even clear that either McConville or Wootton fired the fatal shot from the AK 47 assault rifle on the night of March 9th, 2009, that killed 48-year-old Constable Carroll Lord Justice Girvan, stated that while the evidence against the two men was circumstantial, the case was nonetheless "compelling" and they "were both intimately involved" in the murder.

This is outside of two substantial aspects that deserve further investigation in relation to this case. Firstly, the British army surveillance equipment that was removed from a vehicle, alleged to have been used on the night in question, by the SSR (Special Reconnaissance Regiment) and tampered with, removing vital data.

Secondly, the naming of an Agent involved by a defence lawyer during the trial, as Officer Commanding the Continuity IRA, raises a number of very substantive issues, and begs the question to which agency was he alleged to have been working for and reporting to.

This case, like many in the 1980s and 90s points to security force involvement in the course of events and raises the possibility that an agent provecateur may have been active in this instance, which raises worrying substantive legal issues. Moreover, the entire proceedings in this case appear entirely prejudiced against the defendants so much so that considering the recent conviction of Brian Shivers in relation to the deaths at Masserene Barracks and this recent decision calls into serious question whether dissident republican suspects can get a fair trial in the North.

Both men continue to maintain their innocence and with an appeal fast approaching they ask that the facts be made public so that their quest for justice does not develop into another long running saga like that of the Guilford four or the Birmingham six.

John Paul Wootton: Roe 4, HMP Maghaberry, Old Road, Ballinderry Upper, Lisburn, BT28 2PT

Brendan McConville, Roe 4, HMP Maghaberry, Old Road, Ballinderry Upper, Lisburn, BT28 2PT

mission did retrieve a metal box from the Merseyside Police in 1998. While it is not possible to be absolutely certain after all this time that the diary was inside, we do not dispute it is more than likely we obtained and considered the 1972 to 1976 diary as part of our review."

Mr Foot said: "We now have the official confirmation that Eddie Gilfoyle's defence did not receive these diaries over all these years, which the CPS acknowledges were disclosable. The police who put together this report, which has taken all year to materialise, did not even bother to interview Eddie or his solicitors. We are waiting for the full report but what we have seen so far is partial."

Merseyside Police said it considered the report "comprehensive". Avon and Somerset Police said: "We did write to [Gilfoyle's solicitors] on a number of occasions. The information they provided duplicated information we already had." *Sue & Paul Caddick, Eddie Gilfoyle Campaign*

Report on an Unannounced Inspection of HMP Gloucester

Inspection 3/13 July 2012 by HMCIP, report compiled Sept 2012, published 21/11/12

Inspectors had the following concerns: - Overall this is not a good report, with many issues and concerns we have raised in previous reports still to be addressed - treatment of vulnerable prisoners remained a significant concern, environment where they lived was poor and their regime very limited, there was evidence that they experienced abuse and intimidation from other prisoners - Formal support for minority groups was limited, particularly so for foreign nationals - Time out of cell and access to association were poor; routines were less than predictable - half of the population locked up during the working day, which was as high as we had seen in any prison recently and completely unacceptable - accommodation in Gloucester is among the poorest in the prison system

Report on an Announced Full Follow-up Inspection of HMP Stocken

Inspection, 6 – 10 August 2012, report compiled October 2012, published 27/11/12

Inspectors were concerned to find that: - despite considerable management effort, activity places had not kept pace with the growth of the population; - too many prisoners were locked up during the working part of the day; - the treatment of vulnerable prisoners required improvement and too many prisoners in a self-harm crisis were segregated; number of self-harm incidents recorded was higher than in comparable prisons - although the use of illegal drugs in the prison was reasonably low, this masked the diversion of prescribed medications, about which we had significant concerns.

Offenders [Bank accounts]

Damian Hinds: To ask the Secretary of State for Justice what plans he has to enhance financial inclusion and capability for prisoners and ex-offenders.

Jeremy Wright: We recognise that access to bank accounts and other basic financial services can positively contribute to the rehabilitation of prisoners and their resettlement into society, and we are working closely across Departments and with banks to increase provision. In particular we have worked with UNLOCK and several of the major banks to increase provision through a number of pilots across the country and we are keen to continue to mainstream the offer across all prisons as part of business as usual. We have agreed some documentation with the banks which can be endorsed by governors and directors of prisons to ensure that the prisoners have the necessary ID approved by the Joint Money Laundering Steering Group to facilitate the opening of bank accounts. We are also working with the Money Advice Service as part of their scoping work to fulfil their statutory duty to provide financial advice.

In 2011, Cameron, with other centre-right leaders across Europe, launched an attack on multiculturalism, which effectively sought to blame immigration and Muslims for the economic crisis.[5] The proposals announced this week take the theme further, seeking to curtail measures to ensure racial equality, and migrants' access to justice, as if they were to blame for the parlous state of the UK economy.

Review Finds, Eddie Gilfoyle Murder Case Diary Was Kept From Defence

A diary that could have helped Eddie Gilfoyle fight his murder conviction was kept from his lawyers for 16 years while he was serving life in prison, an independent police review has found. A box containing his late wife's journal was seized by detectives from the marital home where Paula Gilfoyle, aged 32, who was heavily pregnant, had been found hanged in 1992.

