despite some successful outcomes, there was little evidence of routine evaluation at a strategic level of the quality of effectiveness of multi-agency work.

Chief Inspector of Probation, Liz Calderbank, said on behalf of all inspectorates: “The behaviour of this small but significant group of children and young people can be extremely damaging, often involving other children as victims. Yet the evidence from our inspection is that these children and young people do respond to intervention from the youth offending teams and can be prevented from reoffending before developing entrenched patterns of behaviour. We were therefore very concerned to find that a sizeable number of these children had been referred on previous occasions to children’s services but the significance of their sexual behaviour was either not recognised or dismissed. This, to us, represented a lost opportunity, both for the children themselves and their potential victims.” Inspectors made a number of recommendations to criminal justice agencies, children’s services and social services. Ministry of Justice, 07/02/13

CCRC Refers Sexual Assault Conviction of H to Court of Appeal

The Criminal Cases Review Commission has referred the sexual assault conviction of H to the Court of Appeal. Mr H pleaded not guilty but was convicted in 2009 of sexually assaulting a 17-year-old girl. He was sentenced to a total of eighteen months’ imprisonment. The Commission has referred Mr H’s conviction to the Court of Appeal because it considers that new evidence which significantly undermines the credibility of the complainant raises a real possibility that the Court will quash the conviction.

Appeal Court Orders Release of Severely Disabled Prisoner

The appeal court has shown "exceptional mercy" to a severely disabled prisoner, releasing him from prison early after his lawyers argued the prison service could not meet his complex medical needs. Daniel Roque Hall suffers from Friedreich's ataxia, a degenerative disease, that affects co-ordination of the whole body. It causes a heart defect that requires constant monitoring, as well as diabetes. Hall said it felt "tremendous to be going home". Hall, 31, uses a wheelchair and has a life expectancy of 35 to 40 years. Last July, he was sentenced to three years' imprisonment after pleading guilty to importing two and a half kilos of cocaine into Heathrow. The drugs, hidden in his wheelchair, had been smuggled from Peru, where Hall and a carer had been on holiday. Three appeal court judges on Friday said Hall's was a case "appropriate for an exceptional application of mercy" and reduced his sentence from three years to 18 months, meaning he will be discharged from hospital to his home, where his round-the-clock care will continue.him stable.Roque Hall said it was "tremendous to be going home, where I can hopefully recuperate fully."

Hostages: Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, 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 412 14/02/2013)

Craigavon Two Appeal Date Set

The 29th of April 2013 is the date set for the appeals of John Paul Wootton and Brendan McConville, who were convicted last year and sentenced to life for the killing of PSNI Constable Stephen Carroll in 2009. This appeal comes fast on the back of the quashed convictions and subsequent setting of retrials in the cases of Brian Shivers (in the Massereene Trial) and the three men accused of the murder of school boy Micheal McIlveen.

All these original trials and convictions happened during the same period and were high profile and played out in the media, with the subsequent quashed convictions and the campaign around the case of Brendan McConville and John Paul Wootton (headed up by MOJ victim and campaigner Gerry Conlon). these raises serious issues with the standard of Justice being delivered in Northern Ireland's "new dispensation". A quashed conviction in the case of the Craigavon Two would be a damming indictment of the system and the continued use of Diplock courts.

The recent Media ban put in place by the Norths Lord Chief Justice on the pending retrials in the cases of Brian Shivers and the McIlveen Three, further muddies the waters and smacks of a cover up, weakening one of the key cornerstones of Justice, that it be transparent.

Rio Prison Inmates Escape Through Sewers

Twenty-seven prisoners have escaped from a jail in the Brazilian city of Rio de Janeiro. The inmates fled through the prison's sewage system. Prison officials say they have already recaptured four of the escapees, and are confident none of the others has so far been able to leave the sewer tunnels. Police are questioning the guards who were on duty at the Vicente Piragibe prison when the escape happened. The recaptured escapees will also be questioned before being transferred to another penitentiary. Overcrowding is a major problem in many of Brazil's prison. Local media quoted one unnamed prison official saying that Vicente Piragibe housed about 1,700 inmates and sometimes only had 10 prison guards on duty.

Alpheus Lightbourne - Denied a Fair Trial by Justices

Following the withdrawal of Alpheus Lightbourne’s counsel who had made an unsuccessful application to adjourn the trial, Alpheus renewed the application primarily on the ground that he was now unrepresented and unprepared for trial. The justices refused that application and Alpheus was convicted. The CPS conceded that Alpheus had been denied a fair trial, but in a quite extraordinary submission the justices (not normally an active participant in cases of this type) argued that the trial was fair. Held: The trial was unfair and the conviction would be quashed.

Lightbourne (R application of) v West And Central Hertfordshire Magistrates Court

1. Justice Hickinbottom: In this application for judicial review, with permission of Lang J, Claimant Alpheus Lightbourne challenges the decision of the West and Central Hertfordshire Magistrates' Court, sitting at Watford on 02/0212, to convict him of 6 offences involving public disorder.

2. The charges arose from the Claimant's conduct at the Odeon Cinema at the Galleria Shopping Complex in Hatfield. The Claimant had a large bag with him, and staff at the cinema told him he could not take it into the auditorium as it might pose a fire risk. They alleged that he consequently

lost his temper and proceeded to assault two of their number, Yagnic Pandit and Sirish Bhattacharya, by prodding them. He also threatened a third, Rashita Kitchen.

3. Those events resulted in the Claimant being charged with six offences, namely assaulting each of Mr Pandit and Mr Bhattacharya by beating (contrary to section 39 of the Criminal Justice Act 1988), and using threatening words and behaviour (contrary to section 4 of the Public Order Act 1986): with parallel charges being made on a racially aggravated basis (under the terms of sections 28 to 31 of the Crime and Disorder Act 1988).

