ered by an inquest jury which will start hearing the case next month. New tests and other work have been ordered by inquest officials into the shooting, above and beyond those carried out by the IPCC. A new expert report originally commissioned by the family is understood to challenge aspects of the police account of the shooting. The team behind the Duggan inquest is the same that overturned an earlier IPCC exoneration of the Met in another shooting death. The IPCC findings in the 2005 death of Azelle Rodney were overturned after an inquiry produced new evidence and expert testimony that supported a finding that he had been unlawfully killed after a police marksman opened fire.

None of the 11 firearms officers at the scene of the Duggan shooting who were asked to attend interview have answered oral questions from the IPCC, instead supplying written answers. All initially refused to attend interview, and only the officer who shot him later attended. The officer, known as V53, declined to answer questions orally, instead submitting written answers two days later. V53 has said his substantive account of the shooting was compiled three days later, with he and his colleagues spending more than eight hours sitting in a room together writing their statements. He says he has "no doubt" Duggan had a gun and was preparing to open fire. Neither Duggan's DNA nor fingerprints have yet been recovered from the weapon or the sock it was contained in. The weapon was found 10ft to 14ft from where he fell, over a low fence, after he was shot twice.

Marcia Willis-Stewart, solicitor for the Duggan family, said: "The family would say the IPCC have been tried, tested and found very wanting. We do not have a draft report or final report and don't know when we are getting either from the IPCC." The IPCC was criticised by Tottenham MP David Lammy, who said: "It is a scandal. There have been rapists terrorists and murderers who have gone to trial in the two years we have had to wait for Duggan. They have not kept the community informed. They have a public guardianship role and they have failed. It makes all our jobs harder that the IPCC appears to be so ineffective."

The IPCC is also investigating police over the weapon Duggan allegedly had after it emerged it may have been used a week earlier in an assault by another person.

Jailed PC had 'Intimate Relationships' With Criminals

A disgraced officer who had intimate relationships with known criminals and disclosed police tactics to help them avoid detection has been jailed for three years. Rebecca Swanston (28) a former PC at Hampshire Constabulary admitted to three counts of misconduct in a public office between January and October 2012 at Winchester Crown Court. The court heard how officers from the force's anti-corruption unit secretly recorded Swanston having incriminating conversations with criminal associates in her home. She was also involved in intimate relationships with suspected and known criminals in Southampton, including drug-dealers.

Hostages: Jamie Green, Dan Payne, Zoran Dresic ,Scott Birtwistle, Jon Beere, 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 437 (08/08/2013)

Unacceptable Behavior of CCRC

It has now become established practice for the CCRC, not to reveal to the appellant or the appellants legal team, some of the reasons for referral, if said reasons are of a sensitive nature. At John Jordan's appeal there will be a closed session at which, neither Mr Jordan or his legal team, will be present, they will never know what evidence has been presented to the court, unless the judge/s choose to make it known. CCRC in January this year, took the same position with their referral of Martin McCauley to the Court of Appeal.

Commission Refers the Case of John Jordan to the Appeal Court

Criminal Cases Review Commission has referred the conviction of John Jordan to the Crown Court. Mr Jordan was arrested and prosecuted following a Reclaim the Streets protest in August 1996. In January 1997 at Horsferry Road Magistrates Court he pleaded not guilty to assault on a police officer and guilty to unlawful possession of a police helmet. He was convicted of both offences and received a conditional discharge for 12 months in relation to the first and an absolute discharge in relation to the second. In May 1997 Mr Jordan appealed against his assault conviction but the appeal was dismissed. He applied to the Criminal Cases Review Commission in September 2011 for a review of his convictions for both offences. Following a detailed investigation, the Commission has decided to refer Mr Jordan's case to the Crown Court because it considers that there is a real possibility that the court will not uphold the convictions.

Some of the material on which the referral is based is of a sensitive nature. Full details of the reasons for the referral are being supplied to the appeal court and to the Crown Prosecution Service in a confidential annex to the statement giving the Commission's reasons for the referral. Mr Jordan and his representatives have not been provided with that confidential annex but have been supplied with a summary of the reasons for referral. It will now be for the court hearing the appeal to decide whether or not to uphold the conviction and to decide what, if anything, it is appropriate to disclose about the specific reasons for referral.

Mr Jordan is represented by Mike Schwarz of Bindmans Solicitors. In a letter about the case to the director of public prosecutions, said, "Should a police officer be allowed to instruct a solicitor on a false premise? It's not right surely for them to get access to discussions involving other defendants. Was that information fed back to his minders or the Crown Prosecution Service who were prosecuting the case? The case also raises the question of a serving police officer giving false evidence at trial in front of a court. What about the disclosure regime? "The known evidence suggests prosecutorial misconduct in this case … in terms of proceeding with a prosecution in circumstances where the undercover officer played a major role in initiating conduct that was then prosecuted."

Gordon Nardell QC, who is leading the Bar Council's working party on the operation of Regulation of Investigatory Powers Act (Ripa), said: "At the moment the law allows the police to target legally privileged communications between lawyer and client. The Bar Council thinks that is fundamentally wrong and creates a risk of miscarriages of justice. People accused of crime must be able to speak freely with their lawyer in the knowledge that what they say is kept from the ears of the investigating authorities. We hope to persuade the House of Lords to make amendments to the protection of freedoms bill to ban the police from covertly gaining access to privileged lawyer-client communications.

Michael O'Brien Challenges CPS Decision Not to Charge Police Officer

On 17 July 2013 the High Court granted permission to challenge a decision not to charge a former Detective Inspector with perverting the course of justice and perjury in relation to a false allegation of murder made against Michael O'Brien in 1988. Nogah Ofer acts for Michael O'Brien. Michael O'Brien spent 11 years in prison after a Detective Inspector fabricated a "cell confession" to bolster a murder prosecution. He alleges that the decision not to charge the officer was itself unlawful and results from lack of even-handedness by the CPS.