The Criminal Cases Review Commission (CCRC), which investigates possible miscarriages of justice, examined the box but it is uncertain whether the diary was inside. The commission omitted to tell Gilfoyle's defence team about the discovery.

Gilfoyle has always protested his innocence of killing his wife by tricking her into writing a suicide note and hanging her in their garage in Upton, Wirral. Merseyside Police asked an outside force, Avon and Somerset Police, to review the history of the locked metal box after The Times disclosed in January that it had been given to Gilfoyle's lawyers.

The diary was in two volumes covering Mrs Gilfoyle's life from the ages of 12 to 22. They showed that she had previously attempted suicide by taking an overdose and had pursued a prison romance with her childhood sweetheart after he was jailed for a sex murder.

In the box was a suicide letter from another ex-boyfriend containing some of the same words as her own final note, which the Crown alleged had been dictated by her husband.

The Crown Prosecution Service said: "Had the contents of the diary been known to the Crown Prosecution Service, they would have been disclosed to the defence on the basis that it had the potential to assist the defence case that Paula Gilfoyle committed suicide".

Avon and Somerset Police found no misconduct: Gilfoyle was convicted of murder in 1993. In 1994 the Police Complaints Commission looked into the conduct of the Merseyside investigation after complaints from his family. Officers from Lancashire Constabulary appointed to perform the review searched the Gilfoyles' home and seized what was described as a "metal box cont. personal papers + diaries". It was labelled exhibit JAG2. Later in 1994, Merseyside Police collected boxes of material from Lancashire Constabulary and stored them.

In 1998, when the CCRC was looking at a request by Gilfoyle for an appeal, it took items from Merseyside including a "metal box containing Paula's papers". Material was returned to Merseyside in 1999. Gilfoyle lost his appeal in 2000. Merseyside Police disclosed the box to his solicitor, Matt Foot, in 2010.

There is uncertainty about the contents of the box at different times. Avon and Somerset Police said the diary in JAG2 covered 1972-76. When Mr Foot inspected the box in 2010, it contained two volumes of Mrs Gilfoyle's diary, from 1972-1976 and 1977-1981. The CCRC's records omit any reference to these diaries. The retired CCRC worker who examined Gilfoyle's conviction "could not recall reading the diary".

The report discloses that exhibits in the Gilfoyle case have been lost by Merseyside Police, including a ladder that Gilfoyle or his wife may have used to throw the rope over a garage beam. Four members of the force's staff were given managerial advice.

The CCRC, which is looking at a new request from Gilfoyle for an appeal, said: "The com-

Doping Prisoners Harms Them – And Us Too *By Will Self, Telegraph, 21 Nov 2012*

Treating inmates with drugs such as methadone is a sure way to increase crime. There are other options besides the oxymoronic practice of doping prisoners so that they won't want dope.

Each year some 140,000 inmates pass through British prisons, of whom as many as 70,000 have some form of addictive illness. They move from one environment in which drugs are both sustenance and currency while crime is the means to pay for it, to another in which exactly the same is the case – only with greater intensity.

Let's assume that each of these inmates procures just a single gram of heroin while inside; this would imply that 70 kilos of heroin are smuggled into prisons during that year. In fact, as any reasonably dispassionate professional would tell you, the quantities are far larger.

In the past, illegal drugs were brought into prison by visitors – and this continues to be the case. However, in the past decade or so, the use of sniffer dogs and searches has considerably constricted this flow, and the shortfall in supply has been made up by corrupt prison officers and other staff. How do I know this? After all, the numbers of prison officers being convicted for drug smuggling are paltry. The then under-secretary for state with responsibility for prisons and probation, Crispin Blunt, was asked about this in Parliament as recently as March, and he replied that a total of 18 officers had been convicted since 2008. Unless we are to assume that these individuals were not simply mules but actual packhorses, we can only surmise that they represent a fraction of the total.

Perhaps the existence of groups of prison officers prepared to flout the law so egregiously should be seen, charitably, in this light: they have the unenviable task of dealing with Britain's ever increasing prison population, some of whom are potentially violent, the majority of whom are mentally ill; their pay may be adequate but it's hardly generous, while the roiling inmates – who are often confined to their cells for as much as 23 hours a day – quite obviously require some form of sedation, and are going to get it by any means necessary.

Actually, the attitude of my hypothetical corrupted prison officer isn't far removed from that of other professionals who work in the prison service: psychiatrists, doctors, and so-called drug workers who actively support the current widespread prescription of maintenance methadone or other psychoactive drugs as a "treatment" for addict inmates.

These people may be perfectly well-meaning, but whatever the arguments advanced for maintaining addicts on drugs, the fact remains that most professionals have no alternative, because it's all they know how to do. The prison doctor, doling out methadone to addict inmates, is not that far removed from the GP who hands out antidepressants to patients who feel themselves to be incarcerated in dead-end jobs, unemployment or failed marriages.