4. It was the Claimant's defence that, whilst he accepted that he had lost self-control and had shouted at the staff, he had not assaulted them, nor had he used any racially abusive language.

5. The procedural course before the Magistrates' Court was not a happy one. The Claimant was arrested at the cinema on 2 September 2011, and charged on 25 September. He first appeared in the Magistrates' Court on 6 October, when he entered not guilty pleas and consented to summary trial. The case was fixed for trial on 6 December, with a time estimate of one day. On 5 December, the prosecution made an application to adjourn the trial because a prosecution witness was unavailable. That application was refused. However, the following day, the prosecution witnesses such as they were attending court, the trial could not proceed due to lack of court time, and it was adjourned to 2 February 2012.

6. The prosecution had warned four cinema employee witnesses to attend court, but unfortunately in error they were warned to attend court on the wrong day, 3 February, the day after the trial fixture. However, once the error had come to light and at short notice, the prosecution managed to secure the attendance of Mr Pandit and Mr Bhattacharya on 2 February. The prosecution proposed proceeding with the trial that day, with just those two witnesses. However, the Claimant, through Counsel by whom he was represented, opposed that stance and sought an adjournment of the trial. In particular, she submitted that it would be an abuse of process to proceed that day because (i) the case had not been properly investigated and the prosecution had breached the CPS code; and (ii) she should be afforded the opportunity of cross-examining one of the remaining two cinema employee witnesses who had not attended court, a Mr Harrison Parker. He was an administrator at the cinema and who had seen and heard part of the incident, having been alerted to it. His evidence, she said, undermined the evidence of the two witnesses who had attended court. That was not accepted by the Crown.

7. The application to adjourn was opposed on a number of grounds, including the fact that the trial had already been adjourned once and one of the prosecution witnesses was shortly due to go to India. The Magistrates took advice from their legal adviser, including a reference to Volume 1, paragraph 1.463 of Stone's Justices' Manual, "Power to Adjourn"; and to the case of Crown Prosecution Service v Picton EWHC 1108 (Admin), as there reported. In Picton at [9], having reviewed earlier authorities, Jack J set out various factors relevant to an application to adjourn a trial, which included the public interest in the trial proceeding (subparagraphs (b) and (c)). Those factors also included (at subparagraph (e)), whether, if an adjournment is not granted, a defendant would be able to conduct his own defence and the extent to which any such ability might be comprised by refusing an adjournment; but that subparagraph was said only to apply where a defendant in person applies for an adjournment. In this case, that factor was not in play when Counsel made her application for an adjournment, and there is no evidence that the justices gave any thought to it. There was no reason why they should have done at that stage.

8. The magistrates rejected the application, whereupon the Claimant's Counsel asked for a short adjournment. She returned to court to say that she was professionally embarrassed. For no

and that they had little confidence in the processes to deal with their legitimate concerns or grievances. There was a sense, rightly or wrongly, among prisoners that Hatfield was a place where you could be arbitrarily returned to closed conditions for stepping out of line. We found no specific evidence to confirm this, but relationships were not good when we last visited and local managers had not done enough to improve the situation.

More positively, the provision and quality of work and activity at Hatfield was very good. There had been a good analysis of need and an alignment of provision to meet this. Significantly, the provision of activity was well coordinated with the prison's resettlement function, with most progression managed through voluntary work, paid employment or learning in the community. Approximately half the population were benefiting in this way.

Outcomes for prisoners on resettlement had improved, although structures, strategy and coordination were surprisingly weak. Sentence management arrangements and provision under the resettlement pathways were all in place and had improved. When combined with the very effective use of temporary release in support of resettlement, and with better coordination and promotion, the prison was not far away from providing not just a good but a very impressive service.

Hatfield is a good prison that could be even better. It was striking that, despite what it had to offer and the fact that prisoners were actively and positively engaged, in our survey, only a fifth of prisoners felt supported in preparing for release. There was a clear need to ensure that all connected to the prison were more supportive of its primary purpose, and prepared to support an ethos consistent with that purpose.

Children/Young People Who Sexually Offend: Missed Opportunities

Reoffending by children and young people who commit sexual offences can be prevented, but opportunities to intervene early were often missed by professionals, according to independent inspectors. Today they published the report of a joint inspection on children and young people who sexually offend.

The report, Examining Multi-agency Responses to Children and Young People who Sexually Offend, reflects the findings of HM Inspectorate of Probation, HM Inspectorate of Constabulary, Ofsted, the Care Quality Commission, HM Inspectorate of Prisons, the Care and Social Services Inspectorate Wales, Estyn and Healthcare Inspectorate Wales. Inspectors focused on the quality of the work undertaken with these young people and its outcomes, how the different agencies worked together and what had been achieved. These children form a very small proportion of those who offend, but their behaviour is estimated to account for more than a tenth of all sexual offending and the impact can be extremely damaging.

Inspectors found that most children and young people complied with their order, engaged well with work undertaken to address their offending and the majority had not reoffended at all. However, interventions could have taken place earlier. Inspectors also found that:

cases were slow to get to court, and took an average eight months between disclosure and sentence, resulting in lengthy periods when little or no work was done with the young person;

despite some examples of good practice, much work was characterised by poor communication between the relevant agencies, with inadequate assessment and joint planning;

many young people had complex and multiple needs and positive examples of holistic interventions to address these delivered by a range of agencies were rare;

once these children had been picked up by the justice system, their chances for rehabilitation improved and they clearly benefitted from the child-focused approach by YOT workers;

tariffs in England was extraordinary as the Court of Appeal with the Lord Chief Justice presiding issued a fresh judgment on the issue just days before the ECtHR heard the case, despite the fact that the domestic law was already settled. This was an extraordinarily provocative act and this and the voting case, more than any other, illustrate the difference between the concept of a margin of appreciation for domestic states and allowing public concern and media outrage to dictate prison policy and to curtail the existence of prisoners' rights.