Nine Gross Failures Contributed to Death Of Detainee in Chelsea Police Station

An inquest jury has found that ambulance staff, police officers and a police doctor committed multiple gross failings in their treatment of an intoxicated detainee, Mr Andrjez Rymarzak, who died in Chelsea Police Station. Nogah Ofer of Bhatt Murphy acted for the deceased's family.

The jury sitting at Westminster Coroner's Court returned the neglect verdict on 15 July 2013. Following Mr Rymarzak's death, the Metropolitan Police conducted research which revealed consistently low levels of compliance with policies designed to safeguard intoxicated detainees across London. A Met Chief Superintendent gave evidence at the inquest that these research findings were "shocking".

Major Overhaul of Coroners' System Should Improve Experience for Families

Suzanne White, a specialist clinical negligence partner at Leigh Day, who has attended many inquests with the families of people who have died after medical negligence, has welcomed the implementation of parts of the Coroners and Justice Act 2009 and the new coroner rules and regulations which have been introduced by the Ministry of Justice.

The changes, which came into force on 25th July, impose a national standard on the 96 coroners in England and Wales which will result in coroners speeding up the release of bodies after post mortems; allow less invasive post-mortem examinations; and require coroners to complete inquests within six months of the date on which they are made aware of the death, unless there are good reasons not to.

The changes come as concerns about the long delay and consequent suffering of the relatives and friends waiting for a date for their loved ones inquest have been raised about some coroner's offices in England. In Teeside some grieving families have had to wait for more than two years for inquests because of delays by the local coroner's office.

Suzanne said: "Going through the inquest process of a relative or friend who has died in sudden or unexplained circumstances is an extremely distressing experience. We welcome these changes and hope that bereaved families will feel the benefit of a more efficient and standardised service, wherever they live in the UK. Having sat through many inquests with the families of people who have died in hospital I know that this is often the first time they find out why their loved ones died, and the sooner this happens the better for the family.

"However, despite this progress we still have concerns that there is no separate and independent inspection of the operation of coroner's courts, and that there is still a real lack of an appeals process. Given the lack of resources there is cause for concern that the changes will actually be implemented, particularly the requirement that an inquest should take place within six months. And, of course the potential cuts to legal aid for judicial review are of real concern, as judicial review is the only process which people can use to seek redress for poor decision-making by coroners."

IPCC Terms of its' Review of IPCC Investigation of Sean Rigg's Death

The IPCC's review of its findings in the investigation into the death of Sean Rigg is underway and terms of reference have been agreed. The IPCC announced the review in May 2013 following publication of Dr Silvia Casale's independent report into the original investigation which made a number of recommendations including a re-examination of whether there is potential misconduct in respect of the actions of the police officers involved in Mr Rigg's arrest and detention.

The review, conducted by IPCC Commissioner Mary Cunneen, will revisit the decision of the previous Commissioner not to make a referral to the Crown Prosecution Service (CPS) regarding any officer involved in the arrest and/or restraint and/or detention of Mr Rigg. It will also revisit the previous Commissioner's decision and determine whether any person serving with the police who was involved in the arrest and/or restraint and/or detention of Mr Rigg has a case to answer for misconduct or gross misconduct and whether to recommend disciplinary proceedings. A dedicated team of investigators, led by a senior investigator, are considering the evidence previously gathered during the IPCC investigation, evidence put before and heard at the inquest and evidence collected by the review.

IPCC Commissioner Mary Cunneen said: "I have met with Mr Rigg's family and legal representatives to outline the remit of our review and the terms of reference have been agreed. A dedicated team of investigators, led by an experienced senior investigator, has already begun to consider the evidence and I will ensure this review is conducted as efficiently but more importantly as thoroughly as possible. If during the course of the review issues arise that require further evidence for me to consider previous decisions in relation to this case, the IPCC will consult with Mr Rigg's family and his representatives, the MPS and any officer likely to be affected, to determine whether to re-open the investigation. We will continue to provide regular updates to Mr Rigg's family and seek to address any questions they have."

'Therefore with hands on hearts we the IPCC declare the Mark Duggan murder investigation an official White Wash'

Mark Duggan police shooting: IPCC inquiry finds no evidence of criminality

Vikram Dodd, The Guardian, Friday 2 August 2013

The official police watchdog investigation into the shooting dead of Mark Duggan by a firearms officer has found no evidence of any criminal offence, in the clearest sign yet that it is set to conclude the killing was lawful, the Guardian has learned. The shooting of Duggan on 4 August 2011 in Tottenham, north London, triggered riots that spread across the capital and to other cities. The second anniversary of his death will be marked by his family on Sunday with a vigil at the spot where he was shot twice by a police marksman. The family are angry that the official inquiry conducted by the Independent Police Complaints Commission is yet to be finalised and released to them.

In a clear sign that the IPCC believes there is no evidence of criminal wrongdoing uncovered by its investigation, no officer has been interviewed under caution for potential criminal or disciplinary offences, with the investigation virtually completed. On Friday an IPCC spokesperson confirmed: "We have found no evidence to indicate criminality at this stage." An IPCC commissioner will decide whether to refer the case to prosecutors once the report is finalised, but so far no advice has been sought on charges from the Crown Prosecution Service. The IPCC says its final report will be finished this month. It is waiting on one report from an expert, but otherwise proactive work on the investigation has ended.The final say on the lawfulness or otherwise of the shooting will be deliv-

Unannounced Short Follow-up Inspection Of HMP Guys Marsh

Inspection 25–27 Feb 2013 by HMCIP, report compiled May 2013, published 25/07/13

Inspectors were concerned to find that:

- the use of segregation remained high, with a disproportionate number of prisoners using segregation as a place of safety;
- many cells still required refurbishment and too many cells designed for one prisoner held two;
- some consultation and support for older prisoners was in place but arrangements had ceased in September 2012 for other groups
- there was limited support for foreign national prisoners;
- staff shortages were having an adverse effect on health care services.
- insufficient progress in respect
- It was a serious concern to us that our inspection of health provision was unacceptably impeded when during our inspection we were initially denied access to prisoner clinical records.

