Plan to Stop Non-Residents Getting Legal Aid is Unlawful

The Administrative Court may have handed Mike Penning the new Secretary of State for jusitce; one of his first "to-do" list items. In – PLP v Secretary of State for Justice - a rare three judge Divisional Court has held that the Government's proposal to introduce a residence test for legal aid – where all applicants will have to prove 12 months continuous lawful residence in the UK – is both ultra vires and discriminatory.

For those following the issue, the judgment is not a great surprise. Most organisations and individuals who responded to the Government's consultation on the issue said as much, including JUSTICE. Yet, the Government chose to proceed, introducing the Draft Legal Aid Sentencing and Punishment of Offenders (Schedule 1) Order last month asking Parliament to approve the test for implementation in the Autumn. Then both cross-party Parliamentary Committees tasked with reviewing delegated legislation – the House of Lords Secondary Legislation Committee and the Joint Committee on Statutory Instruments (JCSI) – expressed doubt about the legality of the measures. It is rare for the JCSI to draw issues to the attention of MPs and Peers, yet they reported that the parliamentary materials showed little intention that Parliament intended the Government to have the power to introduce these restrictions under LASPO: there is no indication at all in these passages or in any of the other Parliamentary materials identified by the MOJ that the Government proposed to exercise the power to create a general exception of the type now contemplated under which individuals who do not meet a residence test would be excluded from access to many of the types of civil legal services listed in Part 1 of Schedule 1. On the contrary, it appears to the Committee that the Government consistently presented the power as a focussed one needed to make consequential amendments to Schedule in light of changes to other legislation. (para 4.13)

Lord Justice Moses read the judgment (Justice Collins and Jay concurring) considers evidence given by both parties on the scope and intention of LASPO and the powers under which the Order is to be made – under Section 9(2)(b) and Section 41. Section 1 LASPO places a duty on the Secretary of State to ensure that legal aid is made available consistent with the provisions of the Act. Section 9, by extension, provides that such services as are specified iSchedule 1 be made available provided the individual concerned qualifies for legal aid. Section 9(2) of LASPO makes provision for adding to, varying or omitting services in Part 1 of Schedule 1. Section 41(1)(a) and (b) of LASPO empower the Minister to "make different provision for different cases, circumstances or areas" and to "make provision generally or only for specified cases, circumstances or areas". Importantly, Moses LJ concluded, referencing the materials published with LASPO and Ministerial statements on the limited scope of the enabling powers made under the Act, that these powers must be interpreted consistently with the purpose of LASPO:

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, 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, Paul Higginson, Thomas Petch, 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, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

Miscarriages of JusticeUK (MOJUK)
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MOJUK: Newsletter 'Inside Out' No 486 (17/07/2014)

Multiple Police Failures Led to 1985 Shooting Of Cherry Groce

An inquest jury found the death of Mrs Dorothy "Cherry" Groce was the result of serious and multiple police failures on the part of officers across the ranks. The jury concluded that: Mrs. Groce was shot by police during a planned surprise, forced entry raid on her home and her subsequent death was contributed to by failures in the planning and implementation of that "raid".

Lee Lawrence, Mrs Groce's son, said: "We have always known that the shooting of our mum was not an accident. For 29 years the police have had a copy of the report which clearly identifies the multiple, serious failures behind the shooting. However, that report was not shared with my family until the run up to this inquest. The verdict of this jury serves to break the silence in which we have suffered since the shooting in September 1985. My mum is the hero in this: she inspired us as a family for fight for the truth. Today the truth is our victory."

Deborah Coles, co-director of INQUEST said: "The shooting of Cherry Groce was devastating for her and her family. Their 29 year struggle for accountability included a lengthy battle to obtain public funding to be represented at the inquest, in circumstances where apparently unlimited funds are available to the Commissioner and individual police officers. Legal aid ensured the first and only rigorous public examination of the evidence which has resulted in today's welcome conclusion. It is vital both for the family and public interest that when citizens are shot by police officers, there is a robust and fearless inquiry into the appropriateness and lawfulness of that use of force. However cuts to legal aid mean that similar cases may well not receive this kind of vital public scrutiny. Cherry Groce's shooting also raised important concerns about the oppressive policing of the black community and the use of lethal force by the police generally: concerns as pertinent now as they were three decades ago."

Clare Richardson of Bhatt Murphy, *solicitors,* said: "In the last two weeks the inquest jury heard evidence of the series of catastrophic police failures that led to the shooting of Mrs Groce. Those failures were first brought of the attention of the then Met Commissioner 29 years ago. The fact that these failures have now seen the light of day is thanks to the determination and courage of the family of Mrs Groce, for this we all owe them a debt of gratitude."

Chuka Umunna MP, Shadow Business Secretary said: "In pursuing justice for their mother and fighting to ensure they received legal aid to be represented at the inquest into her death, my constituents – the family of Cherry Groce – have been completely vindicated by the jury's findings. It is a disgrace that my constituents – all innocent victims of a grave injustice - have had to wait almost three decades to get to the bottom of what happened that fateful day in 1985 when their mother was shot by the Metropolitan Police. That Cherry Groce never lived to hear the jury's findings today compounds the injustice my constituents feel. The findings of the jury are very welcome and resounding. The staggering ineptitude and incompetence of the police at the time – who should have called off the raid they carried out and did not properly check who lived in the home – are astonishing. The family now deserve nothing less than a full, proper, formal apology on behalf of the Met by the Commissioner for what happened. Much progress has been made with regard to police community relations since the 1980s. But cases such as this and ongoing injustices surrounding issues like stop and search and

deaths in police custody, highlight there is still a long way to go before we reach the levels of trust in the Police that we all want to see."

Groce Family statement: Today's conclusion by this jury of 11 Londoners represents an honest reflection of the evidence we have heard in this inquest. It is a clear recognition of the catalogue of serious failures by the police before and during the armed raid on our family home in 1985. It is now a matter of public record that the shooting of our mother and grandmother was not an accident but instead a result of astonishing failures by officers across the ranks to follow procedures designed to protect innocent members of the public. As a result of the shooting our lives changed forever. Our mother was left paralysed from the chest down and her children became her carers. She suffered serious ill health and her injuries led to her eventual death in 2011.

