James Martin and Veronica Ryan, Convictions Quashed but Not told Why

Public has a right to know if one State agent was allowed to murder another to advance within the IRA. Belfast Telegraph, 19th April 2013

Lawyers for a husband and wife seeking full reasons why prosecuting authorities now accept their convictions for offences linked to the killing of a police informer should be quashed, claimed non-disclosure could lead to more wrongdoing. And have asked that the contents of a secret dossier that led to the decision to quash should be made public.

The west Belfast couple were both convicted of the false imprisonment of Joe Fenton, a Special Branch agent shot dead after being lured to a house in the city in February 1989. Mr Martin, who was also found guilty of making property available for terrorism, was later sentenced to four years imprisonment. His wife, formerly known as Veronica Martin, was jailed for six months. Their case was referred back to the Court of Appeal.

Last year it emerged that Director of Public Prosecutions Barra McGrory believes the guilty verdicts should be quashed. But a Public Interest Immunity Certificate has been obtained to protect a confidential dossier containing relevant material.

Lawyers for the couple are now seeking a full and open judgment when judges decide whether to overturn their convictions. Sean Devine, counsel for Mr Martin, said the public deserved to know about secretive behaviour. He told the court there was one man at the centre of the case, saying: "If the speculation is correct and it's the case that one agent of the state was allowed to execute another agent of the state to enhance his position with a paramilitary organisation so he could provide a higher grade of intelligence, that needs to be stated."

Referring to the alleged mishandling of agents, he argued that higher standards are expected from the authorities. "If it's the case that there was some profoundly embarrassing behaviour, and there may been be widespread repercussions, it's better to lance the boil rather than to leave communities and individuals speculating about what went wrong," he claimed. "There's been the destruction of lives and that can't be remedied by more secretive behaviour on the part of other public authorities."

But Gerald Simpson QC, for the prosecution service, contended that the case for delivering a closed judgment was "overwhelming", and rejected claims that such a verdict would endorse any wrongdoing. The three-judge panel reserved their decision on the application

Senior judges were also told PSNI and Police Ombudsman investigations into RUC and military behaviour in the case of James Martin and Veronica Ryan are now under way.

Similar false imprisonment counts against the couple over the abduction of another informer, Sandy Lynch, in 1990 were overturned three years ago.

Hostages: Chedwyn Evans, 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 422 25/04/2013)

Rashid Aswat v. United Kingdom - Extradition Would be a Violation of Article 3

Oiginally before the ECtHR as joined cases, Rashid with Babar Ahmad & Talha Ahsan were trying to stop their extradition to the USA. Babar & Talha lost and were extradited, the court made no decision on Aswat's case as it required further submissions from the parties, on the relevance of his schizophrenia and detention at Broadmoor Hospital, having received and considered the new inforation the court handed down their decision on Tuesday 16th April, Aswat currently remains in Broadmoor Hospital, a specialist service that provides assessment, treatment and care in conditions of high security.

Schizophrenic detained in the UK should not be extradited to the USA

In Chamber judgment in the case of Rashid Aswat v. the United Kingdom (application no. 17299/12), which is not final", the European Court of Human Rights held, unanimously:

That there would be a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if Mr Aswat was extradited to the United States. The Court further decided to continue to indicate to the Government of the United Kingdom under Rule 39 of its Rules of Court (interim measures) not to extradite Mr Aswat until the judgment became final or until further order.

The case concerned the complaint by Mr Aswat, who is detained in the United Kingdom, that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a "supermax" prison) were likely to exacerbate his condition of paranoid schizophrenia. The Court held that Mr Aswat's extradition would amount to a violation of Article 3 solely on account of the current severity of his mental illness.

Principal facts: The applicant, Haroon Aswat, of unknown nationality, was born in 1974 and is currently detained in Broadmoor High Security Psychiatric Hospital in the United Kingdom. He has been indicted in the United States as a co-conspirator in respect of a conspiracy to establish a jihad training camp in Oregon. In 2005 he was arrested in the United Kingdom following a request for his arrest and extradition by the US authorities. Mr Aswat contested the order for his extradition without success, his request for leave to appeal to the House of Lords ultimately being rejected in 2007.

Mr Aswat suffers from paranoid schizophrenia and was therefore transferred from prison to the psychiatric hospital in 2008. The last forensic psychiatrist reports in his case, in 2011 and 2012, indicated that while his condition was well-controlled on anti-psychotic medication and that participation in occupational and vocational activities in the psychiatric hospital had helped prevent any significant deterioration in his mood, his detention in hospital was required for his medical treatment and such treatment was necessary for his health and safety.

Complaints, procedure and composition of the Court

Mr Aswat complained that his extradition to the USA would not be compatible with Article 3. He alleged in particular: that his detention in Broadmoor Hospital in the United Kingdom was essential for his personal safety and treatment; that, if extradited, he could remain in pre-trial detention for a number of years and there was no information as to the conditions of that

detention; and that it was likely that if convicted in the USA he would be detained in ADX Florence (a "supermax" prison), where he could be placed alone in a cell and the conditions of isolation were likely to exacerbate his mental illness.

The application was lodged with the European Court of Human Rights on 10 June 2007. On 12 June 2007 the Court applied an interim measure under Rule 39 of its Rules of Court and indicated to the Government of the United Kingdom not to extradite Mr Aswat until further notice.

The proceedings in his case were originally conducted together with the case of Babar Ahmad and Others v. the United Kingdom (application nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09) which concerned similar complaints. The Court adjourned its examination of Mr Aswat's application as it required further submissions from the parties on the severity of his mental health condition and the treatment he was likely to receive in the USA if extradited. In its judgment of 10 April 2012 in the case of Babar Ahmad and Others v. the United Kingdom,the Court found that there would be no violation of Article 3 if the five applicants in that case were extradited to the USA.

