hereby abrogated'. The offence lies in assisting another person to commit suicide. S2[1] Suicide Act 1961 provides that 'A person [D] commits an offence if a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person and b) D's act was intended to encourage or assist suicide or an attempt'. Proceedings can only be brought with the consent of the DPP. This is an unusual crime. It places a secondary participant at risk of penal consequences for assisting in an act that is lawful on the part of his principal. The assisted person is also the victim. He is often a willing victim who is the inciter of the unlawful act. However, it remains an offence until Parliament intervene. Even a suicide pact leading to the death of one party and not the other is unlawful. The case of R v Sweeney (1986) 8 Cr. App. R. (S) 419 establishes that even desperate people must be deterred from taking life. This case concerned a husband suffering from depression and a wife from muscular dystrophy. They agreed that they would commit suicide by setting fire to their car whilst inside it. The wife tried to escape but was unable and died. Mr. Sweeney suffered serious burns. He received two years following a plea to manslaughter. Taking the life of a person suffering from a condition that prevents them committing suicide is murder. The fact that the victim had consented or would have done so if they had been able is not a defence. In fact, such a killing often contains many of the statutorily aggravating features to be found in the current sentencing guidelines. There is a clear intention to kill and the victim is arguably vulnerable while the perpetrator occupies a position of trust. Such offences fall into the top tier of homicide for that reason.

Diane Pretty brought a challenge to this in 2002. Ms. Pretty faced the what she feared would be an undignified end. She was unable to take her own life without assistance. She applied to the DPP for an undertaking that her husband would not be prosecuted if he assisted her. Ms. Pretty argued that Article 2 Human Rights Act protected her right to determine her own death, that failing to alleviate her suffering amounted to inhuman and degrading treatment contrary to Article 3, that her rights to privacy and freedom of conscience under Articles 8 and 9 were infringed without justification and that she was the subject of discrimination in breach of Article 14 as an able bodied person might commit suicide at any time. The House of Lords reject her appeal finding that the DPP had no power to undertake that a crime not yet committed would be immune from prosecution. This ruling was upheld by the European Court of Human Rights.

Debbie Purdy's appeal in 2009 met with greater success although the request that she made was more palatable than Ms. Pretty's. Ms. Purdy suffered from a terminal condition and wished to end her life when she worsened. CPS had refused to create a specific policy covering which factors would be considered when a prosecution was contemplated. Ms. Purdy brought a judicial review of the DPP's decision not to publish such a policy. The Court of Appeal rejected her challenge but a further appeal to the House of Lords lead to a determination that Article 8 of the HRA was engaged in this case. Ms. Purdy did not seek immunity from prosecution but information from the DPP. The Court accepted that it was information she needed so that she could take a decision affecting her private life. The DPP were directed to publish a policy explaining which factors will be considered when the public interest of a prosecution is assessed. Despite Ms. Purdy's success it is important to note that her case did not involve a consideration of whether it should continue to be an offence in the UK to help another to take their own life. The Court noted that would be a matter for Parliament. This judgment has not legalised euthanasia in the UK. The DPP have been forced to declare publicly which factors will be considered and there have been no prosecutions in recent years. However, although these are killers who, in moral terms, attract the most sympathy their actions do amount to unlawful homide.

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Who is Controlling the Justice System in the North of Ireland?

The Justice for the Craigavon Two group welcomes the acquittal of Brian Shivers, Brian's case has many similarities with the case of the Craigavon Two, Brendan McConville and John Paul Wootton.

Both the Massereene attack and the killing of PSNI member Stephen Carroll happened in a four day period, the state response to both attacks was swift and obviously coordinated, in a matter of days Brian Shivers, Colin Duffy, Brendan McConville and John Paul Wootton were arrested and detained in Antrim PSNI Station.

All were held under new legislation which seen periods of up to 13 days detention without charge, a precedent to this time. after this all four were charged respectively and sent to Maghaberry with Brian later securing bail until trial,

After years on remand both trials simultaneously opened in the High Court, both cases relied almost entirely on circumstantial evidence and in the case of Brian and Colin experimental DNA testing techniques.

Colin was acquitted, and Brian was convicted on the slimmest of circumstantial evidence when the State's forensic witness stated that only Brian's DNA was found on matches and a phone in the partially burnt car used in the Massereene attack.

Likewise Brendan McConville and John Paul wootton where similarly convicted based primarily on the evidence of a highly dubious eye witness named only as M.

Brian Shivers' fought an appeal and had the original conviction quashed earlier this year, the PPS moved almost immediately to retry him even though they had no new evidence to back up their case.

Shocking new evidence came to light during the retrial in which it was learned that the truth regarding the forensic analysis had been either hidden or lied about by the original forensic witness, it turned out to be the case that the items recovered from the car namely a phone and matches were covered in multiple DNA profiles this clearly undermined further the case against Brian Shivers.

Rather than concede that Brian was an innocent man the PPS brought further charges of aiding and abetting, again with no new evidence.

Today Brian Shivers was rightly acquitted based on the lack of evidence presented, it has been a terrible ordeal for the man who is severely ill. His lawyer rightly pointed out that the case against Brian Shivers has been a serious miscarriage of Justice.

The questions now needing answered is who is controlling the justice system in the north of Ireland? Following the revelations in Brian's case and following the clear attempt to sabotage the appeals of the Craigavon Two. Who is answerable? Who will stand trial for perjury? Who will investigate the investigators during the original arrests and convictions in 2009? The politicians and media applauded the justice system following the convictions, those same politicians and media condemned those who were convicted. Following today's acquittal there is an eerie silence from those same politicians once so vocal.

Something stinks to high heaven in the Justice system and unless it is fixed more and more people will fall victim to this corrupt system. *Signed PRO, JFTC2*

We Are Under Surveillance Say Murder Convicts' Campaigners

A County Antrim councillor who belongs to a group set up to campaign for the release of two men convicted of killing police officer Stephen Carroll believes she may be under security force surveillance. Anita Cavlan, who is an independent councillor in Ballymoney, says she has been told she may be monitored because of her involvement with the Justice for the Craigavon Two Campaign Group. Her claim comes in the wake of a court hearing earlier this week where the PSNI was accused of trying to "sabotage" the appeals launched by Craigavon men Brendan McConville and John Paul Wootton.