Unannounced Short Follow-up Inspection of HMP Nottingham

Inspection 25–27 Feb 2013 by HMCIP, report compiled May 2013, published 23/07/13

Inspectors had some concerns: - significant issues raised by black and minority ethnic prisoners about relationships with staff had identified, but not yet implemented

- there were still no constructive interventions to change the behaviour of perpetrators or support victims of bullying;
- insufficient progress had been made in resettlement - there was no up-to-date needs analysis or action plan and offender supervisors were not seeing prisoners regularly enough;
- some prisoners waited too long when a transfer to another prison was needed, and there were no interventions to address attitudes, thinking and behaviour.
- inspectors made 69 recommendations

Report on an Announced Inspection of HMP Cardiff

Inspection 18/22 March 2013 by HMCIP, report compiled May 2013, published 16/07/13 More than half the prisoners were on remand or had sentences of less than six months. In our survey, one in five prisoners told us they had a disability, more than one in three said they had emotional or mental health problems, two out of five had a problem with drugs and one in three had a problem with alcohol. There had been five self-inflicted deaths over the past year, four in custody and one shortly after release. Inspectors were concerned to find:

- action to reduce the supply of drugs was sometimes too casual, and the management of searching and testing required improvement;
- one landing was being used to hold prisoners on the 'basic' level of the incentives and earned privileges scheme, which amounted to segregation without the safeguards and governance arrangements a formal segregation unit would have;
- almost half the population not engaged in activity, time out of cell less than three hours a day;
- the prison held a small number of life-sentence and indeterminate-sentence prisoners whose needs were not effectively met and who should be held elsewhere; and
- offender management and resettlement services were not sufficiently geared to the transient population. - Debt was a cause of what bullying there was and the prison could do more to reduce this by the quicker distribution of canteens
- Inspectors made 96 recommendations

Lessons Should Be Learned From PPO Investigations

Prisons and other places of detention need to learn lessons from PPO investigations so that they can make improvements, said Nigel Newcomen, the Prisons and Probation Ombudsman (PPO). Today he published the first report of an annual series, providing an overview of recommendations made in 2012-13 and the main themes identified.

The PPO makes recommendations following both fatal incident and complaint investigations in prisons, immigration removal centres and the probation service. Recommendations are nearly always accepted and action plans are required. HM Inspectorate of Prisons assesses progress on implementation when it visits a prison. Recommendations therefore have considerable potential to ensure that lessons are learned and improvements made.

From April 2012, PPO staff began collating all the recommendations made into a single database. The database enables more effective analysis of trends and identification of action points where similar recommendations have been made in a number of cases or to a number of establishments. Between 1 April 2012 and 31 March 2013, 1603 recommendations were made in 482 investigations. Formal recommendations were more often made in fatal incident investigations (93% of cases), than after complaint investigations (36% of upheld complaints).

Findings from data about deaths in custody include:

- of the fatal incident investigations with recommendations made, 95% were for prisons, 4% for probation and 1% for immigration;
- there were 322 recommendations made about healthcare, highlighting concerns such as the reliability of medical records and management of chronic diseases such as diabetes and epilepsy;
- there were 143 recommendations made about emergency responses, including the need to train more staff in basic life support techniques and improving access to defibrillators;
- there were 109 recommendations made on the Assessment, Care in Custody and Teamwork (ACCT) process to care for individuals at risk of self-harm and suicide; and
- frequent recommendations were made to prisons about the need to improve risk assessment to justify the use of restraints on escorts and in outside hospitals in investigations into deaths from natural causes.

Findings from data about complaints include: - of the complaint investigations with recommendations made, 94% were for prisons, 4% for probation and 2% for immigration.

- formal recommendations were made most often when complaints about equality issues, adjudications and staff behaviour were upheld;
- a fifth of complaint investigation recommendations made were about prison disciplinary hearings (adjudications), normally because of a significant flaw in how the hearing was conducted or recorded; and
- around a tenth of recommendations were for the establishment to apologise - generally in writing - to the complainant.

Nigel Newcomen said: The recommendations database is intended to improve our own practice and consistency, but also to enable more effective analysis of trends and identification of action points where similar recommendations have been made in a number of cases or to a number of establishments. This report is the first of an annual series, providing an overview of the recommendations made in the year 2012/13 and the main themes identified by them. Most of these themes are not new and I hope that by sharing learning in this way we can reduce the number of times I have to make similar recommendations in the future. My ambition is to encourage wider learning of lessons and so help support improvement in the services I investigate.

R v Andukwa, Meteta, Ghavami, Afshar and Mateta

Four of the present cases are before the court by way of a reference from the Criminal Cases Review Commission ("CCRC") and one application for leave to appeal has been referred by the Registrar of Criminal Appeals: we grant that applicant the necessary extension of time and leave to appeal. In each case, the same issue arises and because other similar cases are being pursued by way of application or appeal, it is appropriate to review the law and practice, thereby providing some guidance for the future.

In short, each of the appellants, when entering or leaving the United Kingdom, attempted to rely on a false passport or a false travel document issued under the 1951 Convention Relating to the Status of Refugees ("a Geneva passport"), in that the passport or travel document was a forgery or it related to a different person. They all pleaded guilty to an offence of possession of an identity document with improper intention, either contrary to s. 25(1) Identity Cards Act 2006 or s. 4 Identity Documents Act 2010 (the latter replacing s. 25 in similar but not identical terms).

The issue can be stated simply and concerns the approach to be taken by the Court of Appeal when a defendant, following incorrect legal advice, has pleaded guilty to an offence under s. 25 or s. 4 if a defence under s. 31 Immigration and Asylum Act 1999 ("the Act") was or may have been available to him or her.