But in the past few years there has been something of a sea change in thinking; more and more people seem to be realising that the solution to drug problems may not, in fact, be more drugs. In the wider culture, the current Government has pushed for psychotherapy to be offered as an alternative to antidepressants; and within the prison system the message has begun to trickle down from on high that there are other options besides the oxymoronic practice of doping prisoners so that they won't want dope.

The first intensive, 12-step-based, complete abstinence programme was opened in 1992 in HMP Downview – I know, because I, in turn, wrote the first article on it to be published by a British newspaper. Now, 20 years on, there are some 14 of these programmes throughout the prison system.

The abstinence-based programmes, in conjunction with regular attendance at the anonymous fellowships, have allowed hundreds of addict and alcoholic offenders to achieve drug-

and alcohol-free lifestyles, and upon release to become responsible and productive members of society. Yet as things stand, no more than 1 per cent of inmates are given the opportunity to attend these programmes, and of those that do the bureaucratic obstacles that stand in the way of their being able to depend on a drug-free environment, within which to complete their sentences once they have undergone treatment, remain formidable.

So, what should happen? Since our prisons are meant to be entirely drug- and alcohol-free, and we estimate that at least half of inmates are currently problem drug and alcohol users, the first thing, surely, is to ensure that at least half of these institutions are maintained in that state. If this were the case it would become possible to offer those addicts and alcoholics who receive a custodial sentence a genuine choice: either go to a prison which, to all intents and purposes, is organised as an intensive rehabilitory regime, or take your chances in those other jails that are subject to the arbitrary dictates of drug barons and corrupt staff. Choose addiction and more crime – or choose recovery and less recidivism.

"Murder Most Foul": Whole Life Imprisonment Not A Human Rights Breach

The imposition of whole life orders for extremely serious crimes does not violate the prohibition on inhuman and degrading treatment under Article 3.

Until relatively recently, the Secretary of State decided the minimum term to be served by a "lifer" - a defendant who subjected to a sentence of life imprisonment. This is now a matter for the sentencing judge whose jurisdiction is conferred by the 2003 Criminal Justice Act. Schedule 21 para 4 allows judges to order a whole life minimum term, a jurisdiction of last resort in cases of exceptional criminality.

It was submitted in these conjoined appeals that this provision contravenes <http://ukhumanrightsblog.com/incorporated-rights/articles-index/article-3-of-the-echr/>Article 3 of the European Convention of Human Rights. Not so, said the Court of Appeal, Criminal Division.

Background facts: Three out of five of the appellants had been convicted of murder and two of rape. In four of the cases whole life terms were ordered, and one of the cases of murder the minimum term was assessed at 30 years. All these cases had involved extreme violence perpetrated by dangerous individuals. One of the appellants had burgled four women, raping three of them. The other had been convicted of rape following a number of previous convictions; the judge imposed a life sentence and did not specify a minimum term.

The appellants all argued that a whole life order could never be appropriate; alternatively, that the sentence imposed had been inappropriate in their cases.

Appeals allowed in part: The first section of the judgment concerns the compatibility of the whole life discretion with Article 3. The second part relates to the individual appeals.

The court's reasoning: Every civilised country ... embraces the principle that just punishment is appropriate for those convicted of criminal offences.

For this reason the Strasbourg Court has allowed for different answers to the question of what constitutes a just and proportionate punishment. Provided that the sentencing court has reflected on mitigation properly available to the defendant, a whole life order imposed as a matter of judicial discretion as to the appropriate level of punishment and deterrence following conviction for a crime of utmost seriousness does not constitute "inhuman or degrading punishment" for the purposes of Article 3. In Harkins v United Kingdom (9146/07) (2012) 55 EHRR 19 - a case involving extradition to a jurisdiction where a life sentence might be imposed without the possibility of parole - the Court concluded that an Article 3 issue would only arise if it could be demonstrated that the continued

said, 'there is no principle more basic to our system of law than the maintenance of rule of law itself and the constitutional protection afforded by judicial review.'[4] The last time the government sought drastically to curtail migrants' access to the courts, in 2003, a huge coalition of activist and support groups, senior lawyers and judges, including members of the House of Lords, defeated the proposals. This time, the context for the proposals is the legal aid cuts which have already devastated the immigration and asylum sector, drastically reducing access to specialist legal advice. This is set to get worse after April 2013, when there will be no legal aid for advice or representation for any non-asylum immigration appeal apart from detention. This means no legal aid to fight deportation, or to appeal refusal of a visa, or exclusion from the country, or removal of residence or citizenship rights. Judicial review was largely exempted from these legal aid cuts.

The proposals to curtail time limits for judicial review in particular could be seen as a pre-emptive response to the withdrawal of legal aid for appeals. Unrepresented appellants lose their appeals far more frequently than those with legal representation – not surprisingly, as legal help is needed to prepare and present an appeal properly, with all the necessary evidence. It may be that the curbs on judicial review are designed as an obstacle to those facing removal following a failed appeal – as those who have had to face an appeal without solicitors are less likely to know the time limits for judicial review, or where to find a decent solicitor, or even to know that the remedy of judicial review exists. By the time applicants have found out about the remedy and got themselves a solicitor, it will be too late.