Other sources of rights

The final point I wish to make is that it is very often the actions of reform organisations and even prisoners themselves that lead to real changes in prisoners' rights. In England there have been periods where significant prison disturbances have affected the prison system. The most well known and prolonged was in 1989 at Strangeways in Manchester. In response, the Government commissioned a judge led inquiry that in turn produced the Woolf Report. This is one of the most significant documents in terms of promoting and protecting prisoners' rights in the UK. It recognised that justice in closed institutions requires transparency and fairness. The report concentrated equally on creating procedural fairness and improving prison conditions. It resulted in a formalised complaints system being instituted and the creation of an Ombudsman to oversee those complaints. Importantly, it also made significant recommendations about improving living conditions and rehabilitative measures. These were probably the most important reforms of the English prison system of the late zo" century and the most long lasting. It is important to recognise that they came about as a result of the failure of the legal system to properly ensure justice and fairness within prisons.

Announced Full Follow-up inspection of HMP & YOI Hatfield

Inspection 1–5 Oct 2012 by HMCIP, report compiled November 2012, published 06/02/13

Inspectors were concerned to find that:

- relationships were not good when we last visited and local managers had not done enough to improve the situation
- though the prison was safe, more prisoners than expected reported feeling unsafe or victimised;
- staff-prisoner relationships were mixed and disappointing; and
- prisoners, particularly from minorities, did not feel sufficiently respected,
- had little confidence in the processes to deal with their legitimate concerns or grievances.
- Prisoners felt they could arbitrarily be returned to closed conditions for stepping out of line

Introduction from the report: HMP & YOI Hatfield is an open prison in South Yorkshire holding just under 260 category D adult male prisoners and young offenders. Part of a cluster of establishments including Lindholme and Moorland, the prisons were at the time of this announced follow-up inspection being contested as part of the market competition programme. We learned subsequently that three private sector suppliers had progressed to the next stage of the competition process, meaning that, as part of the cluster, Hatfield will eventually be transferring to the private sector.

Our overall assessment was that Hatfield was a reasonably good prison, when measured against three of our four healthy prison tests, but that some aspects were disappointing.

The prison was safe with few violent incidents, and self-harm was very rare, yet more prisoners than we would expect reported feeling unsafe or victimised. These findings were consistent with what we found to be mixed and disappointing staff-prisoner relationships. There was evidence that prisoners, particularly from minorities, did not feel sufficiently respected,

doubt good reason, how that embarrassment arose is not known to us; but we have no reason to suspect that she acted in anything other than an entirely professional manner. However, the result was that she left court, and left the Claimant to defend himself. The Claimant says that she took her papers with her, leaving him with none; although the Crown Prosecution Service understands that the Claimant did have access to the witness statements at least.

9. In any event, the Claimant then himself made an application to adjourn on the same basis as that made by his Counsel, and that was again refused. As I understand it, the magistrates, a few minutes before having rejected the application to adjourn when made by the Claimant's counsel, refused to reconsider its position after she had withdrawn. Consequently, the trial proceeded, and the Claimant was required to defend himself as best he could in the circumstances.

10. In these proceedings, the Claimant again represents himself. The grounds are somewhat lengthy, and he has taken the trouble to investigate the law and has referred us to many authorities on Article 6 of the European Convention on Human Rights, which guarantees an individual a right to a fair trial. However, the core claims upon which he relies can be summarised briefly as follows. He contends that:

(i) 11. He was denied a reasonable opportunity of presenting his case before the justices. Once his Counsel had left, he was not given an opportunity to obtain other legal assistance or time to prepare the case himself. He was required to proceed immediately to present his own case, for which he was unprepared - for example, he was not prepared to cross-examine the prosecution witnesses - and that put him at a substantial and unfair disadvantage.

(ii) 12. The justices erred in proceeding without Mr Parker.

(iii) 13. He was not given a proper opportunity fully to cross-examine witnesses, the justices interrupting him when he sought to do so.

(iv) 14. The justices' legal adviser did not properly advise the bench on the relevant law.

15. As a result of those matters, he submits his trial was unfair and conducted contrary to the requirements of Article 6.

16. In their grounds and in their skeleton argument, the CPS, as an interested party, concede that, in being required to proceed with the trial without Counsel and without any sensible time or facilities to prepare to conduct the trial himself, the Claimant was indeed denied a fair trial. The trial was set down with a time estimate of one day. This was, the CPS accept, a case of some factual complexity; and, to cross-examine effectively, it required an analysis of the accounts of the various witnesses with a view to challenging the evidence adduced by the prosecution on the basis of possible discrepancies. The CPS deny that there is any merit in any of the other grounds upon which the Claimant relies. However, as a result of the defect in the trial that they acknowledge, they concede that the convictions should be quashed.

17. The justices, somewhat unusually, have however lodged summary grounds of opposition. They say that the Claimant denied the allegations of assault and using threatening words and behaviour; and, they say, he had "ample time to prepare his case for trial."

18. I am fully supportive of robust approach to applications to adjourn trials, because of the inevitable delays – and the potential injustice to both the parties in the specific case and parties in other cases waiting their turn for hearing - that can result from postponed hearings. However, both Article 6 and the common law rules of natural justice require a defendant in a criminal trial to have a reasonable opportunity to present his defence. In the Claimant's case, he was, in my judgment, clearly denied such an opportunity at the point his Counsel absented herself, and the justices failed properly to consider how that might affect the Claimant – how

it might result in procedural unfairness to him, and how that unfairness might be met, e.g. by giving him an opportunity to obtain other legal assistance or the time and opportunity to prepare to conduct the trial himself. Until she withdrew, the Claimant was entitled to rely upon his Counsel to conduct the case for him, and clearly he did rely upon her for that. In my respectful view, he cannot be criticised, as the justices in their summary grounds appear to criticise him, for failing to be ready to conduct the trial in the circumstances in which he was called upon to do so; nor can he be criticised, if this was indeed the case, for not raising the prejudice that resulted from him being left by his legal representative to contest the trial on his own at the very last minute. Such potential prejudice was obvious; and, in the interests of justice, the court was bound to consider, of their own motion, the position of the Claimant to ensure that the trial process remained fair. There is no evidence that they did consider this at all, once it became apparent that the Claimant was left unrepresented.