In 1985 Assistant Chief Constable John Domaille of the West Yorkshire Police – an expert in armed police raids, conducted an independent investigation into these events. His findings were never shared with our mother and were only shared with our family late last year after a lengthy battle for their disclosure. His findings , which have been formally accepted by the Metropolitan Police Commissioner, concluded that the raid should never have gone ahead and created "grave" and "unnecessary" risks for members of the public "which should have been avoided". This inquest has been the first opportunity to hear evidence relating to the armed raid which led to our mother's shooting. For 29 years we have battled for justice and fought for truth. A petition to secure funding to be represented at this inquest was signed by over 130,000 members of the public. We'd like to take this opportunity to thank everyone who supported our campaign for legal aid. We hope that no other family will have to face the prospect of complex legal proceedings, in deeply distressing circumstances, without the support of expert legal assistance.

After 29 years we have achieved on our mother's behalf the accountability she deserved but was denied to her. Our mother never received an apology from the police. We understand that the Metropolitan Police Commissioner will now issue a public apology acknowledging and accepting the failings. We will listen with interest to what he has to say. We love our mother deeply and we miss her dearly. Her legacy will live on through the Cherry Groce Foundation , which we have set up in her memory to support the lives of adults who have become disabled through personal tragedy, and their carers We'd like to thank the media who have shown respect to our family and, more importantly, everyone who has supported us over these 29 years. Finally, we hope that these events have resulted in meaningful learning on the part of the police and that no family will have go through what we have over these three long decades.

The family of Cherry Groce is supported by INQUEST. The family is represented by INQUEST Lawyers Group members Mark Scott and Clare Richardson of Bhatt Murphy solicitors, and Dexter Dias QC and Richard Reynolds of Garden Court Chambers.

Appalling Conditions of Transportation Between Prisons & Inadequate Medical Care

ECtHR: M.S. v. Russia (no. 8589/08) - The applicant, Mr M.S., is a Russian national who was born in 1980 and is serving a ten-year prison sentence in the Mordoviya Republic (Russia) for drug dealing following his conviction in April 2008. Mr M.S. complained about the appalling conditions in which he had been transported to and from the courthouse to attend the hearings on his case in 2007 and 2008 as well as during his transfer in May 2008 from the remand prison to the correctional facility where he was to serve his sentence.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, he alleged totalling 30 journeys within five months – and in the railway carriage during the 15

Compensation for Unlawful use of Terrorism Act Powers by Police

A Deighton Pierce Glynn Solicitors client has won an undisclosed settlement from two police forces after he was wrongly detained and handcuffed under Terrorism Act powers. The incident took place on 14 October 2010 when Mr Gulamussein took a train from Kings Cross for work. Mr Gulamhussein was incorrectly told that his ticket was not valid for the journey and asked to pay a replacement fare, which he did. Mr Gulamhussein wanted to make a complaint as he was told when purchasing the ticket at the station that it would be valid for his journey. Police on the train became involved but refused to provide their details to Mr Gulamhussein who took a photograph of the officers because of their refusal to provide their badge numbers and identity. His phone was confiscated and the photos deleted. The officers then purported to detain Mr Gulamhussein under S.44 of the Terrorism Act when they had no such authority to do so. Mr Gulamhussein was escorted from the train and handcuffed. He was later released without charge. A complaint was made against both forces involved and the IPCC upheld the complaint and found that the police had acted unlawfully in detaining Mr Gulamhussein under Terrorism Act powers. After 4 years a settlement has finally been reached with regard to his civil claim. Mr Gulamhussein was represented by Christina Juman of Deighton Pierce Glynn solicitors, instructing barrister Rajeev Thacker of Garden Court Chambers.

Early Day Motion 236: Second Chance Initiative

That this House acknowledges the importance of sustained and meaningful employment in reducing instances of reoffending; expresses its support for the Second Chance initiative to enhance employment opportunities for ex-offenders which is spearheaded by the Citizen Trust working in the community and at HM Prison Wormwood Scrubs; welcomes the creation of the Second Chance Charter with a nationally recognised kitemark, which will identify employers willing to consider offering employment to suitable ex-offenders without discrimination on the basis of past records. *House of Commons: 08.07.2014 - Sponsors: Clarke, Tom / McDonnell, John*

IPCC Sends File of Evidence To CPS as Part of Bijan Ebrahimi Investigation

The Independent Police Complaints Commission (IPCC) has sent a file of evidence to the Crown Prosecution Service (CPS) as part of its investigation into police actions in the events leading to Bijan Ebrahimi's murder in Bristol in July last year. The file of evidence relates to three Avon & Somerset police officers who attended at Capgrave Crescent on 11 July 2013 and how they dealt with Mr Ebrahimi's subsequent calls for help. The file also includes evidence relating to one police community support officer (PCSO) who was part of the police response to calls on 12 July last year. The IPCC has been liaising with the CPS from an early stage of the investigation. The IPCC is continuing its independent investigation into the actions of 12 other Avon & Somerset police officers and civilian staff. The six police officers and six civilian staff have been interviewed by IPCC investigators. IPCC Commissioner Jan Williams said: "I have decided, based on the evidence and in line with our ongoing liaison with the CPS, to send a file in respect of three police officers and one PCSO. This represents the next stage in our complex investigation into how Avon & Somerset Police dealt with Mr Ebrahimi prior to his murder a year ago. I am sure the anniversary of Bijan's murder will be an especially difficult and poignant time for his family. We continue to update them, and all interested parties, on the progress of the investigation." Lee James pleaded guilty to murdering Mr Ebrahimi in Capgrave Crescent, Brislington, Bristol on 14th July 2013 in November last year.

Conclusions: No one who reads or hears about the events of 24 June 2003 could be unmoved, not only by the deaths of the six RMP soldiers who were killed on that day, but by the horrible circumstances in which they died. We recognise the strength of the claimant's feelings that, despite all the investigations that have taken place, no full explanation has ever been given of her son's death which makes sense of it for her and that people in the British army or civil service should be blamed for what happened. We cannot attempt to assuage those feelings. All that we can decide is whether Mrs Long is owed a right in law to have another investigation held into her son's death.

