

## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

### Current Membership

#### HOUSE OF LORDS

Lord Bowness  
Lord Campbell of Alloway  
Lord Judd  
Lord Lester of Herne Hill  
Lord Plant of Highfield  
Baroness Stern

#### HOUSE OF COMMONS

Mr Douglas Carswell MP (Conservative, *Harwich*)  
Mary Creagh MP (Labour, *Wakefield*)  
Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)  
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)  
Dan Norris MP (Labour, *Wansdyke*)  
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)

### Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

### Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm).

### Current Staff

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## Summary

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In this Report, the Committee analyses progress in implementing judgments of the European Court of Human Rights which have found the UK to be in breach of the European Convention on Human Rights (ECHR). The Committee has continued the practice of its predecessor Committee in the last Parliament, of monitoring the general implementation measures put in place following such judgments, by writing to the relevant Minister requesting information about the implementation steps proposed. This report publishes the Committee's correspondence with Ministers regarding ECtHR cases, and analyses the progress made towards implementation in each case.

In Chapter 2 of the Report, the Committee considers some of the general legal and procedural issues which have arisen in the implementation of ECtHR judgments. It reiterates the recommendation of the previous committee that the government should make more up-to-date information on implementation available to the public (paragraph 7).

The Committee notes the delay in the implementation of some ECtHR judgments is a matter of concern, and highlights a number of outstanding cases where discussions on the implementation measures required are continuing (paragraphs 8 to 14).

The Committee notes that successful applicants to the ECtHR may have difficulty in finding a remedy in their own case, since general implementation measures may not apply retrospectively to them. The Committee recommends that, in drafting legislation or remedial orders following ECtHR judgments, consideration should be given to addressing the circumstances of the individual applicants in the case which led to the remedial measures, as well as of those in analogous situations (paragraph 15).

A further issue is that, where the Convention violation occurred before the coming into force of the Human Rights Act 1998, there is no domestic law obligation to remedy the violation, following the decision of the House of Lords in *In re McKerr*. The Committee acknowledges the Government's assurance that it would apply the same standard of implementation to pre and post Human Rights Act cases, but notes with concern the delay in implementing *McKerr* and other similar cases (paragraph 18).

The Committee points out that where the ECtHR finds that a conviction has been obtained in breach of Convention rights, it will not always be possible to re-open the case and review the conviction. The Committee recommends that the Government should investigate the possibility of reform of the law to allow for the re-opening of proceedings in appropriate cases following judgments of the ECtHR (paragraph 23).

In Chapter 3, the Committee comments on the implementation measures taken in a number of cases which it has reviewed in the course of this Parliament. It considers in particular:

- *Steel and Morris v UK*, concerning the right to fair trial and freedom of expression of the defendants in the "McLibel" case;
- *Beet v UK and Lloyd v UK* concerning the right to fair trial and right to liberty of persons imprisoned for failure to pay fines or local taxes;

- *Crowther v UK*, concerning the right to fair trial within a reasonable time in proceedings for enforcement of a confiscation order;
- *King v UK*, concerning the right to fair trial within a reasonable time in Inland Revenue investigations and appeals;
- *Hirst v UK*, concerning the right of prisoners to vote, on which the Committee has previously commented in its report on the Electoral Administration Bill;
- *Whitfield v UK*, concerning the right to an independent tribunal and right to legal representation of prisoners charged with disciplinary offences;
- *Blackstock v UK*, concerning the impact on the right to liberty of delays in reviewing the detention of a discretionary lifer prisoner;
- *Hooper v UK*, concerning the right to legal representation and to make representations to the court in proceedings to bind over to keep the peace;
- *Henworth v UK*, concerning the right to trial within a reasonable time in criminal proceedings;
- *Massey v UK*, also concerning delays in criminal proceedings;
- *B and L v UK*, concerning the prohibition on marriage between father-in-law and daughter-in-law, where the Committee is shortly to report separately on a draft remedial order introduced to rectify the incompatibility;
- *Roche v UK*, concerning the right to respect for private life and access to information on tests in which the applicant participated at Porton Down Chemical and Biological Defence Establishment; and
- *Yetkinsekerci v UK*, concerning delays in criminal proceedings.

# 1 Introduction

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## Purpose of this Report

1. Since the Human Rights Act 1998 came into force in October 2000, applicants alleging breach of their human rights protected under the European Convention on Human Rights (ECHR) have been able to bring their claims before the domestic courts. Alongside this advance in the domestic law of human rights, the European Court of Human Rights (ECtHR) at Strasbourg, to which there is a right of individual petition from all Council of Europe states, retains its vital role as the court of ultimate resort in UK human rights disputes. The judgments of the Court do not take effect in our domestic legal system, but they do bind the UK as a matter of international law. Effective implementation of judgments of the Court remains an important part of the UK's system of human rights protection, ensuring that incompatibilities will be remedied without the need for further resort to the domestic or international courts.

2. Implementation of judgments of the ECtHR is supervised within the Council of Europe by the Committee of Ministers,<sup>1</sup> which meets<sup>2</sup> regularly to review the implementation measures taken by states in response to judgments of the Court, both in providing individual redress for the applicant, and in introducing necessary general measures, including changes to law, policy or administrative practice, to ensure that the violation does not re-occur.

3. To be effective, this international review must be accompanied by close scrutiny at a national level of the implementation of Convention rights and judgments of the ECtHR. The importance of implementation measures at national level, both in respect of the Convention rights generally, and in respect of particular judgments of the ECtHR, has been emphasised by the Council of Europe,<sup>3</sup> most particularly in the package of measures for reorganisation of the European Court of Human Rights under Protocol 14 ECHR. A series of Recommendations of the Committee of Ministers, agreed alongside the Protocol, propose enhanced measures of national implementation.<sup>4</sup>

4. Seeking to contribute to the scrutiny of implementation measures within the domestic political process, our predecessor Committee adopted the practice of monitoring judgments of the ECtHR finding the UK to be in violation of the Convention rights. Where the judgments raised issues of general implementation, as well as individual redress, the Committee wrote to the relevant Minister to request information about the implementation steps proposed. The Committee published its correspondence in its Report on the Work of the Committee in the 2001–2005 Parliament, and recommended that we, in continuing the Committee's work in the present Parliament, should develop

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1 Article 46 ECHR

2 At meetings of Ministers' Deputies of the Committee of Ministers

3 Explanatory Report on Protocol 14 ECHR, para. 14

4 First Report of Session 2004–05, *Protocol No 14 to the European Convention on Human Rights*, HL Paper 8, HC 106, paras. 40–66

and make more accessible this strand of our work by regularly publishing this correspondence.<sup>5</sup>

5. The purpose of this report is therefore to provide an update on our review of implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the Convention, and to inform Parliament about the current issues of compliance with Strasbourg judgments. In Chapter 2, we consider some of the systemic issues which are apparent from our scrutiny of ECtHR judgments. In Chapter 3, we analyse the implementation measures taken in respect of recent Strasbourg judgments, on which we have sought information from the Government. We annex to the report our correspondence with Ministers in respect of these cases. We intend to publish further progress reports on our review of implementation of judgments, at regular intervals.

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5 Nineteenth Report of Session 2004–05, *The Work of the Committee in the 2001–2005 Parliament*, HL Paper 112, HC 552, para.128

## 2 Procedures for the Implementation of Judgments

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6. Our predecessor Committee identified in its Report at the end of the last Parliament a number of general problems in the implementation of judgments, in particular: the delays in the process of implementation of judgments, which in some cases had left both general and individual implementation unresolved for many years; the lack of transparency in the implementation process and the lack of an active approach to dissemination of judgments and education and training on the implications of judgments.<sup>6</sup>

7. The length of time taken to implement certain cases is a continuing problem, on which we comment further below. We hope that our own monitoring of judgments of the ECtHR, and the publication of regular progress reports on the matter, will contribute to the transparency of the implementation process. **We also reiterate the recommendation of our predecessor committee that greater efforts should be made in government to make up-to-date information on ECtHR judgments available to the general public.** Regarding the need for an active approach to the provision of information on judgments against the UK, we intend to scrutinise implementation measures in individual cases with this in mind. We now turn to consider the systemic problems which exist for the implementation of judgments as regards the individual applicants before the Strasbourg Court.

### Delay in Implementation: Outstanding Judgments

8. As our predecessor Committee previously commented, it is highly unsatisfactory that successful applicants in Strasbourg cases, as well as persons in a similar position to such applicants, may be left in a position of uncertainty for several years as to how their case, or the law affecting it, may be resolved. There are currently 50 judgments outstanding against the UK in respect of which discussions on either general or individual implementation measures with the Committee of Ministers have yet to be resolved.<sup>7</sup>

9. There are several judgments against the UK in relation to which general, as well as in some cases individual, implementation measures have been outstanding for a considerable time. Although we have not comprehensively surveyed all outstanding cases, we note below a number of these judgments, which were of particular concern to the Committee in the previous Parliament.

10. The series of cases concerning the use of force by the security forces in Northern Ireland, *Jordan*, *McKerr*, *Finucane*, *Kelly*, *Shanaghan*, and *McShane*, are notable for the considerable delay there has been in agreeing appropriate implementation measures, in particular in respect of establishing new independent inquiries in the individual cases concerned.<sup>8</sup> Whilst it is outside our remit to comment on individual implementation

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6 Nineteenth Report of Session 2004–05, op cit, paras. 231–234

7 HL Deb, WA34, 10 January 2006

8 The cases of, *Jordan*, *McKerr*, *Finucane*, *Kelly*, *Shanaghan*, *McShane*. (App Nos 24746/94; 28883/95; 29178/95; 30054/96; 37715/97 and 43290/98)



measures in particular cases, we note with concern that this group of cases remains unresolved.

11. It is to be welcomed that *A v UK*,<sup>9</sup> one of the longest outstanding judgments against the UK, is now considerably closer to being resolved, following the enactment of the Children Act 2004. In the previous Committee's report on the Children Bill<sup>10</sup> it was accepted, as the Committee of Ministers has also accepted, that the amended law under the Children Act would be likely to be sufficient to remedy the incompatibility found in *A*. We note however that the Committee of Ministers is not yet fully satisfied that the implementation of the new legislation in practice will ensure compliance with Article 3 ECHR.

12. We have also noted with particular concern the delay in implementation of the case of *JT v UK*,<sup>11</sup> concerning the "nearest relative" provision in the Mental Health Act. In March 2000, the Court accepted a friendly settlement in the case by which the Government undertook to amend the law to allow for persons detained under the Mental Health Act to apply to change the person designated as their nearest relative.<sup>12</sup> The law on this point was subsequently the subject of a declaration of incompatibility in the domestic courts in the case of *M v Secretary of State for Health*.<sup>13</sup> The previous Committee conducted a long-running correspondence with the Department of Health in regard to the implementation measures to be taken following these cases, and the possibility of a remedial order.<sup>14</sup> Although it was accepted by the Government in March 2004, following representations by the Committee, that the incompatibility should be remedied by way of an urgent remedial order,<sup>15</sup> by 2005 it had been decided that the matter was too complex to allow for remedy by this route, and that it would need to be dealt with by primary legislation in the forthcoming Mental Health Bill.<sup>16</sup> The continuing delays and controversies surrounding the draft Mental Health Bill, however, have meant that this legislation has not yet been introduced, which has resulted in what in our view is an unacceptable delay in remedying a breach of Convention rights identified by both the domestic and the Strasbourg courts. The case is a particularly clear illustration of the difficulties of remedying incompatibilities by way of primary legislation, which is subject to great competition for Parliamentary time, and which may be delayed or defeated by considerations unrelated to the remedial clauses.

9 (1999) 27 EHRR 611, judgment of September 1998. *A v UK* concerned the compatibility with Article 3 ECHR (freedom from inhuman or degrading treatment) of the defence of "reasonable chastisement" to a charge of assault on a child. In *A*, a stepfather who had severely beaten his stepson was acquitted of assault occasioning actual bodily harm, having successfully pleaded the defence. The ECtHR held that the availability of the defence in the case breached the positive obligation on the State to protect against inhuman and degrading treatment contrary to Article 3.

10 Twelfth Report of Session 2003–04, *Scrutiny of Bills: Fifth Progress Report*, HL Paper 93, HC 603, paras.1.1–1.35; and Nineteenth Report of Session 2003–04, *Children Bill*, HL Paper 161, HC 537

11 App No 26494/95. In *JT*, the applicant was detained under the Mental Health Act 1983. Under the Act, a detained person's "nearest relative" has a right to apply for the discharge of the detained patient, and a right to be informed of certain decisions concerning the detained patient. The applicant's mother was designated as her nearest relative, against the applicant's wishes. The applicant argued that the disclosure of information concerning the applicant's detention and mental condition to the applicant's mother as her nearest relative, and the absence of sufficient safeguards to allow for the appointment of a different nearest relative where the nearest relative powers were not being exercised in the interests of the detained person, breached Article 8 ECHR (the right to respect for private life). The European Commission of Human Rights considered that there had been a breach of Article 8 (Decision of 20 May 1998)

12 Judgment of 30 March 2000

13 [2003] EWHC 1094 (Admin)

14 Nineteenth Report of Session 2004–05, *op cit.*, Appendix 9

15 *ibid.*, Appendix 9d

16 *ibid.*, Appendix 9e

It further makes the case, in our view, for greater efforts to be made to effect implementation by way of remedial order.

13. A further case in which implementation has been significantly delayed is *Connors v UK*.<sup>17</sup> In that case, the Court found that the summary eviction of a family from a local authority gypsy caravan site, without reasoned justification or sufficient procedural safeguards, breached the right to respect for private life and the home under Article 8 ECHR. The previous Committee commented on implementation of this judgment in its scrutiny of the Housing Bill in the last Parliament. Government amendments were made to the Bill during its passage through Parliament which provided some further safeguards for residents on local authority sites, but fell short of full security of tenure equivalent to that available under the Mobile Homes Act 1983, and were not sufficient to remedy the incompatibility found in *Connors*.<sup>18</sup> The Government informed the previous Committee that, given the complexity of these issues, they were to be further considered by the Law Commission as part of its review of rented tenure.<sup>19</sup> It was the view of the previous Committee, however, that the incompatibility could have been relatively easily rectified by an amendment to the definition of “protected site” in the Mobile Homes Act 1983, which could have been made in the Housing Act 2004, and it is regrettable that this opportunity was not taken to provide speedy and effective implementation of the judgment. We will continue to monitor progress in the implementation of this judgment.