Slashing 'red tape' – or retreating from equality?: Cameron's CBI speech attempted to evoke the 'buccaneering spirit' of entrepreneurial businessmen too busy innovating, creating and selling to worry about red tape. 'We are calling time on Equality Impact Assessments … consultations, impact assessments, audits, reviews … complying with EU procurement rules, assessing sector feedback – this is not how we became one of the most powerful, prosperous nations on earth.'

The speech might have been more convincing if the government had been more receptive to the CBI's concerns that the cap on economic immigration introduced in April 2011 would stifle economic growth. But the proposals to do away with equality impact assessments and to curtail consultation are clearly designed to appeal to both the neoliberal and the neo-nationalist wings of the Tory party. Equality impact assessments have been important in ensuring that legislation and executive decisions do not have a discriminatory effect – and judicial review has also been essential in ensuring that such assessments are done. A judicial review drew attention to the failure to assess the potential for discrimination in the decision to concentrate foreign national prisoners in a small number of prisons, without consideration of remoteness from families and from legal advice. Another revealed the failure to assess the impact of a change in mental health policy for immigration detainees; a third (the only one which could conceivably affect economic growth) showed the failure to assess the disproportionate effect that a shopping development would have on BME traders because of the projected closure of a Tottenham market. If equality impact assessments were abolished, the discrimination revealed in these cases would be free to flourish. Similar arguments apply to EU procurement rules which require contractors not to discriminate in awarding contracts – another of the coalition's targets.

Abolition of these safeguards is proposed at a time when the statutory body tasked with monitoring and countering such discrimination is at its lowest ebb. In May, the Equality and Human Rights Commission had its budget and workforce halved, and in October its two remaining non-white commissioners were told their appointments would not be renewed.

changed once a decade are now often amended monthly. Many of the changes are rushed through in response to electoral concerns, like the recent attempt to define by rules when migrants can enjoy family life with spouses, partners, children and other relatives – and already gaps, ambiguities and other defects are becoming apparent, which judges will have to put right.

Another claim voiced by the politicians dwells on the very small proportion of judicial reviews which are won by applicants. This, too, is misleading – it fails to record the high proportion of judicial reviews in the field of immigration and asylum which are settled in the applicant's favour before the case comes to court, with the UKBA agreeing to retake the contested decision if the applicant withdraws the application. Other judicial reviews in the field are brought to deal with an emergency – a threatened removal, for instance – and are discontinued once the removal is successfully averted. The fact that outcomes, such as these, are not properly recorded skews the statistics and underestimates the degree of success applicants have.

But justice minister Chris Grayling should know better than to say that many judicial reviews are brought when applicants know they have no prospects of success. It would certainly be impossible for judicial review to be brought using public funding in this situation; a case cannot go forward unless its prospects of success are good. And the filtering mechanism of requiring permission to proceed is designed to weed out unmeritorious applications.

Why curtail judicial review?: It was through the medium of judicial review that many Tamils, recently threatened with removal to Sri Lanka, were able to demonstrate to judges through new evidence post-dating their asylum appeals that the risk of torture on return was real. And it was through judicial review that severely mentally ill immigration detainees were able to demonstrate to the High Court that their continued detention in defiance of psychiatric opinion amounted to inhuman treatment. Judicial review is preferred to the ancient remedy of habeas corpus for challenging immigration detention since such detention generally complies with the letter of the law (which allows for indefinite detention pending deportation), but might be contrary to policy or to detainees' basic rights.

The remedy of judicial review has been used successfully to challenge regulations depriving asylum seekers of all support, laws which required non-Anglican migrants to obtain Home Office permission to marry, rules which prevented family reunion for migrant spouses or partners under 21, and is routinely used to challenge removal of asylum seekers to unsafe countries, whether of origin or transit. It was used to challenge the blatant race discrimination which saw Roma passengers being refused boarding at Prague airport. It has recently been used repeatedly to stop executive law-making which bypasses parliamentary scrutiny, such as the interim cap on the admission of skilled workers and the imposition of onerous financial requirements on students through policy rather than rules.

The coalition's proposals are in the tradition of authoritarian governments seeking to get judges off their backs, particularly in dealing with unpopular minorities. As the UK Human Rights blog noted, only a week before the CBI speech, Cameron was complaining of having 'moved heaven and earth to try and comply with every single dot and comma of every single convention to get [Abu Qatada] out of this country'.[3] Making judicial review more restricted and more expensive will not affect those like Qatada who are entitled to exhaust statutory appeals before deportation – but will make executive action such as detention and removal of vulnerable people more difficult to challenge.

The importance of resistance: As Lord Dyson, the lead judge in the Court of Appeal, has

incarceration could no longer be justified on any legitimate penological grounds, such as punishment, deterrence, public protection or rehabilitation.