For the reasons given in this judgment, we find that she does not have such a right. We have held that the right of a soldier under article 2 of the Convention to have his life protected by law does not include a right to be safeguarded from human error, including negligent error, in the conduct of military operations which results in the risk of death on active service being greater than it would otherwise have been. There is in these circumstances no arguable breach of duty by the state which requires a further investigation. We have also held that the investigations already carried out, including in particular the inquest held in 2006, have discharged any investigative duty which the state had under article 2 and that there is in any event no warrant for holding a further investigation now with the aim of casting blame on individual servicemen for actions which they should have taken that might (although they probably would not) have averted the death of Corporal Long. We have further held that, in circumstances where there is no current duty to hold an investigation, any other relief must be refused and the claim dismissed because it has been brought so many years out of time.

Early Day Motion 258: Indeterminate Sentences for Public Protection

That this House notes that there are 5,206 prisoners in the UK who are still serving indeterminate sentences for public protection, which were abolished by the Government in 2012; further notes that 3,575 of these prisoners have already passed their tariff and that, since the Parole Board releases roughly 400 inmates every year, it will take nine years for the Board to clear this backlog of cases; further notes with dismay that many prisoners serving indeterminate sentences fail to gain places on appropriate courses which would progress their rehabilitation, and that, as a result, such prisoners have little hope of release; further notes that each prison place costs £40,000 every year, making indeterminate sentences highly costly; and calls on the Government to increase funding to the Parole Board to clear the backlog of indeterminate prisoners, starting with those given initial tariffs of two years or less.

Sponsors: Elfyn Llwyd / Hywel Williams/ Jonathan Edwards, House of Commons:

Burglar Jailed After Leaving House Key at Scene *Source Police Oracle*

When a resident returned to her house and discovered that she had been burgled, officers quickly attending the scene found the key to indentifying the perpetrator, as he'd dropped the very object on the floor during the crime. Anthony Noah Aaron Eastwood returned to the scene of the crime and then ran out of sight. Officers attended his address with key kindly supplied by Eastwood, but unfortunately, nobody was home. He was arrested a week later "following a short foot chase", but not before resisting detention, assaulting the arresting officer and being found the possession of a kitchen knife. Eastwood appeared at Maidstone Crown Court and was found guilty of burglary, possession of an offensive weapon, assaulting a officer and resisting arrest and was sentenced to three years and eight months in prison.

hour journey to the correctional colony. Further relying on Article 13 (right to an effective remedy), he also complained about the lack of an effective remedy with which to complain about the conditions in which he had been transported.

Mr M.S., who has HIV, also made a further complaint under Article 3 that, during his detention on remand in Moscow as well as when serving his sentence in correctional colonies in the Mordoviya Republic, the authorities had failed to ensure adequate and prompt monitoring and treatment of his illness and that, as a result, he had developed a number of other diseases, including tuberculosis. Lastly, he also alleged under Article 34 (right of individual petition) that the correctional facility where he had been serving his sentence in 2011 and 2012 had not dispatched a number of his letters to the European Court of Human Rights.

Violation of Article 3 – on account of the conditions in which the applicant had been transferred to and from the courthouse and the conditions in which he had been transported to the correctional colony. Violation of Article 13 – on account of the lack of an effective remedy enabling the applicant to complain about the conditions in which he had been transported. Violation of Article 3 – on account of the authorities' failure to comply with their responsibility to ensure adequate medical assistance to the applicant during his detention in the correctional colonies between September 2011 and 18 May 2012. Just satisfaction: 17,500 euros (EUR) (non-pecuniary damage) and EUR 1,350 (costs and expenses)

Former Met Officers Lose Appeal Against Drug Conspiracy Convictions *theguardian.com*

Thomas Kingston, Thomas Reynolds and Terence O'Connell, who all served in the forces's south east regional crime squad (Sercs), were jailed in August 2000 after a trial, which heard key prosecution evidence from a former colleague, Neil Putnam. Their case was referred to the court of appeal by the Criminal Cases Review Commission (CCRC) on the grounds that, since the trial and an unsuccessful appeal, Putnam had made unsubstantiated claims relating to the Stephen Lawrence case and there were doubts over his credibility and reliability. Putnam was a police officer in the Met for 22 years but, in February 2000, he was sentenced to three years and 11 months in prison for corruption. He had previously entered the witness protection programme and became a police informant. Kingston and Reynolds were convicted of conspiracy to supply amphetamines and jailed for three and a half years each while O'Connell was sentenced to two years for perverting the course of justice. On Wednesday 09/07/14, Lady Justice Rafferty, Mr Justice Burnett and Mr Justice Holroyde rejected argument that the convictions were unsafe, and dismissed the appeal.

The court heard that, in 2006, Putnam made an allegation in a BBC Panorama programme of a corrupt link between an officer in the Lawrence case, DS John Davidson, and Clifford Norris, the father of David Norris, one of the suspects later convicted of the teenager's murder. Putnam claimed he had told Met officers about this in 1998, but they had failed to act. An investigation by the Independent Police Complaints Commission found the allegations unsubstantiated and the CCRC has said that it has found nothing that lends support to them.

Alun Jones QC, representing Kingston, Reynolds and O'Connell, said the appeal judges were confronted by the stark possibility that there was either a conspiracy by senior Met officers to suppress evidence or Putnam was a determined liar. But Crispin Aylett QC, for the Crown, said the convictions were safe and nothing the appellants had been able to produce could undermine the verdicts. In their ruling on Wednesday, the judges said that, from start to finish, Putnam was advanced as thoroughly corrupt and dishonest and as admitting six offences of perjury. His

Panorama stance would be seen as the seventh, and nothing more. Rafferty said: "He was at the time of the appellants' trial known to be devious, a skilled liar, out to advance his own position where he thought he could, and capable of prodigious feats of recall. The addition to that opprobrium of one allegation against Davidson, once explored, would not in the scheme of things have been of the significance necessary to cast doubt upon the safety of their convictions."