14. In *Glass v UK*,<sup>20</sup> the Court held that medical treatment administered to a severely ill child against the wishes of his family breached his right to physical integrity under Article 8 ECHR. In particular, the Court was critical of the hospital trust’s failure to bring the case before the High Court for guidance. The Government responded to the inquiries of the previous Committee, stating that it would be writing to Chief Executives of trusts to draw attention to the judgment and to remind them of the UK policy framework and the circumstances in which doctors need to seek the intervention of courts in the event of parental objection. Overall Department of Health guidance on consent would also be revised to take account of new legislation as well as court judgments.<sup>21</sup> We note that the Government subsequently informed the Committee of Ministers that the release of the revised guidance was awaiting the enactment of the Human Tissue Bill and the Mental Capacity Bill, since as the guidance was also intended to deal with the law as amended by these Bills.<sup>22</sup> **Both Bills have now been enacted, and we have therefore written to the Department of Health requesting copies of the new guidance when it is published.**<sup>23</sup>

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17 App No 66746/01, Judgment of 27 May 2004

18 Twentieth Report of Session 2003–04, *Scrutiny of Bills: Eighth Progress Report*, HL Paper 182, HC 1187, para. 3.3 and Appendix 2(b); Fourteenth Report of Session 2004–05, *The Convention on the Elimination of Racial Discrimination*, HL Paper 88, HC 471, paras 108–111

19 Twenty-third Report of Session 2003–04, *Scrutiny of Bills: Final Progress Report*, HL Paper 210, HC 1282, Appendix 2c, letter from Rt. Hon Keith Hill MP, Minister of State for Housing, ODPM

20 App No 61827/00

21 Nineteenth Report of Session 2004–05, *op cit.*, para.221

22 Committee of Ministers, Ministers’ Deputies Annotated Agenda, CM/Del/OJ/DH(2005)948 Volume I Public, 14 December 2005, 948th meeting, DH, 29–30 November 2005, Vol 1

23 Appendix 1

## Remedies for individual applicants to the ECtHR

15. There have been several legal barriers encountered by successful applicants to the Strasbourg Court who seek to give effect to the Strasbourg judgment in domestic law. First, where remedial legislation is introduced following a Strasbourg judgment, it may not, unless it is given retrospective effect, apply to the particular circumstances of the applicant's case. This was in issue, for example, in early versions of the Gender Recognition Bill, which in its draft form would not have allowed for recognition of existing transsexual marriages, including those of the successful applicants to the Strasbourg and domestic courts,<sup>24</sup> whose cases had triggered the remedial legalisation. Following recommendations by the JCHR and others,<sup>25</sup> the Bill was amended to apply retrospectively to the applicants' cases.<sup>26</sup> The discussions on this point in the Bill illustrate a general difficulty in the implementation of judgments in respect of individual applicants to the ECtHR, and highlight the need for remedial orders, or legislation designed to remedy the violation, to make specific provision for the individual circumstances of applicants and those in analogous situations. **We recommend that in drafting remedial orders or legislation, consideration should be given to addressing the circumstances of the individual applicants in the case which led to the remedial measures, as well as the circumstances of those in analogous situations.**

## Retrospective application of the Human Rights Act

16. A further issue relates to domestic remedies for violations of the Convention rights, which have been the subject of judgments by the ECtHR, but which occurred before the Human Rights Act came into force in October 2000. The House of Lords held in *In Re McKerr*<sup>27</sup> that where the initial violation occurred before the coming into force of the Human Rights Act 1998, domestic law does not require the Government to remedy the breach, as the Act does not apply retrospectively. In that case, which followed the ECtHR's decision in *McKerr v UK*,<sup>28</sup> that the death of the applicant's father had not been the subject of an effective and independent investigation as required by Article 2 ECHR, there was no domestic law obligation to initiate an Article 2 compliant inquiry.

17. One impact of the House of Lords decision in *McKerr* has been uncertainty in relation to the duty to interpret the scope of Northern Ireland inquests into pre-October 2000 deaths compatibly with the right to life under Article 2 ECHR. In recent oral evidence, the Committee on the Administration of Justice (CAJ) told us that there was a risk of developing a two-tier inquest system, with wider, Article 2 compliant inquests taking place into post-Human Rights Act deaths, and a narrower inquiry, falling short of Article 2 requirements, applying in respect of deaths which occurred before the Human Rights Act came into force.<sup>29</sup>

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24 In *Goodwin and I v UK* (2002) 35 EHRR 447 and in the House of Lords in *Bellinger v Bellinger* [2003] 2 WLR 1174

25 Nineteenth Report of Session 2002–03, *Draft Gender Recognition Bill*, HL Paper 188-I, HC 1276-I, paras. 42–48

26 Fourth Report of Session 2003–04, *Scrutiny of Bills: Second Progress Report*, HL Paper 34, HC 303, para. 4.22

27 [2004] UKHL 12

28 (2001) 34 EHRR 20

29 Transcript of Oral Evidence, Wednesday 7 December 2005, Q 108 [Ms Gilmore]

18. Our predecessor Committee raised concerns regarding the impact of *In re McKerr*, noting that the judgment called into question the UK's compliance with Article 13 ECHR, the right to a remedy for breach of the Convention rights, as well as with the obligation to implement decisions of the ECtHR under Article 46, and expressing concern that the effect of the judgment was to make domestic law inconsistent and in some cases ineffective in implementing judgments of the ECtHR. We reiterate that concern here. **The Government assured the previous Committee that it did not contend that there was any lesser obligation to implement judgments arising out of pre-Human Rights Act events.<sup>30</sup> We trust that this understanding will be applied in the implementation of judgments concerning pre-October 2000 violations. We note with concern however the continuing delay in implementing the judgment in *McKerr v UK*, and other similar cases.**

## Re-opening proceedings following judgments of the ECtHR

19. A particular legal obstacle to the implementation of judgments in UK law is that where the ECtHR finds that a conviction has been obtained on the basis of legislation in breach of Convention rights, it will not always be possible to re-open the case and review the conviction. In the case of *R v Lyons and Saunders*,<sup>31</sup> the applicants' convictions had been found by the ECtHR to have been obtained in breach of Article 6 rights of freedom from self-incrimination.<sup>32</sup> Following the judgment, the UK took steps to remedy the general incompatibility identified by the Strasbourg court, amending the Companies Act 1985. This amendment did not affect the individual circumstances of the applicants' case, since it was not retrospective. The applicants' case was referred to the Court of Appeal by the Criminal Cases Review Commission, but the Court of Appeal found that the convictions remained safe. This decision was upheld by the House of Lords, which considered itself bound to uphold the convictions as safe, applying the legislation in force at the time of the trial, rather than the law as subsequently amended.

20. A further issue is that some criminal cases where the ECtHR has found an incompatibility cannot be referred to the courts by the Criminal Cases Review Commission (CCRC), because the incompatibility arises from substantive, rather than procedural law. For example, the CCRC could not reopen the convictions of the applicants in the case of *ADT v UK*,<sup>33</sup> because the violation arose from the substantive criminal law rather than from a procedural breach.<sup>34</sup>

21. The majority of Council of Europe states allow for criminal proceedings to be reopened following judgments of the ECtHR, and a smaller number also allow for the reopening of civil proceedings. The Council of Europe institutions have repeatedly emphasised the importance of mechanisms to allow for the re-opening of proceedings. The Committee of

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30 Nineteenth Report of Session 2004–05, op cit., para. 224–227

31 [2002] UKHL 44

32 In *Saunders v UK*, (1996) 23 EHRR 313, where the ECtHR held that the applicant's conviction for offences related to illegal share dealing breached the Article 6(1) right to freedom from self-incrimination because of the use at his trial of statements obtained from him by DTI inspectors under statutory powers of compulsion. The applicant had been convicted on a number of counts of theft and conspiracy and sentenced to five years' detention.

33 App No. 35765/97, Judgment of 31 July 2000

34 In *ADT*, the applicant had been convicted under the Sexual Offences Act 1956 of gross indecency between men, following a police search of his home and the seizure of videotapes. The Court held that the prosecution and conviction of the applicant breached the right to respect for private life under Article 8 ECHR.

Ministers has recommended, in its Recommendation on the re-examination or reopening of certain cases at domestic level following judgments of the ECtHR,<sup>35</sup> that Member States should “examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention”. It particularly stresses the importance of such mechanisms in cases where the applicant continues to suffer very serious consequences from the decision of the domestic courts at issue, and where the ECtHR has found that the merits of the domestic court decision breaches the Convention, or where the domestic proceedings have involved serious procedural shortcomings contrary to the Convention, which cast doubt on the outcome of the proceedings. The Parliamentary Assembly in a report by the Committee on Legal Affairs and Human Rights’ Rapporteur on the execution of judgments, has also recommended that states which lack legislation to remedy individual applicant’s cases by reopening legal proceedings should begin work on the development of such legislation as a matter of priority.<sup>36</sup>

22. Most recently, the Committee of Ministers, in its Recommendation on the Improvement of Domestic Remedies,<sup>37</sup> agreed alongside Protocol 14 to the ECHR which reorganised and streamlined the workings of the European Court of Human Rights, suggested that where the Court has delivered a judgment pointing to a structural deficiency in national law or practice, and a large number of repetitive cases raising the same problem are likely to be lodged, the state concerned should ensure that other potential applicants have a rapid and effective remedy allowing them to apply to a competent national authority and able to obtain redress at national level. It also suggested that such remedies at the national level should be open to people who have already been affected by the problem prior to its resolution, which might require giving new or existing remedies a retrospective effect.

23. We raised this issue in a recent oral evidence session with Harriet Harman QC MP, Minister of State at the Department for Constitutional Affairs with responsibility for human rights, and she undertook to give further consideration to the matter.<sup>38</sup> **We recommend that the Government should investigate the possibility of reform of the law to allow for the re-opening of proceedings in appropriate cases following judgments of the ECtHR, in order to allow for effective implementation of judgments in all cases. We intend to return to this issue in future work we undertake on the effectiveness of remedies for breach of the Convention rights.** We also note that the case of *Price v Leeds City Council*,<sup>39</sup> currently before the House of Lords, which concerns the application of contrary decisions of the House of Lords and the ECtHR, may be relevant to this issue.

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35 Recommendation No. R (2000) 2, 19 January 2000

36 Committee on Legal Affairs and Human Rights, Report on the Execution of Judgments of the European Court of Human Rights, Doc 8808, Para12.i.d and para 76.

37 Rec. (2004) 6

38 Transcript of Oral Evidence, Monday 16 January 2006, QQ 55–61. This was confirmed in a supplementary memorandum of written evidence from the Minister, following the oral evidence session (to be published shortly).

39 (2005) 3 All ER 573

### 3 Cases reviewed by the Committee in this Parliament

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#### *Steel and Morris v UK*<sup>40</sup>

24. *Steel and Morris v UK* concerned the non-availability of legal aid in defamation actions. The applicants in this case were the defendants in a libel action by the McDonalds Corporation (the “McLibel” case) arising out of leaflets which they distributed outside McDonalds restaurants. They were refused legal aid, and represented themselves throughout the case, with occasional voluntary help from lawyers. The trial was the longest in English legal history (lasting for 313 days) and was preceded by 28 interim applications. McDonalds were awarded £60,000 in damages against the applicants for libel. At the time of the action, the Legal Aid Act 1988 precluded the grant of legal aid in libel actions.

25. The Court held that, given the length, scale and complexity of both the factual and legal issues involved in the hearing, neither the sporadic help provided to the applicants by volunteer lawyers nor the judicial assistance and latitude granted to them during the proceedings, was sufficient substitute for competent, expert and sustained legal representation. The disparity between the representation available to McDonalds, and that available to the applicants, could only lead to unfairness in such exceptionally complex proceedings. Therefore the denial of legal aid had meant the applicants could not present their case effectively to the court and had led to inequality of arms in violation of the right to a fair hearing under Article 6.1.

26. The Court also found that the absence of legal aid amounted to a disproportionate interference with freedom of expression rights under Article 10, pointing to the importance to a democratic society of even small and informal campaign groups disseminating information and fostering public debate, including in relation to the activities of powerful commercial concerns. It further held that the size of the awards of damages made against the applicants (although never enforced against them) were so substantial compared to the applicants’ very modest means, that they gave rise to a disproportionate interference with Article 10 freedom of expression rights.

27. Since 2000, the Access to Justice Act 1999 has provided the statutory framework for civil legal aid. It retains the presumption that legal aid will not be granted in defamation proceedings, but allows the Lord Chancellor at his discretion, on the request of the Legal Services Commission, to grant legal aid in exceptional cases, including cases of defamation (section 6(8)).

28. We wrote to the Secretary of State for Constitutional Affairs on 20 October 2005<sup>41</sup> asking whether, in light of the decision in the case, consideration was being given to legislative amendment or to a remedial order to rectify the incompatibility in the case; whether guidance would be revised in relation to the discretion to grant legal aid in defamation proceedings under the Access to Justice Act 1999; and what steps had been

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40 App No 6841601, Judgment of 15 February 2005

41 Appendix 2

taken to bring the decision to the notice of the courts and the relevant decision-makers in the Legal Services Commission.

29. The Secretary of State in reply<sup>42</sup> stated the Government's view that there was no need for any specific legislative amendments or remedial orders to implement the judgment, following the coming into force of new provisions regarding exceptional grant of legal aid in the Access to Justice Act 1999. This the Government considered to be adequate to ensure that Article 6.1 rights are protected. He pointed to revised exceptional funding guidance issued since the judgment. We are grateful to the Secretary of State for providing us with a copy of this guidance.

30. We note that the revised guidance, though it refers to the *Steel and Morris* case as the “benchmark” by which the exceptional nature of a case is to be judged, retains a very high threshold for the grant of legal aid in defamation cases. Paragraph 13 of the guidance establishes that exceptional funding may be granted in three circumstances: where there is a significant wider public interest in the resolution of the case; where the case is of overwhelming importance to the client; or (the criterion relevant to compliance with *Steel and Morris*) where there are other exceptional circumstances such that without public funding for representation it would be “practically impossible” for the client to bring or defend the proceedings, or the lack of public funding would lead to “obvious unfairness” in the proceedings. The guidance goes on to note at para.14 that “the fact that the opponent is represented or has substantial resources does not necessarily make the proceedings unfair ...there must be something exceptional about the client or the case such that for the client to proceed without public funding would be practically impossible or would lead to obvious unfairness.”

31. It is certainly the case that the right to legal aid under Article 6.1 is dependent on a number of factors, including the importance of what is at stake for the applicant in the proceedings, the complexity of the law and procedure at issue in the case, and the applicant's capacity to represent his or her case effectively in court.

32. In our view the guidance would be of greater assistance if it provided more detail as to the effect of *Steel and Morris*. To advise that there must be “something exceptional” about the case which would mean that without legal aid the proceedings would be obviously unfair or practically impossible accurately states the principle in *Steel and Morris*, but does so in very general terms. In our view it would be more helpful if the guidance were to list those factors found in *Steel and Morris* to give rise to such a right to legal aid under Article 6, pointing out that the implications for the applicant of any award against them in the case; the length and complexity of the proceedings; and the disparity between the levels of legal assistance available to the parties to the case may, cumulatively, provide the exceptional circumstances which could lead to the “obvious unfairness” referred to in the guidance, and may therefore require an exceptional grant of legal aid.

33. In relation to the dissemination of the judgment, the Government points out that it has been reported in a number of reports and journals. Whilst we welcome this, we consider that, given the reliance on the judicial application of the current law in order to implement the judgment, and the general nature of the guidance referred to above, it would be

appropriate to take more active measures of dissemination, including in particular its incorporation of the judgment in training for the Legal Services Commission.

34. It is notable that the revised guidance does not make any specific reference to defamation cases, and in particular does not refer to the particular freedom of expression concerns which may arise in defamation cases where legal aid is not granted. In *Steel and Morris*, the Court found that given the substantial burden on the applicants in proving the truth of the allegations they had published, without legal aid, a fair balance had not been struck between the protection of freedom of expression and McDonald's right to protect their reputation. The lack of procedural fairness and equality of arms between the parties therefore gave rise to a breach of Article 10. In our view the guidance should make reference to the need to ensure that denial of legal aid would not disproportionately interfere with Article 10, taking into account the Strasbourg jurisprudence and *Steel and Morris* in particular.

35. In relation to the size of the damages award, the Government states in its reply, "existing provisions in the law are sufficient to enable domestic courts to take into account the defendant's means and the proportionality of an award when assessing general damages for defamation". We accept that the existing law in this regard is likely to be sufficient.