Gerry Conlon, who was wrongfully convicted of the IRA Guildford pub bombings, also spoke of his unease amid claims that police named him to a man who was being questioned about the case last week. Mr Conlon, who is chairman of the Justice for the Craigavon Two Campaign Group, attended this week's court hearing with Paddy Hill of the Birmingham Six. He said ,"My name was brought up and while it's not surprising it is disturbing" he said. "They obviously know my background and they know what i stand for". "There are times when you praise the police for their investigations into miscarriages of justice, I understand the need for them ". "But i also understand the need for transparency in order to have faith in the institutions". "its not me that calls the institutions into question, its the institutions themselves."

Commission Refers Rape Conviction of N to Court of Appeal

Mr N was convicted of rape in 2008 and sentenced to ten years' imprisonment. He appealed in 2009 but the appeal was dismissed. Mr N applied to the Commission in 2010.

Having conducted a detailed review of the case, which included commissioning expert opinion, the Commission has decided to refer the case to the Court of Appeal (CoA). The referral is made on the basis of fresh expert evidence which raises a real possibility that the CoA will quash the conviction.

The Commission has replaced the applicant's name with a letter in order to protect the identity of individuals involved in the case. The letter should not be taken as an initial. The Court of Appeal will make its own decision about if/how to anonymise the case when the appeal is heard.

Court Rules - Police Must Treat 17-Year-Olds in Custody as Children

Seventeen-year-olds must be treated as children when held in police custody, the high court has ruled. The decision will transform the way older teenagers are handled when arrested. The Home Office, which resisted any change to the law, estimated it will cost £20m ensure that parents or an "appropriate adult" are called in to provide support. The parents of two 17-year-olds who committed suicide after being arrested have supported the campaign to change the law by the charity Just For Kids Law.

Handing down judgment, Lord Justice Moses said: "This case demonstrates how vulnerable a 17-year-old may be. Treated as an adult, he receives no explanation as to how important it is to obtain the assistance of a lawyer." Moses added: "It is difficult to imagine a more striking case where the rights of both child and parent under article 8 [of the European convention on human rights, guaranteeing family life] are engaged than when a child is in custody on suspicion of committing a serious offence and needs help from someone with whom he is familiar and whom he trusts in redressing the imbalance between child and authority." The home secretary, Theresa May, has been ordered to redraft the code governing detention of teenagers under the Police and Criminal Evidence Act.

The director of Just for Kids Law, Shauneen Lambe, called on the Home Office to issue

oners is a routine occurrence particularly in men's prisons and is often overlooked by staff.

Chris Sheffield, chairman of the Commission into Sex in Prison, said: "We know very little about sex in prison. No one knows how many people are sexually assaulted in prison every year, or whether some prisoners are having underage sex, perhaps putting their health or their partner's health at risk." In an HM Inspectorate of Prisons survey, 1 per cent of prisoners said that they were being sexually abused, rising to between 2 and 3 per cent among prisoners who considered themselves to be disabled. In an academic study of 200 ex-prisoners, 91 per cent said they had been coerced sexually. Yet only a tiny number of complaints about sexual issues are officially logged. The PPO logged just 108 such complaints between 2007 and 2012. Debra Baldwin, head of women and inequalities at the National Offender Management Service (Noms) said that the internal process of making a complaint is so complicated and time consuming that often prisoners either give up or are released before their case makes it to the outside.

Solicitor Nick Wells, who has represented several prisoners who claim to have been victims of sexual abuse, said that "even for a solicitor, when you have some sort of stick to wave at them it is hard enough to get a prison to do what it is supposed to do".

Sex in prison: rules: Prisons are under no legal obligation to distribute condoms or barrier protection to inmates. Policy is discretionary and varies from prison to prison, though most do offer some kind of free condom service. But under Prison Service Order 3845, "condoms may be prescribed if in the clinical judgment of the doctor there is a risk of HIV or STD transmission". HM Prison Service says consensual sex in jail is illegal because cells are "public places", but relationships between prisoners tend to be dealt with on a discretionary basis. The Prison Service Instruction 47/2011 regarding prisoner-discipline procedures states: "There is no rule specifically prohibiting sexual acts between prisoners, but if they are observed by someone who finds (or could potentially find) their behaviour offensive, a charge… may be appropriate, particularly if the act occurred in a public or semi-public place within the establishment, or if the prisoners were "caught in the act" during a cell search. But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate."

For a member of staff to have a relationship with a prisoner is a disciplinary and sackable offence. The Prison Service Order 1215 overseeing professional standards states: "Staff must exercise particular care to ensure that their dealings with prisoners, former prisoners and their friends and relations are not open to abuse, misrepresentation or exploitation on either side."

Dilemma of Assisted Suicide *Jo Morris, Barrister, 1 Inner Temple Lane*

The controversy of mercy killing is unresolved. It is capable of being either an act of compassion or that of unconscionable self interest. The law recognises no difference between these motivations. Despite challenges from Diane Pretty and Debbie Purdy, mercy killing remains an offence in the UK. Assisting a person to commit suicide is an offence under the Suicide Act 1961. Killing a person not capable of committing suicide even at their request is murder or manslaughter. It is no defence to say that the best interests of the victim were served. While the DPP have been forced to publicise their policy upon which factors will be considered when a prosecution is contemplated that goes only to the public interest in any prosecution. The law recognises no offence or defence, full or partial, of mercy killing.

Suicide is not a crime. Until 1961 suicide and its attempt were prohibited. S1 Suicide Act 1961 provided that the 'rule of law whereby it is a crime for a person to commit suicide is

ment and the police are investigating. We will not tolerate violence against prisoners or staff and will always press for the most serious charges to be laid against perpetrators."

Sex In Prisons: Campaigners Warn Of Culture Of Denial *Indpendent, 06/05/13*

An HIV-positive inmate who was having unprotected sex with another prisoner was refused condoms by jail staff in a potentially harmful breach of guidelines, the Chief Inspector of Prisons has revealed. In another incident, managers of one jail claimed that they did not need to provide their prisoners with protection because none of them was homosexual. The revelations by Nick Hardwick to the first Commission into Sex in Prisons have thrown light on the rarely reported issue of intercourse behind bars and sparked calls for more action to prevent non-consensual sex between inmates.

