the appeal was dismissed. "We were told, and we believe it to be correct, that this will be the first occasion since the Criminal Justice Act 2003 came into force on which this court has considered an appeal against sentence in the context of gross medical negligence. Our decision will no doubt be considered by other sentencing courts, but beyond broad general observations, this is not a guideline decision which purports to encompass the full ambit of sentencing in cases of manslaughter by gross medical negligence. Our decision reflects specific individual features of the case. Even in cases of medical gross negligence manslaughter, where the consequence of the harm in every case is identical, that is, the death of a patient, the level of culpability of the defendant will vary considerably.

There will certainly be cases of greater culpability than this, and other cases where the culpability will be significantly lower. In the end, of course, all will be cases involving gross rather than simple negligence, and therefore liable to involve the perpetrator in a criminal prosecution rather than provide the victim with civil remedies only." Lord Chief Justice Of England And Wales, Justice Simon & Mr Justice Wilkie

Jail for Pair who Stole £500,000 Xculpture and Sold it to Scrap Dealer for...£46

If proof were needed that the names of Liam Hughes and Jason Parker are not destined for the ranks of the nation's criminal masterminds, it came when the pair turned up at a scrap metal dealer brandishing a large and unusual bronze sundial. Hours earlier the pair had cleaved the sculpture by Henry Moore, worth up to £500,000, from its plinth in the grounds of a Hertfordshire museum dedicated to the revered British artist. They left the dealer's premises with £46 in their pockets.

Yesterday 04/12/12, Hughes, 22, and Parker, 19, from near Stansted in Essex, were each jailed for a year after they admitted two counts of theft last July from the Henry Moore Foundation in Much Hadham, a sculpture park set in the grounds of the sculptor's former home.

Judge Who Said Burglars Showed 'Courage' Reprimanded *Terri Judd, Indpendent, 04/12/12*

A judge who commented a burglar needed "a huge amount of courage" has been formally reprimanded for a "serious error of judgment", the Office for Judicial Complaints (OJC) said.

Judge Peter Bowers told an offender, who raided three homes in five days: "It takes a huge amount of courage, as far as I can see, for somebody to burgle somebody's house. I wouldn't have the nerve" as he gave him a suspended 12-month sentence at Teesside Crown Court in September. His comments led to a public outcry with Prime Minister David Cameron joining the criticism, insisting burglars were not brave but "cowards" and their crimes were "hateful".

Today, the OJC said that following an investigation, the Lord Chancellor and Lord Chief

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.

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Fax: 087 2023 1623

MOJUK: Newsletter 'Inside Out' No 401 06/12/2012)

Never Stop Fighting Till You Get a Result

In 2004 Kevin Ruddy got a drumming from two Strathclyde police officers. He sought redress against the police. The police held an internal investigation into his allegations and like their British counterparts, found their was no case to answer and no action should be taken against the police. He also took legal action claiming breach of his Article 3 rights, this had no more success, getting knocked back at Glasgow Sheriff's court and and subsequent appeals right up to the Inner House of the Court of Session, highest court in the Scottish judicial system. The reasoning in all appeals that Kevin's complaints were not competent and therefore the courts did not have to consider his claim

Undaunted Kevin fought on taking is case to the UK Supreme Court, where five Law Lords, unanimously decided that his complaints were competent and have referred the matter back to the Scottish Inner House of the Court of Session

Ruddy v Chief Constable, Strathclyde Police & anor (Respondents) (Scotland) [2012] UKSC 57. On appeal from [2011] Inner House of the Court of Session (CSIH) 16

Justices: Lord Hope (Deputy President), Lady Hale, Lord Mance, Lord Kerr, and Lord Reed.

Background To The Appeal

On 6 September 2004 the Appellant, having been arrested the day before and taken to Perth police station, was driven by car to a police station in Glasgow by two officers of Strathclyde Police. He alleges that he was abused, threatened with violence and assaulted by the Strathclyde police officers before, during and after that journey. He applied for legal aid in order to take proceedings against the Chief Constable of Strathclyde Police (the "Chief Constable"). Strathclyde Police treated the intimation of the legal aid application in November 2004 as a complaint and remitted the matter to its Complaints and Discipline Branch (the "Complaints Branch"). The Complaints Branch reported receipt of the complaint to the Procurator Fiscal for Glasgow.

In January 2005, the Procurator Fiscal instructed the Complaints Branch to carry out an investigation into the complaint. An officer of the Complaints Branch carried out the investigation and submitted his report to the Procurator Fiscal in March 2005. The Procurator Fiscal took a statement from the Appellant and considered the Complaints Branch report and a medical report submitted by the Appellant. On 6 June 2005, the Procurator Fiscal informed the Appellant that she was satisfied that the available evidence did not justify criminal proceedings against any police officer. The Complaints Branch then reviewed the complaint and informed the Appellant on 22 June 2005 that Strathclyde Police did not consider it necessary to take any proceedings for misconduct against the police officers.

The Appellant raised an action in Glasgow Sheriff Court in August 2005. The first claim in the action was in relation to the alleged assault and was made against the Chief Constable. The Appellant sought damages at common law and under section 8(3) of the Human Rights Act 1998 for a breach of the substantive obligation under article 3 of the Convention (which prohibits torture and inhuman or degrading treatment or punishment). The second claim was in relation to an alleged failure to carry out an effective investigation into the Appellant's

complaint, in breach of the procedural obligation under article 3 of the Convention. The Appellant sought damages under section 8(3) of the Human Rights Act 1998 and section 100(3) of the Scotland Act 1998 against the Chief Constable and the Lord Advocate jointly and severally for this breach.

The Chief Constable and the Lord Advocate argued that the Appellant's second claim was irrelevant. After a debate, the Sheriff agreed. The Appellant's appeal to the Sheriff Principal was unsuccessful. The Appellant then appealed to the Inner House of the Court of Session. At the start of the first day of a three day appeal hearing, the Court informed counsel that it seemed to it that there were fundamental questions about the competency of the action. The suggestion was that the second claim was distinct and separate and raised questions of administrative law that would require to be made the subject of judicial review in the Court of Session. Proceedings were adjourned until 2.00 pm that afternoon to allow counsel to consider this issue. Having heard argument on the point, it discharged the remainder of the hearing and took time to consider its judgment [1 – 5].