Chief Inspector of Prisons: Conditions 'Getting Worse' *Nick Hopkins BBC Newsnight*

There has been a "significant" and worrying deterioration in the standards of British jails, the chief inspector of prisons in England and Wales says. In an exclusive interview with BBC Newsnight, Nick Hardwick urged ministers to take immediate action. He said he had "seen with his own eyes" prisoners being held in "deplorable conditions" in some jails. Mr Hardwick told the BBC: "I think they are an indication of wider problems in the Prison Service, an indication of a prison system under growing pressure. "It's not acceptable we have this rate of suicides in prison." He added: "If you look since the beginning of the year, our inspection findings have dropped significantly. We are seeing a lot more prisons that are not meeting acceptable standards across a range of things we look at. And I go to most of these inspections and I see with my own eyes a deterioration. There is a danger I think of the politicians over-analysing the figures and miss what is under their noses on the wings, which is sometimes I think people being held in deplorable conditions who are suicidal, they don't have anything to do and they don't have anyone to talk to. We need to look at what's under our noses and sort that."

The comments come as a report from the Howard League for Penal Reform is published which says the total number of prison officers has fallen by 30% over the past three years, to 19,325. The charity said there had been 42 suicides in jail in the first half of this year - up from 30 in the same period last year. Its chief executive Frances Crook told BBC Newsnight: "I am absolutely sure that lack of staff [due to] cuts in prison officer numbers are contributing to increased violence, people being locked up for longer, and as a consequence, the highest death rate we have ever had in prisons." She said the situation was "beyond crisis", with the system pushed to breaking point. The Ministry of Justice's own figures show the number of suicides in jail rose from 60 to 72 from 2012 to 2013 - and another rise could be on the cards this year.

Two weeks ago, the Ministry of Justice announced it was recruiting ex-prison officers on short-term contracts to help plug gaps in jails. Prison Governors Association president Eoin McLennan Murray welcomed the move but said his members had been urging the Ministry of Justice to do something months ago. "We were saying we were heading for a shortage some time before the Prison Service reacted. I think they were late to react when the warning signs were there."

Michael Spurr, chief executive of the National Offender Management Service Agency, conceded Mr Hardwick was "right" to say there had been "some deterioration" in the standards of prisons this year. "Over the last six months in particular we have struggled with some additional pressures. The population has gone up greater than anticipated, there are more remand prisoners and sex offenders than anticipated. At the same time we have ended up with fewer staff than we need actually. Have we taken action? Absolutely we have taken action." However, he said there had been overcrowding in British jails since he started in the service 30 years ago, adding: "To get rid of the problem would cost £900m that we do not have. So we are retaining the level of overcrowding, not expanding it. The crowding now is lower than it has been for the last 10 years. Of course I'd like a position where we didn't have anybody in crowded cells. But can we manage people in crowded cells safely? Yes." He said he was worried by the suicide rates, but insisted the service was safe and that it was wrong to suggest people's lives had been put at risk by the cuts to staff numbers.

Don Hale explains why he didn't publish Barbara Castle's paedophile dossier

The Daily Star Sunday published an interesting exclusive at the weekend: "Second paedo dossier cover-up after cop raid". It revealed that a former newspaper editor, Don Hale, was handed a dossier at some time in the early 1980s about 16 high-profile political figures who appeared sympathetic to the Paedophile Information Exchange (PIE). The document was given to Hale, the then editor of the Bury Messenger, by the late Barbara Castle, the veteran Labour politician. At the time, Castle was a member of the European parliament for Greater Manchester after her 34-year stint as MP for Blackburn.

According to the Star's report, once Hale began to investigate the claims made in the dossier "an astonishing operation kicked in to silence the claims." First, Hale said he was visited by the Liberal MP for Rochdale, Cyril Smith, who tried to persuade the journalist that it was "all poppycock". Second, Hale said special branch officers arrived at the Messenger's office, showed him a D-notice and warned him of imprisonment if he failed to hand over the dossier.

Hale had agreed with Castle that he would run a story the week after she handed him her documents. He was quoted by the Star as saying: "Obviously, I had to contact certain members named [in the dossier] and the home office for their responses. Each call was met with shock horror as to why I should be wasting my time asking these 'daft' questions as nothing was happening within parliament. When I explained the detailed nature of the information available and that I couldn't reveal my source, you could almost hear a pin drop as officials were unsure as to what to say or do."

Then came the special branch visit. Hale said: "I was sworn to secrecy by special branch at the risk of jail if I repeated any of the allegations. "When I met Barbara again, she apologised for the 'hassle' caused and reluctantly admitted she was fighting a formidable foe." The revelations follow revelations about a dossier compiled by the late Tory MP Geoffrey Dickens detailing an alleged Westminster paedophile ring.

Don Hale later became editor of the Matlock Mercury where he successfully campaigned for the release of Stephen Downing, a man wrongly imprisoned for 27 years for murder. Downing's conviction was quashed and declared unsafe by the appeal court in 2001. Hale was named journalist of the year in the 2001 What the Papers Say awards and received the OBE for his campaigning journalism. Since leaving the Mercury in 2001 Hale has written several books, mostly about crime.

Pat Long v Secretary of State for Defence

Preamble: The Claimant (Mrs Pat Long) is the mother of Corporal Paul Long, one of six British soldiers of the Royal Military Police murdered by an armed mob when visiting a police station in Iraq on 24 June 2003. Although there have been extensive investigations into the deaths of the soldiers, it is the claimant's case that the United Kingdom has an obligation under article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") to investigate her son's death which has still not been discharged. On this claim for judicial review she seeks an order requiring the Secretary of State to conduct an effective independent investigation into Corporal Long's death in compliance with article 2 of the Convention. The claim raises issues concerning the scope of a state's duty under article 2 of the Convention to investigate the death of a member of its armed forces and, by implication, about the scope of a state's substantive obligations under article 2 to safeguard the lives of its soldiers when on active service. The claim also raises issues about when a claim alleging breach of a duty to investigate can or should be brought and whether there has in this case been undue delay which should lead the court either to refuse to entertain the claim or to refuse the relief sought.

respondence with Mr Black, the prison refused to allow any prisoners access to the number. They then reluctantly agreed to put the number on Mr Black's individual PINphone account, but nobody else's. This means that Mr Black is currently the only person at the prison who is able to ring the Compliance Line. Instead, the prison stated that all other prisoners who wished to use the line would need to apply for the number added to their individual PINphone account. Furthermore, any calls to the Compliance Line would not be confidential but would be recorded and monitored by prison staff in the same way as is the practice with social calls.