In light of the medical evidence before it, the Court found that there was a real risk that Mr Aswat's extradition to the USA, a country to which he had no ties, and to a different, potentially more hostile prison environment, would result in a significant deterioration in his mental and physical health. Such deterioration would be capable of amounting to treatment in breach of Article 3.

While in the case of Babar Ahmad the Court had not accepted that the conditions in ADX Florence would amount to treatment in breach of Article 3, Mr Aswat's case was to be distinguished from that case on account of the severity of his mental health condition.

The Court gave full consideration to the submissions of the US Department of Justice made in the proceedings before the Court, and observed, in particular, that it could not be determined with certainty in which detention facility or facilities Mr Aswat would be placed if extradited to the USA, either before or after trial. It was also unclear how long he might expect to remain on remand pending trial. As for his detention following a possible conviction, the Court observed that although Mr Aswat would have access to mental health services regardless of which prison he was be detained in, his extradition to a country where he had no ties and where he would face an uncertain future in an as yet undetermined institution, and possibly be subjected to the hightly restrictive regime in ADX Florence, would violate Article 3 of the Convention.

While all these factors contributed to the Court's conclusion that Mr Aswat's extradition to the USA would be in violation of Article 3, the extradition would not give rise to a real risk of treatment contrary to Article 3 as a result of the length of his possible detention there.

Just satisfaction (Article 41), Mr Aswat did not submit a claim for just satisfaction.

Early Day Motion 1280: Treatment Of 17 Year Olds In Police Custody

That this House condemns the exclusion of 17 year olds from the specific protection given to juveniles in the Police and Criminal Evidence Act 1984, which remains inconsistent with domestic and international legislation which states that a human is a child until the age of 18 and that 17 year olds in police custody are consequently not provided with an appropriate adult as a matter of course; notes with great sadness the tragic consequences this has had on the Thornber and Lawton family whose 17 year old sons Edward Thornber, who was arrested for the possession of cannabis, and Joe Lawton, arrested for drink driving, committed suicide as a result; and calls on the Government for a change of law so that 17 year olds are treated as children when arrested and in police custody, as requested by a 52,000 signature petition presented to 10 Downing Street, 28/03/13.

support the effective reintegration of offenders after their release, as well as the ongoing challenges of old accommodation, overcrowding and the limitations of the prison's regime. An unannounced short follow-up inspection such as this focuses on the progress the prison has made in implementing the recommendations made at the last inspection and so does not provide a complete picture of the establishment as a whole. This inspection found that the prison had made sufficient progress in implementing our recommendations on safety and resettlement, but that insufficient progress had been made in the areas of respect and purposeful activity.

Concerning our healthy prison test safety, there had been progress against our previous recommendations. However, a particular concern was the lack of self-harm monitoring refresher training for staff, notable because there had been three tragic self-inflicted deaths since our last inspection. The drug support unit was a positive initiative, but prescribing arrangements for substance misusers, at most risk during the early part of their stay at Swansea, were not sufficiently flexible and monitoring arrangements too limited.

There had been too little focus on achieving recommendations concerning respect but staff-prisoner relationships appeared to be good, and health provision was reasonable. The fabric of the prison was old but reasonably clean and well maintained. However, cells were cramped and the prison remained significantly overcrowded. The needs of some minority groups were not understood or met and, although few, they could be among the most marginalised in the prison. Provision for equality and diversity work required fundamental attention.

Although not uncommon in a local prison, there were still not enough activity places. It was, therefore, inexcusable that not all the places and workshops available were used. Too many prisoners were unemployed and not purposefully engaged with activities, which was further compounded by restricted opportunities for time out of cell. Resettlement had, with some caveats, improved. Swansea prison now broadly understood the needs of its population. The quality of offender management work appeared reasonable, but custody planning for unconvicted and short-term prisoners was still inadequate. Improvements were evident across most resettlement pathways. Focused work to develop support for prisoners' children and families was positive. The family support coordinator was a welcome addition and had implemented some good initiatives but other aspects of maintaining prisoner contact with their families, particularly in visits, needed more attention.

Teenager Set Fire to Cell Mattress to Prove it Wasn't Fire Resistant

Prosecutor Karen Ball said the defendant has hidden a lighter in her underwear while she was in the police van being taken to Barnstaple Police Station. "The fire alarm was activated and officers found the defendant had burnt a hole in the cell mattress and burnt the code of practise book also in the cell. "Officers then moved her into another cell where she ripped a pair of self-protection shorts officers had given her. During an interview the defendant said she had done it because one of the police officers had called her stupid and she wanted to get him back. She also said she was bored and that she wouldn't pay the costs of the damage because the items were too expensive and the police should buy cheaper items. She added that she was also proving the fire resistant mattress was not fire resistant and that the shorts weren't very well designed."

Dano Sonnex, currently in high security unit HMP Belmarsh, for onward transit to CSC Wakefield (has arrived), alleged to have assaulted three staff in Broadmoor, but no details as to the facts of alleged assault. Seems to make nonsense of the fact they moved him from

ments from a low base, notably in the area of respect, but also evidence of concerning regression, particularly in the provision of learning and skills.

Overall, we concluded that safety outcomes were reasonably good, despite some concerns. A significant vulnerable population was well managed, young adults were properly integrated, and recorded levels of violence were not high. Too many prisoners, however, had safety concerns, there was evidence of a bullying problem, and many arrangements to promote and ensure safety were only adequate.

The quality of respect in the prison, which had been poor, had improved to a degree. The prison environment was reasonable and staff-prisoner relationships were better than they had been, but according to our survey, prisoners at Moorland felt less respected and reported more victimisation than at similar prisons. With the exception of a few pockets of good practice, we found the promotion of diversity to be limited, and across many indicators, prisoners from minority groups had more negative perceptions of their treatment. Health service provision was improving.