The Court of Appeal itself had said in R v Bieber [2009] 1 WLR 223 that . . . . Schedule 21 of the 2003 Act proceeds on the premise that some crimes are so heinous that they justify imprisoning the offender for the rest of his life, however long that may be. - and Lord Hoffmann, commenting on the decision in Bieber, observed that Article 3 was prescribing the minimum standard, not a norm. It must be open to individual states to decide for themselves what, if any, higher standards they would set for themselves. Furthermore, the courts have emphasised "time without number" that the language of this provision is not prescriptive. It does not require a judge to impose the order if the interests of justice did not require it, Accordingly, the whole life order was reserved for the few exceptionally serious offences in which, after reflecting on all aggravation and mitigation, the judge was satisfied that just punishment required the imposition of a whole life order.

As for the individual appeals:- There was not a "shred" of mitigating evidence in the case of O, who had planned and carried out his intention to make the death of his former partner a terrifying and agonising ordeal, and had then deliberately executed their daughter. There was no reason to interfere with the sentence. In the case of KS, a young man who had committed a "random" killing, the sentencing judge had been aware of his personality disorder. KS had revelled in his crime and there was no reason to interfere with the sentence.

DR was "a cold, depraved, calculated killer" who murdered his victim "to satisfy a sadistic sexual appetite". The mutilation of the body of the victim was "shocking". Taking all these features into account, together with a previous killing of which he had not been convicted, the judge had been driven to the conclusion that a starting point of 30 years imprisonment as the minimum term would not be appropriate. The order would be a whole life order. Nevertheless the Court of Appeal considered that the judge had not been at liberty increase the sentence as retribution and deterrence for the other murder of which DR had not been convicted. The whole life term would be quashed, but in view of the "exceptional brutality" of the crime the minimum term should be fixed at 40 years.

The court acknowledged the seriousness of the rape carried out by MR in the course of his burglaries. But these sexual assaults, though dreadful, had not been followed by murder, and the whole life order was reserved for the most exceptional cases. Although the statutory provision does not prevent the sentencing judge from making an order unless the defendant had been convicted of a murder, such an order would be very rare indeed. A minimum term of 25 years was imposed; it seemed highly improbable that MR would ever be safe for release.

Similarly in DS's case, profoundly disturbing though the offence of rape had been, it was not of the extreme level of seriousness to justify a whole life order. The appropriate minimum term was 10 years. However, his release was most unlikely.

This judgment may not address the disquiet felt by some about the irreversibility of a life sentence, expressed by Laws LJ in R (Wellington) v Secretary of State for the Home Department [2007] . . . . a prisoner's incarceration without hope of release is in many respects in like case to a sentence of death. He can never atone for his offence. However he may use incarceration as time for amendment of life, his punishment is only exhausted by his last breath

But the positions taken in this debate, as in many others, are probably irreconcilable. No amount of judicial and philosophical soul searching will lead everybody to a compromise, and the human rights Convention is arguably the last place to find this solution. The Strasbourg Court has wisely held off, as this judgment quite emphatically reminds us.

Government Secret Courts Plans Defeated In Lords BBC News, 21/11/12

The government has been defeated three times in the House of Lords over plans to allow ministers to order secret court hearings to consider evidence in cases relating to national security. Peers backed calls to give judges the say over the use of "closed material proceedings" by 264 votes to 159.

Critics say closed hearings are unfair to defendants and threaten the principle of open justice. But ministers say intelligence which risks UK lives must not be disclosed. The House of Lords is debating the Justice and Security Bill, which would ensure far greater use of so-called closed proceedings to examine sensitive intelligence and protect national security.

The BBC's deputy political editor, James Landale, said ministers had been braced for a number of defeats after a coalition of crossbench peers, led by QC Lord Pannick, joined forces with Labour and Liberal Democrat peers to introduce safeguards into the bill.

Peers backed Lord Pannick's call to give judges greater discretion to hold secret hearings, rather than obliging them to do so in national security cases, by a majority of 105. Judicial decisions are respected precisely because all the evidence is heard in open court subject to acceptance and judges give a reasoned judgment which explains their decision"

Once again defying the government, peers voted by 273 to 173 to give judges and defendants, not just ministers, the right to demand closed material proceedings. After suffering a third substantial defeat on a related issue, ministers chose not to oppose a series of further amendments tabled by opponents. As such, peers nodded through without a vote changes that would ensure that closed proceedings would be used only as a last resort, and only if the court also had considered using an existing mechanism allowing some proceedings to be secret, known as the public interest immunity system.

However, a backbench Labour-led amendment that would have removed the whole concept of secret hearings from the bill was defeated by 164 votes to 25, a government majority of 139, although Labour suggested many of its peers had abstained from voting because it would have contradicted earlier concessions.

During Wednesday's debate, Lord Pannick said the government's proposals were a "radical departure from the principles of common law and transparent justice". "We should be very careful in that a closed material proceeding is inherently damaging to the integrity of the judi Judicial decisions are respected precisely because all the evidence is heard in open court subject to acceptance and judges give a reasoned judgement which explains their decision."

Speaking in support of the Pannick amendments, Labour's justice spokesman Lord Beecham said they placed judges "firmly in control of the process" while still protecting from disclosure what was essential not to be made public.