The Court then issued an opinion which dealt with the point raised at the appeal hearing and set out its reasons for holding on another ground, before hearing the parties on the point, that the action as a whole was incompetent. The parties were given an opportunity to make submissions at a procedural hearing, but no submissions were made. The Court then dismissed the action. The Appellant appealed to the Supreme Court. The issues in the appeal were: (1) whether it was competent for the Appellant to bring his two article 3 claims, or either of them, by way of action; and (2) whether it was competent for the Appellant to raise the first claim against the Chief Constable and the second claim against the Chief Constable and the Lord Advocate together in the same action [6, 7 – 10 and 12].

Judgment: The Supreme Court unanimously allows the appeal. The Appellant's action is competent. The case will be returned to the Inner House for a hearing of the appeal against the decision of the Sheriff Principal. Judgment is given by Lord Hope with whom all Justices agree.

Reasons for the judgment: As the Court of Session is to a large extent the master of its own procedure, the Supreme Court will always be reluctant to interfere with the judgment of the Inner House on a question of competency unless the judgment is wrong in principle. Regrettably, however, that test is satisfied in this case [13].

The objections to the competency of the two article 3 claims are unsound in principle. The Appellant is not seeking an exercise of the supervisory jurisdiction of the Court of Session in order to have decisions of the Chief Constable or the Lord Advocate reviewed or set aside. His case in relation to both article 3 claims is based on allegations of acts or omissions. He is not seeking, and does not need, to have them corrected in order to provide a foundation for his claims. He seeks just satisfaction for the fact that, as he argues, his Convention rights have been breached. The claims are in essence simply those of damages. Judicial review for their determination would be inept [15 and 18 – 21].

The well-established principle that one pursuer cannot sue two or more defenders for separate causes of action and conclude for a lump sum against them jointly and severally has not been breached in this case. It is clear that the wrongs which are the subject of the Appellant's claims are separate and were committed at different times by different people. But the Appellant is not asking for a decree for the Respondents to be found liable in a single lump sum. The objection to the competency of the action on this basis is misconceived [22 and 24 – 25].

It is possible to imagine cases where an objection to competency could be taken on the ground that the pleadings defeat the ends of avoiding undue complexity and keeping good order in liti-

Data is not collected by the Department about the number of people serving custodial sentences who died from a heroin overdose while in prison. Data is available on the number of clinical interventions for opioid dependence since 2001 in prisons. It is only possible to disaggregate maintenance prescriptions from detoxifications since 2007-08 and caution should be shown when using this data because it refers to the total number of clinical interventions, not the number of prisoners receiving these treatments. Individual prisoners may receive more than one clinical intervention in any given year.

State Must Adequately Protect Families Exposed to Retribution From Criminal Circles

Chamber judgment in the case of R. R. and Others v. Hungary (application no. 19400/11), which is not final1, the European Court of Human Rights held, unanimously, that there had been: a violation of Article 2 (right to life) of the European Convention on Human Rights as regards a mother, Ms H.H., and her children. The case concerned the exclusion of a family from an official witness protection programme on the ground that the father, in prison, had remained in contact with criminal groups.

The Court found that the applicants had been excluded from the programme without the Government having shown that the risks had ceased to exist and without having taken the necessary measures to protect their lives. The Court concluded that the Hungarian authorities had potentially exposed Ms H.H. and her children to life-threatening vengeance from criminal circles. It further held under Article 46 (binding force and execution) that adequate measures had to be taken to protect the family, including proper cover identities if necessary.

The Court further considered that the indication made to the Government under Rule 39 of the Rules of Court that all necessary measures had to be taken in order to guarantee the applicants' personal security must continue in force until the judgment became final or until the Court took a further decision on the question.

Ashfield Young Offenders, Teenage Prisoners Begin Legal Battle *BBC News, 04/12/12*

Seven teenagers who claim they were punished unlawfully have began a legal battle against a Bristol prison. The prisoners were accused of taking part in a protest on a sports pitch which resulted in damage. The boys, all aged 18, claim Ashfield Young Offenders institution operated an unlawful punishment regime and are seeking a judicial review against it. Lawyers acting in support of the group will argue they were punished with a type of 'quadruple jeopardy'.

'Serious concerns': Lawyers from the Howard League for Penal Reform say it was unlawful for the boys to be punished "by awarding them additional days; subjecting them to an informal version of segregation without any safeguards; and removing privileges and rights such as restriction to education and the gym". The claim "raises serious concerns both regarding the treatment of these seven young people, and more general concerns in relation to all those currently held there, and who may be held there in future".

Earlier this year, inspectors criticised Ashfield's procedures for locking prisoners up until they calmed down, saying monitoring and governance of the measures were "inadequate". The private company which runs the prison, Serco, is defending the legal action but declined to comment.

R v Garg - Appeal Against Sentence Of 2 Years Imprisonment Dismissed

In these circumstances the sentence imposed by the judge, making due allowance for the mitigating features which he clearly identified, was not manifestly excessive. Accordingly

scale recording system, are subject to possible errors with data entry and processing.

No information is collected on how many prisoners refuse to undertake programmes and this could be obtained only at disproportionate cost.

Failure to access a recommended intervention, such as an offending behaviour programme, is not the only reason that prisoners do not complete them: some prisoners will not have been assessed as suitable to undertake particular interventions (for example, because they deny their crime). Other prisoners who have accessed interventions may have failed to engage sufficiently to complete them.

It is important to remember that the release of a prisoner serving an IPP or any other indeterminate sentence on tariff expiry is not automatic, even where that prisoner has completed a number of interventions designed to reduce his or her risk. The Parole Board's assessment of an IPP prisoner's suitability for release is based upon what is known of the prisoner's risk of harm and risk of reoffending at the time of his or her parole review, rather than whether or not the prisoner has completed specific interventions.