#### ***Beet v UK*,<sup>43</sup> *Lloyd and Others v UK*<sup>44</sup>**

36. The applicants in both cases had each failed to pay either local taxes such as community charge or council tax, or fines imposed by a magistrates' court. Following enforcement proceedings in the magistrates' court, it was determined in each case that the applicants' failure to pay was due to their wilful refusal or culpable neglect, and a liability order was made against each of the applicants. Each was sentenced to imprisonment, suspended on condition that periodic payments be made towards the outstanding sum. The applicants each failed to make these payments and were imprisoned. In each case, following imprisonment, the High Court quashed the order of imprisonment, and the applicants were released. At the time of the proceedings, no legal aid was available in such cases in magistrates' courts, and none of the applicants were legally represented in the magistrates' court.

37. The Court noted that, under Regulation 41 of the Community Charge (Administration and Enforcement) Regulations 1989,<sup>45</sup> it was a condition precedent to the making of a liability order that the magistrate inquire into the individual's means. Only following a means inquiry could the magistrate decide whether failure to pay had been due to wilful refusal or culpable neglect. Since no means inquiry was undertaken in these cases, the liability order was made in excess of jurisdiction and the order for detention was unlawful and therefore in breach of Article 5.1 (the right to liberty). Since, at the time of the applicants' imprisonment, there was no compensation available to them in domestic law, there was also a breach of the right to compensation for unlawful detention under Article

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43 App No 47676/99, Judgment of 1 March 2005

44 App No 29798/96, Judgment of 1 March 2005

45 The Council Tax (Administration and Enforcement) Regulations 1992; the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989; and Section 82 of the Magistrates' Courts Act 1980 (in respect of court-imposed fines) make similar provision.



5.5. The Court noted the principle that, where an individual's liberty was at stake, the interests of justice in general called for legal representation to be provided. The non-availability of legal aid therefore breached the right to legal assistance under Article 6.1 and Article 6.3.c.

38. Since the coming into force of the Human Rights Act, there is an enforceable right to compensation for breach of Article 5, and therefore the incompatibility with Article 5.5 has now been addressed. The Article 6 issues regarding legal aid have also now been dealt with: since June 1997, legal aid has been available in magistrates' courts for proceedings such as those of the applicants. The only outstanding issue is therefore compliance with Article 5.1, which was breached in these cases as a result of errors in the magistrates court in the application of regulations on local taxes and magistrates' courts' fines.

39. We wrote to the Secretary of State for Constitutional Affairs on 20 October 2005<sup>46</sup> asking what action had been taken to inform magistrates and magistrates' clerks of the judgment in this case, and what action has been taken to ensure that the relevant regulations are applied so that magistrates, in imposing imprisonment in default of payment of fines or taxes, act within their jurisdiction and thereby comply with Article 5.1.

40. The Secretary of State's reply<sup>47</sup> states that guidance to magistrates' courts following *Beet* and *Lloyd* is still in preparation and is to be circulated shortly. It is intended that the guidance will include a checklist for magistrates in conducting such cases. We broadly welcome plans for such guidance in response to the judgments, and will return to consider whether it effectively ensures Article 5.1 compliance, when the final guidance is published. **In the meantime, we have written to the Department of Constitutional Affairs asking for a copy of the current draft version of the guidance to be supplied to us.**

### *Crowther v UK*<sup>48</sup>

41. This case concerned a confiscation order made against the applicant following his conviction for importation of a controlled drug. The applicant argued that the amount of the confiscation order was wrongly calculated, and that he was unable to pay it. No steps were taken to enforce the order against the applicant for four years after the date on which payment was due. Enforcement proceedings were finally concluded eight years and five months after the applicant had been charged.

42. The Court held that the proceedings for enforcement of the confiscation order were criminal in nature, in that they formed part of the criminal proceedings for conspiracy to import drugs. It considered that the period of over four years during which Customs had commenced no enforcement proceedings against the applicant amounted to an unjustifiable delay. The fact that throughout this period the applicant was under a duty to pay the sum owing under the confiscation order did not absolve the authorities from ensuring, in accordance with Article 6.1, that the proceedings were complete within a reasonable time. The State's general obligation to ensure compliance with the reasonable

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46 Appendix 2

47 Appendix 3

48 App No 53741/00, Judgment of 1 February 2005

time guarantee in Article 6.1, applied a *fortiori* where the State was itself a party to the proceedings and responsible for their prosecution.

43. We wrote to the Paymaster General, Dawn Primarolo MP on 20 October 2005<sup>49</sup> asking what steps had been taken to inform the officials responsible for decisions on the progress of enforcement proceedings of the Article 6 requirement to determine proceedings within a reasonable time, and its application in this case; and how it was planned to evaluate progress in protecting the right to trial within a reasonable time in enforcement proceedings.

44. In her reply of 7 December 2005,<sup>50</sup> the Paymaster General noted a number of measures that have been introduced to improve the enforcement of confiscation orders since the proceedings in *Crowther*, including:

- the establishment of the Concerted Inter-Agency Criminal Finance Action Group (CICFA) in June 2002, which monitors performance in relation to confiscation proceedings and considers measures to improve efficiency in the enforcement process;
- the establishment of the Joint Asset Recovery Database (JARD) in April 2004, which records the progress of each confiscation order process, allowing agencies to monitor cases more easily;
- “incentivisation” of police performance through distributing a proportion of criminal assets recovered to the police since April 2004;
- publication of the National Best Practice Guide to Confiscation Order Enforcement in August 2003, which includes reference to the implications of *Crowther*;
- establishment by CICFA of an Enforcement Task Force (ETF) in 2003 to clear the backlog of confiscation orders and improve efficiency in the enforcement of new orders;
- the establishment of an independent Revenue and Customs Prosecution Office in April 2005, which reports to CICFA on performance in enforcement proceedings.

45. The Paymaster General further stated that Magistrates’ Courts had worked hard, in co-operation with the ETF, to equip their staff with the necessary knowledge and skills as well as improving their overall enforcement procedures and processes, and that the *Crowther* judgment had been made an integral part of all training seminars for Magistrates’ Court enforcement staff. **We welcome these measures, which appear to us to be comprehensive and are likely in our view be sufficient to address the general implementation issue in this case.**

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49 Appendix 4

50 Appendix 5

*King v UK*<sup>51</sup>

46. This case concerned an Inland Revenue investigation and appeals, which were subject to considerable delays. Following a lengthy investigation, the Revenue issued substantial tax assessments against the applicant for tax years between 1972 and 1987. The applicant appealed to the Special Commissioners, and then by way of case stated to the High Court. Appeals of separate Inland Revenue assessments in respect of the applicant's property, and interest due on previous assessments, were transferred to the Special Commissioners to be consolidated with the main appeal, but the transfer was considerably delayed. The case was then appealed to the High Court and the Court of Appeal. In all, the proceedings lasted 13 years, 10 months and 12 days.

47. The Court accepted that the proceedings were highly complex, and that the applicant contributed to their difficulty by his failure to disclose properties and assets and by a number of unmeritorious appeals. Nevertheless, prior to 1997, the Court found that there were several periods of delay for which the authorities bore responsibility, including a delay of eight months in the Special Commissioners producing the case stated for appeal; a gap of nine months between the rejection of the applicant's appeal by case stated and the Revenue's issuing of the penalty determinations on the assessments; and a completely unexplained delay, due apparently to an oversight on the part of the Commissioners, in transferring and consolidating the appeals. Therefore, the authorities themselves contributed, without reasonable justification, to the length of the proceedings, leading to a breach of the Article 6.1 reasonable time requirement.

48. We wrote to the Paymaster General, Dawn Primarolo MP, on 20 October 2005<sup>52</sup> asking whether the decision in the case had been brought to the attention of the relevant decision makers in HM Revenue and Customs; and what steps had been taken to modify Revenue procedures to ensure that similar delays do not re-occur.

49. Replying on 7 December 2005,<sup>53</sup> Ms Primarolo stated that HMRC were aware of the *King* decision, and that guidance and practice in relation to civil investigation cases had been amended to reflect the case. HMRC intended to protect Article 6 rights through a number of procedures:

- the taxpayer will be specifically advised of the right to seek early closure of a case when it is opened;
- the taxpayer will be specifically reminded of his right to seek early closure when any potential liability to a civil penalty is indicated and the Article 6 advice is first given.
- at relevant stages the taxpayer will have the option to apply for early closure or not. At these stages the taxpayer will be advised of the consequences of taking such a decision;

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51 App No 13881/02, Judgment of 16 November 2004

52 Appendix 4

53 Appendix 5

- if it is agreed that a contentious hearing is needed to settle the tax position then a decision regarding penalties will be made at that point so that all appeals can be heard together.

**50. We appreciate that these measures should assist in addressing delays of the type that occurred in the *King* case, and should therefore reduce the likelihood of a breach of the Article 6.1 reasonable time requirement.**

### *Hirst v UK*<sup>54</sup>

51. In October 2005 the Grand Chamber of the European Court of Human Rights, giving judgment in *Hirst v UK*, confirmed the earlier Chamber judgment of the Court that the blanket deprivation of voting rights for convicted prisoners breached Article 3 of Protocol 1. The Grand Chamber noted that the ban on voting applied to a wide range of offenders, and did so in a way that was indiscriminate, applying irrespective of length of sentence, gravity of the offence committed, or individual circumstances. Sentencing in the criminal courts made no reference to the disenfranchisement consequent on imprisonment. There had not been any reasoned parliamentary debate on the ban on prisoner voting, which attempted to justify the ban. Although a wide margin of appreciation should be granted to national legislatures in relation to voting rights, this margin of appreciation was not all-embracing. The Court concluded that the general, automatic and indiscriminate nature of the ban meant that it fell outside of the State's margin of appreciation and breached Article 3 of Protocol 1. The Court reserved the question of whether a more targeted ban, applying only to certain categories of offenders, would comply with Article 3 of Protocol 1.

52. We wrote to the DCA to inquire about implementation measures following this case as part of its scrutiny of the Electoral Administration Bill. Subsequently, in a written statement of 2 February 2006, the Secretary of State for Constitutional Affairs stated that:

The ECtHR indicated that there should be proper debate about those issues and I have therefore concluded that the best way forward would be to embark on full public consultation in which all the options can be examined and which will give everyone the opportunity to have their say. A consultation document is therefore in preparation and I hope it will be available for discussion in a few weeks time. Thereafter there will be a period for those with an interest to make their views known, which will help to inform the development of future policy.<sup>55</sup>

**53. In our report on the Electoral Administration Bill,<sup>56</sup> we expressed regret that Parliament had not been afforded the opportunity to consider the important issue of prisoner voting rights in the course of its scrutiny of that Bill. We nevertheless welcomed the consultation exercise proposed. We intend to return to consider the proposals for reform of the law arising from the consultation process.**

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54 App No 74025/01, Judgment of 6 October 2005

55 HL Deb., 2 February 2006, col. WS 26

56 Eleventh Report of Session 2005–06, *Legislative Scrutiny: Fifth Progress Report*, HL Paper 115, HC 899

**Whitfield and Others v UK<sup>57</sup>**

54. This case concerned prisoners charged with disciplinary offences under the Prison Rules 1964. Each of the applicants was charged with such offences and, following a hearing before a prison governor, was found guilty and sentenced to additional days detention or forfeiture of privileges. Each applied for, but was denied, legal representation at the hearing before the prison governor. They complained that they had been tried by a body that lacked the independence required by the Article 6 right to a fair hearing, and that the lack of legal representation breached Article 6.1 and Article 6.3(c).

55. The Court found that since the prosecution, investigation and adjudication in the applicants' cases had all been carried out by persons answerable to the Home Office, the adjudicating body was insufficiently structurally independent to satisfy Article 6.<sup>58</sup> The Court also found that the refusal of legal representation to the applicants breached the right to legal representation in criminal proceedings guaranteed by Article 6.3.c, relying on the previous decision of the Grand Chamber of the Court in the similar case of *Ezeh and Connors v UK*.<sup>59</sup>

56. In 2002, subsequent to the events at issue in this case, the Prison Rules were amended, in response to the decision of the ECtHR in *Ezeh and Connors v UK*, to allow for prison disciplinary hearings to be referred to an independent adjudicator in cases which might lead to additional days' detention being awarded against the prisoner (The Prison (Amendment) Rules 2002). This addresses the incompatibility with Article 6.1 as to the structural independence of prison disciplinary adjudications.

57. In regard to compliance with Article 6.3.c, we wrote to the Home Secretary<sup>60</sup> asking whether it was intended to amend the Prison Rules to ensure legal representation in appropriate cases in accordance with Article 6.3.c, and if not what new guidance was being provided to prison governors and the courts as to the interpretation and application of the Prison Rules in light of the judgment. The Home Secretary in response<sup>61</sup> makes clear that the 2002 amendments to the prison rules require, under Rule 54(3) that a prisoner be provided with legal representation in serious disciplinary proceedings where additional days' detention could be imposed. **We accept that these provisions are sufficient to comply with Article 6.3.c.**

**Blackstock v UK<sup>62</sup>**

58. *Blackstock v UK* concerned a prisoner serving a sentence of life imprisonment, with a tariff (a minimum period of imprisonment) of 17 years. On the expiry of the tariff period, the applicant's detention was reviewed by a Discretionary Lifer Panel of the Parole Board, which recommended that the Home Secretary transfer the applicant from a category B to a category D ("open") prison with a view to preparing him for release. The Home Secretary

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57 App No. 46387/99, Judgment of 12 April 2005

58 relying on *Grievs v UK*

59 (2002) 35 EHRR 28

60 Appendix 6

61 Appendix 7

62 App No 59512/00, Judgment of 21 June 2005

rejected the Panel's recommendation, directing instead that the applicant should be transferred to a category C prison, and that his situation should be reviewed 12 months thereafter. In fact, it was 22 months before the applicant's case was again reviewed by the Panel, which again recommended transfer to a category D prison. This decision was accepted by the Home Secretary two months later. The applicant was released two years after his transfer to a category D prison.

59. The applicant argued that the delays in reviewing his detention infringed Article 5.4 ECHR, which protects the right of those deprived of their liberty to take proceedings to review the lawfulness of their detention, and the right to have these proceedings decided speedily. The Court noted that Article 5.4 required both that reviews should be speedy, and that they should occur at reasonable intervals. In previous cases concerning the UK, the Court had considered reviews at intervals of more than one year to be unacceptable. In this case, the lapse of 22 months was due in part to the time taken for the Home Secretary to review the decision of the Panel; and in part by a shortage of spaces in appropriate category C prisons, which delayed the actual transfer of the applicant following the Home Secretary's decision. When he was eventually transferred, it was still considered necessary for him to spend 12 months in a category C prison. The Court doubted the necessity for this: it pointed out that there were no formal courses or programme of work outlined for the applicant during his time as a category C prisoner. The Court therefore considered that there had been a lack of reasonable expedition and a breach of Article 5.4.

60. The case highlights not only problems of delay in the system of review of detention, but also delays in transfers caused by overcrowding, and a lack of flexibility in the pre-release programme which did not take account of the delays in the individual case. We therefore wrote to the Home Secretary on 20 October 2005,<sup>63</sup> asking:

- whether they were aware of cases other than *Blackstock* where there has been a delay in putting Parole Board decisions on transfers into effect;
- what action had been taken to reduce the impact of prison overcrowding on procedures for review of detention and transfer of prisoners;
- what action had been taken in response to the judgment to ensure prompt decisions by the Parole Board and prompt review by the Home Office; and
- where delays do occur in the transfer of prisoners following decisions of the Parole Board, whether procedures allowed for account to be taken of this delay in setting the period which the prisoner is required to serve in the category of prison to which he or she has been transferred.