Officially, sexual relationships between prisoners – as well as between staff and inmates – are prohibited. But prisoners should have free access to protection and condoms must be supplied if prisoners are thought to be at risk of contracting HIV or another STI. Giving evidence to the commission, Mr Hardwick warned that the "Prison Service had not adopted a uniform approach as to how to achieve this requirement and practice varied between prisons". He added that "one prison claimed that access to barrier protection was unnecessary because none of its prisoners were homosexual". While at another prison "one homosexual and HIV-positive prisoner who was having unprotected sex requested and was refused condoms". While Mr Hardwick did not name either of the prisons involved and declined to supply further information to The Independent, his testimony last November raises concerns that vulnerable convicts could be contracting sexually transmitted diseases because of failures within the prison system. Campaigners claim that a systemic culture of denial about the extent of sexual relations – both consensual and coercive – behind bars is so damaging that prisoners have died as a result.

Between 2007 and 2012, six inmates died in sexually related incidents in the UK prison system. The commission heard that in 2008, a prisoner referred to as Mr E was murdered by his cellmate Mr F who had allegedly sexually assaulted two prisoners on previous occasions. Mr F had been convicted of the rape of an adult male two years before Mr E's death. There were already concerns that Mr F was "grooming" other prisoners. He had been the subject of three Violence Reduction Strategy documents, due to his inappropriate behaviour to other prisoners. Given the security information available in Mr F's files, he should have been considered a risk to other prisoners and not have been sharing a cell.

Giving evidence to the commission, which was launched by the Howard League for Penal Reform last year, Nigel Newcomen, Prison and Probation Ombudsman (PPO), spoke of another incident in which a woman prisoner in a relationship with another female inmate took her own life. He said: "Most staff who were aware of the relationship commented that it was not a positive relationship."

Despite the prison having a policy that intimate relationships between prisoners were not condoned and should be brought to the attention of wing managers, key staff were not made aware of this relationship. Mr Newcomen said that this "led to decisions being made which did not access the risks involved". In several cases, Mr Newcomen found that "general themes emerged… regarding poor record keeping and information sharing which impacted on the safety of the individual".

Former prisoners interviewed by The Independent claimed sex is rife in some jails, with prisoners regularly lured into sexual relations with staff on the promise of a long-term relationship. One former prisoner, Rebecca Hilton, who had gender reassignment while serving a life sentence between the male and female estate, said that sexual abuse and rape between pris-

immediate guidance to police forces to change their policy. She added: "The judgment makes me proud. Proud of the 17-year-old who stood up and said: 'I am prepared to take this to court because I think it is not fair.' Proud to be a citizen of a country whose judges are prepared to tell the home secretary that she is wrong when she is. And proud that because of all the hard work of so many, this country will now be a better place for all 17-year-olds."

According to the National Appropriate Adult Network, 75,000 17-year-olds are held in police custody in the UK every year. It disputed the Home Office's estimate of a £20m cost, insisting that a largely voluntary service supporting 17-year-olds in custody would cost £1.5m at most.

The test case was brought by a south London teenager, Hughes Cousins-Chang, who was 17 when he was arrested last April on suspicion of stealing a mobile phone. He was held for more than 11 hours in custody. His parents were prevented from talking to him. He was eventually released and no charges were ever brought. Outside court, Cousins-Chang, now 18, he said: "I hope it will change the way 17-year-olds are treated by the police."

Judicial Review Reform: What Does "Totally Without Merit" Mean?

Paul Bowen QC, UK Human Rights Blog

What is the test the Court should apply in deciding whether an application is 'totally without merit'? The question is prompted by the Lord Chancellor's announcement on 23 April 2013 that he will press ahead with plans to reform judicial review procedure to target 'weak, frivolous and unmeritorious cases'. A key change will be to give judges of the Administrative Court, when refusing permission to apply for judicial review on the papers, the power to certify a claim as 'totally without merit' (TWM), thus depriving the claimant of the right to renew the application before the court at an oral hearing.

This power is one that is already exercisable by judges when refusing applications for permission to appeal on the papers under Civil Procedure Rules (CPR) r. 52.3(4A), the effect of which is to prevent the appellant from renewing the application orally. However, it is better known – or, at least, more widely used – in the context of the courts' jurisdiction to make 'civil restraint orders' under CPR 3.11. Indeed, the Administrative Court has had power to certify an application as TWM for the purposes of making a 'civil restraint order' since those rules were introduced in 2004 (see R (Kumar) v Secretary of State for Constitutional Affairs [2007] 1 WLR 536). Although no statistics are currently available for this use of the power to certify a claim as TWM, according to Lynne Knapman, Head of the Administrative Court Office, these are now being collated for applications made since the beginning of 2013.

There is plenty of case-law on the making of 'civil restraint orders', but very little as to the test the Court should apply when deciding a case or application is TWM. Clearly, a case that is TWM is not necessarily the same as one that is not 'arguable', which is the test for whether permission to apply for judicial review should be granted in CPR 54.4. A claim is 'arguable' if 'there is an arguable case that a ground for seeking judicial review exits which merits full investigation at a full oral hearing with all the parties and all the relevant evidence' (for which see Sharma v Browne-Antoine [2006] UKPC 57, para 14(4)). Something more than 'unarguable' is required, but what?

I suggest that a finding of TWM should not be made unless the claim is so hopeless or misconceived that a civil restraint order would be justified if such applications were persistently made. This interpretation is consistent with the history of the relevant provisions and with the importance that the Courts place on the right of access to justice, including the right to make oral representations.