The Crown does not resist the suggestion that the convictions in the cases of Koshi Mateta, Simon Andukwa, Yasin Bashir, Amir Ghavami and Saeideh Afshar should be quashed. Following further analysis of the position, an appeal by Herve Tchiengang, although referred by the Criminal Cases Review Commission, was abandoned on notice prior to the hearing.

Lawyers of Refugees Wrongly Jailed Criticised By Appeal Court

The Appeal Court has criticised the lawyers of five refugees who were wrongly jailed for carrying false documents after fleeing their countries under the threat of persecution. It was “surprising and disturbing” that their legal teams did not know there was a valid defence to protect those in fear of losing their lives or freedom, three judges ruled. The five - who included a husband and wife - were jailed for between six months and a year after being found to be carrying false papers after arriving in Britain. They included a Congolese man who faced death threats for his political stance and an Iranian couple arrested in 2012 as they tried to reach Canada because they feared imprisonment and ill-treatment.

“It is both surprising and disturbing that neither solicitors nor counsel appear to have been aware of the position in law and we repeat that this situation should not recur in the future,” said Lord Justice Leveson in a written ruling. Prosecutors said they would not appeal against the ruling. Ben Douglas-Jones, junior counsel for the prosecution, said: “He (Leveson) has made it clear that he wants to kill this issue stone dead.”

Florida Football Player Allegedly Barked at a Police Dog

A K-9 police dog. (Wikimedia Commons)A K-9 police dog. (Wikimedia Commons)

Florida Gators' linebacker Antonio Morrison was arrested Sunday for resisting arrest after allegedly barking at a police dog. According to police, the sophomore from Illinois walked up to a police car's open window and barked at a K-9 dog named Bear. When the dog barked back, police arrested the player for interfering with a police canine. The player then resisted police efforts to put handcuffs on him. According to police, the player told officers he made a "woof woof" sound at Bear because the dog barked at him. He was previously arrested on June 16 for allegedly punching a bouncer, and was told to stay out of trouble for six months.

man had left the drugs in his car. The court heard evidence from police officers, who said that they had not seen anyone else in the car. One of the jurors, AT, indicated to the judge that he was a serving police officer and that he knew one of the police officers giving evidence, MB. AT stated that he had known MB for about ten years and that on three occasions they had worked on the same incident, although not in the same team. They had never worked at the same station and did not know each other socially. The defence made an application to discharge AT but the judge rejected the application. AT subsequently became the jury foreman.

Applicants appealed their conviction arguing that the jury which convicted them was not impartial, because of the presence of the police officer. In March 2008, the CoA upheld the applicants' conviction. It referred to a recent change introduced by the Criminal Justice Act 2003 which had permitted persons in certain occupations which were previously ineligible for jury duty, including police officers, to sit on juries. It therefore considered that police officers could not be considered solely by reason of their occupation to be biased in favour of the prosecution. As the police officer sitting as juror in the applicants' case had not had any connection with the prosecution of the case, no violation of Article 6 arose. The applicants were refused leave to appeal to the House of Lords in June 2008.

Decision of the Court: The Court referred to its consistent case-law to the effect that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and the accused and emphasised the need to ensure that juries are free from bias and the appearance of bias.It noted that the the Criminal Justice Act 2003, which for the first time allowed police officers to serve in juries in England and Wales, was also a departure from the rule followed in a number of other jurisdictions which have trial by jury. Of the jurisdictions surveyed by the Court.? only two permitted police officers to serve on juries> and in both, it was possible to challenge the inclusion of jurors without providing any reasons for the challenge. Recent public consultations in a number of jurisdictions+ had shown support for the continued exclusion of police officers from jury service. The Court therefore considered that the effect of the amendment in the circumstances of the case required particularly careful scrutiny.

Mr Hanif's defence had depended to a significant extent upon his challenge to the evidence given by the police officers, including MB. There was therefore a clear dispute between the defence and the prosecution regarding the credibility of the evidence of the police officers. The Court considered that where there was an important conflict regarding police evidence, and a police officer who was personally acquainted with the police officer giving the relevant evidence was a member of the jury, that juror might, favour the evidence of the police. In the present case, although the juror and the witness were not from the same police station, AT had known MB for ten years and had worked with him on three occasions. The Court accordingly found that Mr Hanif had not been tried by an impartial tribunal, in violation of Article 6 § 1.

The applicants had been co-defendants in one set of criminal proceedings and had been convicted by the same jury. The Court therefore considered that, having found in its examination of Mr Hanif's complaint that the jury could not be considered to constitute an "impartial tribunal" for the purpose of Article 6 § 1 in light of AT's presence, it would be artificial to reach a different conclusion regarding the "tribunal" which had tried Mr Khan. Thus the Court considered that there had also been a violation of Article 6 § 1 in respect of Mr Khan.

Under Article 41 (just satisfaction) of the Convention, the Court decided that the finding of a violation of Article 6 constituted sufficient just satisfaction but rejected applicants' claims in respect of non-pecuniary damage. Held UK to pay Mr Hanif 4,500 euros (EUR) & Mr Khan EUR 2,000 costs and expenses.

him to prove that there are no other available assets which could be used for the relevant purpose, such that if he does not discharge that burden, his application must fail.

iv) In coming to that conclusion I am aware that I differ from the way the point was put by Henderson J in Szepietowski at paragraph 41, as to the applicability to cases under the 2002 Act (in its present form) of the principles applying in the case of freezing orders to protect proprietary claims in ordinary civil proceedings, and as to the burden of proof lying on the defendant, in which he followed what Stanley Burnton J had said in Creaven, before the 2006 amendments to the 2002 Act. I hesitate before disagreeing with Henderson J on any point, but it seems to me that this point was not necessary for his decision and he did not have occasion to examine the issue so closely as we have had to. In my judgment the observations of Mitting J and Ouseley J are better indications as to the correct approach in this respect. For each of those judges the point was central to the case before him."