61. The Home Secretary, in reply,<sup>64</sup> stated that he was not aware of other cases similar to *Blackstock* pending before the ECtHR. He did not however address the question of whether other cases, not before the ECtHR, had involved similar delays. The Home Secretary acknowledged the impact of prisoner overcrowding on procedures for review of detention and the transfer of prisoners, and pointed to the steps taken by the Home Office and National Offender Management Service (NOMS) to increase and manage prison capacity.

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63 Appendix 6

64 Appendix 7

In regard to measures to ensure prompt review of detention, the Home Secretary points to new streamlining arrangements introduced in 2003 which allow some cases to be decided at an earlier stage. On the possibility for delays in Parole Board reviews being taken into account in setting the period which the prisoner is required to serve following transfer, the Home Secretary notes that all decisions on the timing of reviews of detention are based on the individual circumstances of each case. He adds that it is: “absolutely right and necessary that risk assessments on life sentence prisoners are meaningful, thorough and conducted over a sufficiently lengthy period of testing in whichever category of prison the prisoner is held.”

62. The Chairman of the Parole Board, Professor Sir Duncan Nichol, to whom our letter to the Home Secretary was copied,<sup>65</sup> also replied to the Committee,<sup>66</sup> pointing out that the Board had already been made aware of its obligations under Article 5(4) and Article 5 (5) by the Court of Appeal judgment in the case of *R v Secretary of State for the Home Department and the Parole Board ex parte Noorkoiv*,<sup>67</sup> which required the Board to ensure that life sentence prisoners’ reviews are completed in good time to allow their physical release from custody to be effected promptly.

63. We remain concerned that increasingly overcrowded prison conditions, which have a substantial impact on effective prison management, noted by the Committee in the previous Parliament,<sup>68</sup> may continue to result in delays in further cases similar to Blackstock, despite the best efforts of the Home Office and the Parole Board. We are therefore grateful for the Home Secretary’s reassurance that the position is being kept under close review, in light of changes to sentencing policy and the overall demand for prison places.

64. We appreciate that, as the Home Secretary points out, risk assessments on life sentenced prisoners must be thorough and conducted over a substantial period of time. However, the judgment of the ECtHR makes clear that such general considerations do not in themselves justify additional prolonged detention in cases where there have already been delays. It was crucial to the Court’s finding of a breach of Article 5.4 in this case, that in the particular circumstances of the case, no consideration had been given to whether it was necessary to insist on a full 12 month detention in a category C prison before the next review, and no particular rehabilitative programme had been provided to the applicant whilst in category C detention. **We recommend that in any cases where there have already been delays in reviews of detention, such as may risk breach of Article 5.4, consideration should be given to whether it is possible, in the circumstances of the particular case, to reduce the amount of time a prisoner will be required to spend in a lower category prison.**

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65 Appendix 8

66 Appendix 9

67 [2002] EWCA Civ 770

68 Third Report of Session 2004–05, *Deaths in Custody*, HL Paper 15-I, HC 137-I

### *Hooper v UK*<sup>69</sup>

65. The applicant in this case was charged with assault occasioning actual bodily harm and failing to answer bail. At a preliminary hearing in the magistrates' court, the applicant caused a disturbance. The Magistrate considered that he posed a future risk of breach of the peace and therefore, without hearing representations from the applicant, made an order binding the applicant over to keep the peace and to be of good behaviour under the Justices of the Peace Act 1361. In the absence of the required surety of £250, the applicant was committed to prison for 28 days. The High Court, applying the pre-Human Rights Act law, found that the order was in breach of the principles of natural justice.

66. The Court affirmed that where, as in this case, personal liberty was at stake, the interests of justice in principle call for legal representation, and for the legal representative to be heard.<sup>70</sup> The Court held, and the Government conceded, that the failure to give the applicant or his representative the opportunity to address the magistrates' court before the order was made breached Article 6.1 and Article 6.3.c.

67. We wrote to the Home Secretary on 20 October 2005,<sup>71</sup> asking what guidance has been provided to magistrates' courts and magistrates' clerks in light of the case to ensure that magistrates allow for representations to be made before making orders binding over to keep the peace, in order to ensure Article 6 compliance.

68. In response, the Home Secretary<sup>72</sup> points to a consultation document, *Bind Overs—a power for the 21st Century*, which recommended amongst other reforms to the bind over system, that there should be provision for legal representation where required. He stated that the Home Office has approached the judiciary about the possibility of issuing a practice direction on the matter, and that both the Lord Chief Justice and the President of the Queen's Bench Division had responded positively. A practice direction is expected to be issued later in 2006. **We welcome the plans to issue a practice direction on rights to make representations and to provide for legal representation where necessary in proceedings for orders to bind over to keep the peace.**

### *Henworth v UK*<sup>73</sup>

69. *Henworth v UK* also concerned delays in criminal proceedings. The applicant was convicted of murder, and his conviction quashed on appeal. After the failure of two retrials, the applicant was convicted on a third retrial. Following an appeal, which was dismissed, the case was finally resolved six years after the applicant's arrest. Although many of the delays in the proceedings were in themselves not excessive, the Court considered that, taken together, they were significant. Furthermore, by the time of the second retrial, the State was under a particular obligation to proceed with diligence, and to ensure that any delay was kept to an absolute minimum, since not only was the applicant in custody, but

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69 App No 42317/98, Judgment of 16 November 2004

70 Following *Benham v UK*

71 Appendix 6

72 Appendix 7

73 App No 35605/97, Judgment of 2 November 2004



the authorities had elected to retry him for a second time. The accumulation of delays therefore failed to satisfy the Article 6.1 requirement of trial within a reasonable time.

70. We wrote to the Home Secretary on 20 October 2005<sup>74</sup> asking how it was intended to evaluate progress in preventing delays in the course of retrials and what steps had been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service, and to ensure that particular and appropriate efforts are made to avoid delays where a case is retried.

71. The Home Secretary, in response to our queries,<sup>75</sup> pointed to the Effective Trial Management Programme, which applies to both trials and retrials, and aims to improve case preparation and progression. Furthermore, Criminal Procedural Rules on case management were brought into force in April 2005 and the Criminal Case Management Framework was published in 2004 and revised in 2005. The Home Secretary states that early indications from monitoring of the impact of the Effective Trial Management Programme are that it is having a positive impact in reducing delays.

72. The Home Secretary also assures the Committee that the judgment has been published and drawn to the attention of judges and the CPS. In light of the judgment, lawyers at the Criminal Appeal Office of the Court of Appeal were instructed to give careful consideration to the history of proceedings prior to the lodging of any application for leave to appeal, and where there had already been a delay in the Crown Court, to ensure against further delays. **We welcome these measures.**

### ***Massey v UK***<sup>76</sup>

73. This case concerned delays in criminal proceedings. The applicant was arrested in 1997 on suspicion of 16 counts of sexual assault taking place in the 1970s and 1980s. His arrest followed a lengthy police investigation, which involved long delays in taking statements from the complainants, due to pressure of other business. There were a number of further delays before the matter could be brought to trial, in part as a result of the non-availability of the complainants. Convicted in 1999, the applicant had his case finally determined by the dismissal of his appeal by the Court of Appeal in 2001.

74. The Court noted that the case was not particularly complex, with no forensic or expert evidence involved. Only one minor delay could be attributed to the applicant. It nevertheless took two years eight months from arrest to trial and then over a further two years for the appeal to be terminated. The Court considered that, given that there had been some delay in bringing the matter for trial, there was a particular onus on the authorities to progress the case expeditiously in its later stages. It was also significant that the trial concerned matters some years in the past, and a further lapse of time could only damage the quality of the evidence available. In the circumstances, the accumulation of delays failed to satisfy the reasonable time requirement and violated Article 6.1.

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74 Appendix 6

75 Appendix 7

76 App No 14399/02, Judgment of 16 November 2004

75. We wrote to the Home Secretary on 20 October 2005<sup>77</sup> asking:

- whether the case had been brought to the notice of the relevant decision-makers in police forces, the CPS and the courts;
- whether the Home Office was satisfied that police forces are aware that delays in investigations may contribute to a prosecution that breaches the reasonable time requirement of Article 6.1, and what action had been taken to ensure that they are aware of this;
- whether the Home Office was satisfied that the relevant officials in the CPS and the courts are aware that delays in proceedings where investigations have already been delayed may lead to a breach of Article 6.1, and what action had been taken to ensure that they are aware of this;
- how it was intended to evaluate progress in ensuring compliance with Article 6.1 in such cases.

76. The Home Secretary in reply<sup>78</sup> states that the case has been drawn to the attention of the relevant decision makers in the CPS and the courts, and refers to the action taken by the Criminal Appeal Office of the Court of Appeal referred to above in relation to *Henworth*. Prior to the judgment in *Massey*, court and CPS officials were already aware of the Article 6.1 implications of delays in proceedings where there had been previous delays in the investigation of the case. Guidance on these matters was issued to prosecutors by the CPS following the Court of Appeal's judgment in *R v J (Attorney General's Reference No 2 of 2001)*. Although no guidance has been provided to the police, the Home Secretary accepts that since the judgment in *Massey* suggests that the investigative period may be relevant to the Article 6 reasonable time requirement in some cases, it may be necessary to provide guidance on this point. **We welcome the Home Secretary's willingness to consider guidance to the police on this point, and recommend that such guidance should be adopted.**

### ***B and L v UK***<sup>79</sup>

77. *B and L v UK* concerned the prohibition on marriage between father-in-law and daughter-in-law, which prevented the applicants from marrying. The Court held that the bar on the applicants' marriage impaired the very essence of the right to marriage protected by Article 12 ECHR. The Government laid before Parliament a proposal for a draft remedial order to remedy the incompatibility in this case on 16 February 2006. In accordance with the requirements of our terms of reference we will report on this remedial order shortly, in a separate report.

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77 Appendix 6

78 Appendix 7

79 App No 36536/02, Judgment of 13 September 2005

**Roche v UK<sup>80</sup>**

78. *Roche v UK* concerned the effects on the applicant of his participation in tests of mustard and nerve gas at the Chemical and Biological Defence Establishment at Porton Down in 1962, and his attempts to obtain disclosure of information on the tests and their consequences. The applicant had been diagnosed as suffering from hypertension, bronchial asthma, high blood pressure and Chronic Obstructive Airways Disease, and from 1992 was unable to work. He sought through a number of routes, over a period of more than a decade, to obtain information on the tests in which he had participated and their possible connection to his ill-health. These included doctor's requests to the MOD for medical records (which were provided, but which contained several errors and gaps), and lobbying Parliament and Government for information (which resulted in disclosure of some relevant records, in 1997). In 1991, the applicant claimed a service pension on the grounds of health problems resulting from the Porton Down tests. The Secretary of State issued a "section 10 certificate" under the Crown Proceedings Act 1947, granting a pension on the basis of ailments including acute bronchitis, but did not accept the link between the Porton Down tests and certain of the applicant's other medical conditions. In 1998, the applicant appealed the decision to the Pensions Appeal Tribunal (PAT) in order to obtain disclosure of documents related to the Porton Down tests, under Rule 6 of the Pensions Appeal Tribunals (England and Wales) Rules 1980. The appeal proceedings resulted in the disclosure of some further documents. The PAT found no reliable evidence of a causal link between the tests and the applicant's condition; however the High Court allowed an appeal and referred the matter back to PAT for reconsideration.

79. The Court, whilst dismissing the applicant's case under Article 6, Article 10, Article 13 Article 14 and Article 1 of Protocol 1, of the Convention, found that the inadequate arrangements for access to information about the tests performed on him breached the right to respect for private life under Article 8 ECHR. The Court held that there was a positive obligation under Article 8 to provide an effective and accessible procedure to allow access to relevant and appropriate information, which would have enabled the applicant to assess the danger to which he had been exposed.

80. Where, as in the present case, the applicant sought disclosure not primarily to support legal proceedings for a pension (contrasting the earlier case of *McGinley and Egan v UK*) but in order to obtain information concerning his private life, a disclosure process linked to litigation could not as a matter of principle fulfil the State's Article 8 positive obligation. The Article 8 obligation was to provide a means of disclosure not requiring the individual to litigate to obtain the information. Furthermore, the possibility of obtaining information through political lobbying, or through disclosure of records to doctors, did not provide the structured disclosure process required by Article 8.

81. The Court noted that there had been piecemeal disclosure of information, some of it inaccurate, in the applicant's case, and much of the disclosure had come only as a result of the applicant's tenacious pursuit of information over many years. The Government had not asserted that there was any pressing need to withhold many of the documents, though it noted the difficulties in locating documents dispersed over several decades. The Court considered that the State had:

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80 App No 32555/96, Judgment of the Grand Chamber, 19 October 2005

not fulfilled the positive obligation to provide an effective and accessible procedure for access to information which would allow him to assess any risk to which he had been exposed during his participation in the tests.<sup>81</sup>

There had therefore been a violation of Article 8.

82. We recognise that since the events at issue in this case, the Freedom of Information Act 2000 has come into force, making the armed forces, as public authorities, subject to a duty to disclose documents. We nevertheless wrote to the Secretary of State for Defence, asking for information on whether any further measures to strengthen the system of disclosure of armed forces records are proposed; the timescale for any such measures; and whether any further practical steps have been taken to gather and make accessible records of chemical and biological tests by the armed forces.<sup>82</sup>

83. In reply, Don Touhig MP, Parliamentary Under-Secretary of State at the Ministry of Defence, noted that both the Freedom of Information Act 2000 and the Data Protection Act 1998 had entered into force since the proceedings at issue in *Roche*, and that as a result of these developments, the Ministry of Defence was confident that any similar request for information would be dealt with more effectively.<sup>83</sup> He also stressed the Ministry's commitment to provide assistance to those involved in the Porton Down tests in obtaining access to information on the tests, and provided us with a copy of the statement published on the Ministry's website, which provides information for people concerned about their involvement in the tests.

84. Despite these advances, the Minister acknowledged that there remained practical difficulties in implementing the judgment, since it imposed an onerous duty of disclosure which was not subject to any express limits as to the cost of locating the information. In relation to information on the Porton Down tests, there were particular practical difficulties. First, "simply identifying the hazards in relation to which a request might be made is no simple matter". Second, potentially relevant information was likely to be held in many different locations and for very different business reasons. Finally, the requested information often concerned events which had taken place a considerable time ago.