For the Line to be effective, all prisoners need to be confident that calls to the Line can be made anonymously and confidentially. Needing to apply to prison staff in advance to use the Line, with the calls then being monitored by prison staff, satisfies neither. Rather, to be of use, the number needs to be added to the list of global numbers (such as Crimestoppers and the Samaritans) that all prisoners are able to access without needing the number added to their particular PINphone and that are not recorded or monitored. In light of the prison's inadequate response, Mr Black commenced judicial review proceedings in March 2014 arguing that the Prison Service's position breaches Mr Black's right to respect for his private life, that the restrictions unlawfully discriminate against prisoners and is also contrary to the Prison Service's own Rules which do not allow restrictions on prisoners communications where it affects their human rights. A number of other non-smoking prisoners have provided helpful statements in support of Mr Black's challenge. Following a contested hearing on 1st July 2014, the Administrative Court granted Mr Black permission to proceed to a full hearing later this year. In granting permission, the Court confirmed that the issue was clearly arguable. There is expected to be a full one-day hearing of the case later this year.

One unexpected issue that has arisen in the proceedings is the Prison Service's argument that prisons benefit from Crown Immunity and so the smoking restrictions imposed by the Health Act do not apply to prisons. This is likely to come as a surprise to many prison Governors and staff, not least because the Prison Service's own guidance, PSI 09/2007 'Smoke free legislation: Prison Service Application' dated 2nd April 2007 specifically refers to the smoking restrictions applying to prisons.

Sean Humber, Head of the Prison Law Team at Leigh Day, stated: "Prisoners are entitled to the same protections against unauthorised smoking as those in the wider community. There is something particularly objectionable about the same prison authorities who are likely to be committing a criminal offence by turning a blind eye to the problem then doing all they can to prevent prisoners from reporting the problem to the appropriate enforcement authority."

Michael Wheatley - Prisoners Transfers *House of Commons: 8 July 2014 : Column 266W*

Sadiq Khan: To ask the Secretary of State for Justice (SSJ) for what reasons Michael Wheatley was transferred from HM Prison Standford Hill in December 2013. What role the Governor of HM Prison Standford Hill played in rescinding the decision of the parole board to send Michael Wheatley to that prison.

Jeremy Wright: Mr Wheatley transferred from HMP Standford Hill to HMP Elmley on 9 November 2013. He was transferred following security intelligence that he had more money in possession than he was permitted. The duty governor made the decision to return Mr Wheatley to closed conditions as a precautionary measure pending a full investigation of this intelligence. It was stressed this was a temporary move. The intelligence received was evaluated, but found to be uncorroborated. A decision was taken on 10 January 2014 to return Mr Wheatley to open conditions. He was returned to open conditions on 4 February 2014.

Prison Overcrowding Due to More Sex Offenders Behind Bars theguardian.com, 10/07/14

There are almost 700 more sex offenders behind bars than a year ago, Chris Grayling revealed as he sought to explain prison overcrowding. The justice secretary told MPs that "many" were those found guilty of historic abuse cases. "There are a number of factors," he told the Commons justice select committee. "Probably the most visible and obvious one is that over that last year or so ... there's been quite a big increase in the number of sex offenders coming into our prisons, many of them historic sex abuse cases. I think it is something like 700 new people in our prisons in that category." There were 10,498 convicted sex offenders in prison on 31 March 2013 but the number rose by 652 to 11,150 by the same time this year, officials said. Mr Grayling played down the significance of the overcrowding, insisting he felt it was "not a great problem" if more inmates had to share cells. Nick Hardwick HMCIP has warned of trouble if there is a hot summer and blamed a "political and policy failure" for an increase in suicides and inmates deliberately misbehaving to be sent to punishment blocks to escape cramped conditions. A "reserve" force of prison officers is being recruited to step in to deal with any surge in numbers over the next few months.

UK Government to Rush Through Emergency Surveillance Legislation *The Guardian*

The government will announce that it is rushing through emergency legislation underpinning the state's right to keep personal data held by internet and phone companies. The move has been prompted by a judicial review claim in the high court that current practice is unlawful Labour is expected to accept the bill on the basis that it will simply restore what the government believed to be the law before the European Court of Justice ruled in April that an EU directive on privacy retention had over-reached its powers and amounted to an invasion of privacy. But, as part of the deal, the opposition has won agreement that ministers will launch a review of the Regulation of Investigatory Powers Act passed in 2000. The act is seen as the source of excessive surveillance by the security services.

It is likely that the legislation will be passed through the Commons next week, but the Labour backbench MP Tom Watson said it would be an outrage for such a fundamental potential threat to civil liberties to be announced to the Commons on Thursday when few MPs are likely to be present. The government has been prompted to act due to a high court challenge to its continued collection and retention of personal data from internet and phone companies, in spite of the ECJ ruling. The judicial review claim in the London high court against the home secretary, Theresa May, is challenging regulations from 2009 under which the British government requires internet and phone companies to retain personal communications data for 12 months and allows the police and security services to access it. The urgent legislation is expected to be introduced as an independent bill or as amendments to the serious crime bill now going through parliament.

Watson said: "Regardless of where you stand on the decision of the European Court of Justice (ECJ), can you honestly say that you want a key decision about how your personal data is stored to be made by a stitch-up behind closed doors and clouded in secrecy? None of your MPs have even read this legislation, let alone been able to scrutinise it. The very fact that the government is even considering this form of action, strongly suggests that it has an expectation that the few people on the Liberal Democrat and Labour front benches who have seen this legislation are willing to be complicit."