Prisons: Drugs *House of Commons / 3 Dec 2012 : Column 665W*

Andrew Griffiths: To ask the Secretary of State for Justice what recent estimate he has made of the level of illegal drug use in prisons; and what steps he has taken to reduce this figure.

Jeremy Wright: Estimating the extent of a covert activity such as drug use in prisons is by nature very difficult. One measure is the proportion of prisoners testing positive under the random mandatory drug testing programme. In 2011-12, 7% of prisoners tested were positive, down from 24.4% in 1996-97. NOMS has a comprehensive range of measures to tackle drugs. These include drug detection dogs, procedures to tackle visitors who seek to smuggle drugs and phones into prisons, and mobile phone detection technology. NOMS is also increasing the number of drug free wings in prisons, rolling out a networked IT intelligence system and providing prisons with short range mobile phone blockers which will help prisons prevent prisoners using mobile phones, which is often associated with drug supply.

Andrew Griffiths: To ask the Secretary of State for Justice (1) what estimate he has made of the number of prisoners addicted to (a) heroin and (b) alcohol in each prison; [130633]

(2) how many people serving a custodial sentence died of an overdose of heroin while in prison in each of the last 10 years; [130786] (3) how many people serving a custodial sentence participated in (a) maintenance-based and (b) abstinence-based drug treatment programmes in each of the last 10 years. [130787]

Anna Soubry: I have been asked to reply on behalf of the Department of Health.

No recent estimate has been made by the Department on the number of prisoners addicted to heroin or alcohol as a nationwide total or by prison. However, further analysis of data from the Office for National Statistics (ONS) survey of psychiatric morbidity among prisoners in England and Wales carried out for the Department in 1997 showed that, in the year before prison, 29% of male remand prisoners and 21% of male sentenced prisoners reported heroin use. The ONS data showed 41% of female remand prisoners and 26% of female sentenced prisoners reported heroin use.

ONS data also showed that in the 12 months before coming into prison, 30% of male sentenced prisoners and 30% of male remand prisoners reported alcohol dependency. For female prisoners, 20% of sentenced prisoners and 19% of female remand prisoners reported alcohol dependency. Alcohol dependency was measured by ONS as a score of 16 or more on the Alcohol Use Disorders Identification Test.

gation. The guiding principle when such an objection is taken is whether the way the action is framed is likely to lead to manifest inconvenience and injustice. There is no absolute rule one way or the other, so long as the rule which says that it is incompetent for a pursuer to ask for a decree in a lump sum for separate wrongs is not broken. In this case the Appellant's two claims, although separate, are interconnected in law and in fact, and it would be in the interests of justice and more convenient for them not to be separated. The pleadings are not unduly complex and good order in litigation favours the two claims being heard together. The objection to the competency of the action on this basis is also misconceived [27 – 28 and 32 – 33]. References in square brackets are to paragraphs in the judgment

Kevin Nunn Granted Leave To Appeal To Supreme Court *BBC News, 2911/12*

A Suffolk man jailed for killing his ex-girlfriend has been granted leave to appeal for a reopening of his case. Kevin Nunn, 50, of Woolpit, is serving a minimum of 22 years in prison for the murder of Dawn Walker, 39, in 2005. He wants forensic evidence held by Suffolk Police to be re-examined but lost a High Court challenge in May. A Supreme Court appeal panel, sitting on Wednesday, granted him leave to appeal against the decision. Suffolk Police is yet to comment.

Nunn's sister, Brigitte Butcher, said family and supporters had been trying to access "unused material and forensic examples" for review by an independent expert. She said they were particularly interested in a sperm sample, "not belonging to my brother", which was found on Ms Walker. "None of the evidence stacks up and we the family will not stop fighting for justice, not just for Kevin but for Ms Walker too," she said Nunn claimed the sample could not have been linked to him as he had undergone a vasectomy.

The High Court had told Nunn the case could not be reopened. But, three weeks later, Judge Sir John Thomas of the High Court said the case raised a point of law - which could allow Nunn to have the case heard at the Supreme Court.

Justice For Kevin Nunn Campaign

Kevin Nunn was wrongly convicted and given a 22 year life sentence for a crime he did not commit. Please read the facts of this case and contact the campaign with any information that may assist in our fight for justice for both Kevin Nunn and Dawn Walker.

On the 20th November 2006 Kevin Nunn was wrongfully convicted of murdering Dawn Walker. They had been in a relationship for two and a half years and had enjoyed many holidays together, both passionate about outdoor pursuits and regular gym users.

Suffolk Police appealed to the public for information of Dawn Walker's last known movements 2nd February 2005. A video still showed her last visit to The Suffolk Golf and Leisure Club in Fornham All Saints, Bury St Edmunds that evening at 2130hrs. These stills were in the press and on the local BBC news at the start of the murder investigation. Kevin Nunn also attended the gym and is clearly seen on the CCTV footage, that same evening. It is alleged by the prosecution, that after being told by Ms Walker the relationship was at an end they had argued outside her home. The argument was supposedly witnessed by a neighbour opposite sometime after 10pm. He told police he saw a man in a dark suit about the same height or taller than Ms Walker and assumed it was her boyfriend - Kevin Nunn is 2" shorter. Kevin Nunn had visited Ms Walker's home after leaving the gym at around 2030 hrs and had returned to his home in Woolpit, Suffolk some 10 miles away within the hour. The police accused Kevin Nunn of lying continually about his movements, after all, they had the CCTV footage from The Suffolk Golf and Leisure Club showing all the visitors that evening.

It is alleged that Kevin Nunn murdered Dawn Walker in a fit of jealousy. A voicemail sent to Kevin Nunn from Ms Walker in the early hours of Thursday morning was portrayed as a part of his plot to hide the truth.