But former director of M15, Baroness Manningham-Buller, said closed sessions would enable British spies to defend themselves against "deeply distressing" allegations of torture

"One of the things that these closed material procedures do is that they give the opportunity for this material, which may or may not reflect badly on the security and intelligence services, to be looked at," she said.

We are in a position at the moment that we have been judged by many to have been engaged in criminal activities but there have been no prosecutions. I do believe closed material procedures are a way that the judiciary can make a judgement on the validity of these claims and give a ruling and give judgement. I really do think we need that for a range of reasons."

Compensation issue: The government says it is currently impossible for it to defend

tim, whom he had not had the opportunity to question. The statement had been taken from the victim as a matter of urgency in view of the latter's possible departure from the Czech Republic and before the criminal proceedings against the applicant had been opened.

Violation of Article 6 §§ 1 and 3 (d) - Just satisfaction: EUR 1,900 (costs and expenses). The Court further held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Dismantling Racial Justice *by Frances Webber, IRR, 22nd November 2012*

The coalition's proposals to restrict judicial review and to abolish measures which safeguard race equality amount to a further assault on migrants, asylum seekers and BME communities, in the guise of promoting economic growth.

Prime minister David Cameron used the unlikely setting of a speech to the Confederation of British Industry (CBI) conference on 19 November to outline his government's plans to curtail judicial review. Describing the current economic situation as akin to war, he claimed that judicial reviews clog up the courts and hold up major infrastructure projects. He also promised to sweep away equality impact assessments, and curb consultations and other restrictions on government's ability to act quickly to 'get Britain ahead in the global race'.

In a coordinated statement, justice minister Chris Grayling cited concerns about 'the burdens that ill-conceived cases are placing on stretched public services as well as the unnecessary costs and lengthy delays which are stifling innovation and economic growth', to announce the government's plans to cut down the time for bringing a judicial review (currently three months from the decision to be challenged), put up fees and curtail appeals.

Lawyers were left scratching their heads at the bizarreness of the claims. Judicial reviews of planning decisions or other types of business regulation are a tiny minority of applications; it is decision-making in immigration and asylum cases which accounts for two-thirds of all judicial reviews – and public law areas in general, including housing and prison law, account for nearly 95 percent of all cases.[1] It is hard to see how judicial reviews in these areas stifle economic growth. Yet the proposals are designed to affect all judicial reviews, not just the few regulating business activity. Whether or not immigration and asylum-related applications are the target of the proposals, it is in these areas that the effects of hiking fees and cutting down access will bite hardest.

Misleading claims: Judicial review focuses on the fairness of executive decision-making rather than the content. The 'classical' grounds for judges to rule decisions unlawful are failure to consider relevant factors, consideration of irrelevant ones, fettering discretion by a too-rigid policy admitting of no exceptions, going beyond the powers given by the law, gross unreasonableness and (since the Human Rights Act) discrimination and /or lack of proportionality. The remedy of judicial review grew out of older legal remedies, known as 'prerogative' remedies of mandamus and certiorari, and as leading barrister Sir Jeffrey Jowell has said, it is a 'tightly controlled, quick and relatively cheap procedure'[2] for ensuring that government and its officials act lawfully and giving ordinary people redress against arbitrariness and illegality. It has become an extremely effective way of holding government to account.

Both Cameron and Grayling pointed to the exponential growth of judicial review since the 1970s – but failed to put it in context of the massive growth of legislation, rules, regulations, policy and administrative bureaucracy in that same period – nowhere more than in the field of immigration and asylum, where immigration rules which in the past might have been

lished series which preceded the establishment of ICLR in 1865): how could lawyers and judges develop the law if judgments were not properly reported?

The late Lord Bingham had praised the “scholarship and amazingly high standards of accuracy” of The Law Reports. Reliable accuracy was important, but so was the selection of cases to be reported, particularly as the number of judgments increased. Judgments which developed the law and set new precedents needed to be identified.

In the case of The Law Reports, as well as the headnotes, lists of cases cited and other enhancements, there was also a report of the argument, which enabled readers to see what points had been made or conceded, and which had not been made, to the court giving the reported judgment.

Newspapers no longer reported legal proceedings in detail, and (with a few exceptions) the days of the dedicated legal correspondent were over. Blogging and tweeting, although they have come into their own in recent years, are not the same.

Hence the importance of judgment dissemination. The extent and the speed of the revolution achieved by BAILII is astonishing. It was now an indispensable and comprehensive source of information. There was no better tribute than the fact that, within a couple of years of its establishment, lawyers were taking it for granted. Its remarkably well organised website made finding judgments easy.

Inevitably, the cost of legal advice had increased, now that every judgment was available at the touch of a button, because of the need for lawyers to trawl through and check them all; and the size of court bundles had correspondingly increased. Lord Neuberger urged the judiciary to take a stronger line on the excessive citation of authorities.

But his Lordship disagreed with those who saw the free availability of judgments on BAILII as a threat to traditional law reporting. The two different types of law reporting complemented each other, as is demonstrated by the recent partnership of BAILII and ICLR. The link from BAILII judgments to an ICLR summary was a very beneficial feature.