The powers to require internet and phone companies to store the personal communica-

tions data was introduced across Europe in the wake of the 7 July 2005 bombings. Two weeks ago, the head of the National Crime Agency warned of the impact the loss of the powers would have on the capacity of the police to combat terrorism and serious crime cases. The ECJ ruling this year said the routine collection of location and traffic data about phone calls, texts, emails and internet use and its retention for between six months and two years meant a very detailed picture of an individual's private life could be constructed. The judges said the blanket collection of such personal data, for a wide range of purposes far beyond serious crime and terrorism and without detailed safeguards, amounted to a severe incursion of privacy. They set out 10 principles that any new legislation needed to include to comply with human rights law. These included restricting data retention to that connected to a threat to public security covering a particular time period, location or specific suspects, and limiting retention periods to what was "strictly necessary".

Privacy campaign groups fear the move will simply mean the continuation of "privatised snooping". Jim Killock, the director of Open Rights Group, said: "Forcing ISPs to retain the data of every UK citizen is disproportionate and unnecessary. Rather than rushing through a new law, let's get parliament to look at this and get this right. If the government is to bring forward legislation, it must comply with the 10 principles set out in the ECJ judgment, in particular the ending of the mass retention of our personal data. This is no longer acceptable."

Emma Carr, acting director of the Big Brother Watch privacy campaign, added: "It is a basic principle of a free society that you don't monitor people who are not under suspicion. Considering the snoopers' charter has already been rejected by the public as well as by the highest court in Europe, it is essential that the government does not rush headfirst into creating new legislation. The EU's data retention laws privatised snooping, meaning companies were paid by governments to record what citizens were doing and retain that information for a year. We need to get back to a point where the police monitor people who are actually suspected of wrongdoing rather than wasting millions every year requiring data to be stored on an indiscriminate basis."

High Court Rules - Detained Fast Track System - Has Serious Failings

A High Court judge has ruled that a system for fast-tracking asylum claims has “serious failings” and is being operated unlawfully by the Government. The Detained Fast Track system (DFT), which keeps asylum seekers in detention while a decision on their case is speeded through by the Home Office, is used for around a fifth of people claiming asylum in the UK. The system was intended for only the most straightforward cases, to cut down the administrative burden and the risk of people disappearing. But instead victims of torture, human trafficking and rape are wrongly caught in it, Mr Justice Ouseley. The Judge found several serious failings within the system and particularly highlighted the unjustifiable delay in allocating lawyers. This, he said, meant “the DFT as operated carries an unacceptably high risk of unfairness”. “In too high a proportion of cases, and in particular for those which might be sensitive, the conscientious lawyer does not have time to do properly what may need doing.” He also demanded that the system be changed to allow the earlier instruction of lawyers.

Shadow Minister for Immigration, David Hanson, said: "This ruling is an embarrassment for the government who administer a system that is judged inherently unfair and has now lost credibility. We need strong borders with fair and effective decision making but unfortunately the Home Secretary is failing on nearly all counts. This unfair policy putting at risk the UK’s history in providing shelter for those fleeing from rape, torture and oppression so Theresa May needs to urgently fix the system and ensure our asylum system makes fair, effective and

offences, the judge did not point out that this was not a case where the defendant had threatened or otherwise improperly persuaded the complainant that she should keep these offences a secret.

25. Second, when dealing with the issue of the defendant's good character, it would have been desirable for the judge to have reminded the jury that there had been no complaints of any sexual (or indeed any other wrongdoing) in the period of ten years or so since the alleged offences against the complainant.

26. Third, there were features of this case which certainly assisted the defence case. First, the fact that notwithstanding the hundreds of times the alleged offences were alleged to have occurred, no-one had heard anything or apparently becomes suspicious of any untoward behaviour by the defendant, notwithstanding that the original offences in particular were committed in a very small house where sound travelled easily and where there was no privacy. Second, the fact that the complainant voluntarily remained in close contact with the defendant into her adulthood. Third, that she delayed for so many years before making the allegations. Fourth, that this was notwithstanding the fact that she had not been threatened or prevailed upon by the defendant in any way to stay silent. Finally, his positive good character and the lack of any further offending since these alleged offences had ceased. The judge did at various points in the summing up deal with the first three matters but as we have said, he did not refer fully to points four and five.

27. In our view, in a case like this, where there is no independent supporting evidence and everything turns on the veracity of the complainant with respect to historic offences, it was highly desirable that the judge should, albeit briefly, have brought these points in the defendant's case together so that if the jury convicted, they would do so with a full understanding of the factors which might undermine the prosecution case.

28. For these reasons we consider that the summing up was defective and we cannot say that the verdicts would necessarily have been the same had an appropriate summing up been given. Accordingly, we quash all the convictions. Nicholas West v R [2014] EWCA Crim 1392

Legal Challenge to Tackle Unauthorised Smoking in Prison

A prisoner has been granted permission by the High Court to challenge the Prison Service’s refusal to allow prisoners access to a confidential telephone service that allows them to report cases of unauthorised smoking. In prisons in England, a prisoner is only allowed to smoke in his own cell with the door closed. However, a common problem reported by many non-smoking prisoners, concerned at the health risks posed by exposure to second hand cigarette smoke, is of prisoners routinely smoking in areas that they shouldn’t, including the communal areas of the prison.

Furthermore, they report prison staff generally turning a blind eye to the problem (and even occasionally smoking themselves). This is despite both smoking in an unauthorised place and those in charge turning a blind eye being criminal offences under the Health Act 2006. In the wider community the public are able to call a confidential NHS freephone Smoke-free Compliance Line to report instances of unauthorised smoking in public places. The information is passed on to the relevant local authority, the body responsible for ensuring compliance with smoking restrictions. Unfortunately in prisons, prisoners do not have access to the Compliance Line in the same way that they have access to other numbers such as Crimestoppers, the Samaritans, etc.