CCRC Refer Bakish Allah Khan and Ilyas Hanif to Court of Appeal

Messrs Khan and Hanif were convicted at Sheffield Crown Court in 2007 for conspiracy to supply heroin. Mr Khan was sentence to 17 years' imprisonment and Mr Hanif to eight years' imprisonment. Both men appealed against their convictions but their appeals were dismissed. Mr Khan also appealed against his sentence and his sentence was reduced from 17 to 15 years' imprisonment. Both men then applied to the European Court of Human Rights (ECtHR). Judgment was handed down 20 December 2011. The ECtHR considered the implications of the presence of a police officer on the jury, in circumstances where there was a significant challenge to the evidence to be given by police officers and where the juror knew one of the police officers giving evidence. It concluded that there was a violation of Article 6§1 of the European Convention on Human Rights (ECtHR) in that Mr Khan and Mr Hanif were not tried by an impartial tribunal and accordingly did not receive a fair trial. The government of the United Kingdom did not request that the case be referred to the Grand Chamber and accordingly the decision of the ECtHR became final on 20th March 2012.

Messrs Khan and Hanif applied to the Criminal Cases Review Commission in July 2012.

Having reviewed the case, the Commission has decided to refer the convictions to the Court of Appeal because it considers that the conclusion of the European Court of Human Rights in regard to their trial raises a real possibility that the Court of Appeal will now quash their convictions.

Mr Khan is represented by Mr Tarsam Salhan, Salhan & Co Solicitors, Mr Hanif is represented by Ms Chris Davey, Howells Solicitors.

Police Officer's Presence on Jury Made Trial Unfair Hanif and Khan v. the United Kingdom

In today's (Tuesday 20th December 2011) European Court of Human Rights Chamber judgment in the case Hanif and Khan v. the United Kingdom (application nos. 52999/08 and 61779/08), which is not final, the Court unanimously, that there had been a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights in respect of both applicants. The case concerned the applicants' complaint that the presence of a police officer on the jury, which convicted them of drugs offences, violated their right to a fair hearing.

Principal facts: The applicants, Ilyas Hanif and Bakish Allah Khan, are British nationals who were born in 1967 and 1978 respectively. At the time of lodging his application, Mr Hanif was serving an eight-year prison sentence; Mr Khan is currently serving a 15-year sentence. They were both convicted in January 2007 of conspiracy to supply heroin.

During the trial, in which they were co-defendants, Mr Hanif's defence was that a third

Use of Force in Prisons on Prisoners

Using force on a prisoner must be justified and accord with prescribed conditions: that it is reasonable in the circumstances, it is necessary, no more force is used than needed, and it is proportionate to the seriousness of the circumstances. In a secure environment such as a prison, YOI, or immigration centre this will normally mean force is only appropriate when required to prevent someone harming staff, another detainee, or themselves. Even when force is used justifiably and the correct techniques used - control and restraint - it is likely to be extremely distressing to the individual and they may well ask for it to be investigated as a possible assault. It is, therefore, an important function of the Ombudsman in such cases to assess whether force was appropriate in all the circumstances, and that this was fully evidenced and documented.

When complaints that force has been used inappropriately were upheld, the recommendations tended to focus on improvements in use of deescalation, documentation of the incidents, and the appropriate internal investigation. In cases involving young people and children there are additional requirements so recommendations also consider whether staff effectively talked through the incident with the child (known as a debrief), and the effectiveness of the YOI's child protection and safeguarding processes. The recommendations in the case below are representative of many cases about use of force incidents:

"The Governor satisfies himself that procedures are in place to ensure that:

Trainees are always debriefed by the Duty Manager or another appropriate person after the use of force and that a record of this discussion is placed on the trainee's file.

The Safeguards Manager always carries out an investigation into whether the force used was appropriate, carried out correctly by staff, whether any injuries were sustained and whether the trainee wishes to make a complaint, and always considers whether there are any Child Protection issues or if further investigation is required.

Where a complaint is made, the YOI always carries out an internal investigation and is not absolved of the need to do so because the police and social services decide not to take any further action."

In cases about adults, child protection issues do not arise but there are still requirements for the establishment to investigate whether the force was appropriate and carried out correctly. One stage of this is to ensure that use of force is avoided wherever possible by attempting to diffuse tense or threatening situations at the outset.

"The Governor reminds staff that they must record what de-escalation techniques have been used." Where force is used, it must be documented and investigated fully:

"The Governor issues a Notice to Staff reminding them that Annex A Use of Force Statements must provide a full and accurate account of events, including any problems encountered."

"The Governor reminds managers that internal investigations into use of force incidents must be challenging and robust and consider whether the use of force was reasonable, necessary and proportionate."

CCTV can be extremely important in establishing the exact sequence of events, particularly as incidents leading to use of force can take place very quickly. Even where available footage does not directly show the incident, it should be retained, particularly if the individual has complained and there are ongoing investigations: "In cases where a prisoner makes a serious allegation of assault, any CCTV footage of the C&R is immediately retained for a period of three months whether or not it directly shows the alleged incident. "

R v Bate [2013] - Attempted Suicide by Cop

1. Mr Justice Mackay: On 24th January 2013 at the Crown Court at Minshull Street, Manchester, this appellant, now 24 years old, pleaded guilty to having a bladed article (count 3) and on 11th February following he pleaded guilty to two other counts (counts 1 and 2) of possessing a firearm with intent to cause fear of violence. He was sentenced on those three matters on 5th March.

On the first two counts, which were under section 16A of the Firearms Act 1968, to five years on each concurrent and on the bladed article to 12 months concurrent, making a total sentence of five years. He has the leave of the single judge to bring this appeal.