Vexatious litigants: The designation of a case as 'totally without merit' was originally devel-

oped by the Courts in their inherent jurisdiction to restrain vexatious litigants by way of a 'civil restraint order'. In Bhamjee v Forsdick (Note) [2004] 1 WLR 88 the Court of Appeal reviewed the powers of the courts to make such orders. One such power, a 'Grepe v Loam Order', the Court renamed a 'civil restraint order', which would be appropriate in cases where (para 39):

. . . . . the litigant's conduct has the hallmark of one who is content to indulge in a course of conduct which evidences an obsessive resort to litigation and a disregard of the need to have reasonable grounds for making an application to the court. Normally we would not expect a civil restraint order to be made until after the litigant has made a number of applications in a single set of proceedings all of which have been dismissed because they were totally devoid of merit. The characteristics of "vexatious" conduct set out by Lord Bingham of Cornhill CJ in his judgment in Attorney General v Barker [2000] 1 FLR 759 (see para 7 above) may be a useful indicator of the need for a civil restraint order.

The characteristics of 'vexatious conduct' set out by Lord Bingham were as follows: "The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

The decision in Bhamjee prefigured amendments to the Civil Procedure Rules in 2004 which made explicit statutory provision for the making of 'civil restraint orders' in cases where a person has made applications which were 'totally without merit'. Those amendments were made by the Civil Procedure (Amendment No. 2) Rules 2004, SI 2004/2072 which introduced express power in the Court to determine that a statement of case (CPR 3.4) or other application (CPR 23.12) was 'totally without merit', whereupon the Court was required to consider whether it was appropriate to make a 'civil restraint order' under CPR 3.11. Practice Direction 3C provides for the circumstances in which a civil restraint order may be made. By para 2.1:

. . . . . 2.1 A limited civil restraint order may be made by a judge of any court where a party has made 2 or more applications which are totally without merit.

SI 2004/2072 also introduced new CPR 52.10(5) by which the Court of Appeal was empowered to determine that an appeal was 'totally without merit' and was required to record that fact and then consider whether a civil restraint order was appropriate. However the Court did not have power to prevent an appellant from renewing an application for permission to appeal following refusal on the papers even thought it was TWM, a problem identified in Perotti v Collyer-Bristow [2004] EWCA Civ 639. CPR 52 was then amended to introduce such a power, which became CPR 52.3(4A) (SI 2006/1689). From 1 October 2012 CPR 52.3(4A) has been amended further so that a High Court judge or other first instance judge may also determine that an application for permission to appeal is TWM so that the application may not be reconsidered at an oral hearing (SI 2012/2208).

Two serious consequences: Accordingly, a finding that an application for apply for judicial review is 'TWM' will now have two serious consequences for an appellant. First, and in accordance with the Lord Chancellor's proposals, he will be deprived of the right to renew his application by way of an oral hearing. This right is not to be removed lightly. In Sengupta v Holmes [2002] EWCA Civ 1104, a case which concerned an application to appeal in judicial review proceedings, Laws LJ referred at paragraph 38 to "the central place accorded to oral argument

munication, express or understood, and mutual give and take, experimentation and excitement. These are intensely private matters, personal to the couple in question.

"The facts suggested by the evidence in this case are quite different. … Consensual penetration occurred. The claimant consented on the clear understanding that the intervener would not ejaculate within her vagina. She believed that he intended and agreed to withdraw before ejaculation. The intervener knew and understood that this was the only basis on which she was prepared to have sexual intercourse with him. …. In short, there is evidence that he deliberately ignored the basis of her consent to penetration as a manifestation of his control over her." (paras 24 – 25)

"In law, the question which arises is whether this factual structure can give rise to a conviction for rape. Did the claimant consent to this penetration? She did so, provided, in the language of s.74 of the 2003 Act, she agreed by choice, when she had the freedom and capacity to make the choice.

What Assange underlines is that "choice" is crucial to the issue of "consent", and indeed we underline that the statutory definition of consent provided in s.74 applies equally to s.1(1)(c) as it does to s.1(1)(b). The evidence relating to "choice" and the "freedom" to make any particular choice must be approached in a broad commonsense way. If before penetration began the intervener had made up his mind that he would penetrate and ejaculate within the claimant's vagina, or even, because "penetration is a continuing act from entry to withdrawal" (see s.79(2) of the 2003 Act) he decided that he would not withdraw at all, just because he deemed the claimant subservient to his control, she was deprived of choice relating to the crucial feature on which her original consent to sexual intercourse was based.

Accordingly her consent was negated. Contrary to her wishes, and knowing that she would not have consented, and did not consent to penetration or the continuation of penetration if she had any inkling of his intention, he deliberately ejaculated within her vagina. In law, this combination of circumstances falls within the statutory definition of rape."

Conclusion: Lord Judge, on behalf of the Court concluded: "The entire body of evidence, both in relation to the nature and history of the relationship between these two people, and as it applies to each of the individual, specific occasions of complaint, requires re-examination in the light of these observations. This decision should be reviewed in the light of the legal principles explained in this judgment. This is an appropriate case in which to order a judicial review." (para 27)

£80m Seized From Scottish Criminals

More than £80m has been recovered since Scotland's proceeds of crime laws came into force a decade ago. In the past year alone, about £12m was netted from people involved in activities such as drug dealing, human trafficking and benefit fraud. About £8m of the 2012/13 total was confiscated from convicted criminals, with the remainder from cash and assets seized through civil court orders. Figures were revealed by the Crown Office and provide an overview of their work

Prisoner Seriously Hurt in HMP Full Sutton Attack *The Press: Monday 29/04/13*

Police have launched an investigation after a prisoner was seriously injured in an attack by another inmate (at the high-security jail near York. The assault happened on Thursday 25th April 2013 at HMP Full Sutton which houses some of the country's most dangerous criminals including terrorists and murderers. Prisoners' newspaper Converse said it had been told by sources at the jail that the prisoner who was attacked had his throat slashed and was now in a critical condition. The assault reportedly led to Full Sutton being placed into full lockdown, and lasted till Tuesday 30th April.

A Prison Service spokeswoman said: "A prisoner at HMP Full Sutton was seriously assaulted by another prisoner on April 25. "The victim was taken to an outside hospital for treat-

Strachan, 19. The Court of Appeal threw out his claim he should have faced a manslaughter trial and a bid to reduce his sentence. At his 2011 trial, Luton Crown Court was told Foye, then 26, stamped on serial child sex offender Coello so hard the tread of his shoes could be seen on Coello's body. Judge Richard Foster said: "It was a callous, premeditated murder of a helpless victim."