Dawn Walker did not turn up for work the following day. Kevin Nunn reported Dawn Walker as a missing person to Suffolk Police on the morning Friday 4th February 2005. Dawn Walker's body was found alongside the River Lark later that Friday by two women just before 5pm. It is a public footpath used regularly by dog walkers and joggers and just over a mile away from Dawn Walkers home in Oak Close in Fornham St Martin. No known cause of death was ascertained. If, as the prosecution alleges, and Ms Walker was killled in a jealous rage on the evening of Wednesday 2 February 2005, why did 2 Pathologists state "probable cause of death was hypothermia owing to exposure?"

Kevin Nunn is alleged to have asked a close friend of Dawn Walker - a man that Kevin had not knowingly met before, to assist in disposing of her body. This man was a work colleague of Ms Walker. He owned a silver estate car which was seen outside Ms Walker's home around the time of her disappearance. It was alleged he helped Kevin Nunn to take the body of Ms Walker from her home concealed in a carpet or similar in a silver estate car. The co-defendent and Kevin Nunn were identified by neighbours in the vicinity of Ms Walkers home in Oaks Close when they were actively trying to find her.

The prosecution told the jury that Ms Walker's body had been in her home since Wednesday evening. They also suggested whilst summing up during the trial, Ms Walker's body could have been kept in the water butt in her garden! There was no forensic evidence whatsoever to substantiate any of these claims. There was no missing carpet, underlay or disturbance within Ms Walkers home, garden or evidence of a body stored in the water butt. No forensic evidence was ever found on any possession owned by Kevin Nunn or evidence of a body being placed in the silver estate car owned by the co-accused. Kevin Nunn had a company owned black Volkswagon Passat. There was nothing but assumptions, heresay and circumstantial evidence to link Kevin Nunn to the disappearance and murder of Dawn Walker. In fact, there was no evidence to indicate that this was, as the the prosecution claimed, a jealousy killing.

Kevin Nunn was arrested for the murder of Dawn Walker on 14 March 2005 and charged 2 days later. In October 2005 he was granted bail and was able to live on his own and sign-in to a police station each day. The trial took place at Ipswich Crown Court in October 2006 and was based purely on circumstantial evidence. The co-defendent was acquitted during the trial. Kevin Nunn was wrongly convicted in November 2006 and given a 22 year life sentence for a crime he did not commit.

Kevin Nunn: LA9547, HMP Garth, Ulnes Walton, Leyland, PR26 8NE

Convictions Quashed for Two Men Jailed For London Riots Robbery *Telegraph, 29/11/12*

Millions of people around the world watched in horror at CCTV footage of 21-year-old Ashraf Rossli being robbed by men purporting to be Good Samaritans. A Malaysian accountancy student, he had only moments earlier had his jaw shattered by another rioter as he cycled in Barking, east London, in August 2011. Mr Rossli had been in Britain for only a month when he was attacked on August 8, 2010.

John Kassongs Kafunda, 23, of Eastwood Road, Ilford, and Reece Donovan, 25, of Cross Road, Romford, were accused of robbing him as he walked dazed over the Queen's Road flyover. At Wood Green Crown Court, Mr Kafunda was jailed for four years and three months for robbery and vio-

and-a-half years by appeal judges. His lawyers argued the original term was too long as Jackson was only a "secondary getaway driver".

Community Care

PAS's Community Care Caseworker represented an elderly prisoner (B) who had suffered from a stroke. He was unable to care for himself or communicate easily with other prisoners - other prisoners had to feed him, wash him and generally care for him at a basic level.

PAS commissioned an independent care report for the prisoner, which backed up the obvious conclusion that the prison should be providing a carer to carry out these basic services for the elderly prisoner; within a week of the report, a carer was being provided three times a day to feed, wash and care for B. The threat of legal action worked.

This was just the first stage however. A medical prognosis revealed that B had only a matter of days and weeks to live, and so the Community Care Caseworker began a compassionate release application on his behalf. But for this he would require supported nursing accommodation. Despite the obvious desperation of B's condition, the Secretary of State did not deem the situation urgent due to the absence of suitable release accommodation. Yet the Primary Care Trust and Local Authority refused to organise suitable accommodation as the prisoner had not been granted release an absurd Catch-22 situation that is sadly very frequent.

PAS launched a legal challenge to the Secretary of State. Eventually the local authority agreed to provide the requisite services, in turn allowing a successful application for compassionate release, two weeks following the prognosis. As a result, B was released and transferred to London, where he was able to spend with his family what sadly proved to be the last few weeks of his life.

Race Discrimination

One of PAS's clients, D had been given an IEP warning due to prison staff alleging that D was about to use violence; D felt that this allegation was clearly based upon a racially discriminatory interpretation of his conduct, adhering to stereotypes about non-white people without any evidence that he had been planning to use violence. This IEP warning affected his ability to have his categorisation downgraded, affecting his proper movement through the prison system. D submitted a Discrimination Incident Reporting Form to his Diversity Manager, but astonishingly did not receive a reply for three months, until PAS intervened on his behalf. The prison eventually accepted the appeal against the IEP ruling, and restored his enhanced status. Eventually D was able to be moved to Category C, as the original decision not to recategorise him had been based upon the unlawful downgrade in his IEP status. This recategorisation decision will be crucial for his eventual progress through the prison system to open conditions.

Prisoners: Rehabilitation *House of Lords / 28 Nov 2012 : Column WA67*

Lord Wigley to ask Her Majesty's Government, of the prisoners with indeterminate sentences who had exceeded their tariff in September 2012, how many have been given an opportunity to undergo rehabilitation courses; and, of those, (1) how many had completed those courses, (2) how many were still undertaking them, and (3) how many had refused to undertake them.

Minister of State, Ministry of Justice (Lord McNally): Of those prisoners serving indeterminate sentences of imprisonment for public protection (IPP) at 30 September 2012, 3,245 had started at least one accredited offending behaviour programme. Of these, 3,171 had completed at least one programme and 20 were still attending a programme.