BAILII makes judgments accessible and available. Scholarly law reporting is more directed to the expert judicious selection and summarising of judgments for a more specialist readership, as speedily and accessibly as was consistent with those aims. There was no more than a theoretical risk that BAILII would undermine the price paid for scholarly law reports, and one should ensure that they could continue to exist and complement each other. But both played an essential role, and should be supported.

Introducing the lecture to an auditorium packed with senior judicial figures, leading practitioners, academics and some very grateful law reporters, Sir Stanley Burnton, chairman of the trustees of BAILII, said that its online platform provided the practical implementation of the idea, in which he believed passionately, that all citizens had the fundamental right to free access to all primary legal materials. He invited anyone who shared that belief to support BAILII, which is funded entirely by sponsorship and charitable donations.

Tseber v. the Czech Republic (no. 46203/08) Full judgement only available in French

The applicant, Igor Tseber, is a Ukrainian national who was born in 1981. When his application was lodged, he was serving a prison sentence in P?íbram in the Czech Republic (after his release on licence in 2010 he was extradited to Ukraine). On 18 April 2007 he was sentenced to prison, accompanied by an order to leave the country, for, among other things, having intentionally caused serious injury to a man by shooting him in the leg. Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to question witnesses), Mr Tseber complained that this criminal conviction had essentially been based on a statement given by the vic-

itself against cases of alleged complicity in torture in open court as the disclosure of sensitive information could endanger British agents and compromise relationships with key allies. Ministers have dismissed suggested safeguards - such as allowing witnesses to give evidence behind screens and redacting names from documents - as inadequate. They say the UK cannot continue to settle multi-million pound cases against the security services - such as those involving former detainees of Guantanamo Bay - without their allegations being tested in court.

Government spokesman Lord Wallace of Tankerness said there were currently 20 civil damages cases where material "relating to national security would be central" and it was in the interest of all concerned for them to go to court. "If there is a valid claim being put forward by a claimant, the claimant may not actually be able to have that claim properly vindicated but the case has to settle, but material was necessarily excluded from the court," he said.

Guilt, Non-Guilt And Innocence: What Will Strasbourg Decide?

Jon Robins, guardian.co.uk, Wednesday 21 November 2012

Victims of miscarriages of justice await Lorraine Allen judgment with hope: "Innocence as such is not a concept known to our criminal justice system," said Lady Hale last year as the supreme court ruled on what, according to the law, constituted "a miscarriage of justice". "We distinguish between the 'guilty'and" the 'not guilty'. A person is only guilty if the state can prove his guilt beyond reasonable doubt." That uncertain territory between guilt and non–guilt has been troubling our courts for some time. We will soon see what the European court of human rights will make of the compensation claims of those alleging to be victims of miscarriages of justice.

The case of Lorraine Allen, one of a number of so-called "shaken-baby" cases, reached the European court of human rights last week. Judgment has been reserved and it could be months before the court rules. Allen was convicted of the manslaughter of her four-month old son in 2000. She was sentenced to three years' imprisonment and a child subsequently born while she was serving that sentence was placed for adoption. Her conviction was quashed in 2005, after fresh medical expert evidence proved it to be unsafe. "The key argument we've been trying to put forward, in its simplest terms, is you start off innocent, you're convicted and when your conviction is quashed you return to innocence," explains Mike Pemberton, head of civil liberties at Stephensons solicitors and Allen's lawyer.

Six years ago the then home secretary, Charles Clarke decided (without consultation) to scrap an ex gratia scheme of compensation for the victims of miscarriages of justice. That decision was described by Professor John Spencer QC as "monstrous". The only compensation now available comes via the Criminal Justice Act 1988 – a provision enacted to put the UK in minimal compliance with its international obligations, according to Spencer.

In May 2011, the supreme court rejected the government's contention that only those who could prove their innocence could be entitled to compensation in R (Adams) v Secretary of State for Justice. It was in that ruling that Hale (and others) grappled with the meaning of "miscarriage of justice". The majority (five to four) held that a miscarriage of justice had occurred when "a new or newly-discovered fact" showed conclusively that the "evidence against a defendant has been so undermined that no conviction could possibly be based upon it". Allen argues that such a test is contrary to her right under article 6(2) of the European Convention to be presumed innocent.

The Adams ruling has subdivided miscarriages into three, possibly four, categories: first, where the applicant can effectively prove innocence; second, where there is evidence that undermines the safety of the conviction; third where the fresh evidence might be suffi-

cient for the court to quash the conviction but there may be other evidence upon which a jury could still convict; and fourth, a purely technical quashing of a conviction.

Last month there was a three-day hearing in the high court considering compensation in a number of cases including Barry George, who spent eight years in prison after being wrongly convicted of the murder of TV presenter Jill Dando. "The public might think, as they watch someone being released from the court of appeal, that they would be compensated by the state for being wrongfully convicted and for all the time they have served in prison," comments Mark Newby, who specialises in miscarriage cases. The solicitor is representing Ian Lawless, one of the lead cases alongside George. "That expectation is invariably not met. Under the current Ministry of Justice scheme only one award has been made post-Adams."