85. The Minister assured us that the matter was being taken very seriously and that the Ministry was investigating the nature of the problems and how they could be addressed. We are grateful for these assurances. **We look forward to receiving further information in due course.**

### **Yetkinsekerci v UK<sup>84</sup>**

86. This case concerned delays in criminal procedures. The Court held that the lapse of three years between the applicant's conviction and the determination of his appeal in the Court of Appeal, breached the right to trial within a reasonable time under Article 6.1 ECHR. The facts of this case reflect those of a number of cases against the UK involving

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81 para.167

82 Appendix 10

83 Appendix 11

84 App No 71841/01, Judgment of 20 October 2005

delays in criminal proceedings found to be in breach of Article 6. We therefore wrote to the Secretary of State for Constitutional Affairs, asking for information on any steps taken to address such delays, and on the steps that have been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service.<sup>85</sup>

87. In reply, the Secretary of State for Constitutional Affairs points to a number of measures designed to streamline procedures in the Criminal Appeals Office (CAO).<sup>86</sup> These measures have resulted in falls in average waiting times for the determination of appeals against conviction, from 15.1 months in October 2003, to 13.6 months in October 2005. The CAO expects that waiting times will continue to decrease. The Secretary of State also confirms that the judgment *Yetkinsekerci v UK* has been circulated to CAO lawyers. **We welcome the progress that has been made in reducing delays in criminal appeals procedures in respect of average waiting times, and look forward to further progress in this regard, especially in relation to the number and duration of long waits.**

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85 Appendix 12

86 Appendix 13

# Formal Minutes

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**Monday 27 February 2006**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Mary Creagh MP
Lord Campbell of Alloway	Dr Evan Harris MP
Lord Judd	Dan Norris MP
Lord Lester of Herne Hill	Mr Richard Shepherd MP
Lord Plant of Highfield	
Baroness Stern	

Draft Report [Implementation of Strasbourg Judgments: First Progress Report], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 22 read and agreed to.

Paragraph 23 read, as follows:

“ We raised this issue in a recent oral evidence session with Harriet Harman QC MP, Minister of State at the Department for Constitutional Affairs with responsibility for human rights, and she undertook to give further consideration to the matter. **We recommend that the Government should investigate the possibility of reform of the law to allow for the re-opening of proceedings in appropriate cases following judgments of the ECtHR, in order to allow for effective implementation of judgments in all cases.**”

Amendment proposed, in line 3, to leave out from the word “matter.” to the end of line 6.—(*Mr Richard Shepherd.*)

Question put, That the Amendment be made.

The Committee divided.

Content, 4	Not Content, 7
Lord Campbell of Alloway	Lord Bowness
Mary Creagh MP	Mr Andrew Dismore MP
Dan Norris MP	Dr Evan Harris MP
Mr Richard Shepherd MP	Lord Judd
	Lord Lester of Herne Hill
	Lord Plant of Highfield
	Baroness Stern

An Amendment made.

Paragraph, as amended, agreed to.

Paragraphs 24 to 85 read and agreed to.

Paragraph 86 read, amended and agreed to.

A paragraph—(*The Chairman*)—brought up, read, the first and second time, and added (now paragraph 87).

Summary read.

Question put, That the Summary stand part of the Report.

The Committee divided.

Content, 10

Not Content, 1

Lord Bowness  
Lord Campbell of Alloway  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Lord Lester of Herne Hill  
Dan Norris MP  
Lord Plant of Highfield  
Baroness Stern

Mr Richard Shepherd MP

Motion made, and Question put, That the Report, as amended, be the Thirteenth Report of the Committee to each House.

The Committee divided.

Content, 10

Not Content, 1

Lord Bowness  
Lord Campbell of Alloway  
Mary Creagh MP  
Mr Andrew Dismore MP  
Dr Evan Harris MP  
Lord Judd  
Lord Lester of Herne Hill  
Dan Norris MP  
Lord Plant of Highfield  
Baroness Stern

Mr Richard Shepherd MP

Several Papers were ordered to be appended to the Report.

*Ordered*, That the Chairman do make the Report to the House of Commons and Baroness Stern do make the Report to the House of Lords.

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[Adjourned till Monday 6 March at 3pm.





## Appendices

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### **Appendix 1: Letter from the Chair to Rosie Winterton MP, Minister of State for Health Services, Department of Health, re *Glass v UK***

The Joint Committee on Human Rights is continuing its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR). I am writing to request updated information on implementation of the judgment in *Glass v UK* (Application Number 61827/00) in which the Court held that medical treatment administered to a severely ill child against the wishes of his family breached his right to physical integrity under Article 8 ECHR. In a letter to our predecessor committee in November 2004, you stated the Government's intention to revise existing Department of Health guidance on consent, taking into account the judgment in *Glass v UK*. You indicated that this guidance would be produced following the enactment of the Human Tissue Bill and the Mental Capacity Bill.

We note that both Bills have now been enacted, and would be grateful for details of when you expect the revised guidance to be published. We would also be grateful if you could forward us a copy of the revised guidance when it is available.

27 February 2006

### **Appendix 2: Letter from the Chair to The Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, re *Steel and Morris v UK; Beet v UK* and *Lloyd v UK***

The Joint Committee on Human Rights intends to continue its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR). I am writing to inquire about the government's response to two recent judgments of the Court, which find violations of the ECHR in areas within the responsibility of your department.

*Steel and Morris v UK Application No 68416/01* concerned the availability of legal aid in defamation proceedings. The applicants, the defendants in the "McLibel" trial, were refused legal aid, and represented themselves throughout the case, with occasional voluntary help from lawyers. The trial resulted in substantial damages being awarded against the applicants. At the time of the action, the Legal Aid Act 1988 precluded the grant of legal aid in libel actions.

The Court held that, given the length, scale and complexity of both the factual and legal issues involved in the hearing, neither the sporadic help provided to the applicants by volunteer lawyers nor the judicial assistance and latitude granted to them during the proceedings, was sufficient substitute for competent, expert and sustained legal representation. Therefore the denial of legal aid had meant the applicants could not present their case effectively to the court and had led to inequality of arms in violation of the right to a fair hearing under Article 6.1 ECHR.

The Court also found that the absence of legal aid amounted to a disproportionate interference with freedom of expression rights under Article 10 ECHR, pointing to the importance to a democratic society of even small and informal campaign groups disseminating information and fostering public debate, including in relation to the

activities of powerful commercial concerns. It further held that the size of the awards of damages made against the applicants (although never enforced against them) were so substantial compared to the applicants' very modest means, that they gave rise to a disproportionate interference with Article 10 freedom of expression rights.

We understand that the Access to Justice Act 1999 has retained the presumption that legal aid will not be granted in defamation proceedings, but allows legal aid to be granted in exceptional cases. Guidance under the Act states that this discretion is to be used only in highly unusual cases, where there is a significant wider public interest in the case; or the case is of overwhelming importance to the individual; or the absence of legal aid would make participation in the proceedings impossible, or would lead to obvious unfairness.

I would be grateful if you could inform the Committee:

- in light of the decision in the case, whether consideration is being given to legislative amendment or to a remedial order to rectify the incompatibility in the case;
- whether guidance will be revised in relation to the discretion to grant legal aid in defamation proceedings under the Access to Justice Act 1999;
- what steps have been taken to bring the decision to the notice of the courts and the relevant decision-makers in the Legal Services Commission.

*Beet v UK Application No 47676/99* and *Lloyd v UK Application No 29789/96* concerned liability orders made by magistrates' courts against each of the applicants in default of payment of local taxes or fines. Liability orders were made on the basis that the applicants' failure to pay was due to their wilful refusal or culpable neglect. In each case the magistrate failed to meet the requirements of the relevant regulations to hold a means inquiry into the applicant's ability to make the relevant payments, before the liability order was imposed. Following the making of the liability order, the applicants failed to make further payments towards the outstanding sum, and were imprisoned. The Court found that the non-availability of legal aid in these cases breached Article 6.1 and Article 6.3.c ECHR. Although this incompatibility has now been addressed, the Court also found that the failure to conduct a means inquiry meant that the liability order was outside the jurisdiction of the magistrates' court, and the applicants' detention was therefore in breach of the right to liberty protected by Article 5.1 ECHR.

I would be grateful if you could inform the Committee what action has been taken to inform magistrates and magistrates' clerks of the judgment in this case, and what action has been taken to ensure that the relevant regulations are applied so that magistrates, in imposing imprisonment in default of payment of fines or taxes, act within their jurisdiction and thereby comply with Article 5.1.

I am copying this letter to the Legal Services Commission and the Judicial Studies Board for information. I would appreciate your response to these queries by 9 December 2005.

20 October 2005

### Appendix 3: Letter from The Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, re *Steel and Morris v UK; Beet v UK and Lloyd v UK*

Thank you for your letter of 20 October about the implementation of judgments of the European Court of Human Rights. I would like to apologise for the delay in responding to your letter.

You asked about the government's response to two recent judgments of the Court, which find violations of ECHR rights in areas for which my department has responsibility. The first case raised in your letter is that of *Steel and Morris v UK* Application No 68416/01—the 'McLibel' case.

**You asked whether consideration is being given to legislative amendment or to a remedial order to rectify the incompatibility in the case.** We do not consider that there is any need for any specific legislative amendments or remedial orders to implement the judgment, as the law has Changed since the facts giving rise to this application. As you state, provisions in the Access to Justice Act 1999 allow legal aid to be granted (as "exceptional funding")—subject to the relevant criteria being met—in cases which are otherwise outside the scope of legal aid; this includes defamation proceedings. This provides sufficient safeguards to prevent similar violations of Article B arising in future. In respect of the violation of Article 10, existing provisions in the law are sufficient to enable domestic courts to take into account the defendants means and the proportionality of an award when assessing general damages for defamation.

**You asked whether guidance will be revised in relation to the discretion to grant legal aid in defamation proceedings under the Access to Justice Act 1999.** The Legal Services Commission's exceptional funding guidance has indeed been revised, and is attached to this letter for your reference (see paragraph 14 for reference to the *Steel and Morris* case). The guidance is published as part of the Legal Services Commission's Manual, and is available on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). It was approved by Bridget Prentice MP on my behalf on 26 May 2005.

The revised guidance makes it dear that the judgment of the European Court in *Steel and Morris v UK* is to be considered the "benchmark" by which exceptional cases are to be considered. The Government will of course keep the guidance under review, and revise it further as necessary to reflect any further developments in the jurisprudence of the Court (or any decisions of the domestic courts of the United Kingdom taken under the Human Rights Act 1998).

**You also asks what steps have been taken to bring the decision to the notice of the courts and the relevant decision-makers in the Legal Service Commission.** The judgment has been widely reported in legal publications, which will ensure that the competent domestic courts are informed of the judgment and are able to put it into effect. Indeed, the judgment has already been considered by the House of Lords in the case of *Campbell v MGN Ltd*. [2005] UKHL 61, §21.

The judgment has been reported in, inter alia, the following law reports:

- (1) The Times Law Reports (16 February 2005)
- (2) European Human Rights Reports (2005) 41 EHRR 22
- (3) Entertainment and Media Law Reports [2005] EMLR 15

And it has been commented in, inter alia, the following legal publications:

(4) *Law Quarterly Review* (2005) Vol. 121 (July 2005), pp. 395–499

(5) *European Human Rights Law Review* (2005) 3 EHRLR, pp. 301–309

As the guidance on exceptional funding was produced and disseminated by the Legal Services Commission, the relevant decision-makers in the LSC will be aware of the judgment, and aware of the relevant guidance.

Secondly, you raised the Benham clone cases of *Beet v UK* Application No. 47676/99 and *Lloyd v UK* Application No 29789/16.

**You asked what action has been taken to inform magistrates and magistrates' clerks of the judgment in this case.** Draft guidance to magistrates' courts has been prepared but not yet circulated. It was originally developed in October following confirmation of the outcome of the request by some applicants to refer to Grand Chamber, and also following completion of all the payments due to the applicants in accordance with the timetable set by the European Court. In early December, following initial legal advice, the draft was reworked, and is currently awaiting legal clearance prior to consultation with key stakeholders. Once this consultation is complete, the guidance will be released. We have not communicated the outcome of the cases separately, as it is our intention to include formal notification as part of the guidance along with a checklist to which magistrates can refer when dealing with such cases. We would however be happy to send you a copy of the guidance the moment it has issued.

The cases have been reported in, inter alia, the following law reports:

(1) *The Times Law Reports* (10 March 2005)

(2) *European Human Rights Reports* (2005) 41 EHRR 23

**You also asked what action has been taken to ensure that the relevant regulations are applied so that magistrates, in imposing imprisonment in default of payment of fines or taxes, act within their jurisdiction and thereby comply with Article 5.1.** The guidance, once issued, will provide a checklist to ensure that the relevant regulations are applied, and that magistrates are able to act within their jurisdiction.

I hope that I have been able to address your concerns in relation to these judgments, and reassure you that the Government is doing all it can to implement the Court's judgments.

*29 January 2006*

#### LORD CHANCELLOR'S GUIDANCE ON INDIVIDUAL CASES

1. Section 6(8)(b) of the Act empowers the Lord Chancellor to authorise finding in individual cases, following a request from the Commission. The Lord Chancellor has ... issued the following guidance to the Commission under section 23 of the Act, to indicate the types of case he is likely to consider favourably under this power:

2. "Schedule 2 of the Act, together with the general exceptions I have authorised, is designed to ensure that money is not spent on cases that do not have sufficient priority to demand a share of the available resources. I would therefore expect it to be extremely unusual for me to authorise the Commission to fund an individual case that remained outside scope.

3. "Schedule 2 excludes funding for personal injury cases because they are generally suitable for conditional fees. I have authorised the Commission to fund personal injury cases with very high investigative or total costs, because this may not always be true of these cases. If a particular client was having difficulty finding a solicitor to take a case that was objectively suitable for a conditional fee, that is a case with reasonable prospects of success but not requiring very high costs, I would generally expect the Commission, through the Community Legal Service, to advise the applicant about solicitors willing to take cases under conditional fee agreements, rather than apply to me for exceptional funding.

4. "The other categories in paragraph 1 of Schedule 2 are excluded because they are of low priority. However, I do accept that within those categories there will be exceptional individual cases which may justify funding under the approach described below.

5. "Paragraph 2 of Schedule 2 excludes the provision of advocacy services before coroners' courts and most tribunals. Coroners' courts are excluded because the inquisitorial nature of the process means that public funding for legal representation is not usually appropriate. Historically, most tribunals have been excluded from legal aid on the grounds that their procedures are intended to be simple enough to allow people to represent themselves. The 1999 Act excludes advocacy before the Lands Tribunal and Commons Commissioners for the first time because they do not have sufficient priority to justify public funding.

#### EXCEPTIONAL FUNDING FOR REPRESENTATION AT INQUESTS

6. "The then Lord Chancellor issued a Direction with effect from 1 November 2001 bringing representation at certain inquests within the normal scope of CLS funding (see section 3.13 of this guidance). The following guidance should be taken into account by the Commission both when considering applications which fall within that Direction and when considering applications relating to other inquests under the section 6(8)(b) procedure.

7. "It is only advocacy before the coroner that is excluded by paragraph 2 of Schedule 2. Therefore any funding under 6(8)(b) would take the form of a grant (under level 7 of the Funding Code) to cover attendance on the day and the incidental costs (where appropriate) of advocacy, such as conferences.

8. "Before approving an application I would expect the Commission to be satisfied that either:

(i) There is a significant wider public interest, as defined by the funding code guidance, in the applicant being legally represented at the inquest; or,

(ii) Funded representation for the family of the deceased is likely to be necessary to enable the coroner to carry out an effective investigation into the death, as required by Article 2 of the ECHR. For this purpose 'family' should be given a wide interpretation, in line with the funding code guidance.

9. "For most inquests where the Article 2 obligation arises, the coroner will be able to carry out an effective investigation into the death, without the need for advocacy. Only exceptional cases require the public funding of advocacy in order to meet the Article 2 obligation. In considering whether funded representation may be necessary to comply with this obligation, all the circumstances of the case must be taken into account, including:

(i) The nature and seriousness of any allegations which are likely to be raised at the inquest, including in particular any allegations against public authorities or other agencies of the state.

(ii) Whether other forms of investigation have taken place, or are likely to take place, and whether the family have or will be involved in such investigations.