These figures have been drawn from administrative IT systems, which, as with any large

a right of application on the part of detained patients to be transferred to conditions of lower security. Such debate also led, as a result of an amendment, to a commitment being made that such rights would be in force by no later than May 2006 [38-39]. The intention of the Scottish Parliament was that the rights of application for which the part of the Act containing section 268 provided should be in effective operation by that date. There was nothing in the Act to support the contention that the Scottish Parliament intended that section 264 should be in effective operation by 1 May 2006 but that section 268 should not; both required the enactment of regulations to give them practical effect [40].

· It is a basic principle of administrative law that a discretionary power must not be used to frustrate the object of the Act of Parliament which conferred that discretion. The Respondents' failure to exercise their power to make the regulations necessary to define 'qualifying patient' and 'qualifying hospital', and therefore to give section 268 of the Act practical effect, thwarted the intention of the Scottish Parliament. That failure therefore was, and is, unlawful [42-43].

· Before the Scottish courts, the Respondents pointed out that the Scottish Parliament did not confer a right of application on an identified class of patients in section 268 in the way that it had in section 264. They argued that this meant they had no duty to make regulations, as there was no right contained in section 268 to which they were duty-bound to give effect [44]. However, the Court notes that that proposition is circular; there is no duty to make regulations because no rights have been conferred, but no rights have been conferred because no regulations have been made [45]. The fundamental flaw in the argument is that it is too narrow an approach to suggest that an obligation to exercise a discretionary power to make regulations only arises where it is necessary to do so to give effect to a legal right. It may be necessary to exercise such a power to bring about some other result that was intended by Parliament, and in this case that intended result was that the part of the Act containing section 268 should be in effective operation by 1 May 2006 [46-47].

References in square brackets are to paragraphs in the judgment

Resettlement Leave

A category D prisoner with a 16-year sentence had progressed to open conditions, but as a result of a consecutive sentence imposed upon him due to non-payment of a confiscation order, was told that his eligibility dates for resettlement leave had changed, according to a blanket prison policy. The upshot was that he would have 6 weeks' resettlement leave at most, yet the prisoner had a young daughter he had never seen and an ill father, and had had previous resettlement leave without incident.

PAS's Managing Solicitor thus took the decision to judicial review, and as a result the prisoner's resettlement leave was recalculated. It has also led to a new policy in the prison estate for prisoners with consecutive sentences placed on them due to non-payment of confiscation orders, by which their resettlement leave will be subject to individual assessment - thus taking on one case led to a significant policy change.

Bungling Birmingham Raider Had Own Name Written On Getaway Van

A robber jailed after using a getaway van emblazoned with his own name and contact details has won a bid to slash his sentence. Warren Jackson used his own Ford Transit to spirit away his accomplices after they stole £13,000 from two security guards delivering cash to a Tesco store. In June, he was jailed for seven years for his role in the raid but that was cut to five-

lent disorder, and Mr Donovan for five years for robbery, violent disorder and burglary.

They appealed and saw their convictions overturned by the country's top judge, the Lord Chief Justice, Lord Judge, sitting with two senior colleagues. The hearing was held in private at the Court of Appeal, but Lord Judge, Mr Justice Fulford and Mr Justice Bean announced their decision in open court. The prosecution did not seek a retrial after their convictions were quashed. Mr Kafunda and Mr Donovan insisted it was not them in the video clip, but were convicted on the back of anonymous witness evidence.

Jeremy Bamber Latest Legal Challenge Quashed By High Court

His long-running battle to overturn his convictions for murdering five relatives 27 years ago has been thrown out by high court judges. Bamber, 51, wanted to challenge a refusal by the Criminal Cases Review Commission (CCRC), the independent body which investigates possible miscarriages of justice, to refer his case back to the court of appeal to be looked at again. Thursday's (29/11/12) hearing followed the rejection by a single judge, who studied the case papers in private, of Bamber's application for permission to seek judicial review of the CCRC's decision.

His renewed application was refused by Sir John Thomas, president of the Queen's Bench Division, and Mr Justice Globe. Thomas, announcing the decision of the court, said that having looked at the approach taken by the CCRC in the case he could not see any way in which a challenge could be made to the decision reached. Thomas said: "It seems to me that a challenge is impossible to mount."

Bamber, serving a whole-life term for the 1985 killings, has always protested his innocence and claims his sister, Sheila Caffell, shot her family before turning the gun on herself.

Announcing its decision in April, the CCRC said that, despite a lengthy and complex investigation, it "has not identified any evidence or legal argument that it considers capable of raising a real possibility that the court of appeal would quash the convictions".

Dale Johnston, Wrongfully Convicted, Wins Fight to be Declared Innocent

After spending seven years on Death Row for a pair of now-three-decade-old murders that he didn't commit, Dale Johnston feels he finally has pocketed a piece of long-denied justice. A judge ruled yesterday 31/11/12 that the 79-year-old man was wrongfully imprisoned for the dismemberment slayings of his stepdaughter and her fiance, clearing the way for Johnston to seek compensation from the state. The ruling by Franklin County Common Pleas Judge Richard A. Frye came in Johnston's third attempt to win recognition that he wrongly served time for the 1982 slayings that horrified Hocking County shortly before Halloween.

"It's been a long time coming. It's been delayed so long, it takes the edge off of it," Johnston said last night from his Grove City home. "This is about more than the money. The public has known for a long time I didn't do the crime, but the state continued to try to prevent me from being judged wrongly convicted. Everyone else knew it. The state just wouldn't accept it," he said. Johnston was sentenced to die in the electric chair in 1984 for the shooting deaths of Annette Cooper, 18, and Todd Schultz, 19, whose bodies were cut up and buried in a cornfield and thrown into the Hocking River. The shaky case against him toppled on appeal and he was freed in 1990.

A drifter and drug addict, Chester McKnight, confessed in 2008 to slaughtering the couple and was sentenced to life in prison, reviving Johnston's claim for compensation. However, Johnston could not use McKnight's conviction to support a finding that he was innocent. That avenue was barred as a result of a ruling rejecting his innocence in one of his prior attempts to be cleared of the crimes.