Newby has another case stayed pending the ruling by the Strasbourg court on the Allen case. If the European court decides in favour of Allen, the lawyer believes this will help the other compensation cases, with the possible exception of category four cases.

I wrote about the campaign to reinstate the ex gratia scheme last year. Frankly, persuading people to support a campaign for adequate compensation for the wrongfully convicted is never going to be a hugely popular crusade — and trying to persuade ministers to prioritise miscarriages over other voter-friendly and cash-starved causes nigh on impossible. Nonetheless the campaign is both right and one of fundamental importance — the state should be properly held to account for its errors.

The shocking attitude of the last government towards miscarriages of justice can best be summed up by Tony Blair's notorious sound bite: "It is perhaps the biggest miscarriage of justice in today's system when the guilty walks away unpunished." "Victims of miscarriages of justice were totally devalued by the former government when they talked about a 'rebalancing of the justice system'," reflects Mike Pemberton. "They were totally screwed. It is abhorrent we have a justice system that can destroy lives and then not provide adequate financial compensation to the individual."

Charles Clarke caricatured the relatively tiny number of defence lawyers willing to take on criminal appeals thus: "A massive industry for the legal profession that has been giving away large amounts of money to individuals who do not deserve it."

Pemberton insists that legal actions for compensation on the part of the victims of miscarriages of justice are not part of "a whiplash claim mentality". Allen lost a child and her freedom and she also lost a second baby born while she was serving her three-year term who was placed for adoption less than 24 hours after she gave birth. "The message from the state is: 'We aren't sure you're innocent anyway'," says Pemberton. "It is that lurking doubt that she has to struggle with."

No Judgment, No Justice *November 21, 2012 by 1 Crown Office Row*

For justice to be seen to be done, judgments given in open court must be accessible in two senses. They must be clearly written so that a reasonably well informed member of the public can understand what is being decided. But they must also be available to the public, and in this sense their accessibility depends on their being reported. Lord Neuberger, President of the Supreme Court, so stated in the first BAILII annual lecture.

Lord Neuberger said that by providing free access to primary legal materials, including statutes as well as judgments, BAILII (the British and Irish Legal Information Institute) was providing a unique service, whose importance was all the greater given the increasing number of self-represented litigants appearing in the courts.

Judges were required both to exercise judgement, and to give judgments. Without reasons, there could be no judgment. For justice to be seen to be done, two fundamental requirements had to be satisfied. First, judges should give publicly available reasons for their judgments. Second, those judgments must be reliably disseminated and reported.

In relation to the first requirement, it was important to recognise that the public were the real audience: judgments had to speak to the public, as well as to the lawyers and litigants. They should therefore be sufficiently well written to enable reasonably intelligent non-lawyers to understand what the case was about.

Open justice underpinned the rule of law. There was a particular reason for this: the right to a fair trial required a reasoned judgment to be given. But there was a more general reason too, which was that a clearly reasoned judgment enabled the public to see how justice was being dispensed.

Advice to judges: Lord Neuberger had a number of suggestions for his judicial brethren. The first was that, when giving judgment, they should give a short summary at the start, like a headnote. By no means are all judgments available with a headnote in a law report, and even if they were, litigants might not have access to them. The Incorporated Council of Law Reporting's database (ICLR Online) had made significant steps in that direction (by providing free case summaries), but in the absence of a judgment reported by ICLR (or some other law reporting body) a litigant could be at a disadvantage.

Judges could also give better guidance to the structure of their judgments, as some already did, with tables of contents, a "roadmap" to the contents, and headings. This was not only good discipline but also what legal readers wanted, and, a fortiori, non-lawyers.

His Lordship also urged a certain amount of judicial restraint. Where the law was complex and depended on precedent, it should be explained in a consistent way and coherently developed. Judges should take a more rigorous approach to the length of their judgments, removing anything otiose and avoiding excessive displays of erudition.

In appellate courts, judges should avoid giving unnecessary concurring judgments, which risked introducing confusion and giving rise to debate, as well as adding to the amount that needed to be read; and they should only give a dissenting judgment where they not only did not agree with the majority but felt it important to explain why. He was not suggesting a straitjacket of compulsory unanimity (such as that required in the Court of Justice of the European Union), merely a bit of judicial self restraint.

The second fundamental requirement of justice being seen to be done was law reporting. Lord Neuberger identified two types of reporting.

First, what he called "judgment dissemination", in the form of easy and full access to all judgments given in open court. That is what BAILII provides.

Second, what he called "judgment enhancement", in the form of scholarly law reporting as done by the Incorporated Council of Law Reporting for England and Wales (ICLR) in The Law Reports since the 1860s, and the Weekly Law Reports since the 1950s, and by LexisNexis in the All England Law Reports since the 1930s.

Both forms of reporting were of fundamental importance. Both supported the administration of justice, and made the law available to students, practitioners and judges.

Scholarly law reporting, or judgment enhancement, was of particular importance in developing a corpus of law, particularly the common law, which was judge-made law, based on precedent, refined over time. Such law changed as society changed. The process of development and refinement could not happen without scholarly law reporting. That had been the problem with the unreliable and inaccurate Nominate reports (the various individually pub-