Foye, who had boycotted the trial and was not present for the verdict, cut off both his ears in Woodhill Prison in Milton Keynes while waiting for the case to come to court. His defence had argued he should be convicted of manslaughter on the grounds of diminished responsibility.

After convicting Foye, the jury was told he was already serving life for murdering his former lover Ms Strachan in front of her son. He had stabbed her nearly 50 times at her home in Corby on 30 August 2005. The judge said his jail sentence 35 years for killing Coello would run concurrently to the 16-year sentence he was serving for his first murder. It means Foye cannot even be considered for parole until he is aged 61.

R (F) v DPP - Choice is Crucial to the Issue Of Consent

The High Court (Lord Chief Justice, Mr Justice Fulford and Mr Justice Sweeney) has today allowed a judicial review of a decision by the Director of Public Prosecutions (DPP) not to prosecute a man for rape. The Court also confirmed the Divisional Court's view in Assange v Swedish Prosecution Authority that 'choice' is crucial to the issue of 'consent'.

Introduction: Lord Judge, the Lord Chief Justice, on behalf of the Court said: "This is an unusual, but not unique, application for judicial review of the refusal of the Director of Public Prosecutions ("the defendant") to initiate a prosecution for rape and/or sexual assault of the claimant by her former partner, ("the intervener"). (para 1) Background The allegations by F against her former partner ('the intervener') and summary of evidence available to the DDP, which was reviewed by Alison Levitt QC, the DPP's Principal Legal Advisor, is set out in paragraphs 7 - 19.

Discussion Lord Judge said: "In relation to the incident in February 2010, the question Miss Levitt asked herself was whether ejaculation without consent could transform an incident of consensual intercourse into rape. She could find no authority that dealt directly with this problem. She noted that as a matter of law a person could withdraw consent to intercourse even after penetration had begun, but she was "not clear at which point it could be argued that (the intervener) should have ceased to have intercourse with her". She suggested "were it possible to prove that he had embarked on the act intending to ejaculate it is arguable that he knew that she would not have consented to it, but as a matter of evidence it would be in my view be impossible to prove that it was not a spontaneous decision made at the point of ejaculation". (para 20)

The Court notes that, at the time when the review was written Ms Levitt QC did not have the advantage of the judgment of the Divisional Court in Assange v Swedish Prosecution Authority [2011] EWCH 2849. (para 22)

In relation to the case before the Court, Lord Judge said: "We must emphasise that we are not addressing the situation in which sexual intercourse occurs consensually when the man, intending to withdraw in accordance with his partner's wishes, or their understanding, nevertheless ejaculates prematurely, or accidentally, within rather than outside his partner's vagina. These things happen. They always have and they always will, and no offence is committed when they do.

They underline why withdrawal is not a safe method of contraception. Equally we are not addressing the many fluctuating ways in which sexual relationships may develop, as couples discover and renew their own levels of understanding and tolerance, their codes of com-

in our common law adversarial system" and went on: . . . . . "This I think is important, because oral argument is perhaps the most powerful force there is, in our legal process, to promote a change of mind by a judge. That judges in fact change their minds under the influence of oral argument is not an arcane feature of the system; it is at the centre of it."

At paragraph 47 of his judgment in the same case, Keene LJ identified a marked distinction between the role and efficacy of written advocacy and that of oral argument: . . . . . "One important factor which exists both at a renewed application hearing and at a substantive appeal hearing is the benefit enjoyed by the court of listening to oral argument. This is a fundamental part of our system of justice and it is a process which as a matter of common experience can be markedly more effective than written argument. It will be evident from what has been said earlier in this judgment that, before hearing oral argument in this case, I had some considerable sympathy for the applicant's arguments. The process of oral debate has persuaded me that those arguments are unsound. I mention this simply as one example of the impact which oral submissions may have under our system on the decision-making process. Yet it is a feature absent from the process by which the decision by the single judge on the papers is arrived at."

The second adverse consequence is that that where a TWM finding is made the court order will have to specify that fact and the court must consider whether to make a civil restraint order. This is already specified by CPR rr. 3.3(7), 3.4(6), 23.12 and 52.10(6)) and will doubtless be introduced into CPR 54. As CPR Practice Direction 3C makes clear, a civil restraint order can be made after as few as two applications have been found to be TWM.

It is this context which leads to the conclusion that a finding of TWM should only be made where the claim is so hopeless or misconceived that, if persisted with, a civil restraint order would be justified. As I have observed, the Administrative Court already has power to certify a claim as TWM for the purposes of considering whether to exercise its jurisdiction to make a civil restraint order. Any change to the CPR allowing the Courts to make such findings so as to prevent the renewal of an application at an oral hearing does not affect the test the Court should apply of when a claim is 'totally without merit' – although we should probably expect the power to be used more often.

Indeterminate Sentenced Prisoners Detained After Expiry of Tariff

R (application of Faulkner) (FC) (Appellant) v Secretary of State for Justice and anor

R (application of Faulkner) (FC) (Respondent) v SS Justice (Respondent) & Parole Board

R (application of Sturnham) (Appellant) v Parole Board of England and Wales and anor

The first two cases concern the correct approach to quantification of damages for a violation of Article 5(4) of the European Convention on Human Rights. The latter case concerns the proper test for determining the release or continued detention of a person subject to an indeterminate sentence for public protection.

Justices: Neuberger (President), Mance, Kerr, Reed and Carnwath

Judgment: The Supreme Court allows the Board's appeal in Mr Faulkner's case, reduces the damages awarded to him to £6,500, and dismisses his cross-appeal. The Court grants Mr Sturnham permission to appeal and allows his appeal. Lord Reed gives the lead judgment, with which Lord Neuberger, Lord Mance and Lord Kerr agree. Lord Carnwath delivers a concurring judgment with which Lord Mance agrees.

Reasons for the Judgment: - Mr Faulkner's argument that the detention of a life prisoner constitutes false imprisonment if it continues beyond the point at which the prisoner would

have been released if a hearing had been held in accordance with Article 5(4) must be rejected. That detention is still authorised by statute, and is therefore lawful until the Board directs release [16, 86]. Nor was Mr Faulkner the victim of a violation of Article 5(1). Such a violation requires exceptional circumstances warranting the conclusion that continued detention has become arbitrary, which were not present in Mr Faulkner's case [17-23, 86].