2. The facts were very serious and unlikely to be repeated very often, if at all. On 14th October 2012 he had gone to McDonald's in Stockport and threatened the staff with a pistol. He had previously worked at that restaurant and he telephoned the police to tell them that he was armed and armed police responded. As their car drew close, he pointed a pistol at the officers, one of whom raised his carbine and ordered him to put the pistol down and go to ground. Fortunately the appellant complied.

3. On being searched he had on his person two pistols and a large hunting knife. On his way to the police station he apologised to the police on behalf of the officer at whom he had pointed the pistol. When interviewed he said he had been hearing voices that had told him to harm himself, as a result of which he decided to create a situation where he expected the police to shoot him dead. He had taken the two guns from his father's collection. They were examined by an expert who found that one of them was in effect an innocuous and non-illegal gun, incapable of firing anything but blanks. The second was loaded with blanks but was capable of being used with self-contained gas cartridges and as such was a prohibited weapon by virtue of section 5(1)(af) of the Firearms Act 1968. That was a modification of the Act introduced in 2003 to include within its embrace air weapons capable of being modified to fire live ammunition.

4. As a result of the status, as it were, of that gun, section 51A of the Act applied requiring a five-year sentence to be passed even on a plea of guilty, absent exceptional circumstances.

5. This appellant was an unusual young man with an unhappy background. It included two occasions, March 2011 and February 2012, where he had been found on motorway bridges threatening to throw himself from them and police had taken him in on both occasions and admitted him to hospital under section 136 of the Mental Health Act 1986.

6. When he came to the Minshull Street court he submitted a basis of plea and the judge was to accept in due course that he should sentence him on that basis. It is an important document. It reads as follows:

"1. The accused wished to end his life and believed he would be shot dead by police if he threatened them with what appeared to be a firearm.

2. The accused stole the guns from his father who is a wild west enthusiast.

3. To the best of the accused's knowledge and belief both guns were replicas capable only of firing blanks.

4. The relevant gun, exhibit JNR2, was not loaded with any ammunition capable of discharging a projectile, nor did the accused believe it was capable of being so loaded.

5. Accused had never heard of self contained gas cartridges and had no knowledge of their use."

6. His previous convictions were modest and irrelevant and related to motoring offences only. The pre-sentence report was positive.

It said he was intending to use his time in custody constructively and certain sentence

ed ourselves too that in that case there had been no suggestion that two had acted in concert, rather that one or the other was responsible. Nevertheless, the logic of the approach is not weaker as a consequence.

In our judgment the words of Farquharson LJ in Strudwick resonate as powerfully in this case as then they did: It was proved that [the Appellants] had told lies, but these did not lead to the inference of [a single] Appellant's presence, let alone participation. These Appellants by their pleas and in evidence admitted lies, but the subject-matter even allied to motive came nowhere near proving their presence at the killing of DB.

We were grateful for the sharp focus on reality of Mr Clegg QC who accepted that the likelihood is that one or other appellant murdered DB. This case however demands the application of established law to fact even if the outcome appears troubling. As the LCJ said in Abbott:

"Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and that the law should be maintained rather than that there should be a failure in some particular case."

Five postulations as to what might have explained the death, lucidly set out by Mr Clegg QC, are an useful guide to the problem the Crown's choice of a count of murder not of conspiracy to murder created. i) SB killed him and LB encouraged her ii) LB killed him and SB encouraged her. iii) SB killed him absent LB. iv) LB killed him absent SB. v) The applicants acted in concert.

The first four show how obvious were the tenable alternatives which could have led to DB's death. Once the Crown was unable to identify of which of the four options the jury could be sure, the fifth could not on the evidence provide a backstop.

The submission of no case to answer should have been allowed. These appeals will be allowed and both convictions will when we complete this judgment be quashed.

Serious Organised Crime Agency v Azam Use of frozen funds to pay for legal costs

i) It is for the applicant to show that, in all the circumstances, it is just to permit him to use funds which are subject to the PFO in order to pay his legal expenses.

ii) If on the evidence the court is satisfied that there are other available assets which may be used for this purpose, to whomsoever they may belong, it will not allow the affected assets to be used.

iii) If the court is not satisfied of that, the court has to come to a conclusion as to the likelihood that there are other available assets on the basis of the evidence put before it. If the evidence leaves the court in doubt, but with specific grounds for suspicion that the applicant has not disclosed all that he could and should about his assets, then it may resolve that doubt against the applicant, as it did in SFO v X. But if the evidence does not provide any such specific indications or grounds for suspicion, then even if the court rejects the applicant's evidence as unreliable, it may not have any adequate basis for concluding that there are other available assets. In that case (Mrs Azam's application being an example) the court should not resolve the impasse against the applicant on the basis that it was for him to prove positively the absence of available assets.

There may be objective factors which cast light on the probabilities one way or the other, as there were in the case of Mrs Azam. But if there is nothing of that kind, and nothing which indicates the existence of unexplained or undisclosed available assets, then the fact that the applicant has previously concealed relevant assets is not sufficient by itself to show that he is still concealing such assets, and thereby to deprive him of the ability to use his own assets, despite the constraints of the PFO, to defray the cost of legal representation to defend himself in the proceedings. I would therefore reject the proposition that there is a specific burden of proof on the applicant which requires

Conviction for Murder 'Joint Enterprise' Quashed

Shirley Banfield, 65, and daughter Lynette, 41, were given life sentences in 2012 for the murder of Don Banfield. A jury would have been unable to properly decide between 5 logical outcomes, not all of which supported the guilt of any or all parties. Accordingly the Judge should have upheld the submission of no case to answer.

Regina v Shirley Banfield and Lynette Banfield

This was an alleged joint enterprise murder with no body, no suggested mechanism of death, no identified day when the murder was said to have occurred, no time and no place and no suggestion of what happened to the body.

The appeal turns on whether there were evidence at the close of the case for the Crown from which the jury could infer that the two defendants must have killed together and not one in the absence of the other.