Leigh Day Solicitors are acting for Paul Black, currently an inmate at HMP Wymott, in a legal challenge of the prison’s refusal to allow all prisoners at the prison access to the Line. On account of his long-standing health problems, Mr Black is particularly concerned at the effects of this enforced exposure to second hand smoke on his health. Initially, in protracted cor-

Nicholas West - Convictions for Indecent Acts with a Child, Quashed

1. The appellant was convicted unanimously at the Crown Court at Bolton before HH Judge Davies of ten counts of indecent assault (counts 1-5, 7, 9, 11,13 and 15) and four counts of indecency with a child (counts 10, 12, 14 and 16). These were all specimen counts reflecting, it was alleged, regular offending. Counts 1 to 8 involved offences occurring at the family house in Elizabeth Street and counts 9-16 in a different house in Elmwood Grove after the family had moved.

2. On 26th April 2013 he was sentenced by the judge to 6 years on all the indecent assaults concurrent with each other, save for count 9 where the sentence was 6 years consecutive; and 6 years concurrent on each of the indecency with a child counts. The total sentence was therefore 12 years. A sexual offences prevention order was also imposed. 3. He was acquitted by the jury on the judge's direction of counts 6 and 8 (indecency with a child) and 17 (indecent assault).

4. He appeals against conviction by leave of the single judge who gave permission for the appeal to go forward on two grounds. The first was that the judge's summing up on the burden and standard of proof was defective. The second was that this was an exceptional case where the court should have a lurking doubt about the safety of the conviction. In fact at the hearing itself the emphasis of the appeal shifted. Ms Gerry QC, who was counsel for the appellant before us but was not trial counsel, submitted essentially that there were a number of failings in the summing up whose cumulative effect was that it was not a fair or balanced summing up and failed to ensure that the defendant's case was fully and fairly placed before the jury. She did also contend that the judge was wrong not to stop the case at half time (notwithstanding that he had not been asked to do so) and she advanced the lurking doubt argument. These last two points were not pressed with much conviction and it is sufficient to say that we think there is no merit in either argument.

Summing up - 20. In our judgment, whilst this does fairly indicate the difficulties in assessing the reliability of the evidence of witnesses, particularly young children, after such a length of time, it suggests that the disadvantages apply equally to the prosecution and defence alike. That is not, in our view, adequate given that the burden lies on the prosecution. In JS Sir Christopher Holland dealt with a similar weakness in the summing up as follows: "At no stage did the judge draw the jury's attention to the potential impact of delay upon the burden and standard of proof. It is rigorous attention to the latter that ultimately secures a trial that is fair: it is for the Prosecution to surmount the impact of delay upon the cogency of the evidence."

21. In our judgment, this was a case where the judge ought to have emphasised that if the jury considered that the defendant may have been prejudiced by the delay, they ought to have regard to that fact when considering whether the prosecution had made them sure of the defendant's guilt.

22. There is an additional point to make about this direction. The judge is telling the jury that they "have to think about" the fact that it cannot be known whether the evidence would have assisted prosecution or defence. That might certainly suggest to the jury that they were being invited to form a view as to which party is more likely to have been prejudiced. Although we have no doubt that the judge did not intend that the jury should speculate in that way, that is a perfectly sensible interpretation of his direction, notwithstanding that elsewhere he has told them that they must not speculate where there is a lack of evidence.

23. There are three further areas where we have concerns about the summing up. Whilst in our view they would not on their own have rendered the verdicts unsafe, they reinforce our doubts about the safety of the conviction.

24. First, when dealing with the reasons why there had been the delay in reporting these

quick decisions." Inadequate checks mean that the most vulnerable asylum seekers, such as victims of torture, are not being identified and pulled out of the fast track.

The case was brought by the charity Detention Action against the Home Office. The charity's director Jerome Phelps said: "We are delighted that the High Court has recognised that asylum seekers are being detained in an unlawful process. It is unfortunate that the government has spent years ignoring such warnings from UN and independent monitoring bodies. This is good news for people in detention facing return to torture, but it is also good news for British justice."

The Helen Bamber Foundation reports experiencing a significant increase in referrals of survivors of torture, human trafficking and other forms of human cruelty to them from the Detained Fast Track. The foundation is now calling for an urgent review of its operation. TJ Birdi, executive director of the Helen Bamber Foundation, said: "For years we have worked with survivors of extreme human cruelty who have been routed into the detained fast track for administrative reasons, not because of any crime. We welcome this decision highlighting the unfairness of a system that compounds the psychological trauma of those who deserve to be protected, and recognises the injustices people have had to endure."

The policy was introduced in 2002 at a time when there were four times as many asylum applications and experts argue it is no longer proportionate. Since 2008, the United Nations High Commissioner for Refugees has expressed concern about the operation of the UK's Detained Fast Track process in published audits of the DFT.

Raj, a survivor of torture from Sri Lanka who was released from the Detained Fast Track last month, said: "The whole DFT process overwhelmed me. The fear of returning to Sri Lanka gave me flashbacks of my torture. No one told me what was going on. It felt like they had decided not to believe me even before we started the interview. It was like a show trial. They just wanted me out of the room, out of the country, as fast as possible."

Refugee Council chief executive, Maurice Wren, said: "Today's judgment is extremely significant. However, it fails to acknowledge the reality that the Detained Fast Track system is fundamentally unjust and can never achieve fairness. The whole purpose of the Detained Fast Track is to condemn innocent people to a Kafkaesque procedure, solely on the say-so of Home Office officials, because it's politically and administratively convenient to do so.

A Home Office spokeswoman said: "We are considering the judgment in detail and concentrating in particular on the areas in which the court said we need to improve. The judgment is complex and until the court has ruled on its effect it would be premature to comment on the precise implications. Detained Fast Track is a process that is playing a significant role in saving taxpayers money by allowing us to remove those with no right to be in UK at the earliest opportunity and will continue to be a key part of the government's response to managing asylum numbers." Emily Dugan, Indpendent, 09/07/14

Pre-Interview Disclosure

David Pickover for Police Oracle, examines the legislation surrounding pre-interview disclosure, clarifying what an officer is legally bound to divulge to a suspect prior to interview. Some defence solicitors ask for pre-interview disclosure before their clients are interviewed in respect of criminal offences. One or two officers accede to their requests while others refuse to give them anything. Some will only provide pre-interview disclosure of material if it suits their purpose. What does the law say on the topic?