A person cannot be declared wrongfully imprisoned if it can be shown he committed other crimes during the time of their original felony convictions. The office of Attorney General Mike DeWine argued that Johnston was guilty of sexually molesting his slain stepdaughter, a claim rejected by Frye. Frye granted Johnston's request for summary judgment after previously denouncing the state's interpretation of wrongful-imprisonment laws as "illogical ... absurd (and) mean-spirited."

Johnston's attorney, Benjamin A. Tracy of Columbus, said his client never molested his stepdaughter and certainly didn't kill her and her fiance. "He absolutely is innocent," Tracy said. "Justice absolutely demanded that he be declared wrongfully imprisoned."

The Attorney general had fought Johnston over the years in his bid to be declared innocent or wrongfully imprisoned, a ruling required before he could turn to the Ohio Court of Claims to seek monetary damages. A spokesman said the attorney general was reviewing Frye's ruling.

Two Strikes and its' Life + Extended Determinate Sentence

Tougher prison sentences for violent crime in force *BBC, 3 December 2012*

A raft of new criminal offences have come into force on Monday 3rd December 2012 in England and Wales, as well as tougher prison sentences for violent crimes. There is a new offence of aggravated possession of a knife, and mandatory life sentences for anyone committing a second serious violent or sexual crime. Some dangerous prisoners will have to serve two-thirds or whole sentences, instead of parole after half the term. Ministers said they were determined to crack down on violent criminals.

The offence of aggravated knife possession targets those who wield knives in a public place or school to threaten and create a risk of serious physical harm. In almost all such cases, judges must impose a custodial sentence - a minimum six months for an adult or a four-month detention and training order for 16 and 17 year olds. It certainly means a small number of additional prisoners going to prison for longer, and I am all in favour of that" Chris Grayling Justice Secretary

There is also the "two strikes" system - a new mandatory life sentence for people convicted of a second very serious sexual or violent offence. For those dangerous criminals who do not come under the two strikes rule, the government is introducing an extended determinate sentence (EDS). Unlike normal sentences, offenders on EDS are not automatically released from prison halfway through their jail term. They have to serve at least two-thirds of their sentence and may be detained until the end of it. EDS replaces highly controversial "indeterminate" sentences under which prisoners deemed a danger to the public could be detained indefinitely.

Speaking about the changes, Mr Grayling told the BBC: "It certainly means a small number of additional prisoners going to prison for longer, and I am all in favour of that." He said the two-strikes rule would apply to serious sexual offences or violent offences that would command a sentence of 10 years or more. "Everyone deserves a second chance. If they don't use that second chance they go to prison for life," he said. If you're wandering round carrying knife in a threatening way, you will go to jail. I'm also looking at the issue of cautions for knife crime, which I'm not happy with at all." Mr Grayling, who became Justice Secretary in September's cabinet reshuffle, said he would make "more changes" as he continued to review sentences.

BBC legal affairs correspondent Clive Coleman says that while some people see the new measures as reducing a judge's discretion, others will welcome what is considered a tough new regime.

In Scotland, Justice Secretary Kenny MacAskill said last week that the maximum prison sentence for carrying a knife in Scotland would increase from four to five years. Mr MacAskill also announced a crackdown on people released from prison who commit more crime before their original sentence has ended.

later than 1 May 2006. Section 268 of the Act specifies that the terms 'qualifying patient' and 'qualifying hospital' were to be defined in regulations made by the Respondents. Section 273 of the Act specifies the same in relation to the term 'relevant health board'. However, although sections 268 and 273 were brought into force on 6 January 2006 specifically and only for the purpose of allowing regulations to be made under those sections, the Respondents made regulations under section 273 only, which defined 'relevant health board'. Those regulations came into force on 1 May 2006. No regulations defining 'qualifying patient' or 'qualifying hospital' have been made by the Respondents under section 268 to date.

Because the term 'relevant health board' was defined prior to 1 May 2006, the right to apply to the Tribunal for patients detained in state hospitals under section 264 was in effective operation by that date. However, because the terms 'qualifying patient' and 'qualifying hospital' remain undefined, section 268 is not in effective operation. Therefore, the Appellant cannot apply for a declaration from the Tribunal that he is detained in conditions of excessive security.

The Appellant applied for judicial review on the basis that the Respondents' failure to draft and lay regulations under section 268 defining the terms 'qualifying patient' and 'qualifying hospital' was unlawful. The Outer House of the Court of Session refused the Appellant's petition on the basis that there was no duty to lay regulations to give effect to a statute where that statute had not conferred a right on any specific class of persons. The Inner House refused the Appellant's subsequent appeal on broadly similar grounds.

Judgment: The Supreme Court unanimously allows the appeal. The Court finds that the failure by the Scottish Ministers to draft and lay the regulations under section 268 of the 2003 Act before the Scottish Parliament prior to 1 May 2006, and their continued failure to do so, was and is unlawful. Lord Reed gives the judgment of the court.

Reasons for the judgment: · The Respondents argue that section 268 was 'in force' by 1 May 2006, as required by section 333(2) of the Act, but did not 'operate'. The latter would not occur unless and until they decided to make the necessary regulations, and their failure to do so did not defeat the intention of the Scottish Parliament. There is a valid distinction, they say, between 'coming into force' and 'operating' [20]. By contrast, the Appellant argues that the inference to be drawn from section 333(2) is that the part of the Act containing section 268 should be in effective operation by 1 May 2006. This is supported by the fact that there are other sections within the Act in respect of which Parliament had not set any deadline for their coming into force [21].

· The Court notes that the question of when a statutory provision comes into force depends not on when it appears on the statute book following Royal Assent, but on what commencement provision Parliament enacts [22]. It is common for a section to come into force on a later date, usually in order to allow for preparation by the officials who are to administer the Act and/or those who will be affected by its practical operation. Parliament may allow Ministers to decide when a section should come into force, or alternatively may specify a particular deadline [24-25].