It is true that the test for the Judge hearing a submission was whether a jury could infer joint responsibility, not whether it were obliged so to do. The test for the jury was whether the Crown had made it sure of joint responsibility. The Crown's difficulty is readily apparent. If at the close of its case the evidence were consistent both with inculpation and exculpation of either defendant then it had not established a prima facie case of murder, against either.

If circumstantial evidence, upon which much of this case was built, were to allow of but one interpretation, then a jury would be driven to a finding of guilt. That was not the position here.

The Crown relied on animus [intense dislike; hatred; animosity]. It contended it had proved the intention to cause grievous bodily harm, and that each Appellant had both opportunity and motive. Mr Aylett accepted it was unusual that the Crown had pleaded so narrow a range of dates.

The Crown also argued that one Appellant woman alone would have found it difficult to kill DB. We were unpersuaded. The courts regularly see proved allegations of homicide against a woman acting alone. A moment's reflection demonstrates the fallacy in the Crown's argument – for example a knife used whilst the victim is unwary or asleep. Disposal of the body is more readily argued as difficult for one woman alone but post mortem activities are not capable without more of proving guilt of murder. If it were otherwise, every relative assisting in the disposal or delayed finding of a body would be guilty of murder. The Crown is entitled to suggest such activities give rise to suspicion but suspicion without more does not equate to proof.

Given its decision to indict murder but not conspiracy to murder (which latter would at the very least significantly have modified the submissions open to the Appellants, as Mr Clegg readily conceded) the Crown's consequential difficulty was its inability to prove that the two women acted in concert to bring about DB's death. It could, many would accept, prove that they had a motive so to do, and that each, singly and with the other, had in his life done enough to suggest animus. It could fortify that in reliance upon the post mortem dishonesty of both, jointly. What it could not do was prove a joint enterprise to be present when he was murdered either as killer or as participant in a joint enterprise.

As the authors of Smith and Hogan's Criminal Law, 13th Ed, para 8.4.1.5 remark, if all that can be proved is that the principal offence was committed either by the first or the second accused, each must be acquitted: Richardson (91785) 1 Leach 387; R v Abbott [1955] 2 QB 497. We have reminded ourselves of the example given by Finnemore J and referred to in the judgment of Croom-Johnson LJ in Lane: If two sisters were provably in the room when X was murdered, and either both together or one alone were responsible, there is no prima facie case against either since the Crown would be unable to exclude either. We have remind-

planning objectives were discussed and were proposed with which he was willing to comply.

7. There was a lengthy psychiatric report from a Dr Ashim which set out fully his history and reiterated the account that the appellant had given the doctor. He had told him about his attempts to take his own life by jumping off the motorway bridge on those two occasions we have mentioned, saying that on those occasions he was suffering with auditory hallucinations telling him he was useless and worthless and that his children (for he had two young children) would be better off without him but he could not bring himself to jump and the police had talked him down.

8. Admitted to hospital he had attempted to hang himself from a curtain pole using a belt. He was given anti-depressants. He said that in prison he had been given time to reflect on his behaviour, had begun to appreciate what his family and his children meant to him and it was clear that he needed treatment to get rid of the voices. Over time he said he had become used to these voices but ignoring them only made it worse.

9. The psychiatrist's diagnosis was not exactly confidently expressed. He rejected as a possible diagnosis any psychotic condition such as paranoid schizophrenia. He thought that a working diagnosis was depressive disorder with symptoms of psychosis, a combination he described as not uncommon, and an unlikely diagnosis of alcoholic hallucinosis because in addition to his other problems this appellant had a significant alcohol problem. He could not recommend any treatment in hospital. He could receive treatment in the community, supervised by a multi-disciplinary psychiatric service. The first line of treatment would be an anti-depressant such as SSRI with an anti-psychotic.

10. We have been referred today by Mr Evans who has presented he argument in a clear disciplined and helpful way, to this court's decision in Rehman [2005] EWCA Crim. 2056, a judgment given by then Lord Chief Justice, Lord Woolf, on the impact of section 51A and the five-year minimum sentence that it mandated for offences of this type. At paragraphs 11 and 12 the court recited the history of the legislation and the analogous legislation relating to automatic life sentences then in force and concluded that Parliament had said that: "... usually the consequence of merely being in possession of a firearm will in itself be a sufficiently serious offence to require the imposition of a term of imprisonment of five years, irrespective of the circumstances of the offence or the offender, unless they pass the exceptional threshold to which the section refers. This makes the provision one which could be capable of being arbitrary. "The court proceeded to recommend therefore a holistic approach to sentencing and to consideration of the question before us, such as this case poses: are these circumstances truly exceptional?

11. Mr Evans submissions are four fold. First, this firearm, as it was on the day, was not capable of discharging live ammunition, though it could be made to do so and that brought it within the grip of the legislation. Secondly, it was not his own. He had stolen it (as the basis of plea put it) from his father's collection and the fact that his father had it in his collection where he used to play wild west games with fellow enthusiasts fortified the appellant's belief that this was an innocuous weapon not capable of firing live ammunition. Thirdly, there was his bizarre but accepted intention that he wanted a police officer to shoot him dead.

That is not an attractive argument because, as counsel realistically accepts, it was a selfish aim because that action, had it happened, would have caused potential danger to others in the region and, as importantly, great harm to the officer who had shot him, for obvious reasons. Fourthly, he points to his mental state, his apparent attempts either to kill himself or at least to attract the attention of others to his plight by the earlier threatened suicide attempts. It was also the case that the appellant had been drinking. That is, we would emphasise, not in

itself capable of being a contributory factor to a finding of exceptionality, it is all too common in offences of this kind and we would ignore it for the purposes of this exercise.

12. The submissions made have persuaded us, after some thought, that the circumstances here viewed as a whole, in the round and with effect being given to the cumulative impact, are such as to merit the description of exceptional and thus to free the sentencer from the straitjacket of a five year minimum term.