The law was clarified by the House of Lords (now the Supreme Court) in the case of

Ward v Police Service of Northern Ireland (2007). Owen Ward was arrested under the provisions of the Terrorism Act 2000 on the basis of his suspected involvement in a bank robbery in Belfast. During his detention a couple of applications were made for his continued detention in police custody and a third such application for was made some seven days after his arrest. On this last occasion a superintendent gave evidence of the fact that, since his arrest, Ward had been interviewed on nine separate topics and his further detention was now being applied for in order that he might be interviewed on a further five.

In order to satisfy himself that the topics had not been addressed in previous interviews, the judge determining the application wanted to know the subject matter of the five areas. The lawyer acting on behalf of the police submitted that neither the suspect nor his legal representatives should be present in court when the five topics were disclosed by the superintendent. Overruling defence objections the judge determined the application excluded Ward and his legal representative from the proceedings as the subject matter of the proposed interview was disclosed. Once the superintendent had given evidence of the intended lines of questioning, Ward and his lawyer were re-admitted to the court proceedings.The judge granted the application without Ward and his legal representative being apprised as to what had taken place in their absence.

Aggrieved by what had taken place, Ward's lawyer sought a judicial review of the judge's decision to extend the warrant of further detention and his exclusion of Ward and his legal representative from part of the proceedings. Ward's application for a judicial review was dismissed, which prompted an appeal by Ward to the House of Lords, now the Supreme Court.

The judgement of the House of Lords records that the power to prohibit the detainee and his solicitor from part of the application proceedings included the power not to advise the person the subject of the application and his legal representative of what had taken place in their absence. The suspect was entitled to be told nothing more than the reason for his further detention; namely, that it was to obtain relevant evidence by interviewing him. In this regard, it should be borne in mind that Police and Criminal Evidence Act Code of Practice C demands that when a person is interviewed they must be informed of the nature of the offence they are to be interviewed about.

In delivering the judgement of the House of Lords in the Ward case, Lord Hope addressed the wider issue and that which is the nub of this question - how much advanced information a suspect or his legal representative is entitled to before the commencement of an interview.

In this regard the House of Lords ruled - . there was no rule of law requiring the police to disclose to a suspect the subject matter of questions they intended to put to him during interview. . . . . the police were under no duty to disclose in advance the topics they intended to cover in the interview, since there was no requirement in law for them to do this

Focusing on the practicalities of the issue, Lord Hope pointed out that in some cases prior disclosure of interview topics would not necessarily prejudice police investigations but in other cases it may well do These were matters best left to the judgement of the officers conducting the interview. From all this it is very clear that - . . the suspect and his legal representative has no right to pre-interview disclosure and in particular, no right to discuss matters which might indicate the strength, nature and weight of the evidence against them . . it is the prerogative of the interviewing officer to decide what, if anything, he discloses to the suspect or his legal representative prior to the commencement of the interview the police are perfectly entitled to withhold information from the interviewee until he is interviewed

Jeremy Bamber: Comment on the Kevin Nunn Disclosure Supreme Court Ruling

The Supreme Court ruled upon the Kevin Nunn case recently when the judges decided prisoners should not retain the same rights concerning disclosure of the evidence as they had pre-trial. Once an individual is convicted they cannot simply request access to documents or forensic samples as they could, had such a request been submitted pre-trial.

This stance by the Supreme Court judges is puzzling me. What they are saying is the Criminal Cases Review Commission (CCRC) can be trusted to request any document or forensic sample to be re-tested and re-examined as they have what is known as 'Section 17 Powers,' (S.17) to request disclosure of everything should they choose to do so.

At one level this statement is 100% correct, but the Supreme Court judges are well aware of what the reality is. The CCRC will not deploy their powers under S.17 in 99% of the applications made to them for further investigations. They have so many requests for help in re-investigation of possible miscarriages of justice that a case workers sifting process can take many years to be completed and the person in jail and contesting their conviction has almost no opportunity to search for 'fresh evidence' capable of casting real doubt about the safety of their conviction.

CCRC require the applicant to submit compelling fresh evidence before deploying their S.17 powers, the classic circular argument 'I can only submit fresh evidence if I can obtain new material from the police/CPS that has not been disclosed to me previously.' The police and CPS won't accept my requests for fresh material to be made available to me unless I present a compelling argument to the CCRC first. Innocent people will have no insight into the circumstances surrounding the crime they are convicted of. Therefore, they won't have any idea about what areas of the evidence it was that police used against them which should be open to questioning its validity. An innocent person will know nothing more than the fact they didn't do it.

In my own case I've had to suggest specific reasons why the silencer evidence was wrong. I also had to set out how I believe the silencer evidence was falsified using snippets of information gleaned from random documents. As more and more material evidence was disclosed to me during the last 28 years (particularly since the 2002 appeal) my arguments got closer and closer to the truth. Multiple police enquiries and 16 years with the CCRC as well as two appeal hearings and a trial, along with tens of thousands of hours hard work reviewing three and a half million pages of case documents and it is only now we know what Essex police concealed about the silencer. Since 2002 we have had to fight tooth and nail to obtain two pieces of information from police to be disclosed under S.17 by the CCRC and even now the CCRC are unable to locate original documents using their powers under S.17 because they have been 'mislaid' by Essex police.

Discovering what the actual truth was has taught me a very valuable lesson. Most of all I have never doubted that justice would prevail no matter what: you never know what's around the next corner. I feel for Kevin Nunn and all of his supporter's but the truth will find a way to reveal itself large and so long as you stay strong on your path when a corner comes along the trick is to ensure that you look around every one because around that next bend may be the answer you've been looking for. Do I think disclosure should be automatic on request? No, I don't, but the hurdle that needs to be jumped should be set very low. In my case it shouldn't have been necessary for me to wait almost 30 years for the true facts to be discovered by piecing together documents—that seems a long time. - "Wrong doing can only be avoided if those who are not wronged feel the same indignation at it as those who are." Solon, (c. 638 – 559 BCE)

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