19. The justices consequently erred in failing to consider the Claimant's position after the withdrawal of his Counsel. In my judgment, that was a serious procedural error that undermined the trial process, sufficient in itself to render the trial unfair in Article 6 terms, and sufficient to warrant quashing the convictions, as the CPS concede. Indeed, although it is not necessary to go further for the disposal of this claim, in the circumstances of this case, in my view, had the magistrates considered the Claimant's position as they ought to have done, they could only properly have concluded that he should be given some reasonable time and opportunity to find other lawyers, prepare the case himself or otherwise present his case properly.

20. For those reasons, I would quash the convictions.

21. The Claimant contends that, the convictions having been quashed, the matter should not be sent to the Magistrates' Court for retrial. Again, his written submissions on this issue are lengthy and somewhat diffuse; but, essentially, he says that the evidence relied upon by the prosecution has within it a number of discrepancies; it is to an extent uncorroborated; and it is now "tainted", in the sense that the witnesses have been effectively "coached" by the first trial. Further, he alleges a breach of the Code for Crown Prosecutors, in that the prosecution has not properly considered these evidential difficulties before proceeding, as they ought to have done.

22. I am unpersuaded by those submissions. Any retrial is, of course, unfortunate; but in my view a retrial will not result in any significant prejudice to the Claimant. Indeed, insofar as discrepancies arise from the prosecution evidence given at the first trial, that is something that can properly form the basis of cross-examination and comment at the retrial. I am quite sure that the second trial will not be inevitably unfair because of the circumstances in which it has arisen. It will be for the Magistrates' Court at the retrial to ensure that that trial is in fact fair.

23. For those reasons, I allow this judicial review. I quash the convictions dated 02/0212 and remit the matter back to the Magistrates' Court to be reheard by a court of different constitution.

24. May I say this as a postscript. The Magistrates in this case convicted the Claimant of three offences, two assaults and an offence under section 4, in both simple and racially aggravated form, so that he was convicted of six offences in all. Entirely coincidentally, this court as currently constituted has before it later today another matter emanating from the same Magistrates' Court, R (Scott Dyer) v Watford Magistrates' Court CO/6217/2012, in which the propriety of convicting a defendant of both aggravated and simple offences in this way is the very issue. Without pre-empting anything which may be decided or said in that other case, I mark that case here because the justices who rehear the charges against Mr Lightbourne may wish to bear in mind any relevant guidance given in it.

at resettlement prisons and gridlock at the Parole Board who were unable to hear the large volume of cases. The result was that many prisoners with fairly short tariffs, sometimes as short as year but often between 3-5 years, were simply stuck in the prison system with no hope of progression or release. The question for the courts to answer was essentially, what rights do life sentenced prisoners have when there are so many of them that the authorities cannot provide treatment or meaningful parole reviews?

When the case reached the House of Lords in England, the Lords all expressed grave concerns at the manner in which the sentence of IPP had been introduced, noting that the numbers receiving the sentence had been far higher than expected and that the prison system and Parole Board were ill equipped to deal with them. However, they did not consider that the manifest defects in the system rendered the post-tariff detention of the applicants arbitrary and so in breach of Article 5(1). Whilst they recognised that such a breach could occur if an IPP prisoner was "allowed to languish in prison for years without receiving any of the attention which both the policy and the relevant rules .... require" (Judge LCJ, para 128), they did not consider that this position had been reached. The judgment effectively concluded that the right to a parole review amounted to no more than consideration of the case by the Parole Board without any guarantee about the quality of the information to be provided to the Board or the treatment of the prisoner in advance of the parole hearing.

The case proceeded to the European Court of Human Rights. The first question for the Court in these cases was whether the detention of these prisoners in the post tariff period was compatible with Article 5(1)(a). The Court reiterated that the purpose of Article 5(1) is to ensure that no-one is deprived of liberty in an arbitrary fashion (para 187). Whilst they confirmed that they will normally refer to national law to determine whether detention is lawful, they set out four situations in which detention may be (or may become) arbitrary:

- Where there is an element of bad faith or deception by the authorities (para 192)
- If national law does not genuinely confirm to the permitted purposes of Article 5(1) (para 193)
- In cases of continued deprivation of liberty, that there is a continued relationship between the ground of detention and the place and conditions of detention (para 194)
- That there is a relationship of proportionality between the ground of detention and the detention in question.

One of the matters considered relevant to the assessment of these factors was the fact that the IPP sentence was, at least in the early days, mandatory and so removed judicial discretion to assess dangerousness in individual cases. Whilst this was not in itself unlawful, it did heighten the Court's scrutiny of the correlation between the aim of the detention and the detention itself. The Court considered that the legislative history of the sentence made it clear that it was intended to include an element of treatment and that the requirements of international law confirmed that prison sentences must include treatment with the aim of reform and rehabilitation. It noted the trenchant criticism made by the Lords of the failure to make adequate provision and while it did not consider that there had been any bad faith by the authorities, the failure to allow access to appropriate rehabilitative courses after the expiry of the tariff did render the detention during that period arbitrary (para 221).