Outcomes were poorest for purposeful activity, a particular concern in a training prison. Evening association was limited and we found over a third of prisoners locked up during the working day doing nothing. Activity, of which there was broadly enough to meet need, was inexcusably underused. Non-attendance, lateness and interruptions for non-work reasons were not challenged with sufficient rigour, and overall there was insufficient vocational training or accreditation of skills. The quality of learning and skills for those who did attend was often good, representing an opportunity missed by too many.

Work to help prisoners resettle was hampered by the lack of a strategic approach. Little had been done to look at how the needs of such a diverse population of adults, young adults, foreign national prisoners and sex offenders could be met. Staff engaged in offender management work often lacked training or confidence. Of particular concern was the very limited provision for the third of prisoners who were sex offenders. Many of these were in denial of their offending and were not sufficiently challenged. Work was in place to provide support across the resettlement pathways but much was uncoordinated and its effectiveness not measured.

Overall we found that Moorland was a prison that had made some progress and was dealing with considerable uncertainties. That said, the pace of progress was disappointing and there remained much to do, some of it fundamental. The need to deal with these problems, and improve outcomes for prisoners, should not be lost in the transit to the private sector.

Report on an Unannounced Short Follow-up Inspection of HMP Swansea

Inspection 17–19 Dec 2012 by HMCIP, report compiled February 2013, published 17/04/13

Inspectors had some concerns: - there had been three self-inflicted deaths since Swansea's last inspection, but nearly two-thirds of staff still required refresher training in self-harm monitoring procedures; - prescribing arrangements for substance misusers, at most risk during the early part of their stay at Swansea, were not sufficiently flexible and monitoring arrangements too limited; - there were still not enough activity places, and not all the places and workshops available were used; and - the needs of some minority groups were not understood or met.

Introduction from the report: HMP Swansea continues to function as a local prison serving the courts of South and West Wales. Our last full inspection of HMP Swansea in February 2010 found that, on the whole, the prison was achieving reasonably good outcomes for prisoners in most areas. Our most significant concern focused on arrangements for resettlement, particularly services to

UKBA Continue To Detain Vulnerable People at Harmondsworth IRC

[There are about 12,000 foreign nationals in prison, who at the end of their sentence are likely to br transferred to an Immigration Removal Centre to await deportation, will they be better treated than in prison?]

Indpendent Monitoring Board report on Harmondsworth IRC 2012 the Board highlights:

- GPs working for UKBA found that 125 detainees were unfit to be detained. Only 12 of these were released. [Currently the case worker can over rule a doctors recommendation to release.]
- Continuing problems of the healthcare service at Harmondsworth IRC.
- Detention of those who are mentally ill for whom there is no appropriate accommodation.
- The 38 people found by the Board to have been detained for more than a year. This includes 2 men detained since 2008 who were ultimately transferred to hospital and a detainee who was held in Segregation Units for 22 months.
- UKBA's lack of information necessary to monitor the detention of those who say that they are under 18 years.

[Prisons and Probation Ombudsman, refused to investigate death of a detainee on the 17th November 2012, who had been transferred to hospital. Bizarrely it was only at the point of death that UKBA released him from detention.]

A great deal of distress is suffered by those held by UKBA in immigration detention who are mentally or physically ill, elderly, young or who have been detained for many months. This is the conclusion of the Independent Monitoring Board (IMB) of Harmondsworth Immigration Removal Centre (IRC) in its annual report.IMB members, who made 188 visits to monitor the Centre in 2012, report that the problems they found related more to the processes of UKBA rather than to the day by day running of the Centre.

Harmondsworth Immigration Removal Centre (IRC) can accommodate up to 615 men and is located near Heathrow airport. It is run, on behalf of the UK Border Agency (UKBA), by GEO, an American-owned company which also runs Dungavel IRC in Scotland.

Many detainees cope, calmly and stoically, with the deprivation of their liberty. Others - especially those with mental and physical health issues, those who have been detained for a long time, and the young and old - suffer a great deal of distress. In our experience the problems relate more to the processes of UKBA rather than to the day by day running of the Centre.

Prisons and Probation Ombudsman investigates deaths in custody but has declined to investigate one death, where a detainee in hospital intensive care had been released from detention by UKBA only a few hours before he died (see Section 5.6.1) .

Healthcare continues to be an issue of major concern and was highlighted in UKBA's own audit of healthcare. There have been improvements but there is a lot of work to do (see section 5.3).

Again this year we highlight the total lack of appropriate accommodation, and therapeutic day care (though weekly counselling sessions were introduced in September), for those who are mentally ill. The most likely location to find the severely mentally ill is the segregation unit (see Sections 5.3.3 and 5.7). As will be seen in those parts of the report, one detainee with mental health or behavioural problems was in the segregation unit at Harmondsworth or other IRCs for a virtually continuous period of 22 months.

Continue to be concerned about healthcare. Our concerns often relate more to the difficulty of providing healthcare in detention, where the duration and outcome of detention are unknown, rather than to the quality of the actual service provided which has improved through 2012.

Detainees lose the power to manage their own health, and rely on others to make judgements for them. If you are living in the community and feel unwell you have various routes for action if unwell - you can visit the retail pharmacy, go to see the GP or visit A&E. If you are detained there is only one route for assistance which is to see a nurse, generally by appointment.

In relation to above, Medical Justice, where it has the resources, delivers a valued service of providing detainees with a second opinion.

Remain convinced that an independent review of the application of Rule 35 (is the person fit to be detained) of The Detention Centre Rules is required. Currently the case worker can over rule a doctors recommendation to release

Open letter from Daniel Roque Hall/Anne Hall

To all those people who supported the Justice For Daniel Roque Hall Campaign.