- On the question of the award of damages under the 1998 Act, the courts should be guided primarily by the principles applied by the ECtHR, which may be inferred from any clear and consistent practice of that court. The quantum of such awards should broadly reflect the level of awards made by the ECtHR in comparable cases brought by applicants from the UK or other countries with a similar cost of living [39]. The courts should resolve disputed issues of fact in the usual way even if the ECtHR in similar circumstances, due to the nature of its role, would not do so [39, 82].

- Where it is established on the balance of probabilities that a violation of Article 5(4) has prolonged the detention of a prisoner past the point at which he would otherwise have been released, damages should ordinarily be awarded. The amount of such damages will be a matter of judgment, reflecting the facts of the case and having regard to guidance from the ECtHR and the national courts in comparable cases [75]. Pecuniary losses should be compensated in full [53, 70]. Though relevant in some circumstances, it will not ordinarily be appropriate to take into account as a mitigating factor that a claimant was recalled to prison following his eventual release [83]. Nor should damages be awarded merely for the loss of a chance of earlier release [82], or adjusted according to the degree of probability of release if the violation of Article 5(4) had not occurred [84].

- Appellate courts do not ordinarily interfere with an award of damages simply because they would have awarded a different figure if they had tried the case. However, as the Court is in this case being asked to give guidance on the appropriate level of awards, and having regard to awards made by the ECtHR in other cases and to the fact that the liberty enjoyed by a person released on licence is precarious and conditional, the Court considers that an award of £6500 would adequately compensate Mr Faulkner [87].

- Even where it is not established that an earlier hearing would have resulted in earlier release, there is a strong presumption that delay which violated Article 5(4) has caused the prisoner frustration and anxiety. Where such a presumption is not rebutted, an award of damages should be made, though on a modest scale [53, 67-68]. No such award should be made in cases where the frustration and anxiety were insufficiently severe to warrant an award, although that is unlikely to be the case where the delay was of around three months or more [66]. Following that approach, and having regard to ECtHR authorities, the award of £300 to Mr Sturnham was reasonable in his case [97].

- Lord Carnwath concurs with the reasoning and conclusions in Lord Reed's judgment, but suggests a more selective approach to ECtHR authorities. He suggests focusing on those cases which explicitly decide points of principle, and eschewing those which are simply assessments of the facts [104-127]. *Square brackets refer to paragraphs in the judgment*

Background to the appeals: These appeals concern the circumstances in which a prisoner serving a life sentence or an indeterminate sentence of imprisonment for public protection ("IPP"), who has served the minimum period specified for the purposes of retribution and deterrence (the "tariff"), and whose further detention is justified only if it is necessary for the protection of the public, should be awarded damages for delay in reviewing the need for further detention following the expiry of the tariff. They are also concerned with the quantum of such damages.

Deborah Coles, co-director of INQUEST said: "This is a shocking death of a woman who should never have been sent to prison. She was a first time, non violent offender with mental health problems, a history of self harm and had been recognised as a serious suicide risk. Six years ago Baroness Corston's report warned that a fundamental overhaul of the way women were dealt with in the criminal justice system was needed as a matter of urgency. Everything highlighted in her review sadly holds true for this case and demonstrates the dire consequences of not implementing her recommendations.

Prisons cannot safely deal with vulnerable women with complex mental health needs. The Government must urgently introduce proper alternatives to prison so that no other child is deprived of a caring mother and no other family is left with the tragic loss after a death that could and should have been prevented."

The family is represented by INQUEST Lawyers Group members Jo Eggleton from Deighton Pierce Glynn solicitors and barrister Jesse Nicholls of Tooks chambers.

Zahirovic v. Croatia (no. 58590/11)

Violation of Article 6 & 1 (equality of arms) and a Violation of Article 6 & 1 & 3 (c) (applicant's absence from the appeal hearing) - The applicant, Zajko Zahirovic, is a stateless person who was born in 1975 and lives in Zagreb. In November 2009 he was found guilty of attempting to murder three people by shooting at them in a nightclub and sentenced to six years' imprisonment. The Supreme Court upheld the judgment on appeal and increased Mr Zahirovi?'s sentence to eight years' imprisonment. His constitutional complaint was dismissed in March 2011. Relying on Article 6 & 1 and 3 (c) (right to a fair trial), Mr Zahirovi? complained about the unfairness of the criminal proceedings against him. He alleged in particular that the Supreme Court had failed both to communicate to him an opinion submitted by the State Attorney's Office – thus breaching the principle of equality of arms – and to invite him to attend the public hearing on his appeal.

Prison Chiefs Slammed Over At-Risk Inmate Who Tried To Hang Himself

The Northern Ireland Prison Service's ability to manage vulnerable inmates has been slammed in a damning report into the attempted suicide of a prisoner at Northern Ireland's highest security jail. The Prison Ombudsman investigation into the circumstances surrounding the inmate's ('Mr C') suicide attempt in Maghaberry last year — which has left him with severe brain injuries and complex physical disabilities — is the latest in a long list of probes that have raised concern over the treatment of at-risk prisoners.

On the day of his attempted suicide, eight days after his committal, he was being observed every 15 minutes in his cell by warders. However, later that evening one officer was busy with paperwork and did not check on him for 29 minutes, (it took a further five minutes to get the cell opened, as a senior officer was also required to be present under security protocols) during which time he attempted to hang himself. He was found collapsed in his cell by prison officers who resuscitated him. The Prisoner Ombudsman's probe into the inmate's near death found more than 40 areas of concern in relation to vulnerable prisoners. *Belfast Telegraph*

Lee Foye Loses Jail Murder Conviction Appeal

An inmate jailed for life after beating a sex offender to death in prison has lost his appeal against the conviction. Lee Foye was sentenced in November 2011 for the murder of Robert Coello, 44, while already serving life at HM Prison Grendon in Buckinghamshire for killing Corby girl, Lauren

The 51-year-old, from Lurgan, Co Armagh, was arrested along with Niall Connolly and James Monaghan in Colombia in 2001 and accused of IRA training of rebel Farc guerrilla forces. At the time the three men's detention threatened to destabilise the Northern Ireland peace process. They were initially cleared of the charge, only to be convicted on appeal and sentenced to 17 years in jail. But the three men avoided imprisonment by fleeing Colombia in 2004, turning up in the Republic a year later.