But it is also accepted realistically by Mr Evans that a non-custodial sentence was never a possibility in this case. Even on his own case this appellant set out to frighten others and almost certainly succeeded in frightening the staff of the restaurant by waving around what was in fact an innocuous but realistic weapon.

13. There is no mental health disposal in terms of treatment or a hospital order appropriate in this case and that we get from the psychiatric report. It was still a serious offence meriting custody. We are urged to keep the sentence as low as possible and we do so, but the least sentence that this conduct merits on counts 1 and 2 would be one of two-and-a-half years' imprisonment. We quash the five-year sentence on those two counts and replace it by concurrent terms of two-and-a-half years. The sentence on count 3 remains one of 12 months concurrent, as before. A total sentence therefore of two-and-a-half years. To that extent this appeal is allowed.

R v Hughes (Appellant) [2013] UKSC 56

This case concerns the scope of the new offence created by section 3ZB of the Road Traffic Act 1988 ('the 1988 Act'). This new section was added by section 21(1) of the Road Safety Act 2006 ('the 2006 Act'). It provides: 'A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under- (a) Section 87(1) of this Act (driving otherwise than in accordance with a licence); (b) Section 103(1)(b) of this Act (driving while disqualified), or (c) Section 143 of this Act (using a motor vehicle while uninsured or unsecured against third party risks).' On conviction on indictment, this offence carries imprisonment for up to two years.

On a Sunday afternoon in October 2009 the appellant was driving his family home in a campervan along the A69 towards Newcastle. Road conditions were normal and the appellant,s driving was faultless. The speed limit was 60 mph and the appellant was travelling at a steady speed of 45-55 mph. At the same time Mr Dickinson was driving in the opposite direction. Mr Dickinson was driving erratically- his car was veering all over the road, twice crossing into the wrong lane before smashing into the appellant,s campervan as it rounded a bend. The appellant and his family survived. However, Mr Dickinson suffered injuries as a result of the impact that proved to be fatal.

Mr Dickinson was found to have had a significant quantity of heroin in his system and was a drug user. He was also overtired, having worked a series of 12 hour nightshifts in a power station in Largs, on the west coast of Scotland. He had already driven to Largs that day and had completed approximately 230 miles of his 400 mile return journey when the collision happened. At the time of the collision the appellant did not have a driving license and was not insured, both of which are offences under the Road Traffic Act 1988. Neither offence carries a sentence of imprisonment.

It was accepted by the prosecution that the appellant was in no way at fault for the accident and could not have done anything to prevent it. The blame was entirely with the driving of Mr Dickinson, yet the appellant was prosecuted under section 3ZB of the 1988 Act for causing the death of Mr Dickinson whilst driving uninsured and without a license. At trial the judge directed the jury that they could only find the appellant guilty if they found he had contributed in a substantial way to Mr

Dickinson's death i.e. in a way that was more than minimal. The prosecution appealed this ruling and the Court of Appeal, which felt itself bound by the decision in R v Williams [2010] EWCA Crim 2552, held that the prosecution did not have to prove any element of fault on the part of the appellant, his mere involvement in the fatal collision would be sufficient to commit the offence.

Judgment: The Supreme Court unanimously allows the appeal. Lord Hughes and Lord Toulson jointly give the judgment of the court.

Reasons for the judgment: If the Court of Appeal were correct, then in this case the appellant would be criminally responsible for Mr Dickinson's death despite not being at fault at all for the collision. In addition, if any of the appellant's family had died he would also be criminally responsible for their deaths despite the fact that if Mr Dickinson had survived he would have been guilty of causing death by, at the very least, careless driving when unfit to drive through drugs.[5- 6].

It would plainly have been possible for Parliament to legislate in terms which left it beyond doubt that a driver was made guilty of causing death whenever a car which he was driving was involved in a fatal accident, if he were at the time uninsured, disqualified or unlicensed. It did not and instead used expression 'causes [death] by driving'.

This imports the concept of causation [19 - 20]. This is not a case where the concept of a deliberate intervening act applies to break the chain of causation. Mr Dickinson did not deliberately set out to kill himself. This is a case where there are potentially multiple causes of the death. The question is whether the appellant's driving was in law a cause [22]. It was not; it was simply an event 'but for' which the collision would not have happened.

That would be much the same as saying, if the other driver had hit a tree rather than the defendant's vehicle, that whoever planted the tree caused the death. The law draws a distinction between things which are ‘but for’, ‘circumstances which are just the background to an event,’ and ‘things which truly cause that event.’

In R v Williams it was held that s.3ZB must catch cases that did not fall under s.2B (causing death by careless driving) but that case did not focus on the meaning of 'causes [death] by driving'. It does not follow from the fact that section 3ZB contains no requirement that the defendant driver should have committed the offence of careless or inconsiderate driving that he is not required to have done or omitted to do something in the driving of the car which has contributed to the death, before he can be held to have caused it by his driving [24]. The gravity of a conviction for homicide, for which the sentence may be a term of imprisonment, is such that if Parliament wishes to displace the normal approach to causation recognised by the common law, and substitute a different rule, it must do so unambiguously [27].

There is no logical or satisfactory intermediate position between holding (a) that the law imposes guilt of homicide whenever the unlicensed motorist is involved in a fatal accident and (b) that he is guilty of causing death only when there is some additional feature of his driving which is causative on a common sense view, and the latter entails there being something in the manner of his driving which is open to proper criticism.

The statutory expression cannot, the Court concludes, be given effect unless there is something properly to be criticised in the driving of the defendant, which contributed in some more than minimal way to the death. It is unwise to attempt to foresee every possible scenario in which this may be true but cases which might fall under s.3ZB but not s.2B (causing death by careless or inconsiderate driving) might, for example, include driving slightly in excess of a speed limit or breach of a construction and use regulation [32].

The trial judge's ruling is reinstated and the matter returned to Newcastle Crown Court.