· Having regard to previous decisions of the Court of Appeal, the distinction between a section coming 'into force', first, in the sense that it forms part of the law of the land and, second, in the sense that it is in effective operation as a matter of objective fact, is in principle a valid one. As such, in a commencement provision such as section 333(2) of the Act, the words 'in force' refer to the former of these two senses[27-32]. However, the natural inference that should nonetheless be drawn, unless the contrary intention appears, is that Parliament intended the sections to which such a commencement provision applies also to be in effective operation [33-37].

· In relation to the present case, Parliamentary debate led to the inclusion in the Act of

ing any justification for its decision. The Divisional Court ruled that this was a stance which the provisions of the 2003 Act did not permit. It was not consistent with the structure of the 2003 Act to find reasonable cause when the requesting state had put forward no explanation for failing to seek a speedy surrender but on the contrary, without explanation, had sought surrender at a time of its own choosing and convenience. Under the statute, delay in implementing an extradition must be justified to the court, once the appeal process is over. In the absence of any justification offered by the requesting state, the USA, the court could not find that there was reasonable cause for the delay. It ordered Mr Tajik's discharge.

But there was no response from the USA, despite repeated requests from the Home Office to the FCO for confirmation of the US position throughout 2009, through until October 2010. Thereafter, until August 2011, the FCO continued to raise Mr Tajik's case with US officials on a number of occasions. It was only in late September 2011 that the Secretary of State was informed that the United States did not intend to withdraw the extant request for Mr Tajik's extradition.

The USA advanced no justification for choosing to reply to the United Kingdom's request in August 2011 and not much earlier, in 2009 or 2010. The only inference the court could draw was that it had arrogated to itself the time for choosing when Mr Tajik should be extradited and face trial without advancing any justification for its decision. The Divisional Court ruled that this was a stance which the provisions of the 2003 Act did not permit. It was not consistent with the structure of the 2003 Act to find reasonable cause when the requesting state had put forward no explanation for failing to seek a speedy surrender but on the contrary, without explanation, had sought surrender at a time of its own choosing and convenience. Under the statute, delay in implementing an extradition must be justified to the court, once the appeal process is over. In the absence of any justification offered by the requesting state, the USA, the court could not find that there was reasonable cause for the delay. It ordered Mr Tajik's discharge.

'Persons detained in in conditions of excessive security in Scotland under Section 264 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Must be able to challenge the authorities as to whether they would have a better quality of life and prospects for release back to the community if treated in an open ward.'

RM (AP) v Scottish Ministers [2012] UKSC 58 - Appeal from [2011] CSIH 19; [2008] CSOH 123

Justices: Lord Hope, Lady Hale, Lord Wilson, Lord Reed and Lord Carnwath

Background to the appeals: The Appellant is a patient who has been compulsorily detained in Leverndale Hospital, which is not a state hospital, since 1995. He believes he is detained in conditions of excessive security. He believes that his quality of life, his liberty and his prospects for release would be improved were he to be transferred to an open ward.

Section 264 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the Act') gives patients who are detained in state hospitals under certain types of order the right to apply to the Mental Health Tribunal for Scotland ('the Tribunal') for a declaration that they are being held in conditions of excessive security. Section 268 of the Act purports to give the same right to such patients who are detained in non-state hospitals. However, it also specifies that, within that class of individuals, only 'qualifying patients' in 'qualifying hospitals' may make an application. Under each section, if the Tribunal makes a declaration, the 'relevant health board' must identify within three months another hospital where the patient can be detained in appropriate conditions of security.

The Act was passed and received Royal Assent in 2003. Section 333(2) of the Act states that the part of the Act containing sections 264 and 268 was to come into force by no

2,000 under-12s Arrested Last Year *The Guardian, 03/12/1212*

The Howard League for Penal Reform said 2,117 children aged 10 and 11 were detained in England and Wales in 2011. Police arrested a total of 209,450 under-18s, down from 315,923 in 2008, the charity said. About a fifth of the children held each year are girls.

The league has campaigned to reduce the number of child arrests on the grounds that they could lead to a criminal record for "being naughty". Its chief executive, Frances Crook, said: "Children who get into trouble are more often than not just being challenging teenagers and how we respond to this nuisance behaviour could make a difference for the rest of their lives.

"An arrest can blight a life and lead to a criminal record for just being naughty. The positive change in policing children will release resources to deal with real crimes. Only a handful of children are involved in more serious incidents and they usually suffer from neglect, abuse or mental health issues. A commitment to public safety means treating them as vulnerable children and making sure they get the help they need to mature into law-abiding citizens."

A Freedom of Information request by the BBC revealed that children as young as 11 had been detained in police cells because officers thought they were mentally ill. There were 347 such detentions under the Mental Health Act in England and Wales in 2011, and two forces had held a child for more than 24 hours.

MPs Debating the Prisons (Property) Bill

The Prisons (Property) Bill is a private member's bill that is being sponsored by Conservative MP Stuart Andrew. The bill was presented to Parliament through the ballot procedure, and given its first reading, on 20 June 2012. The Third Reading took place Friday 30th November.

The bill once it becomes and 'Act' will give powers to prison governors to destroy unauthorised property found in prisons and similar institutions. Unauthorised property includes illegal items such as controlled drugs and offensive weapons, as well as items not authorised to be brought into prisons such as mobile phones.

Report on an Unannounced Inspection of HMP Bullingdon

Inspection 10 – 20 July 2012, report compiled September 2012, published 30/11/12

Inspectors were concerned to find that:

- there were repeated concerns about the behaviour of a very small minority of officers. We thought these concerns were credible.
- were particularly concerned about the use of a body belt and improvised hood (a pillow case) on one prisoner. In addition to our serious concern about the incident itself, we were also disturbed that the report to the use of force committee responsible for reviewing the incident did not disclose the use of either the body belt or the hood.
- documentation relating to the use of force was not always completed
- prisoners had little confidence in the system for making complaints about staff;
- We saw responses to complaints that were dismissive or written by the officer who was the subject of the complaint.
- Several serious allegations did not appear to have been investigated.
- more than a third of prisoners were locked in their cells during the working day;
- more attention was required to the needs of disabled and foreign national prisoners
- At the time of this inspection it held 1,087 adult men - 25% above its normal capacity

Introduction from the report: HMP Bullingdon describes itself as a 'community prison'

and as such has the challenging task of combining the training function of a category C prison with that of a local prison serving the courts of Oxfordshire and Berkshire. At the time of this inspection it held 1,087 adult men - almost 25% above its normal capacity. The prison generally performed well but there were some issues that caused serious concern. We were not assured prison managers were adequately sighted on some of these.