Dear Friends, 'Thank you so much for your kindness and support – they were very much appreciated at a dark time. What all of you did, individually and together, was a source of great inspiration and continues to be so. Hopefully, the many and varied kinds of support you extended to me, and the hard work and dedication that many brought to the campaign, will have a positive effect for other people in prison and for more understanding of disability and disabled people's needs.' Daniel Roque Hall

"In July last year I was desperate as I knew Daniel would not survive prison. I never imagined when the campaign for Daniel was started with a few friends that it would gather the support that it did. That support sustained me – it was solidarity in action. To everyone who signed the petition, wrote a letter, attended a protest or vigil, made statements or organized on Daniel's behalf or used their media role or political position to bring his situation to public attention, I would like to express my heartfelt gratitude. Included in my thanks are the legal team who in the last weeks before Daniel's release took up his cause and supported him- and me – with dedication and integrity. The decision to send Daniel home was made by a Court, but without all the elements of the campaign, which I firmly believe were vital in bringing about that successful outcome, Daniel could have been someone else who died in prison. Daniel is recovering well at home. Anne Hall *With our very best wishes, and in solidarity, Daniel & Anne.*

R v Osman, Mire and Tracey

16 years' imprisonment in the case of a "courier" of a firearm was not too long where the appellant was on licence at the time of committing the offence. The appeals against sentence of two further appellants who had committed the offences whilst on licence were also dismissed; the additional days they served related to their previous offences. By committing the current offences while on licence, (a) they lost the right to serve the balance of their previous sentences "in the community", and (b) it made the commission of their current offences that much more serious.

Decision to force-feed Prisoner on Hunger Strike did not necessarily entail a violation of the Convention. In its decision in the case of Rappaz v. Switzerland (application no. 73175/10), the European Court of Human Rights has by a majority declared the application inadmissible. The applicant, who had been imprisoned for various offences, embarked on a hunger strike in an attempt to secure his release. In this case the Court held that the Swiss authorities had not failed in their obligation to protect the applicant's life and to provide him with conditions of

of a very vulnerable young man with a history of self harm and mental health needs that warrants wide ranging scrutiny." Billy Spiller was the second young man to take his own life in HMYOI Aylesbury in 2011. Seven young men have taken their own lives there since 2000.

INQUEST has been working with the family of Billy Spiller since his death in November 2011. The family is represented at the inquest by INQUEST Lawyers Group members Nancy Collins from Irwin Mitchell solicitors and barrister Stephen Cragg QC of Doughty Street chambers.

Report on an Unannounced Full Follow-up Inspection of HMP/YOI Moorland

Inspection 3–7 Dec 2012 by HMCIP, report compiled February 2013, published 17/04/13

Since its last inspection, Moorland has had to cope with considerable change and uncertainty. These challenges have included the process of recovery and the restoration of over 300 places following the disturbances in late 2010, the opening of new accommodation in 2011, followed by the introduction of over 300 sex offenders and 250 foreign national prisoners to the population, the clustering of Moorland with two other South Yorkshire institutions, creating a single managed entity, and, finally, the market testing of that entity. At the time of the inspection, Moorland and the rest of the South Yorkshire cluster had just been informed that they had been unsuccessful in competition and were likely to transfer to management by Serco during 2013.

Inspectors had concerns:

- there was evidence of a bullying problem and many arrangements to promote and ensure safety were only adequate;
- despite some improvements in staff-prisoner relationships, prisoners reported more victimisation than at similar prisons;
- over a third of prisoners were locked up during the working day doing nothing, a particular concern in a training prison;
- activity, of which there was broadly enough to meet need, was underused;
- there was insufficient vocational training or accreditation of skills;
- work to help prisoners resettle was hampered by the lack of a strategic approach
- there was very limited provision for the third of prisoners who were sex offenders, many of whom were in denial of their offending and were not sufficiently challenged.
- pace of progress was disappointing and there remained much to do
- Staff engaged in offender management work often lacked training or confidence

Introduction from the report: Moorland is a category C training prison in South Yorkshire holding up to 1,000 adult and young adult prisoners. Since we last inspected, the establishment has had to cope with considerable change, uncertainty and, to an extent, turmoil. These challenges have included the process of recovery and the restoration of over 300 places following the disturbances of late 2010; the opening of brand new accommodation in 2011, followed by the introduction of over 300 sex offenders and 250 foreign national prisoners to the population mix; the clustering of Moorland with two other South Yorkshire institutions, creating a single managed entity or lot; and, finally, the market testing of that lot.

At the time of this follow-up inspection, Moorland and the rest of the South Yorkshire lot, all currently publically run institutions, had just been informed that they had been unsuccessful in competition, and that the three prisons were likely to transfer to the management of Serco during 2013.

When inspecting other prisons engaged in the market test process we have found some that have used the process to galvanise and re-energise their management and delivery. Evidence of such benefits was harder to discern at Moorland. Overall there had been some improve-

media in fomenting hatred and – the levels of racial violence.

Worse, multiculturalism itself is now held responsible for racial tension; think-tanks redefine 'the problem' in terms of individual attitudes, identity and willingness to belong; and local anti-racist structures are being decimated. Said IRR researcher Dr Jon Burnett, 'The twenty years since the unprovoked murder of Stephen Lawrence reveals not the end of racism, but the fact that it is deeply entrenched and infinitely adaptable. What we fear is that as austerity measures begin to bite and politicians compete over restricting immigration and benefits, the fall-out will inevitably be an increase in racism.'

Ongoing research by the Institute of Race Relations shows that racial violence does not impact on all communities equally. As racism is shaped by factors such as military intervention abroad and the resort to nativism in social policy as austerity measures bite, its nature changes, as does its manifestation in towns and cities undergoing swift demographic change. At a time of growing anti-foreigner rhetoric, it is newly arrived migrants, asylum seekers and those identified as visibly or culturally different, who are more likely to be the victims of racial attack. And, according to the Crime Survey for England and Wales, such attacks are running at the rate of 130,000 per year.