There have been a number of other cases that illustrate the tension between substance and form which exists between the English courts and the European Court of Human Rights. Perhaps the most notable is the issue of prisoners' voting rights and the current impasse that exists between the legislature in the UK and the European Court. Also, the current challenge to the use of whole life

Segregation or solitary confinement is recognised as the most severe punishment that can be imposed upon prisoners. In consequence, there are a highly developed set of procedural safeguards that accompany any decision to segregate prisoners. These involve not just the prison authorities but also a degree of oversight from Independent Monitoring Boards (part of the UK's National Preventative Mechanisms for the purposes of OPCAT). In a recent case, the Court of Appeal accepted that segregation could arguably fall within the ambit of a civil right for the purposes of Article 6 ECHR, and went on to state that the internal machinery of prison complaints and independent monitoring combined with the availability of judicial review was adequate to satisfy those riqhts", The judgment concentrated on the very detailed policy documents setting out the basis upon which decisions should be taken and how they should be reviewed as providing an important safeguard in the process.

By contrast, cases that have sought to address the substantive rights that accrue to segregated prisoners have had little success. In the case of Malcolm, a prisoner in segregation complained that a mandatory statutory requirement to allow prisoners one hour of activity including 30 minutes in the open air each day was not being followed. The prisoners' complaint was upheld by the Prisons Ombudsman who noted that the operational reasons relied upon by the prison governor for failing to comply should be the exception rather than the norm. However the prisoner did not succeed in persuading the English courts to award him compensation .. The court held that the decision to limit the amount of time in the open air had sound operational reasons and that Article 8 was not engaged on the facts. In a similar vein, cases concerning a challenge to night time cell checks for category A prisoners and the restriction of a prisoner to a small unit were dismissed with great deference being shown to the needs of prison security".

A case which further illustrated the inability of the domestic courts to come to grips with the substance of prison life and the enormous deference shown to the authorities in relation to the management of prisons concerned the practice of "slopping out". This is a system peculiar to the old Victorian prisons where prisoners do not have access to the toilet when confined to their cell and have to urinate and defecate in buckets which are then washed out when the cell is unlocked. The judgment is probably impenetrable to anyone not familiar with the English prison system. However, in essence it dismissed all evidence that pointed towards the adverse health effects of the system - such as faecal matter having been found on tables in cells and an outbreak of nono-virus - in favour of the state's observations that such matters could not be conclusively related to the sanitation system. As such, the claims for compensation and for breaches of Articles 3 & 8 were dismissed.

The current impact of the European Court

In recent years, there have been a number of direct examples of the contrast in approach to prisoners' rights between the English courts and the ECtHR. The case of James and others v UK addressed what is probably a uniquely English problem. The case concerned the impact of the sentence of Imprisonment for Public Protection ("IPP") - a life sentence in all but name - on the prison system. This sentence was first introduced in 2005 when the lifer population of English prisons stood at around 4,000. Almost overnight, this increased to 11,000 and the system simply could not cope. For those of you not familiar with the life sentence, it comprises of two distinct parts: the first is the punitive or tariff period that must be served before release can be considered. The second is the preventative period when the prisoner is eligible for release but only if the Parole Board considers that the risk of harm is low enough. Article 5 is re-engaged at the end of the tariff period and a fresh review of detention is required by a court like body. The problems that arose included a lack of places on courses, a lack of spaces

Use Of Restraints For Seriously Ill And Dying Prisoners

Learning lessons Fatal Incidents Investigations bulletin issue 2

Published by Prisons and Probation Ombudsman, Tuesday 5th February 2013

This Learning Lessons Bulletin examines the lessons that can be learned about risk assessment and use of restraints for seriously ill and dying prisoners.

With more prisoners serving longer sentences and more sentenced later in life, people aged 60 and over are now the fastest growing age group in the prison estate. Prisoners of all ages can suffer from serious health problems, and the risk of cancer and heart disease increases significantly for older people. An older and ailing population brings new challenges and the past decade has seen deaths from natural causes outstrip selfinflicted deaths as the principal cause of death in prison custody. In 2011-12, there were 142 deaths in custody from natural causes, an increase of 20 over the previous year.

Prisons have sought to adjust to these challenges and care for the elderly and infirm is an area of improving practice. For example, investigations have identified a more planned approach to managing terminal illness, with more prisoners receiving palliative care equivalent to that provided in the community. However, prisons can struggle to balance security with humane and dignified treatment for the increasing numbers of people dying in their care. Too often, I have been obliged to criticise the use of restraints in such cases. This bulletin is designed to encourage lessons to be learned. *Nigel Newcomen CBE, PPO*

Restraints: When a prisoner travels to hospital a risk assessment is conducted to determine security arrangements. This considers the probable harm to others the prisoner poses in the event of an escape, and their motivation and ability - both physical and in terms of outside resources - to escape. Through this assessment, the prison decides whether and how to restrain the prisoner. Typically a prisoner is escorted by two prison officers, although this can be reduced or increased depending on the perceived risk. The different options for use of restraints are:

No restraints: close supervision by the escorting officers is considered sufficient to maintain security.

Closeting/escort chain: a length of lightweight chain is cuffed at one end to the prisoner and at the other to a prison officer. This allows a degree of privacy, for example during medical consultations.

Single cuff: the prisoner is handcuffed to a prison officer.

Double cuff: prisoner's hands cuffed together a second pair cuffs the prisoner to a prison officer.

Policy and Law" In 2007, the High Court held in the case of Graham v the Secretary of State for Justice that using handcuffs on Mr Graham while he was receiving life saving chemotherapy infringed Article 3 of the Human Rights Act which prohibits inhuman or degrading treatment.

The judgement established the importance of individual context when considering risk. An adequately founded risk of escape or harm when the prisoner is fit does not necessarily hold true when that same individual is ill and receiving treatment. Medical opinion regarding the prisoner's ability to escape must therefore be considered as part of the assessment process. The forms used by many prisons currently ask only for medical objections to the use of the restraints, rather than requiring an assessment of their appropriateness and how the prisoner's medical condition impacts on risk. Separate assessments should consider the level of restraint during transportation to the hospital and during the prisoner's stay in hospital to reflect the different environments. These should be reviewed whenever there is a change in circumstances.