Most prisoners reported decent relationships with staff and we observed generally positive interactions. Diversity work was generally well managed, although more attention was required to the needs of disabled and foreign national prisoners. The prison was generally safe. There was a good alcohol and drugs strategy and there was effective action to prevent illegal drugs coming into the prison. Measures to support prisoners at risk of suicide and self-harm were good.

However, we heard repeated concerns from a variety of sources about the behaviour of a very small minority of officers. We thought these concerns were credible. Prisoners had little confidence in the system for making complaints about staff, which was sometimes well founded. We saw responses to complaints that were dismissive or written by the officer who was the subject of the complaint. Several serious allegations did not appear to have been investigated.

Documentation relating to the use of force was not always completed. We were particularly concerned about the use of a body belt and improvised hood (a pillow case) on one prisoner. In addition to our serious concern about the incident itself, we were also disturbed that the report to the use of force committee responsible for reviewing the incident did not disclose the use of either the body belt or the hood.

Our last inspection in 2010 raised concerns about a major deterioration in the quality and quantity of work, training and education available in the prison. This inspection found that there had been some improvement, but from a very low base, and much more improvement was still required. Given the prison's training function, there was still too little purposeful activity provided, although it had increased and the prison made good use of what it had. Attendance and punctuality were good but we still found more than a third of prisoners locked in their cells, sleeping or watching TV, during the working day. While some might have had activities to go to for part of the day, a fifth of the population had no activity at all- about the same proportion by which the prison was overcrowded.

The shortage of activity places was largely outside the prison's direct control but it should, and could, have addressed the quality of teaching and instruction, too much of which was not sufficiently good. The prison's own self-assessment processes did not effectively identify where improvement was required.

There was a good and up-to-date strategy to prepare prisoners for release. There was practical support for issues such as housing and employment, and the range of programmes to address prisoner behaviour was much better than we usually see. There was an effective and innovative system to manage the offending behaviour of about 50 prolific offenders. However, for other prisoners there were significant delays and weaknesses in assessing and addressing their risks, in part because the staff responsible were frequently assigned to other duties. Good public protection arrangements mitigated the potential adverse consequences of this.

Bullingdon was an improving prison. Most prisoners had a reasonable experience. They were held safely in decent, if cramped, accommodation. Relations between staff and prisoners were generally positive. Most had some activity to occupy them. There was some good practical support to help prisoners with resettlement. Other than the lack of activity, the exceptions to this generally positive picture were relatively few - but they were very serious and undermined the work of the prison as a whole. These need to be addressed as a matter of urgency so that this community prison can achieve its full potential.

Officer 'Tea Poisoning' Inquiry At HMP Bullingdon

An inquiry is under way to establish how two female prison officers became ill amid fears their tea may have been poisoned at an Oxfordshire jail. The Prison Officers' Association (POA) says the victims became seriously ill and collapsed at all-male Bullingdon Prison, in Bicester, on Monday. Both women are expected to make full recoveries and have since been discharged from hospital. Further tests are planned to establish the cause of their illness. The prison has more than 1,000 inmates and the officers were working on the "enhanced unit" of the jail, where the inmates have extra privileges, when they were taken ill, the POA union said.

Tajik v United States Of America, SSHD and Westminster Magistrates' Court

Summary by Crimeline: From time to time the most senior judges reiterate the need to avoid delay in extradition proceedings. Frequently, the inordinate delays are due to increasingly desperate attempts by requested persons to avoid facing trial. This case is different. Mr Tajik, the claimant, is a former Iranian ambassador to Jordan. The history of his extradition, at the request of the United States of America, started with the issue of a warrant in Illinois for his arrest on charges relating to the export of defence articles, in particular night-vision equipment, on 30 August 2006. The Divisional Court rejected his statutory appeal, brought on the basis of his ill-health, on 10 April 2008.

He then submitted further medical reports to the then Secretary of State and she agreed to consider whether, in the light of those reports, extradition would breach Mr Tajik's rights under the Human Rights Act 1998. There then followed a delay of over three and a half years before the Secretary of State reached a decision that his extradition should be ordered.

In these proceedings Mr Tajik argued that it was now, after so long a delay, too late to order his extradition. The Divisional Court ruled that the question whether he should now be extradited turned on whether reasonable cause had been shown for that delay. It ruled that his case was governed by s.118 of the Extradition Act 2003. This provision requires an order for extradition to be implemented within 28 days following the conclusion of a statutory appeal, unless reasonable cause is shown.

The Secretary of State did consider the fresh medical reports between their submission in June 2008 and 2009. Thereafter, the Secretary of State sought to persuade the USA to withdraw its request for extradition. The reason was explained by a Home Office official: his case was a "prominent feature of the UK's bilateral relationship with Iran since his arrest in October 2006 and has the potential to cause significant disruption to that relationship". The United Kingdom was concerned as to the security of the British Embassy in Tehran and the safety of the staff who worked there in the light of fears as to the reaction in Tehran should Mr Tajik be extradited to the USA.

But there was no response from the USA, despite repeated requests from the Home Office to the FCO for confirmation of the US position throughout 2009, through until October 2010. Thereafter, until August 2011, the FCO continued to raise Mr Tajik's case with US officials on a number of occasions. It was only in late September 2011 that the Secretary of State was informed that the United States did not intend to withdraw the extant request for Mr Tajik's extradition.

The USA advanced no justification for choosing to reply to the United Kingdom's request in August 2011 and not much earlier, in 2009 or 2010. The only inference the court could draw was that it had arrogated to itself the time for choosing when Mr Tajik should be extradited and face trial without advanc-