Inquest Opened Into Death of Billy Spiller at HMYOI Aylesbury

Billy Spiller was aged 21 years old when he died on 5 November 2011. During his childhood Billy was variously diagnosed with learning difficulties, autism and attention deficit hyperactivity disorder (ADHD). He self harmed as a child and first used a ligature when he was 16 years old. In January 2010, whilst in HMYOI Aylesbury, Billy was found hanging in his cell. He was found and cut down and sustained no serious injuries. He was released on licence in October 2010 but recalled soon after and arrived back at HMYOI Aylesbury in February 2011. Following his return Billy repeatedly threatened to self harm. He was referred to the mental health in-reach team and a psychiatrist. Billy was also subject to an ACCT (Assessment, Care in Custody, and Teamwork – the system used for prisoners who are at risk of self harm).

In October 2011 Billy again threatened to self harm and on 3 November 2011 he threatened to make a noose. On 5 November Billy became distressed when he was unable to speak with his girlfriend. He punched the walls and asked to be constantly observed because he felt like killing himself. He was given a phone call to his girlfriend. At the end of the call both Billy and his girlfriend were in tears. That afternoon Billy was found hanging in his cell at 2.17pm and, despite attempts to resuscitate him, he was pronounced dead at 3.08pm.

Billy's family hope that the inquest will address the following issues:

1. The care given to Billy by the mental health staff at HMYOI Aylesbury
2. The ACCT process, assessments of risk of suicide and recognition of self harming behaviour.
3. How the prison dealt with Billy's threats to hang himself.
4. Information the prison had on Billy's history of mental health difficulties and the medication he had been prescribed previously.
5. Prison staff training on dealing with prisoners with complex mental health needs.

Dawn Spiller, Billy Spiller's mother said: "After having to wait for nearly a year and a half to find out what happened on that tragic day, we hope to get closer to the truth and find out exactly what went so terribly wrong. We would like answers as to why my son had to lose his life in a state-run establishment that should have been protecting his wellbeing."

Deborah Coles, co-director of INQUEST said: "This is another troubling death in prison

detention compatible with his state of health.

Crime Novel Inspired Woman To Falsely Accuse Priest Of Rape Telegraph 16/04/13

Father John Taylor, 49, found himself accused of raping the woman after meeting his accuser on Facebook and going on a dinner date which ended in sex. The woman reported him for rape and he lost his job, found himself shunned by parishioners and had his car vandalised three times. He was also banned from seeing his two young children who live with his ex wife Zsanett, 34, in her native Hungary because of the allegation.

Father Taylor was due to stand trial for rape on Monday but the case collapsed minutes before it was due to start. Canterbury Crown Court heard that the woman, in her late 20s, told police she identified with the characters in the novels by Martina Cole which feature violent rape. The woman told police the catholic priest had pinned her on his sofa and forced to have sex but DNA evidence proved she had never been on the couch. The Crown Prosecution Service said it was offering no evidence against Father Taylor and he was formally found not guilty of rape.

Cost per Prisoner Adult/YOI and Public/Private, 2011-12

Adult Public £33,603 Private £33,236 / YOI (ages 15 to 21) Public £41,381 Private n/a YOI (ages 15 to 17) Public £76,162 Private £77,791

R V Cairns & Ors - Appeals Against Sentence on Guilty Plea Entered

Far too many appeals against sentence are mounted on the basis that the Judge has failed to have any, or sufficient, regard to the basis on which a plea of guilty has been entered. Although it has not been submitted that the principles are in doubt, these cases (each of which is said to raise some aspect of the problem) have been collected together in order to re-state the approach to be adopted. To that end, the Crown Prosecution Service has instructed Mr Paul Lewis Q.C. (who was counsel for the Crown in the case of Rafiq and Drummond) to provide over-arching or general submissions: we are grateful for his assistance.

Held: It is a cardinal principle of our criminal justice system that, for those cases decided in the Crown Court, a jury decides on the guilt or otherwise of those charged with crime. That critical decision concerns only whether the ingredients of the criminal offence or offences (as set out in the indictment) are proved. The jury is not concerned with what might be described as the aggravating or mitigating circumstances which will be important in the event of a conviction, namely the decision that falls to the judge as to the sentence to be imposed. Only in very rare circumstances should the jury be asked questions supplementary to the verdict (one example being whether manslaughter has been proved as an involuntary act, by reason of diminished responsibility or because of loss of control).

After a trial, therefore, once the offence has been proved, in order to do justice, the judge has to determine the gravity of the offending and is both entitled and required to reach his or her own assessment of the facts, deciding what evidence to accept and what to reject. The conclusions must be clear and unambiguous not least so that both the offender and the wider public will know the facts which have formed the basis for the sentencing exercise. They also inform this court should the offender seek to appeal the sentence as wrong in principle or manifestly excessive, or the Attorney General seek to refer it as unduly lenient.

The position is no different when an offender pleads guilty. The admission comprised within the guilty plea is to the offence and not necessarily to all the facts or inferences for which

the prosecution contend. Once again, however, the responsibility for determining the facts which inform the assessment of the sentence is that of the judge. In the normal course, when the contrary is not suggested, that assessment will be based on the prosecution facts as disclosed by the statements. If, however, the offender seeks to challenge that account, the onus is on him to do so and to identify the areas of dispute in writing, first with the prosecution and then with the court.