(iii) Whether the family may be able to participate effectively in the inquest without funded legal representation. This will depend on the nature of the issues raised and the particular circumstances of the family. In most cases, a family should be able to participate effectively in the inquest without the need for advocacy on their behalf. Legal Help can be used to prepare a family for the inquest; to prepare submissions to the coroner setting out the family's concerns and any particular questions they may wish the coroner to raise with witnesses.

(iv) The views of the coroner, where given, are material though not determinative. There is however no expectation that the coroner's views should be sought before making an application, or that the coroner will wish to express a view.

10. "In general applicants must also satisfy the eligibility limits for Legal Representation as set out in regulations. However with effect from 1 December 2003 I have the discretion to waive financial eligibility limits relating to representation at an inquest where the Commission requests me to do so (Regulation SC of the CLS (Financial) Regulations 2000 as amended). I will consider such a waiver in relation to inquests that satisfy the guidance set out above if, in all the circumstances, it would not be reasonable to expect the family to bear the full costs of representation at the inquest. Whether this is reasonable will depend in particular on the history of the case and the nature of the allegations to be raised, the applicant's assessed disposable income and capital, other financial resources of the family, and the estimated costs of providing representation.

11. "Where funding is granted to provide advocacy at an inquest into the death of a member of the client's family, the Commission may waive contributions in whole or in part (Regulation 38(8A) and (9) of the CLS (Financial) Regulations 2000 as amended). Where it is appropriate for a contribution to be payable this may be based upon the applicant's disposable income and disposable capital in the usual way ignoring upper eligibility limits. As funding will cover only one off advocacy services at the inquest, an appropriate total contribution will normally consist of one month's assessed income contribution, and a proportion of the assessed capital contribution. Contributions should always be based on what can reasonably be afforded by the applicant and his or her family in all the circumstances of the case."

#### EXCEPTIONAL FUNDING FOR OTHER PROCEEDINGS

12. "Before requesting funding for an individual case under section 6(8)(b) for proceedings other than inquests the Commission must first be satisfied in each case that:

(a) The services applied for are services which are excluded under Schedule 2 of the Act and are not covered by any of my general directions under section 6(8).

(b) The client is financially eligible for Legal Representation.

(c) All relevant criteria in the Funding Code are satisfied. Usually these will be the criteria for Legal Representation in the General Funding Code, but certain criteria will not be relevant in certain types of case. For example prospects of success criteria may not be appropriate for inquisitorial proceedings such as a public inquiry.

(d) The client has produced evidence to demonstrate clearly that no alternative means of funding is available, whether through conditional fees or otherwise.

13. "Where the Commission is so satisfied I would be prepared to consider funding under section 6(8)(b) where any of the following apply:

(a) There is significant wider public interest (as defined in the Funding Code) in the resolution of the case and funded representation will contribute to it. This will only need to be considered for cases which are not within the scope of paragraph 10 of my general Direction on exclusions, which authorises the funding of non-business public interest cases before the courts.

(b) The case is of Overwhelming Importance to the Client as defined in the Code

(c) There is convincing evidence that there are other exceptional circumstances such that without public funding for representation it would be practically impossible for the client to bring or defend the proceedings, or the lack of public funding would lead to obvious unfairness in the proceedings

14. "I should emphasise that each of these considerations is exceptional in nature. When considering funding under paragraph 9(c) above the nature of the case and particular circumstances of the client need to be taken into account. But the fact that the opponent is represented or has substantial resources does not necessarily make the proceedings unfair. Courts are well used to assisting unrepresented parties in presenting or defending their cases. Similarly most tribunals are designed to be accessible to unrepresented clients. Language difficulties alone are very unlikely to be a justification for funding legal representation, since if the client has no friend or family able to act as interpreter, the court or tribunal concerned will normally be able to assist. There must be something exceptional about the client or the case such that for the client to proceed without public funding would be practically impossible or would lead to obvious unfairness. I will use as a benchmark those very exceptional cases where the ECHR at Strasbourg has indicated that the right of access to the courts has effectively been denied because of the lack of public funding, for example *Steel and Morris v the United Kingdom* (application number 68416/01).

#### LORD CHANCELLOR'S DIRECTION ON TRIBUNAL REPRESENTATION

1. This is a direction by the Lord Chancellor under section 6(8) of the Access to Justice Act 1999 ("the Act"). It authorises the Legal Services Commission ("the Commission") to fund in specified circumstances services generally excluded from the scope of the Community Legal Service Fund by Schedule 2 of the Act.

2. References in this direction to services which the Commission may fund are to the levels of service defined in those terms in the Commissions Funding Code ("the Code").

3. All applications under this direction remain subject to the relevant regulations under the Act and all relevant criteria in the Code.

#### PROTECTION OF CHILDREN ACT TRIBUNAL

4. The Lord Chancellor authorises the Commission to fund Legal Help, Help at Court and Legal Representation in all proceedings before this tribunal.

#### THE GENERAL AND SPECIAL COMMISSIONERS OF INCOME TAX AND VAT AND DUTIES TRIBUNAL

5. The Lord Chancellor authorises the Commission to fund Legal Help, Help at Court and Legal Representation in all proceedings before the General and Special Commissioners of Income Tax and before the VAT and Duties Tribunal in the circumstances specified below.



## Appendix 4: Letter from the Chair to Rt Hon Dawn Primarolo MP, Paymaster General, re *King v UK* and *Crowther v UK*

The Joint Committee on Human Rights intends to continue its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR). I am writing to inquire about the government's response to two judgments of the Court, which find violations of the ECHR in areas within the responsibility of your department. Both cases concern delays in court procedures involving HM Revenue and Customs.

*King v UK Application No 13881/02* concerned delays in proceedings brought by the Inland Revenue against the applicant, which lasted, in all, 13 years, 10 months and 12 days. The Court accepted that the proceedings were highly complex, and that the applicant contributed to their difficulty due to his failure to disclose properties and assets and by a number of unmeritorious appeals. Nevertheless, the Court found that there were several periods of delay for which the authorities bore responsibility, including a delay of eight months in the Special Commissioners producing the case stated for appeal; a gap of nine months between the rejection of the applicant's appeal by case stated and the Revenue's issuing of the penalty determinations on the assessments; and a completely unexplained delay, due apparently to an oversight on the part of the Commissioners, in transferring and consolidating a number of appeals. Therefore, the Revenue itself contributed, without reasonable justification, to the length of the proceedings, leading to a breach of the Article 6.1 right of trial within a reasonable time.

I would be grateful if you could inform the Committee:

- whether the decision in the case has been brought to the attention of the relevant decision-makers in HM Revenue and Customs;
- what steps have been taken to modify Revenue procedures to ensure that similar delays do not re-occur;
- what processes are in place to evaluate compliance with the Article 6.1 right to trial within a reasonable time in Revenue proceedings.

*Crowther v UK Application No 53741/00* concerned delays in enforcement proceedings against the applicant for failure to make payments required by a confiscation order. He was convicted, and a confiscation order was made against him. The applicant argued that the amount of the confiscation order was wrongly calculated, and that he was unable to pay it. No steps were taken to enforce the order against the applicant for four years after the date on which payment was due. Enforcement proceedings were finally concluded in 1998, eight years and five months after the applicant had been charged. The Court held that the period of over four years during which Customs had commenced no enforcement proceedings against the applicant amounted to an unjustifiable delay. The fact that throughout this period the applicant was under a duty to pay the sum owing under the confiscation order did not absolve the authorities from ensuring, in accordance with Article 6.1, that the proceedings were complete within a reasonable time. The court pointed out that the State's general obligation to ensure compliance with the reasonable time guarantee in Article 6.1, applied a fortiori where the State was itself a party to the proceedings and responsible for their prosecution.

I would be grateful if you could inform the Committee:

- what steps have been taken to inform the officials responsible for decisions on the progress of enforcement proceedings of the Article 6 requirement to determine proceedings within a reasonable time, and its application in this case;
- how you plan to evaluate progress in protecting the right to trial within a reasonable time in enforcement proceedings.

I would appreciate your response to these queries by 9 December 2005.

*20 October 2005*

## **Appendix 5: Letter from Rt Hon Dawn Primarolo MP, Paymaster General, re King v UK and Crowther v UK**

Thank you for your letter of 20<sup>th</sup> October 2005 regarding two judgments of the European Court of Human Rights, King V UK Application No 13881/02 and Crowther v UK Application No 53741/00.

HMRC take very seriously any delays in court procedures and are committed to bringing civil and criminal proceedings to a full, satisfactory and successful conclusion. HMRC strive for the highest professional standards and always seek to improve procedures during the prosecution process by collaboratively working, both at an operational and policy level, across the law enforcement and criminal justice communities.

HMRC are aware of the King decision, and guidance and practice in relation to civil investigation cases has been amended. HMRC aim to protect the taxpayers Article 6 rights as follows:

1. The taxpayer will be specifically advised of the right, to seek early closure of a case when it is opened.
2. The, taxpayer will be specifically reminded of his right to seek early closure when any potential liability to a civil penalty is indicated and the Article 6 advice is first given.
3. At relevant stages the taxpayer will have the option to apply for early closure or not. At these stages the taxpayer will, be advised of the consequences of taking such a decision.
4. If it is agreed that a contentious hearing is heeded to settle the tax position then a decision regarding penalties will be made at that point so that all appeal can be heard together.

With regards to the Crowther case, I understand that a report prepared by the Revenue and Customs Prosecution Office (RCPO) and submitted to the Foreign Office for the Deputies of the Committee of Ministers in August 2005 answers, in the main, the questions outlined in your letter. A copy is attached for your information.

The report sets out current enforcement procedures in RCPO, which now has enforcement responsibility for all former HMCE and IR criminal confiscation cases, either directly or indirectly through RCPO lawyers working within the Enforcement Task Force (ETF).

The Enforcement Task Force (ETF) was created to deal with the huge backlog in unpaid confiscation orders. It works closely with the Magistrates Courts, who are ultimately responsible for collection of outstanding orders, and the Courts have worked hard to equip their staff with the necessary knowledge and skills as well as improving their overall enforcement procedures and processes.

The Crowther judgment is well known to the DCA and it is an integral part of all the training seminars for Magistrates' Court enforcement staff. The judgement's implications for enforcement are included in the National Best Practice Guide to Confiscation Order Enforcement. This document is issued to all involved in enforcement including ETF litigators and sets out in great detail all the enforcement processes that, if followed correctly, will prevent circumstances similar to those in the Crowther case from reoccurring.

HMRC and RCPO continue to work closely with the ETF and HM Courts Service (HMCS) under the Concerted Inter-agency Criminal Finance Action (CICFA) group programme of wider asset recovery activity, of which the timely enforcement of confiscation orders is a key objective.

The evaluation of progress in protecting the right to trial within a reasonable time in enforcement proceedings will largely be measured by:

- the success that HMRC and other CICFA agencies have in meeting the asset recovery targets on money collected; and
- the identification and closure of cases that have been enforced as far as possible, have been completed and/or have been classified as unenforceable.

HMRC is committed to ensuring compliance with internal procedures and legal obligations, through robust corporate governance and the use of management reviews at regular intervals. These reviews identify cases in which possible delays are emerging, thereby safeguarding against future instances of long delays.

HMRC has a clear and continuing commitment to the highest professional standards, improving procedures and providing greater public reassurance to the taxpayer.

7 December 2005

#### ENFORCEMENT OF CONFISCATION ORDERS BY THE REVENUE AND CUSTOMS PROSECUTIONS OFFICE

#### REPORT TO COMMITTEE OF MINISTERS

#### INTRODUCTION

On 1<sup>st</sup> February 2005, the European Court of Human Rights delivered its judgment in the case of *Crowther v the United Kingdom*. The case concerned the enforcement of a confiscation order. In that case the applicant argued that there had been a delay by the prosecuting authority in taking enforcement action. He alleged, in particular, that the criminal proceedings against him had not been determined within a reasonable time. The court agreed and held that there had been a violation of Article 6.1.

In its judgment the ECHR stated that the authorities, in this case Her Majesty's Customs and Excise (HMCE), should have ensured that the proceedings were completed within a reasonable time and, that even in civil proceedings, the state was obliged to ensure compliance with the reasonable time guarantee under Article 6.1.

The United Kingdom is obliged to demonstrate to the Committee of Ministers that there are systems in place to ensure that similar violations of the Convention do not arise again. This report sets out the measures that have been introduced to improve the enforcement of confiscation orders since the proceedings in Crowther were terminated in October 1998. It also describes the current system in the Revenue and Customs Prosecutions Office (RCPO) for handling enforcement.

## CICFA

The Concerted Inter-Agency Criminal Finance Action Group (CICFA) was formed in June 2002 and consists of senior representatives of the main government agencies involved in asset recovery (law enforcement, prosecutors and courts administration). Its role in relation to confiscation is to monitor performance and consider what measures could be put in place to increase the efficiency of the enforcement process.

## JARD

The Joint Asset Recovery Database (JARD) was established by CICFA in April 2004 to ensure better day-to-day management of asset recovery. Over 2,500 individuals have access to the system in the various agencies involved in asset recovery. The agencies that use the database are obliged to keep it updated by entering data about the progress of confiscation order enforcement. Importantly, JARD records the date the confiscation order was made and the deadline the court sets for the defendant to satisfy the order. Agencies are therefore able to monitor the cases using these dates and are able to prioritise enforcement action accordingly. The data on JARD is regularly analysed by CICFA to monitor performance. Any delay in enforcement action is noted and queried with the agency in question.

## INCENTIVISATION

From April 2004 the police have received a proportion of the criminal assets that they recover, in order to provide them with a financial incentive to recover criminal assets quickly. In April 2006 the proportion of the seized assets that will be offered as an incentive will be increased to 50%, and this will be shared between the law enforcement agency, the prosecuting authority and the court involved in the individual case.

## NATIONAL GUIDELINES

The National Best Practice Guide to Confiscation Order Enforcement (NBPG) was published in August 2003. It was developed from an inter-agency study aimed at improving the rate of success in confiscating criminal assets. The study considered possible problems in the existing system and drew up a step-by-step process map for handling confiscation orders. The guide sets out the minimum acceptable standards for the enforcement process. It has been updated annually to take into account lessons learned, the most recent edition being in April 2005.

## THE ENFORCEMENT TASK FORCE

In 2003 CICFA established an Enforcement Task Force (ETF) in order to clear a backlog of confiscation orders and improve efficiency in the enforcement of new orders. The ETF deals only with orders made under the Criminal Justice Act 1988 (CJA) and the Drug Trafficking Act 1994 (DTA), and does not enforce orders made under the Proceeds of Crime Act 2002 (POCA). The ETF is made up of HMCE and police financial investigators, and Crown Prosecution Service and HMCE lawyers, on attachment.

The Home Office currently funds the ETF, with an annual budget of £1.4m. In addition to this funding, some other costs are met by the participating organisations. Increasing the resources available, and combining people with different areas of expertise and experience in a single agency, has greatly improved the efficiency of the enforcement process.

#### A NEW PROSECUTING AUTHORITY

On 18 April 2005 HMCE merged with the Inland Revenue (IR) to form Her Majesty's Revenue and Customs (HMRC). On the same date RCPO was created as an independent prosecuting authority, conducting criminal cases for HMRC. The cases concern drug trafficking, evasion of duty and tax fraud (direct taxes and VAT). RCPO is organised into five Casework Units (CU 1 to 5) and an Asset Forfeiture Unit (AFU). In addition RCPO lawyers are attached to the ETF.