Advice for prisons is outlined in 'Prisoner Escort and Bedwatch Function', a concordat between the National Offender Management Service (NOMS) and the National Health Service. The concordat notes that, following the Graham judgement, using restraints on

terminally or seriously ill patients should be considered inhumane except when justified by security considerations. It goes on to say: "Levels of restraint used on prisoners must at all times be proportionate to the perceived security risks and be balanced by consideration of care and decency for the prisoner."

Deaths in custody: Based on detailed information collected from over 500 PPO investigations into deaths of prisoners from natural causes between 2007 and October 20121, around two thirds of the prisoners were known to have been admitted to hospital or a hospice in the last six months of their lives. The majority had been restrained while in hospital and it was identified in 51 investigations that the level of restraints used had been inappropriate.

Between January and October 2012, the Ombudsman published 23 reports into natural deaths where the restraints used were regarded as inappropriate. The common themes include:

• prisoners who were already ill when attending hospital, remaining in restraints even after their condition declined further or was diagnosed as terminal;

• concerns raised by escort or medical staff not being appropriately considered;

• routine use of restraints according to the prisoner's security category, offence or previously assessed risk rather than the actual risk the prisoner presented at the time;

• inconsistency about when or whether to remove restraints;

• restraints remaining in place even as release on compassionate grounds is being sought.

3 examples of cases where such concerns have been raised are outlined below. These took place in 2011/2012. Ombudsman investigated 647 deaths of prisoners from natural causes in this period.

Case study 1: Mr A had been in custody for several decades before an urgent health referral led to a diagnosis of terminal cancer. Mr N.s health declined rapidly resulting in his admission to hospital. He died less than a month after first reporting his symptoms.

A risk assessment determined that Mr A should be restrained using an escort chain. In hospital, a bedwatch log was kept by the escorting officers and detailed the decline in Mr N.s health. Despite the fact that the log should be read as part of regular checks by prison managers there was no evidence that the information prompted any reconsideration of security arrangements. Nor did it seem that the original risk assessment was reviewed during the ten days Mr A was in hospital, despite his rapidly declining condition. He died while handcuffed by the chain to a prison officer.

Mr A.s condition was not confirmed as terminal to the prison until two days before he died. However, restraints were not removed despite Mr A.s serious illness, his shortness of breath and inability to move far from his bed. The lack of consideration given to the impact his health had on his security risk meant he was treated in a disrespectful, undignified and inhumane way during his final illness.

Case study 2: Mr B had been in prison a number of years and had a history of heart and breathing problems as well as lung cancer. His lung cancer returned almost two years after diagnosis, and four months before his death, after it initially appeared that treatment had been successful.

Mr B was admitted to a hospice on two occasions in four months. He was in his seventies and an ill man. At the hospice, staff usually moved him in a wheelchair, and by his second stay, Mr B was bedridden. Both times the risk assessment determined that he was to be restrained using an escort chain. The first time at the hospice, his restraints were briefly removed but were reapplied on the instruction of a different manager at the prison. Both escort and nursing staff raised concerns with the Governor about the restraints. The risk assessment for Mr B was regularly reviewed but, despite being terminally ill, and incapable of posing a risk to others while under observation by prison officers, he remained in restraints.

On his second admission to the hospice, a doctor noted that the escort chain was injur-

The classic statement in English law on this area, and the basis on which all subsequent actions have been laid was made by Lord Wilberforce in the case of Raymond v Honey in 1983: "prisoners retain all rights save for those expressly or impliedly taken away by statute". This mirrors the view of the European Court of Human Rights in Golder v UK that "justice does not stop at the prison gates". However, both statements beg the question of what rights are removed from detainees?

The classic view of the law and judicial intervention into prison life and the rights of prisoners in the UK has been to characterise it as a steady process of progression. This process has seen the courts - and in particular the Administrative Court - extend their jurisdiction into all aspects of prison life. However, whilst there has undeniably been an overall trend towards greater judicial scrutiny of the State in general and prisoners have benefitted from that trend, the law in the UK still provides very limited protection for the substantive rights of those in detention.

Unlike most European jurisdictions, the lack of a written constitution in the UK has proven to be a severe inhibitor for the courts when seeking to define what rights do survive imprisonment. The discrepancy that this has created between form and substance was noted at a very early stage by a respected academic, Professor Genevra Richardson. When she wrote about the first wave of cases about prisoners in the early 1980s she commented that:

"Prisoners should possess special rights vis-a-vis the prison authorities in a sufficiently detailed form to promote effective supervision by the courts":"

It is arguably this lack of a written constitution that has resulted in the European Court of Human Rights and the domestic enactment of the Convention through the Human Rights Act 1988 having such a profound influence on the rights of those in detention. I would like to explore the three methods by which prisoners rights have come to be defined in this country. These are: 1. Domestic judicial intervention 2. European Court of Human Rights 3. Non-legal interventions

I will avoid giving a linear history of prison litigation and will instead try and concentrate on a few key cases and events to illustrate the different results that arise from these sources.

Domestic judicial intervention

There is a highly developed formal system for prisoners to raise complaints in England. This comprises of: 1. An internal complaints system 2. The Prisons Ombudsman 3. Judicial Review of administrative decisions 4. Compensation claims for mistreatment

The two areas where the British courts have been most pro-active in relation to prison issues have been the right to legal advice and procedural parole rights. Although both areas of law have developed in tandem with European Court decisions on Articles 5 and 6, they have largely resulted in a settled view that:

• English common law recognises that the right to obtain confidential legal advice is an important aspect of the right of access to the courts and that it survives imprisonment in a manner that is reflected in Article 6

• Common law requires fairness in the parole and early release processes in a manner that is also reflected in Article 5

The consequence of this is that there is a highly developed parole system with the right to legal representation. In consequence, the main area of prisoners' rights litigation in England and Wales concerns decisions made in relation to parole. However, this leads to frustration amongst prisoners that the courts fail to provide effective supervision of their treatment in prison.