The proper approach of the prosecution to bases of plea was considered in R v Tolera [1999] 1 Cr App R 29 and is now set out in the Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise (issued with effect from 1 December 2009). In so far as it deals with the position of the defendant and the court, it can be summarised in this way:

i) A basis of plea must not be agreed on a misleading or untrue set of facts and must take proper account of the victim's interests; in cases involving multiple defendants, the bases of plea for each defendant must be factually consistent with each other (see para C1).

ii) The written basis of plea must be scrutinised by the prosecution with great care. If a defendant seeks to mitigate on the basis of assertions of fact outside the prosecutor's knowledge (for example as to his state of mind), the judge should be invited not to accept this version unless given on oath and tested in cross examination as set out in IV.45.14 of the Consolidated Criminal Practice Directions (CCPD): see para. C3. If evidence is not given in this way, then the judge might draw such inferences as he thought fit from that fact.

iii) The prosecution advocate must ensure that the defence advocate is aware of the basis on which the plea is accepted and the way in which the case will be opened (para. C5). Where a basis of plea is agreed, having been reduced into writing and signed by advocates for both sides, it should be submitted to the judge prior to the opening. It should not contain matters that are in dispute: see R v Underwood [2005] 1 Cr App R 13 replicated in CCPD IV.45.11(c) and (d). If it is not agreed, the basis of plea should be set out in writing identifying what is in issue; if the court decides that the dispute is material to sentence, it may direct further representations or evidence in accordance with the principles set out in R v Newton (1982) 77 Cr App R 13.

iv) Both sides must ensure that the judge is aware of any discrepancy between the basis of plea and the prosecution case that could potentially have a significant effect on sentence so that consideration can be given to holding a Newton hearing. Even where the basis of plea is agreed between the prosecution and the defence, the judge is not bound by such agreement: see paras. C8 and C10, CPR IV.45.12 and Underwood (ibid). But if the judge is minded not to accept the basis of plea in a case where that may affect sentence, he should say so.

Without seeking to be exhaustive of the issues that might arise (or citing all the relevant authorities), there is no obligation to hold a Newton hearing (a) if the difference between the two versions of fact is immaterial to sentence (in which event the defendant's version must be adopted: R v Hall (1984) 6 Cr App R (S) 321; (b) where the defence version can be described as 'manifestly false' or 'wholly implausible': R v Hawkins (1985) Cr App R (S) 351; or (c) where the matters put forward by the defendant do not contradict the prosecution case but constitute extraneous mitigation where the court is not bound to accept the truth of the matters put forward whether or not they are challenged by the prosecution: R v Broderick (1994) 15 Cr App R (S) 476.

A Newton hearing need not be a lengthy affair. By way of example, in the case of Cairns discussed below, if the judge was concerned that the defendant was, in truth, the equivalent of a street dealer (given the quantity of drugs, the money in his possession and the phone

A request for data to be removed was liable to run counter to the interest of the investigating services in maintaining a database containing as much information as possible; this was a contradiction in itself. Consequently, since the prospects of such a request being successful were uncertain, the retention period of 25 years equated in practice to retention for an indeterminate period.

The Court therefore concluded that the French courts had overstepped their margin of appreciation and had failed to strike a fair balance between the public and private interests at stake. The retention of M.K.'s fingerprints had amounted to disproportionate interference with his right to respect for his private life and could therefore not be regarded as necessary in a democratic society.

Just satisfaction (Article 41) : The applicant, who had received legal aid in the proceedings before the Court, did not submit a claim for just satisfaction. Accordingly, the Court held that it was unnecessary to make such an award.

Successful Claim For Judicial Review Brought By A Mother In Care Proceedings

This was a successful claim for judicial review brought by a mother in care proceedings in respect of her two children who were removed from the care of the paternal grandparents. To that extent, it is a first. It concerns the duty on the Local Authority to consult with parents when an Interim Care Order is in place.

The claim raised two points. The first concerned whether it was permissible to bring a claim for JR when there were ongoing care proceedings and secondly the extent of the Local Authority's duty to consult with parents when an ICO is in force. As to the latter point, there were two decisions that were challenged by the mother. The first was a decision taken on 31st January 2013 and the second concerned a decision taken on 1st February 2013 both concerning the placement of her children under the ICO.

HHJ Jeremy Richardson QC decided that it was right for the mother to bring the claim for JR and that the decision on 31st January 2013 to remove the children from the care of the paternal grandparents was unlawful but that the decision taken on 1st February 2013 was lawful given the events on the day. The judge therefore granted declaratory relief to the mother in respect of the decision taken on 31st January 2013.

Racial Violence Since the Death of Stephen Lawrence

As the twentieth anniversary of the murder of Stephen Lawrence approaches, the IRR examines racial violence since his death in 1993.

In the twenty years since the death of Stephen Lawrence, we can report that 106 people have lost their lives in (known or suspected) racist attacks – five per year on average, that black people are twenty-eight times more likely than white to be stopped and searched by the police (using Section 60 powers), that in 2009/10 black people were over three times more likely than white to be arrested, that black and those of mixed ethnicity are over twice as likely as whites to be unemployed, that three quarters of 7-year-old Pakistani and Bangladeshi children are living in poverty compared to one in four whites, and that those classifying themselves as 'Other Black' are six times more likely than average to be admitted as mental health inpatients.

Yet as a society we are in denial about racism. Because the 1999 Macpherson report (into Lawrence's death and subsequent policing), for the first time, acknowledged institutional racism and the Race Relations Amendment Act followed in its wake, politicians regard the issue as over, declare our society 'post-racial'. But the kind of mechanistic, box-ticking equality measures being implemented leave intact the laws which discriminate, the power of the

the court concluded that the conviction was unsafe and the conviction was quashed.