CU 1 to 5 conduct prosecutions, including applications for confiscation orders. The AFU is responsible for conducting restraint and receivership proceedings to preserve assets that may later be the subject of a confiscation order, and also for enforcing confiscation orders so that the proceeds of crime are collected.

#### ENFORCEMENT BY RCPO

RCPO reports to CICFA regularly on its enforcement performance. JARD is used extensively throughout the office and provides a means of monitoring enforcement activity. RCPO enforcement procedures comply fully with the NBPG.

Confiscation orders obtained under CJA and DTA are enforced by the RCPO team attached to the ETF. A senior lawyer from the AFU monitors the team's work on a daily basis.

Confiscation orders obtained under POCA are enforced by the AFU. The team consists of dedicated case holders who are allocated to deal solely with enforcement work. They are able to prioritise enforcement action thereby ensuring that it is dealt with promptly. Any legal issues that arise are referred directly to one of the lawyers within the AFU.

### **Appendix 6: Letter from the Chair to Rt Hon Charles Clarke MP, Secretary of State for the Home Department, re *Henworth v UK*, *Massey v UK*, *Whitfield v UK*, *Hooper v UK* and *Blackstock v UK***

The Joint Committee on Human Rights intends to continue its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR). I am writing to inquire about the government's response to a number of recent judgments of the Court, which find violations of the ECHR in areas within the responsibility of your department.

*Henworth v UK*, Application No 515/02, concerned a murder conviction quashed on appeal. After the failure of two retrials, the applicant was convicted on a third retrial. Following an appeal, which was dismissed, the case was finally resolved 6 years after the applicant's arrest. The Court found that, although many of the delays in the proceedings were in themselves not excessive, taken together they were significant. Furthermore, by the time of the second retrial, the State was under a particular obligation to proceed with diligence, and to ensure that any delay was kept to an absolute minimum, since not only was the applicant in custody, but the authorities had elected to retry him for a second time. The accumulation of delays therefore failed to satisfy the Article 6.1 ECHR requirement of trial within a reasonable time.

I would be grateful if you could inform the Committee:

- how you intend to evaluate progress in preventing delays in the course of retrials;

- what steps that have been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service, and to ensure that particular and appropriate efforts are made to avoid delays where a case is retried.

*Massey v UK*, Application No 14399/02, concerned a trial on a number of counts of sexual assault of children taking place in the 1970s and 1980s. The applicant's arrest followed a lengthy police investigation, which involved long delays in taking statements from the complainants, due to pressure of other business. There were a number of further delays before the matter could be brought to trial, in part as a result of the non-availability of the complainants. Convicted in 1999, the applicant had his case finally determined by the dismissal of his appeal by the Court of Appeal in 2001.

The Court noted that the case was not particularly complex, with no forensic or expert evidence involved. It nevertheless took two years eight months from arrest to trial and then over a further two years for the appeal to be terminated. The Court considered that, given that there had been some delay in bringing the matter for trial, there was a particular onus on the authorities to progress the case expeditiously in its later stages. It was also significant that the trial concerned matters some years in the past, and a further lapse of time could only damage the quality of the evidence available. In the circumstances, the accumulation of delays failed to satisfy the requirement of trial within a reasonable time and violated Article 6.1 ECHR.

In light of the decision of the Court, I would be grateful if you could inform the Committee:

- whether the case has been brought to the notice of the relevant decision-makers in police forces, the CPS and the courts;
- whether you are satisfied that police forces are aware that delays in investigations may contribute to a prosecution that breaches the reasonable time requirement of Article 6.1, and what action has been taken to ensure that they are aware of this;
- whether you are satisfied that the relevant officials in the CPS and the courts are aware that delays in proceedings where investigations have already been delayed may lead to a breach of Article 6.1, and what action has been taken to ensure that they are aware of this;
- how you intend to evaluate progress in ensuring compliance with Article 6.1 in such cases.

In *Whitfield v UK*, Application No 46387/99, the applicants were prisoners who were charged with disciplinary offences under the Prison Rules 1964, and following a hearing before a prison governor, were found guilty and sentenced to additional days detention or forfeiture of privileges. Each applied for, but was denied, legal representation at the hearing before the prison governor. The Court found that since the prosecution, investigation and adjudication in the applicants' cases had all been carried out by persons answerable to the Home Office, the adjudicating body was insufficiently structurally independent to satisfy Article 6. The Court also found that the refusal of legal representation to the applicants breached the right to legal representation in criminal proceedings guaranteed by Article 6.3.c.

Rights to legal representation are governed by the Prison Rules made under section 49(2) of the Prison Act 1952, which requires rules to be made to ensure that persons charged with offences under the Rules shall have a proper opportunity of presenting their case. Rule 49 (2) of the Prison Rules states that a prisoner charged with disciplinary offences

shall be given “a full opportunity of hearing what is alleged against him and of presenting his own case.”

I would be grateful if you could inform the Committee whether it is intended to amend the Prison Rules to ensure legal representation in appropriate cases in accordance with Article 6.3.c, if so how, and if not what new guidance is being given to prison governors and the courts as to the interpretation and application of the Prison Rules in light of the judgment.

*Hooper v UK*, Application No 42317/98, concerned an order made by a magistrate binding over the applicant to keep the peace under the Justices of the Peace Act 1361. The order was made without hearing representations from the applicant. Subsequently, in the absence of the required surety of £250, the applicant was committed to prison for 28 days. The High Court, applying the pre-Human Rights Act law, found that the order was in breach of the principles of natural justice. The Court affirmed that where, as in this case, personal liberty was at stake, the interests of justice in principle call for legal representation, and for the legal representative to be heard. It further held that the failure to give the applicant or his representative the opportunity to address the magistrates’ court before the order was made breached Article 6.1 and Article 6.3.c.

I would be grateful if you could inform the Committee what guidance has been provided to magistrates’ courts and magistrates’ clerks in light of the case to ensure that magistrates allow for representations to be made before making such orders, in order to ensure Article 6 compliance.

*Blackstock v UK*, Application No 59512/00, concerned decisions taken on the continued detention of a life sentenced prisoner following the expiry of his tariff period. A Discretionary Lifer Panel recommended that the Home Secretary transfer the applicant from a category B to a category D (“open”) prison with a view to preparing him for release. The Home Secretary rejected the Panel’s recommendation, directing instead that the applicant should be transferred to a category C prison, and that his situation should be reviewed 12 months thereafter. In fact, it was 22 months before the applicant’s case was again reviewed by the Panel, which again recommended transfer to a category D prison. This decision was accepted by the Home Secretary two months later. The applicant was released two years after his transfer to a category D prison.

The Court noted that Article 5.4 required both that reviews of detention should be speedy, and that they should occur at reasonable intervals. The lapse of 22 months was due in part to the time taken for the Home Secretary to review the decision of the Panel; and in part by a shortage of spaces in appropriate category C prisons, which delayed the actual transfer of the applicant following the Home Secretary’s decision. When he was eventually transferred, it was still considered necessary for him to spend 12 months in a category C prison. The Court doubted the necessity for this: it pointed out that there were no formal courses or programme of work outlined for the applicant during his time as a category C prisoner. The Court therefore considered that there had been a lack of reasonable expedition and a breach of Article 5.4.

I would be grateful if you could inform the Committee:

- whether you are aware of cases other than Blackstock where there has been a delay in putting Parole Board decisions on transfers into effect;
- what action has been taken to reduce the impact of prison overcrowding on procedures for review of detention and transfer of prisoners;

- what action has been taken in response to the judgment to ensure prompt decisions by the Parole Board and prompt review by the Home Office;
- where delays do occur in the transfer of prisoners following decisions of the Parole Board, whether procedures allow for account to be taken of this delay in setting the period which the prisoner is required to serve in the category of prison to which he or she has been transferred.

I am copying this letter to the Secretary of State for Constitutional Affairs, the Attorney General, the Judicial Studies Board and the Parole Board. I would appreciate your response to these queries by 9 December 2005.

*20 October 2005*

### **Appendix 7: Letter from Rt Hon Charles Clarke MP, Secretary of State for the Home Department, re *Henworth v UK, Massey v UK, Whitfield v UK, Hooper v UK and Blackstock v UK***

Thank you for your letter of 20 October in which you requested information about the Government's response to a number of recent judgments of the Court. Unfortunately your letter was misplaced by my office and this accounts for the severe delay in responding. I understand that my office has contacted yours to explain, but please accept our sincere apologies again that this has happened. I have responded to each of your questions in turn in the accompanying Annex.

I am copying this letter to Charlie Falconer, Peter Goldsmith, the Judicial Studies Board and the Parole Board.

*10 February 2006*

ANNEX

*Henworth v UK* Application No 515/02

#### **1) How you intend to evaluate progress in preventing delays in the course of retrials**

The primary aim of the Effective Trial Management Programme, which covers all trials, including re-trials, is to reduce the number of ineffective trials by improving case preparation and progression from the point of charge through to trial or earlier conclusion. The Programme has worked with representatives from the CPS, police, magistrates' court, Crown Court and the defence in shaping and delivering the proposals. The Programme has also worked closely with the judiciary and magistracy and this has provided valuable input on how improvements to case management can be achieved. Two other important developments are worth noting. The first Criminal Procedure Rules on case management were brought into force in April 2005 and the Criminal Case Management Framework was published in 2004 and revised in 2005. The impact of the ETMP on performance is closely monitored. Results in areas that have fully implemented their changes indicate reductions in headline ineffective trial rates.

#### **2) What steps have been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service, and to ensure that particular and appropriate efforts are made to avoid delays where a case is retried**



The judgment has been published in the *European Human Rights Reports* ((2005) 40 EHRR 33). Judges are expected to familiarise themselves with the relevant caselaw. Furthermore, under the Human Rights Act 1998, judges are obliged to apply the relevant Strasbourg jurisprudence in interpreting our domestic law. The Crown Prosecution Service were notified immediately of the judgement when it issued and formed their own assessment of the case. The judgment was also drawn to the attention of the Criminal Appeal Office of the Court of Appeal. In the light of this judgment, and the judgment in the Massey case discussed below, the Registrar instructed lawyers in the CAO to look carefully at the history of proceedings prior to the lodging of any application for leave to appeal and, where there has been some delay in the Crown Court (for whatever reason, and irrespective of whether Article 6 delay has been taken as a point of appeal) to ensure that any application or appeal is processed without further delay and, if appropriate, draw the delay to the attention of the Court.

*Massey v UK*, Application No 14399/02

**1) Whether the case has been brought to the notice of the relevant decision-makers in police forces, the CPS and the courts.**

The case was drawn to the attention of the relevant decision makers in the CPS and the courts (the Criminal Appeal Office of the Court of Appeal) when it issued. Please see the comments above, regarding the CPS and CAO response to the *Henworth* case which also apply to *Massey*. *Henworth* was not considered to raise an issue requiring guidance for the police.

**2) Whether you are satisfied that police forces are aware that delays in investigations may contribute to a prosecution that breaches the reasonable time requirement of Article 6.1, and what action has been taken to ensure that they are aware of this**

Like other public authorities, the police must implement the Convention in their work. They are accustomed to progressing investigations as quickly as possible, whether because of the possibility of an abuse of process application at the trial or more immediate factors such as the risk of evidence being lost. As the Committee rightly point out, however, the judgement suggests that the investigative period may be relevant to the Article 6 reasonable time requirement in some cases, so we are considering whether there is a case for specific guidance on this point.

**3) Whether you are satisfied that the relevant officials in the CPS and the courts are aware that delays in proceedings where investigations have already been delayed may lead to a breach of Article 6.1, and what action has been taken to ensure that they are aware of this**

Some time before the judgment issued, the Attorney General had already sought clarification from the courts of the law on unreasonable delay in the hearing of criminal charges for the purposes of Article 6(1) of the Convention. Relying on the powers in the Criminal Justice Act 1972, the Court of Appeal was invited to consider the issues in the case of *R v J* (Attorney General Reference 2/2001). The judgment, delivered on 11 December 2003, is the leading authority on delay in criminal cases. Following this judgment, information and guidance was issued by the CPS to prosecutors. It is considered that *Massey* turned on its particular facts and did not call for additional guidance.

The CPS were, however, informed of the judgement when it issued and made their own assessment of its impact. The judgment was also drawn immediately to the attention of the Criminal Appeal Office of the Court of Appeal and the action there is described above. Specific action was taken to address the court's comments with regard to the need to

ensure that an appeal is progressed expeditiously where there have been previous delays, for whatever reason, in a case.

#### **4) How you intend to evaluate progress in ensuring compliance with Article 6(1) in such cases**

The monitoring aspect of the ETMP was described above. The Criminal Appeal Office specifically monitors its own case through-put.

*Whitfield v UK*, Application No 46387/99

#### **You asked whether it was intended to amend the Prison Rules to ensure legal representation in appropriate cases in accordance with Article 6.3.c, if so how, and if not what new guidance is being given to prison governors and the court as to the interpretation and application of the Prison Rules in light of the judgment**

In July 2002 the European Court of Human Rights ruled in the cases of *Ezeh* and *Connors* that Article 6 applied to prison disciplinary hearings (adjudications) if the punishment was additional days. The decision was subsequently upheld by the Grand Chamber. The Prison Rules were amended in August 2002 so that disciplinary charges likely to attract additional days are referred by the governor to an independent adjudicator for hearing. District Judges act as independent adjudicators.

*Whitfield* was among a number of cases put on hold by the ECHR because it raised the same issues as *Ezeh* and *Connors*. Following the decision of the Chamber, the UK government decided not to contest it. The necessary remedial action to ensure Article 6 compliance had already been taken. This included an amendment to the Prison Rules that in independent adjudications, the prisoner must be given the opportunity to be legally represented (Prison Rule 54(3)).

*Hooper v UK* Application No 42317/98

#### **You asked what guidance has been provided to the courts in the light of this case to ensure that magistrates' allow for representations to be made before making binding over orders, in order to ensure Article 6 compliance.**

*Hooper* is a fact specific case and, therefore, the European Court judgement requires a clarification to magistrates that in similar circumstances they should afford the defendant an opportunity to address them prior to the imposition of a binding over order. The court as a public authority under the Human Rights Act 1998 is under a duty to act in compliance with Article 6 anyway.

Our Consultation Document, *Bind Overs—a power for the 21<sup>st</sup> century*, recommended a number of reforms in the bind over powers, including that provision be made for the giving of representations and for legal representation where required. We have approached the Lord Chief Justice and Sir Igor Judge (who now issues criminal practice directions jointly with the LCJ as President of the Queen's Bench Division) about whether or not they are willing to issue a practice direction on bind overs and both are in favour. This is intended to ensure that the way the power is used meets modern legal safeguards and it should be issued later this year.

*Blackstock v UK*, Application No 59512/00

**1) Whether you are aware of cases other than Blackstock where there has been a delay in putting Parole Board decisions on transfers into effect?**

I am not aware of any lifer cases where the issue in *Blackstock* is currently before the ECtHR.

The earlier precedent cases of *Oldham* and *Hirst* in 1997 and 2001 established that the ECtHR will not rule on a maximum period between parole reviews, in view of the recognised fact that bases fall to be determined on their individual circumstances. Current policy in setting lifer review dates was framed in the light of these judgments.

**2) What action has been taken to reduce the impact of prison overcrowding on procedures for review of detention and transfer of prisoners?**

Overcrowding does impact on the allocation and transfer of prisoners and their progress through the system. We have no control over that, and our first priority must always be to house all those sent to us by the Courts in a way that protects both the public and the prisoner.