McCauley is now appealing a conviction for having weapons in suspicious circumstances in 1982 for which he received a two-year suspended jail sentence. He was charged after being shot and wounded by an RUC team at a farm shed near Lurgan where the antique-style guns were discovered. His 17-year-old friend Michael Tighe was killed in the operation.

That death was one of six cases John Stalker, the former assistant chief constable of Greater Manchester Police, and Sir Colin Sampson of West Yorkshire Police, investigated to try to establish whether police intended to kill. McCauley's lawyers argue the conviction should be quashed because events at the farm shed were recorded by police but never disclosed to the defence at trial.

Central to the challenge are the contents of the Stalker and Sampson reports, which have never been made public. Their findings have been made available to the families in the shoot-to-kill cases and their lawyers but only for the purposes of holding inquests and after they gave signed undertakings not to disclose details.

McCauley has also seen their contents due to his status as a key witness in the Tighe case. The Court of Appeal heard that formal permission to use the reports in his challenge to the weapons conviction will now be sought from senior coroner John Leckey. Lord Chief Justice Sir Declan Morgan agreed to list the case for a further update in June.

Outside the court McCauley's solicitor Fearghal Shiels, of Madden and Finucane, said: "My client has had access to the Stalker/Sampson reports which are central to his appeal. He has this in his capacity as a main witness to the inquest into the death of Michael Tighe."

Jury Highlights Prison Failures in Death of Melanie Beswick

The jury at the inquest into the death of Melanie Beswick at HMP Send has returned a verdict that she took her own life while the balance of her mind was disturbed, but that failures in communication and assessment contributed to her death.

Melanie was found hanging in her cell in HMP Send in August 2010. She had been convicted of fraud and was serving a second default prison term for failing to meet the terms of a confiscation order. She had already served a prison sentence for the fraud itself which was her first and only offence. Melanie had a long history of depression and self harm and the sentencing judge had specifically warned the prison service that she was a serious suicide risk.

She also had two young daughters. Melanie hanged herself following her return from hospital where she had been taken that day due to her fragile mental state. The jury found that failures in communication between the prison and the hospital, and internally within the prison, contributed to Melanie's death. The Coroner has made two rule 43 reports recommending changes in the way information is shared between hospitals and prisons nationally and changes in the way suicide risk is managed at HMP Send.

Melanie's mother, Margery Davies said: "It's the children who suffer most. It's wrong to send mothers to prison especially when the crime they committed was not violent and they are not a threat to the public. Nothing can bring Melanie back but we hope to see real changes that mean no other family ever has to go through this again."

Since 1997, legislation has required judges to impose life sentences on a wider range of offenders than was previously the case. In addition, IPPs were introduced in April 2005. It is for the Parole Board of England and Wales ("the Board") to decide whether to direct the release of a life or IPP prisoner whose tariff has expired. The prisoner's case must first be referred to the Board by the Secretary of State for Justice ("the Secretary of State"). The increase in the number of life prisoners and the introduction of IPP sentences resulted in an increase in the Board's workload, but its resources were not increased. This resulted in delay in the consideration of post-tariff prisoners' cases. That delay has implications under the Human Rights Act 1998 ("the 1998 Act"), which gives effect to Article 5 of the European Convention on Human Rights ("the Convention"). Article 5(1) requires that detention must throughout its duration remain causally connected to the objectives of the sentencing court. In relation to post-tariff prisoners, that objective is the protection of the public. In order to comply with Article 5(4), the Board has to review the necessity for the continued detention of post-tariff prisoners "speedily" upon the expiry of their tariff and at reasonable intervals thereafter. The 1998 Act also provides that the remedies for a violation of a Convention right include damages.

Mr Faulkner was sentenced in 2001 to life imprisonment for a second offence involving grievous bodily harm. Mr Sturnham was convicted of manslaughter in 2007 and given an IPP sentence. In each case, there was a delay in the holding of a hearing before the Board after the tariff had expired, due to administrative errors for which the Secretary of State was responsible. Both men were eventually released following Board hearings, but Mr Faulkner was twice recalled to prison in respect of allegations of which he was acquitted, and remains in custody.

Each sought judicial review of the failure by the Board and the Secretary of State to conduct a review of his detention "speedily", as required by Article 5(4). Mr Faulkner was unsuccessful in the High Court, but the Court of Appeal held that the Secretary of State had breached Article 5(4), that Mr Faulkner would have been released 10 months earlier than he was but for that breach, and that the Secretary of State should therefore pay him £10,000 in damages. In Mr Sturnham's case, the High Court held that there had been a breach of Article 5(4) due to a delay of 6 months, that he had been caused anxiety and distress by the delay, but that there was no prospect that he would have been released any earlier had the hearing taken place speedily.

The Secretary of State was ordered to pay him £300, but that award was quashed by the Court of Appeal. In Mr Faulkner's case, the Board appeals to the Supreme Court on the ground that the award of damages was excessive. Mr Faulkner cross-appeals on the ground that the award was inadequate and that his imprisonment during the period of delay constituted false imprisonment at common law or a violation of Article 5(1). Mr Sturnham seeks permission to appeal against the Court of Appeal's decision to quash the award of damages to him.

Scotland Yard let Staff 'Resign to Avoid Justice' *Paul Peachey, Indpendent, 01/05/13*

Officers accused of sexual assault, racism and theft have been allowed to resign from Scotland Yard the force before facing dismissal and professional disgrace at misconduct hearings, according to new figures out today. Nearly a third of the 274 officers and staff were allowed to quit before the conclusion of their hearings despite serious allegations remaining against them.

Critics claim that the system would allow some former officers to renew their careers in the burgeoning private policing sector. Keith Vaz, the chairman of the home affairs select committee, said: "I am very surprised by the number of officers who were able to resign to avoid justice.

Hearings must be taken to their conclusion notwithstanding the officer's departure from the force."