Retention of Fingerprints of a Person Not Convicted - Violation of Article 8

In Chamber judgment in the case of M.K. v. France(application no. 19522/09), which is not flna!', the ECtHR held, unanimously, that there had been: A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned a French national who complained of the fact that his fingerprints had been retained on a database by the French authorities. He had been the subject of two investigations concerning book theft, which ended in one case with his acquittal and in the other with a decision not to prosecute. The Court considered, in view of the circumstances of the case, that the retention of the data in question amounted to disproportionate interference with the applicant's right to respect for his private life.

Principal facts: The applicant, M.K., is a French national who was born in 1972 and lives in Paris (France). In 2004 and 2005 his fingerprints were taken in the context of two investigations into alleged book theft. The first ended with his acquittal and the second with a decision not to prosecute. In 2006 the applicant wrote to the public prosecutor requesting the removal of his fingerprints from the database. As his request was granted only in relation to the fingerprints taken during the first set of proceedings, he applied to the liberties and detention judge, who rejected his application. The President of the Investigation Division of the Paris Court of Appeal upheld that decision in 2006. M.K. lodged an appeal on points of law which was dismissed by the Court of Cassation in 2008.

Relying mainly on Article 8, the applicant complained that the retention of data concerning him in the computerised database of fingerprints had infringed his right to respect for his private life. He also alleged a violation of Article 6.

Article 8: The Court considered that the retention of M.K.'s fingerprints by the domestic authorities had amounted to interference with his right to respect for his private life. The interference had been in accordance with the law, namely the Code of Criminal Procedure and a 1987 decree, and had pursued the legitimate aim of preventing crime.

Nevertheless, the Court reiterated that the protection of personal data was of fundamental importance to a person's enjoyment of his or her right to respect for private life. This applied with even greater force when such data underwent automatic processing and were used for police purposes. The domestic law therefore had to ensure that such data were relevant and not excessive in relation to the purposes for which they were stored. The same applied to the length of time for which they were retained.

In the present case the reason invoked by the public prosecutor for refusing to have the fingerprints taken during the second investigation removed from the database had been the need to protect the applicant against identity theft. In the Court's view, that argument, which moreover had no basis in legislation, could end up justifying a measure as extreme as storing the details of the entire population. Furthermore, the decree in question was purportedly aimed at making it easier to prosecute persons who were implicated in criminal proceedings and needed to be identified, but did not specify whether its scope was actually confined to criminal offences. In addition, it did not make any distinction based on the seriousness of the allegations, since it also concerned minor offences. Lastly, it applied indiscriminately to persons who had been convicted and those who, like the applicant, had never been found guilty of an offence and were therefore at risk of being stigmatised, in disregard of their right to be presumed innocent.

Finally, the provrsions in question did not give sufficient protection to the persons concerned.

details), it would have taken a few minutes only for the defendant to be provided with the opportunity and, if he took it, to give evidence seeking to establish his contention that his supply of class A drugs to others was on a social basis to friends and associates only. The judge would then have been in a position to decide the issue to the usual standards. Given the risk that credit for a guilty plea will be reduced if there is an adverse Newton finding (see R v Caley & other cases [2012] EWCA Crim 2821 at paras. 26 and 27), advancing a spurious basis of plea will require careful consideration. At the conclusion of any such hearing, in order to meet the requirements of the defendant and the wider public, the judge should provide a reasoned decision as to his findings of fact and thereafter, following mitigation, proceed to sentence.

After conviction following a trial, the judge is bound to honour the verdicts of the jury but, provided he does so, is entitled to form his own view of the facts in the light of the evidence. This is so even if the jury express an opinion on a matter going only to sentence: see R v Mills [2004] 1 Cr App R (S) 332. In R v McGlade (1990) 12 Cr App R (S) 105, Lord Taylor CJ put the general proposition in this way (at 109):

"There is clear authority that if the verdict of a jury leads inexorably to one version of the facts being found and only one version, the learned judge is bound to sentence upon that basis. But if the verdict of a jury leaves open some important issue which may affect sentence, then the learned judge, having heard all the evidence himself in the course of the trial, is free and, indeed, it is his duty to come to a conclusion, if he can, upon where the truth lies."

That is not to say that a Newton hearing is never appropriate after a trial. If an issue not relevant to guilt but relevant to sentence has not been canvassed in the trial, a further hearing may be necessary. In R v Finch (1993) 14 Cr App R (S) 226, the defendant alleged that he had been enticed into carrying drugs by a police officer and the judge made it clear that, even if it were the case, it would not constitute a defence. In fact, neither that officer nor the defendant gave evidence so, as the court observed, there was no evidence "one way or the other" although "if there had been, then of course there would have been no need for a Newton style enquiry" (per Lloyd LJ at 228).

Following well established principles, this court will not interfere with a finding of fact made either following a trial (R v Wood (1992) 13 Cr App R (S) 207) or a Newton hearing (R v Ahmed (1984) 6 Cr App R (S) 391) provided that the judge has properly directed himself or, exceptionally, where the court is satisfied that no reasonable finder of fact could have reached that conclusion. It follows, therefore, that it is important for all involved in the exercise to ensure that it is conducted correctly and in accordance with principle.

R v Morris - Conviction Quashed Following Misdirection On Law

Morris was convicted of dangerous driving and sentenced to a community order involving 180 hours of unpaid work, disqualified from driving for a period of 12 months and ordered thereafter to undertake an extended driving test.

The appellant was a taxi driver who accepted a fare consisting of four young men. At one location, three of the men alighted and started walking away at a fast speed, leaving the remaining passenger who intended to pay the fare. The appellant did not realise that he still had a passenger in the cab and to stop what he thought was an evasion of the fare, he drove his taxi onto the pavement and caused Martin Walters, at the front of the group, to fall to the ground and suffer a broken ankle.