The inability of the domestic courts to really grapple with substantive rights can be illustrated with examples of two areas. The first is in relation to segregation and the second in relation to the provision of treatment for prisoners.

cers to form sexual relationships with people they were investigating and monitoring; seeks confirmation from the Association of Chief Police Officers (ACPO) that stolen identities are not now being used by undercover officers; seeks further confirmation from the ACPO that undercover officers are not now having sexual relationships with those they are investigating and monitoring; and joins with the former Director of Public Prosecutions, Lord Macdonald, in calling for a public inquiry into police undercover operations.

Sponsor: Galloway, George House of Commons: 04/02/2013

Report back: INUK Symposium on the Reform of the CCRC

On Saturday 2nd February 2013, Network UK (INUK) published the Report on the Reform of the CCRC following the Symposium held in March last year. Although differing views are expressed in the report there is a broad consensus on the following issues, these are:

1) The existing relationship between the CCRC and the Court of Appeal is unsatisfactory and requires, at the very least, a re-examination.

2) In particular, the 'real possibility' test under s.13 of the Criminal Appeal Act 1995 enshrines a relationship of deference to the Court of Appeal. It prevents the CCRC from referring potentially genuine wrongful convictions of applicants who may be innocent if it is thought that the Court of Appeal may conclude that the case lacks legal merit. This severely compromises the CCRC's independence and hinders its ability to assist applicants who may be innocent.

3) The 'real possibility' test under s.13 of the Criminal Appeal Act 1995 needs to be replaced with a different test that allows the CCRC more independence both in its review of alleged wrongful convictions, and in its consideration on whether to refer a case back to the Court of Appeal.

4) The wording of the fresh evidence criteria under s.23 of the Criminal Appeal Act 1968, which defines fresh evidence as evidence not adduced at trial, is generally unproblematic. However, both the CCRC and the Court of Appeal tend to adopt an overtly strict interpretation of the test. In particular, evidence that was, or could have been, available at the time of the trial is generally not considered as fresh evidence. A looser interpretation of the fresh evidence criteria needs to be adopted so that victims of wrongful conviction are not procedurally barred from having their convictions overturned.

5) The CCRC's case review approach is generally limited to a desktop review of the case papers. It needs to undertake more fieldwork investigations, such as crime scene visits and re-interviewing of witnesses, particularly in complex, serious cases. While it is accepted that this would require a significant increase in the CCRC's resources, the resource implications could be addressed by refining the CCRC's intake to sharpen its focus. For instance, cases based on points of law or legal technicalities that have no bearing on the applicant's possible innocence could be excluded from the CCRC's remit. Such a refinement can contribute to more rigorous investigations on potentially genuine innocence cases.

Prisoners' Rights In The UK - Simon Creighton of Bhatt Murphy

Prison law and the rights of prisoners in the UK present something of a paradox. On the one hand, there is sophisticated legal machinery, supported by a legal aid scheme, that has jurisdiction over almost all aspects of prison life. On the other, the law appears to have very little reach into the daily lives of prisoners or the matters that cause them most concern in terms of their conditions of detention.

ing Mr B's wrists and, following a request to the prison, the chain was removed. He remained at the hospice, unrestrained, until his death a few days later.

Ombudsman noted that whenever restraints are used the risk assessment must accurately reflect the risk posed at that time, to ensure restraints are proportionate and maintain human dignity.

Case study 3: Mr C was a Category A prisoner, meaning he was considered a significant risk to the public in the event of escape. He had spent over a decade in custody before he was diagnosed with terminal cancer. The palliative care he received at the prison was of a high standard; however there were concerns about the level of restraint used when outside the prison.

When attending hospital for diagnosis, Mr C was restrained using double cuffs and escorted by three officers. The risk assessments took some account of the state of Mr C's health because, as his condition deteriorated, the restraint was reduced to an escort chain. However, the escort chain remained in place even after Mr C was put into a medically induced coma for four days following a diagnostic procedure when there was no possible risk of escape. There was no evidence that the removal of restraints was considered at this time or that a medical opinion about his condition was considered as part of the risk assessment. Lessons to be learned

Lesson 1 - Sufficient weight should be given to a prisoner's current health and mobility when considering the risk they pose to the public. There is, inevitably, a balance to be struck between decency and security. However our investigations have shown that the correct balance is not consistently being achieved. Too often an overly risk averse approach is taken when frail, immobile or even unconscious prisoners remain restrained.

Lesson 2 - If concerns about restraints are raised by escort or medical staff these should be responded to. A fresh risk assessment which explicitly addresses the issues raised is appropriate in order to justify continuing the use of restraints.

Lesson 3 - Medical opinion should be a key consideration in any risk assessment. Whenever a risk assessment is completed, the state of the prisoner's health at the time and how this impacts on risk should be assessed rather than relying on assessments about risk when the prisoner was fit and well. It is clear that in cases of serious illness, the level of risk posed by a prisoner can change rapidly. It is important that changes in the prisoner's condition prompt an immediate review of their restraints to prevent them remaining in place longer than necessary.

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration removal centres. The Ombudsman also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

The Prisons and Probation Ombudsman's vision is: To be a leading, independent, investigatory body, a model to others, that makes a significant contribution to safer, fairer custody and offender management.

400 Mobile Phones Seized in HMP Birmingham in One Year

Inmates are smuggling phones into Birmingham Prison in record numbers – with more than 400 seized in the last year. Private security firm G4S who manage the prison, had pledged to crack down on the phones scam after taking over the jail in October 2011. But new figures show that the numbers of banned mobiles being seized by officers and staff is at its highest ever level.