Couple Sentenced For Throwing Packages Into Prison

Kerry Seeley, 43, and his wife Fenella, 46, of Chyngton Gardens, Eastbourne, were arrested after two packages were recovered on 20 February last year. They each contained three mobile phones, cut phone chargers and two packages of cannabis, and had fishing line and fish hooks attached. During the previous weekend of February 18/19, a number of other packages had also been discovered from inside the prison's perimeter wall. These had mobile phones inside together with the relevant phone numbers for each handset handwritten on pieces of white paper.

Lewes Crown Court heard that Fenella Seeley was arrested on 21 February on suspicion of conspiracy to supply cannabis after she booked a visitors' appointment to see her husband. A subsequent search of her house revealed mobile phones, £800 in cash, a small amount of white substance and silver duct tape. A number of mobile phone boxes were also seized which had numbers printed on them; these correlated to those found handwritten in the packages discovered inside the prison's perimeter fence.

The couple were both charged in September last year and stood trial in March.On Thursday 18 April they were both sentenced. Kerry was given a nine- month prison sentence and Fenella was sentenced to 18 months' imprisonment suspended for two years for count 1, nine months' imprisonment suspended for two years (to run concurrently) and 100 hours' unpaid community work.

Detective Constable Paul Gray, who investigated the case, said: "Operation Fish Hook is a joint operation between HMP Lewes and Sussex Police that started in 2010 to investigate packages containing prohibited articles from being brought, thrown or conveyed into the prison. Operation Fish Hook is on-going and these convictions show the commitment from both organisations that offences of this nature will be fully investigated and will dealt with robustly."

Death of James Herbert In Police Custody - Jury and Coroner Raise Concerns

Source: "Communications at INQUEST" <communications@inquest.org.uk>

An inquest jury has found communication failures, a failure to adequately monitor James on the journey to Yeovil police station, failure to call for medical assistance either en route to the police station or at the very latest on arrival may have contributed to James Herbert's death.

James was the only child of Barbara Montgomery and Tony Herbert and was living with his mother at the time of his death. He had suffered mental ill health for several years.

On 10 June 2010 James was seen in public acting strangely. The police were called at around 7pm. Several police officers and members of the public were involved in restraining him and placing him in the back of a police van. Limb restraints were applied to his ankles, legs and wrists. He was detained under section 136 of the Mental Health Act and transported over 27 miles away to Yeovil Police Station (a 40 to 45 minute journey). Upon arrival at the station James was clearly unresponsive. He was carried face down on a blanket from the police van and placed in a cell in the custody suite. His clothes were removed and he was left naked on the floor before officers withdrew from his cell.

The coroner is to write to the Chief Constable of Avon and Somerset Police using his rule 43 powers. He will raise concerns around lack of information gathering and sharing, including from James' mother at the time of his restraint; and the need to monitor those detained under section 136 during their transportation. The third area of concern is in relation to risk assessment and the need to regularly re-assess the need for medical assistance and restraint of detainees.

James Herbert's family said: "We are pleased the jury has recognised the serious failings of the police officers in their duty of care towards James. Evidence throughout the inquest has shown that had the officers responded differently, and treated the situation as a medical emergency, there is every likelihood that James would have survived his ordeal and still been with us today. This has been an intense and exhausting few weeks and the combative approach of Avon and Somerset Police, not to mention their unwillingness to admit wrongdoing, have been hard to bear. There have been several instances of some police officers lying in their statements or at the inquest under oath. We may have been able to forgive Avon and Somerset Police had they acted honourably, but they never gave us that chance. We can only hope now that lessons will be learned and James's tragic death may help to make it a safer world for others, particularly for the vulnerable and those struggling with mental illness."

Deborah Coles, co-director of INQUEST said: "This is sadly not an isolated case and the issues of concern raised by the jury and coroner are not new. INQUEST is working on too many cases of people suffering mental illness who have died after being restrained by police and there is no evidence that any of the collective learning from these cases is being acted upon. Everybody agrees that police custody is an inappropriate and potentially dangerous place for someone experiencing mental ill health. An urgent review must be undertaken into how the police and mental health providers can work together to respond to people in crisis and a new nationwide strategy developed. Without this our fears are that more tragic and preventable deaths will follow."

INQUEST has been working with the family of James Herbert since his death in 2010. The family is represented at the inquest by INQUEST Lawyers Group members Beth Handley from Hickman and Rose solicitors and barrister Alison Gerry of Doughty Street chambers.

IPCC statement following the Inquest verdict into James Herbert's death

The Independent Police Complaints Commission investigated and provided a file of evidence to the Coroner for his Inquest into the circumstances leading to the death of James Herbert on 10 June 2010 after he was arrested in Bath Road, Wells, Somerset, just after 7pm.

The Inquest decided today that 25-year-old Mr Herbert, who lived in Wells, had died of cardio-respiratory arrest intoxicated by synthetic cathinones with an acute disturbance following restraint and struggle against restraint. The jury also provided a narrative with its verdict.

The IPCC investigation found a case to answer for misconduct for an acting inspector, the custody sergeant and two police constables. The IPCC has also made a number of recommendations to the force following this incident.

Avon and Somerset Constabulary held misconduct meetings for these officers and decided that the officers would not face misconduct sanction. The legislation governing police misconduct gives the employing force the decision on what sanctions, if any, to apply and the IPCC has no powers to direct outcomes. IPCC Commissioner Rachel Cerfontyne said: "My condolences go to Mr Herbert's family and friends at this difficult time for them. I have offered to meet them and would like to do so before the IPCC publishes its investigation findings."

Top Secret Reports Used In Bid To Overturn Conviction *Belfast Telegraph, 27/04/13*

Appeal was referred back to the Court of Appeal by the Criminal Case Review Commission, set up to examine miscarriages of justice. The body has supplied a confidential annex to back its belief that the conviction is unsafe. Secret reports into alleged shoot-to-kill cases will form part of a bid by one of the Colombia Three to have his weapons conviction overturned, senior judges heard yesterday. Even though Martin McCauley faces extradition to South America if he returns to Northern Ireland, his challenge to being found guilty of having three rifles 30 years ago is continuing at the Court of Appeal in Belfast.