The case for the prosecution was that the appellant deliberately drove his taxi onto the

pavement at speed, revving the engine, and pursued the pedestrians, driving into Mr Walters and causing him to fall under the taxi: this was dangerous driving and the appellant had acted unreasonably in all the circumstances and had used unreasonable force in any event, regardless of what had occurred. The defence case was that although he had not looked back into the taxi (a seven seater) to check that all four passengers had alighted and thus had not realised that one had remained, he believed that they had shared an intention of making off without payment of the fare. He drove the taxi onto the pavement to prevent them from making off and/or to assist in their lawful arrest (in the absence of a constable); he had done so at a slow speed to block the escape of his erstwhile passengers whereupon Mr Walters had fallen over the bonnet of the car and to the ground: that had caused his injuries. Those actions, it was contended, were reasonable.

Before considering the issue of dangerous (or alternatively careless) driving, it was common ground that the jury had to consider the general defence contained within s. 3(1) of the Criminal Law Act 1967.

An issue arose as to which limbs of this provision should be left to the jury. For the appellant, it was argued that the jury should be directed to consider whether the appellant was seeking to prevent crime, prior to considering the alternative, namely whether he was assisting in the lawful arrest of offenders. The judge ruled that the only defence that could be left to the jury was the latter: the appellant could not have been preventing a crime under the first limb of s. 3(1) because the offence of making off without payment was made out (and completed) when Mr Walters and his friends alighted from the taxi.

The judge dealt with the use of force in effecting lawful arrest of a suspected offender in this way:

"6. The first issue for you to resolve, therefore, is whether the prosecution has proved, so that you are sure, that the defendant was arresting Martin Walters unlawfully when he used his taxi to stop him going where he wanted to go.

An arrest of Martin Walters by the defendant would have been lawful if and only if:

(a) either (1) Martin Walters was in the act of making off without payment or (2) if he was not doing so the defendant had reasonable grounds to suspect that he was doing so and

(b) it appeared to the defendant that it was not reasonably practicable for a constable to make the arrest instead of him and

(c) the defendant had reasonable grounds to believe that it was necessary to arrest Martin Walters to prevent him making off before a constable could assume responsibility for him.

8. If it was lawful for the defendant to arrest Martin Walters then he was entitled to use such force as was reasonable in effecting such an arrest.

9. If you are sure that it was not lawful for the defendant to arrest Martin Walters then it is not necessary for you to decide any question about whether the degree of force used was reasonable and you will proceed to decide whether the prosecution have proved an offence of dangerous or careless driving without further reference to the concept of the use of force to effect a lawful arrest.

10. If you think it was or may have been lawful for the defendant to arrest Martin Walters, the question whether the degree of force he used was reasonable in the circumstances is to be decided by reference to the circumstances as you find the defendant genuinely believed them to be, even if his belief was mistaken and even if it was an unreasonable one.

11. Reasonable force means proportionate force. The degree of force the defendant used would be reasonable if it was proportionate in the circumstances as the defendant believed them to be. So the degree of force the defendant used would not be reasonable if it was disproportionate in the circumstances as the defendant believed them to be.

12. Remember that a person using such force in order to effect the lawful arrest of a suspected offender may not be able to weigh up to a nicety the exact measure of any necessary action.

13. Remember too that if the defendant was using only such force as he believed was necessary to effect the lawful arrest of a suspected offender, that would be strong evidence that the force he used was reasonable in the circumstances.

14. If you think that it was or that it may have been lawful for the defendant to arrest Martin Walters then you will proceed to decide whether the prosecution have proved an offence of dangerous or careless driving in the light of the fact that a person effecting a lawful arrest may do so using such force as is reasonable in the circumstances as he believes them to be."

That direction accurately dealt with the effect of the provisions of s. 24A of the Police and Criminal Evidence Act 1984 and s. 76 of the Criminal Justice and Immigration Act 2008 and, so far as it went, was not contentious.

The issue, however, was whether it went far enough. In particular, assuming that Mr Walters had not in fact made off, or was not making off, without payment (and the appellant accepted that the fourth passenger remained in the vehicle and did not, in the event, contend that his passengers were guilty of that offence), it required the appellant to have reasonable grounds to suspect that they were.

The argument advanced was that it should have been left to the jury to decide whether the appellant genuinely (however unreasonably) believed that his passengers were in the act of making off without payment, in which event, the jury should then have been directed to consider the degree of force used, again by reference to the appellant's genuine belief

If, as the appellant contended in this case, he honestly believed that the men were making off without payment, he was entitled to use reasonable force in order to prevent the commission of that offence; the jury would thus be required to consider whether driving onto the pavement (howsoever that occurred) was the reasonable exercise of the use of force. The difficulty with the way in which the judge put the case was that his direction required the jury to consider whether the appellant had reasonable grounds to believe that it was necessary to arrest Mr Walters to prevent him making off before a constable could assume responsibility for him. If they concluded that he did not have reasonable grounds (perhaps because he should have realised the fourth man was still in the cab), they never get to the question of the use of reasonable force.

The judge did not deal with the possibility that the jury could conclude that the appellant was acting to prevent crime because he concluded, as a matter of law, that once the passengers had moved away from the window of the taxi (ie where they should have paid the fare), they had 'made off'. He thereby failed to ensure that the jury focussed on what the appellant honestly (i.e. genuinely) believed were the facts before using their conclusions as to that belief to go on to decide whether he may have had reasonable grounds for suspecting that an offence was being committed (or had been committed such that he had a reasonable belief that an arrest was necessary) and crucially, whether the force used may have been reasonable. That approach is consistent with Faraj [2007] EWCA Crim 1033.

In the circumstances, the court accepted the submission that there was an error of law in the direction of law that the jury were given. Although the court had real reservations about the question whether a jury properly directed could ever have concluded that the use of force in this case was or may have been reasonable and, thus, that the offence of dangerous driving was not made out, in the light of the failure to focus on the honest belief of the appellant,