Police Spies Stole Identities Of Dead Children *Paul Lewis/Rob Evans, Guardian, 03/02/13*

Britain's largest police force stole the identities of an estimated 80 dead children and issued fake passports in their names for use by undercover police officers. The Metropolitan police secretly authorised the practice for covert officers infiltrating protest groups without consulting or informing the children's parents. The details are revealed in an investigation by the Guardian, which has established how over three decades generations of police officers trawled through national birth and death records in search of suitable matches. Undercover officers created aliases based on the details of the dead children and were issued with accompanying identity records such as driving licences and national insurance numbers. Some of the police officers spent up to 10 years pretending to be people who had died. The Met said the practice was not "currently" authorised, but announced an investigation into "past arrangements for undercover identities used by SDS [Special Demonstration Squad] officers".

Keith Vaz, the chairman of parliament's home affairs select committee, said he was shocked at the "gruesome" practice. "It will only cause enormous distress to families who will discover what has happened concerning the identities of their dead children," he said. "This is absolutely shocking."

The technique of using dead children as aliases has remained classified intelligence for several decades, although it was fictionalised in Frederick Forsyth's novel The Day of the Jackal. As a result, police have internally nicknamed the process of searching for suitable identities as the "jackal run". One former undercover agent compared an operation on which he was deployed to the methods used by the Stasi.

Two undercover officers have provided a detailed account of how they and others used the identities of dead children. One, who adopted the fake persona of Pete Black while undercover in anti-racist groups, said he felt he was "stomping on the grave" of the four-year-old boy whose identity he used. "A part of me was thinking about how I would feel if someone was taking the names and details of my dead son for something like this," he said. The Guardian has chosen not to identify Black by his real name. The other officer, who adopted the identity of a child who died in a car crash, said he was conscious the parents would "still be grief-stricken". He spoke on the condition of anonymity and argued his actions could be justified because they were for the "greater good". Both officers worked for a secretive unit called the Special Demonstration Squad (SDS), which was disbanded in 2008.

A third undercover police officer in the SDS who adopted the identity of a dead child can be named as John Dines, a sergeant. He adopted the identity of an eight-year-old boy named John Barker, who died in 1968 from leukaemia. The Met said in a statement: "We are not prepared to confirm nor deny the deployment of individuals on specific operations." The force added: "A formal complaint has been received which is being investigated by the DPS [Directorate for Professional Standards] and we appreciate the concerns that have been raised. The DPS inquiry is taking place in conjunction with Operation Herne's investigation into the wider issue of past arrangements for undercover identities used by SDS officers. We can confirm that the practice referred to in the complaint is not something that would currently be authorised in the [Met police]."

There is a suggestion that the practice of using dead infant identities may have been stopped in the mid-1990s, when death records were digitised. However, the case being investigated by the Met relates to a suspected undercover police officer who may have used a dead child's identity in 2003. The practice was introduced 40 years ago by police to lend credibility to the backstory of covert operatives spying on protesters, and to guard against the possibility that campaigners would discover

their true identities. Since then dozens of SDS officers, including those who posed as anti-capitalists, animal rights activists and violent far-right campaigners, have used the identities of dead children. One document seen by the Guardian indicates that around 80 police officers used such identities between 1968 and 1994. The total number could be higher.

Black said he always felt guilty when celebrating the birthday of the four-year-old whose identity he took. He was particularly aware that somewhere the parents of the boy would be "thinking about their son and missing him". "I used to get this really odd feeling," he said. To fully immerse himself in the adopted identity and appear convincing when speaking about his upbringing, Black visited the child's home town to familiarise himself with the surroundings. Black, who was undercover in the 1990s, said his operation was "almost Stasi-like". He said SDS officers visited the house they were supposed to have been born in so they would have a memory of the building."It's those little details that really matter – the weird smell coming out of the drain that's been broken for years, the location of the corner Post Office, the number of the bus you get to go from one place to another," he said.

The second SDS officer said he believed the use of the harvested identities was for the "greater good". But he was also aware that the parents had not been consulted. "There were dilemmas that went through my head," he said. The case of the third officer, John Dines, reveals the risks posed to families who were unaware that their children's identities were being used by undercover police.

During his covert deployment, Dines had a two-year relationship with a female activist before disappearing from her life. In an attempt to track down her disappeared boyfriend, the woman discovered the birth certificate of John Barker and tried to track down his family, unaware that she was actually searching for a dead child. She said she was relieved that she never managed to find the parents of the dead boy. "It would have been horrendous," she said. "It would have completely freaked them out to have someone asking after a child who died 24 years earlier." The disclosure about the use of the identities of dead children is likely to reignite the controversy over undercover police infiltration of protest groups. Fifteen separate inquiries have already been launched since 2011, when Mark Kennedy was unmasked as a police spy who had slept with several women, including one who was his girlfriend for six years.

On Tuesday the select committee will hear evidence from lawyers representing the 11 women who are suing the Met after forming "deeply personal" relationships with the spies. Kennedy, who worked for a sister unit to the SDS, is not believed to have used the identity of a dead child. Vaz said MPs were now likely to demand answers from the Met police about the use of children's identities. "My disbelief at some of the tactics used [by undercover police] has become shock as a result of these latest revelations. It is clear that inappropriate action has been taken by undercover police in the past. But this has now taken it to a new level," he said. "The committee will need to seek answers from the Metropolitan police, to find out why they allowed these gruesome practices to happen."

Early Day Motion 1012: Use Of Identities Of Dead Children

That this House notes that the Metropolitan Police stole the identities of an estimated 80 dead children and issued fake passports in their names for use by undercover officers; further notes the deceased children's identities were used by the undercover officers of the now disbanded Special Demonstration Squad, which infiltrated protest groups, because they would notstand up to scrutiny if birth records were checked; condemns the stealing of these identities for use by undercover officers; believes that it is totally inappropriate for undercover offi-