The National Offender Management Service (NOMS) keeps under review the overall demand on prison places and the capacity of prisons to accommodate those prisoners sent to them by the courts. Prison capacity has increased by at least 3,800 in the last two years. This includes building additional places at existing prisons and the return to use of accommodation, as well as the construction of two new prisons.

Current plans are to increase the number of prison places under a funded building programme and deliver 1,800 new places to increase capacity to a total of 80,400 by 2007. These additional places will be created by expansion at existing prisons.

The position is being kept under close review, particularly in the light of the changes in the sentencing of dangerous offenders and the changes being introduced to offender management. The impact of the new sentencing framework, and the subsequent implications for the parole system will require analysis over a period of time to ensure that any strategy we adopt is effective and meets actual need.

**3) What action has been taken in response to the judgment to ensure prompt decisions by the Parole Board and prompt review by the Home Office?**

Parole reviews for tariff expired lifers normally take about 6 months and they guarantee the lifer the right to an oral hearing. In 2003, new streamlining arrangements were introduced to enable panels to decide certain cases at a much earlier stage. That new arrangement does not affect the above guarantee.

The Independent Parole Board, together with the Lifer Review and Release Section (LRRS) in NOMS, operates to testing business plan targets which cover all key stages in the review process, including the taking and notification of decisions.

**4) Where delays do occur in the transfer of prisoners following decisions of the Parole Board, whether procedures allow for account to be taken of this delay in setting the period in which the prisoner is required to serve in the category of prison to which he or she has been transferred?**

All decisions on the timing of the next review are based on the individual circumstances of each case, but the interval between lifer parole review cannot exceed 2 years. In the

context of weighing the period of testing against the protection of the public from the risk of harm, I consider it absolutely right and necessary that risk assessments on life sentence prisoners are meaningful, thorough and conducted over a sufficiently lengthy period of testing in whichever category of prison the prisoner is held.

10 February 2006

### **Appendix 8: Letter from the Chair to Professor Sir Duncan Nichol, Chairman, Parole Board, re Blackstock v UK**

I enclose a copy of my letter to the Home Secretary, regarding the recent decision of the European Court of Human Rights in *Blackstock v UK*. The Committee would also be grateful for the Parole Board's views on the questions raised in that letter, and in particular, for information on cases other than *Blackstock* where there have been similar delays in putting into effect Parole Board decisions on transfer of prisoners.

20 October 2006

### **Appendix 9: Letter from Professor Sir Duncan Nichol, Chairman, Parole Board, re Blackstock v UK**

Thank you for your letter of 20<sup>th</sup> October.

The Parole Board plays no part in the criminal trial process, nor that for prisoners charged under Prison Rules. I shall therefore confine my comments to the case of *Blackstock*, although I note that this case concerned the actions of the Home Secretary and allegations of delay by his offices, and in that respect it would be inappropriate for me to offer anything that could be construed as criticism.

The Parole Board acts on a lawful referral by the Home Secretary to consider the release of life sentence prisoners. It is the Home Secretary's practice to ask the Board, where it does not consider a prisoner suitable for release, to give advice on his/her suitability for transfer to open conditions. In Mr *Blackstock's* case the Board recommended such a transfer and in doing so, discharged its statutory function. The recommendation fell to the Home Secretary to consider and the Board played no further part in the proceedings.

Since the Parole Board is only responsible for its own procedures as part of the process of reviewing life sentence prisoners, I can only properly comment on the penultimate bullet point in your letter. You ask what action has been taken in response to the *Blackstock* judgement with a view to ensuring that reviews are completed promptly. I should emphasise that the finding by the European Court of Human Rights that there had been a breach of articles 5(4) and 5(5) was not caused by any action of the Parole Board. The Board had already been made aware of its obligations in this respect by the Court of Appeal in the case of *Noorkoiv*, where it became incumbent on us to ensure that life sentence prisoners reviews are completed by the Board in good time to allow their physical release from custody to be effected promptly. There is nothing in the ECtHR judgement that materially affects the way in which the Board conducts its part in such reviews.

1 November 2005

## **Appendix 10: Letter from the Chair to Rt Hon Dr John Reid MP, Secretary of State for Defence, re Roche v UK**

As part of the continuing review by the Joint Committee on Human Rights of the implementation of European Court of Human Rights judgments finding the UK to be in violation of the European Convention on Human Rights (ECHR), I am writing to inquire about the Government's response to the recent Strasbourg judgment in *Roche v UK*, which I understand falls within the responsibilities of your department.

As you will recall, the case concerned the applicant's attempts to obtain information regarding his participation in tests of mustard and nerve gas at the Chemical and Biological Defence Establishment at Porton Down. The applicant was concerned that his chronic ill-health was related to his participation in the tests. Over many years, he had sought access to medical and other records through various channels, including through applications for disclosure in proceedings before the Pensions Appeal Tribunal (PAT).

The Court found that the piecemeal and incomplete disclosure of information to the applicant failed to fulfil the State's Article 8 positive obligation to provide an effective and accessible procedure for the applicant's access to information concerning his private life. Since the applicant's aim in seeking disclosure was to obtain information about his private life, rather than to obtain a pension, this positive obligation could not be fulfilled by a disclosure process linked to litigation.

The Freedom of Information Act 2000 now provides an additional basis for disclosure. I would nevertheless appreciate information on whether you are proposing any further measures to strengthen the system of disclosure of armed forces records; the timescale for any such measures; and whether any further practical steps have been taken to gather and make accessible records of chemical and biological tests by the armed forces.

I would be grateful for a response to these queries by 28 February.

26 January 2006

## **Appendix 11: Letter from Don Touhig MP, Parliamentary Under-Secretary of State for Defence and Minister for Veterans, re Roche v UK**

Thank you for your letter of 26 January which asked about progress in preparing the Government's response to the judgement made by the European Court of Human Rights (ECtHR) in the case of *Roche v UK*. As you recognise, the lead on this rests with the Ministry of Defence and we are giving careful consideration to the steps we need to take to comply with the judgement.

In your letter you note that implementation of the Freedom of Information Act means there is now a basis for disclosure that did not exist when Mr Roche first asked for information about the hazards to which he might have been exposed at Porton Down. Since the proceedings in the case were brought, the UK has also implemented Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data) by bringing into force the Data Protection Act 1998. These are important factors which give us confidence that any request received today would be handled much more effectively. We put significant effort into preparing for implementation of the access legislation and I am confident that the arrangements for receipt and management of requests are working well. In addition, and long before the ECtHR's judgement, we recognised the need to offer specific help to anyone who was a volunteer in relation to the experiments conducted at Porton Down. The support system

recognises the need for openness and the release of any information which may be of assistance to former volunteers. This commitment is confirmed in the statement which is published on our web-site.<sup>1</sup> A copy is attached for your information.

Although much has improved, I recognise that the arrangements now in place may not provide a full answer to the ECtHR's judgement. As you know, this establishes a requirement to ensure that, if requested, we are able to provide all information relevant and appropriate to any hazardous activity. Moreover, although a countervailing public interest can legitimately lead to the conclusion that information or documents do not need to be disclosed, the obligation that arises under Article 8 is not expressly limited in the same way as the right to access information under the Directive of Acts. As you will be aware, requests for unstructured data under the DPA and for information under the FOI Act are subject to an 'appropriate limit' of £600 and there are specific grounds for the exemption of information. Fully and effectively implementing the ECtHR ruling does, therefore, present some very significant practical challenges. For example, simply identifying the hazards in relation to which a request might be made is no simple matter in relation to defence business. The fact that information which could be relevant to an 'Article 8 request' is held in many different locations and for very different business reasons, also presents a challenge, as does the fact that information may be required about events which happened many years ago. At present, therefore, we are in the process of scoping exactly what the problems are and how, practically, they can be addressed.

At this stage I cannot say what, if any, further steps will be taken to strengthen and add to the current disclosure arrangements, but I hope that my reply will have assured you that we are taking the ECHR ruling very seriously and that we are not complacent.

*14 February 2006*

#### PORTON DOWN: MOD'S RESPONSE

Details of the package of measures announced by the Under Secretary of State for Defence.

On 21 November 2000, Dr Lewis Moonie, then Under Secretary of State for Defence, announced in a written answer to Liz Blackman MP the steps which he would be taking to address reports of ill-health among Porton Down volunteers.

"The Ministry of Defence is taking a number of steps designed to help those who participated as volunteers in trials at Porton Down. The Ministry of Defence is very grateful to all those whose participation in studies at Porton Down made possible the research to provide safe and effective protection for UK armed forces against chemical and biological weapons. Suggestions have been made that some Porton Down volunteers suffer unusual patterns of ill health because of their participation. The Ministry of Defence has seen no scientific evidence to support that belief, but takes such suggestions seriously. Therefore we are:

- offering volunteers the opportunity for a thorough medical assessment if they have concerns about their health. This will be along the lines of the Gulf Veterans' Medical Assessment Programme and will use the same facilities at St Thomas' Hospital, London. The data from these consultations will be analysed to explore whether patterns of ill health are associated with particular exposures;

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<sup>1</sup> <http://www.mod.uk/DefenceInternet/AboutDefence/Issues/PortonDown.htm>

- seeking advice from the Medical Research Council on an independent epidemiological study. Such a study may help establish whether or not former volunteers are suffering from excesses of ill health as compared to a matched group of service personnel who did not participate in trials at Porton Down;
- creating a multi-disciplinary policy focus within the Ministry of Defence which will be responsible for addressing volunteers' health concerns and liaising with other Government Departments;
- approaching this issue with openness and a commitment to dialogue with volunteers and their representatives;
- making public any information which may be of assistance to former volunteers. The current arrangements for the Porton Helpline will remain in being. All volunteers who approach it will be given full information by letter on their own trials, and offered the opportunity to examine the records for themselves at the site;
- continuing to co-operate fully and provide assistance to the ongoing Wiltshire police inquiry into trials at Porton Down.

The policy focus for Porton Down volunteers' issues will be provided by the Ministry of Defence's Gulf Veterans' Illnesses Unit (GVIU). The GVIU will be resourced to take on this important new responsibility and there will be no detriment to the ongoing Ministry of Defence commitment to assist Gulf veterans."

## **Appendix 12: Letter from the Chair to The Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, re *B and L v UK* and *Yetkinsekerci v UK***

As part of the continuing review by the Joint Committee on Human Rights of the implementation of European Court of Human Rights judgments finding the UK to be in violation of the European Convention on Human Rights (ECHR), I am writing to inquire about the government's response to two recent Strasbourg judgments which fall within the responsibility of your department.

The first case, *B and L v UK* (Judgment of 13 September 2005) concerns the prohibition, under the Marriage Act 1949, on marriage between a father-in-law and daughter-in-law. The Court held that the bar on the applicants' marriage impaired the very essence of the applicants' Article 12 right to marry, and could not be justified by social policy imperatives. The relevant provisions of the Marriage Act (section 1 read with Schedule 1 Part III) therefore breached Article 12 ECHR.

In a written statement of 21 November 2005, Baroness Ashton of Upholland stated that the Government accepted the judgment of the Court, and intended shortly to introduce a draft remedial order to allow marriages between parents and children-in-law. She also stated that parallel provisions in the Civil Partnership Act 2004 would not be commenced, so as to allow for parallel treatment of same-sex couples in this matter. I would be grateful if you could inform us of the anticipated schedule for introduction of the remedial order in this case.

The second case, *Yetkinsekerci v UK*, (Judgment of 20 October 2005) concerns delays in criminal proceedings, in particular appeal proceedings. The Court held that the lapse of three years between the applicant's conviction and the determination of his appeal in the Court of Appeal, breached the right to trial within a reasonable time under Article 6.1 ECHR. As you know, this is the latest in a series of cases where delays in the domestic

criminal courts have been found to violate Article 6.1. I would therefore particularly welcome information on any steps taken to address such delays. I would also be grateful for information on the steps that have been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service.

I am copying this letter to the Judicial Studies Board and the Attorney General for their information.

I would be grateful for a response to these queries by 28 February.

26 January 2006

### **Appendix 13: Letter from The Rt Hon Lord Falconer of Thoroton QC, Secretary of State for Constitutional Affairs and Lord Chancellor, re *Yetkinsekerci v UK***

Thank you for your letter of 26 January about the implementation of two recent judgments of the European Court of Human Rights. I have already written in response to your query about *B and L v UK* (Judgment of 13 September 2005), and I write now to answer your questions about the second case, *Yetkinsekerci v UK* (Judgment of 20 October 2005).

*Yetkinsekerci v UK* concerns the delay between the applicants conviction and the determination of his appeal in the Court of Appeal (Criminal Division).

#### **You asked, firstly, what steps have been taken to address such delays.**

The case of *Yetkinsekerci v UK* dates back to a time when the Court of Appeal (Criminal Division) was experiencing significant staff shortages, and delays were much more of a problem. Since then much has been done to address delays and improve efficiency in the Court.

The Criminal Appeals Office (CAO) underwent a fundamental restructure in 2003, primarily to streamline and modernise working practices so as to assist the efficient progress of cases. One of the major innovations was the creation of a casework group dealing purely with sentence applications and appeals, which for the most part can be processed more quickly and simply than conviction cases.

In addition, there are now three conviction casework groups, (which also deal with applications relating to both conviction and sentence). Each group is managed by a lawyer Team Leader and deals with cases from initial receipt in the group to final disposal. A key feature of the revised casework practice is the formal designation of all conviction applications as 'red' 'amber' or 'green', depending on complexity. This enables the casework teams to more effectively allocate work amongst staff and provides a tool by which the progress of different types of case may be monitored.

The CAO also undertook a major recruitment drive, which successfully brought the number of lawyers up to complement. New casework lawyers have now completed their training—and the benefits can be seen in the improved figures for summaries outstanding.

A further innovation saw one of the most experienced lawyers in the Office taking on a new role of Legal Information and Dissemination lawyer—to improve case coordination, provide information on matters of law and practice to the judiciary, legal and administrative staff and to produce the weekly 'database' of conviction appeals. Work is also in hand to revise and update materials, and create an Office best practice guide.



The CACD's performance in recent years has improved markedly as a result of these and other efforts. For example, average waiting times for conviction cases in the CACD dropped from 15.1 months in October 2003 to 13.6 months in October 2005. During the same period, the number of 'old' conviction cases (ie those which have been outstanding in the office for more than 8 months) dropped from 305 to 151. It is expected that the average waiting time will continue to decrease.

**You also asked what steps have been taken to draw the judgment to the attention of judges and the relevant decision makers in the Crown Prosecution Service.**

The judgment on *Yetkinsekerci v UK* was circulated to Criminal Appeal Office lawyers as soon as it was published. In the light of this and other cases raising complaints about delay, lawyers in the CAO are very conscious of the need to avoid any unnecessary delay and to draw the Court's attention to the reasons for delay where appropriate. Judgments are always circulated to lawyers at the earliest opportunity, and any salient points highlighted.

Judges are expected to familiarise themselves with the relevant case law and are obliged to consider the relevant Strasbourg jurisprudence in interpreting our domestic law. The judgment on *Yetkinsekerci v UK* was published on 14 November 2005, and would therefore have come to the attention of the decision makers in the Crown Prosecution Service.

I hope that this information has answered your queries in relation to these judgments.

*19 February 2006*

# Reports from the Joint Committee on Human Rights in this Parliament

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## The following reports have been produced

### Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888
Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955