



Ministry
of Justice

Responding to Human Rights judgments

Report to the Joint Committee on Human Rights on the Government's response to Human Rights judgments 2014–16

November 2016



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the Government's response to Human Rights judgments
2014–16

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of Her Majesty

November 2016



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Introduction

This is the latest report to the Joint Committee on Human Rights (the Joint Committee) setting out the Government's position on the implementation of adverse human rights judgments from the European Court of Human Rights (ECtHR) and the domestic courts.¹

Following the approach in previous reports, it is divided into three main sections:

- general introductory comments, including **wider developments in human rights and the process for implementation of adverse judgments**;
- **the UK's record on the implementation of judgments of the ECtHR** and an **overview of significant ECtHR judgments** that either have become final since the last report or became final earlier but are still under the supervision of the Committee of Ministers; and
- information about **declarations of incompatibility in domestic cases**.

This report covers the period 1 August 2014 to 31 July 2016. It also responds to the recommendations of the Joint Committee's report on human rights judgments published on 4 March 2015.²

The Government welcomes correspondence from the Joint Committee should it require further information on anything in this report.

¹ Previous reports are published at <https://www.gov.uk/government/collections/human-rights-the-governments-response-to-human-rights-judgments>

² <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/130/130.pdf>

General comments

The main focus of this paper is on two particular types of human rights judgments:

- **judgments of the European Court of Human Rights** in Strasbourg against the UK under the European Convention on Human Rights (ECHR); and
- **declarations of incompatibility** by UK courts under section 4 of the Human Rights Act 1998 (HRA).

A feature of these judgments is that their implementation may require changes to legislation,³ policy or practice, or a combination thereof.

European Court of Human Rights judgments

Under Article 46(1) of the ECHR, the UK is obliged to implement judgments of the ECtHR in any case to which it is a party. The implementation or execution of judgments from the ECtHR is overseen by the Committee of Ministers of the Council of Europe (the Committee of Ministers) under Article 46(2).

The Committee of Ministers is a body on which every Member State of the Council of Europe is represented. The Committee of Ministers is advised by a specialist Secretariat (the Department for the Execution of Judgments) in its work overseeing the implementation of judgments.

There are three parts to the implementation of a Strasbourg judgment:

- the payment of *just satisfaction*, a sum of money awarded by the court to the successful applicant;
- other *individual measures*, required to put the applicant so far as possible in the position they would have been in had the breach not occurred; and
- *general measures*, required to prevent the breach happening again, or to put an end to breaches that still continue.

Declarations of incompatibility

Under section 3 of the HRA, legislation must be read and given effect, so far as possible, in a way which is compatible with the Convention rights.⁴ If a higher court⁵ is satisfied that legislation⁶ is incompatible with a Convention right, it may make a declaration of

³ Whether primary legislation (i.e. Acts of Parliament) or subordinate legislation (e.g. statutory instruments).

⁴ The rights drawn from the ECHR listed in Schedule 1 of the HRA.

⁵ Of the level of the High Court or equivalent and above, as listed in section 4(5) of the HRA.

⁶ Either primary legislation, or subordinate legislation if the primary legislation under which it is made prevents the removal of the incompatibility (except by revocation).

incompatibility under section 4 of the HRA. Such declarations constitute a notification to Parliament that the legislation is incompatible with the Convention rights.

A declaration of incompatibility neither affects the continuing operation or enforcement of the legislation in question, nor binds the parties to the case in which the declaration is made.⁷ This respects the supremacy of Parliament in the making of the law. Unlike for judgments of the ECtHR, there is no legal obligation on the Government to take remedial action following a declaration of incompatibility or upon Parliament to accept any remedial measures the Government may propose.

Remedial measures in respect of both declarations of incompatibility and ECtHR judgments may, depending on the provisions proposed in any particular case, be brought forward by way of a remedial order under section 10 of the HRA.

⁷ Section 4(6) of the HRA.

Wider developments in human rights

Current Government policy on human rights

On an international level, the Government believes in Britain remaining an outward-looking nation, engaged with the world. As a nation we continue to comply with our international human rights obligations and take action to tackle any abuse of these rights. This includes working together with the United Nations (UN) to adopt a global response to mass migration and reducing the threat from international terrorism, stamping out modern slavery, championing the rights of women and girls and abhorring sexual violence in conflict.

Domestically, this Government was elected in 2015 with a mandate to reform and modernise the UK's human rights framework. The UK has a proud tradition of respect for human rights which long pre-dates the Human Rights Act 1998.

We will set out our proposals for a Bill of Rights in due course. We will consult fully on our proposals.

Reform of the European Court of Human Rights

The Brighton Declaration on the future of the ECtHR was agreed on 20 April 2012 at a ministerial conference organised under the UK's chairmanship of the Committee of Ministers of the Council of Europe and represents a substantial package of reform.

The Brighton Declaration included agreement in principle to amend the ECHR in five ways:

- to add a reference to the principle of subsidiarity⁸ and the doctrine of the margin of appreciation⁹ to the Preamble to the ECtHR, giving visibility to these key concepts that define the boundaries of the ECtHR's role;
- to change the rules on the age of judges of the ECtHR, to ensure that all judges are able to serve a full nine-year term;

⁸ The principle that national governments, parliaments and courts have the primary responsibility for securing to everyone within their jurisdiction the rights and freedoms defined in the Convention, and for providing an effective remedy before a national authority for everyone whose rights and freedoms are violated. By extension, the role of the Court is to interpret authoritatively the Convention, and to act as a safeguard for individuals whose rights and freedoms are not secured at the national level.

⁹ The doctrine that, depending on the circumstances and the rights engaged, national authorities may choose within a range of responses how they implement the Convention.

- to remove the right of parties to a case before the ECtHR to veto a Chamber's relinquishing jurisdiction to the Grand Chamber, a measure intended to improve the consistency of the Court's case law;¹⁰
- to reduce the time limit for applications to the Court from six months after the date of a final decision in the domestic courts, to four months; and
- to tighten the admissibility criteria in the ECHR to make it easier for the Court to reject trivial applications.

Protocol 15 to the ECHR will give legal effect to these changes. The UK ratified Protocol 15 on 10 April 2015. It has now been ratified by 32 of the States Parties to the ECHR, but needs to be ratified by all 47 to come into force. The Government is encouraging the remaining 15 States to proceed to ratification as soon as possible.

EU accession to the ECHR

Article 6(2) of the Treaty on European Union (the Lisbon Treaty) requires the EU to accede to the ECHR. Accession will mean that the EU and its institutions are directly bound by the ECHR, and will enable individuals to apply to the ECtHR if they believe that EU legislation or the actions of an EU institution have violated their ECHR rights.

A draft Accession Agreement was agreed in principle at negotiator level in Strasbourg in April 2013. The Commission then referred the Agreement to the European Court of Justice (CJEU) for an opinion on its compatibility with the EU Treaties. The CJEU delivered its opinion on 18 December 2014, finding that the draft Agreement was incompatible with the EU Treaties. The opinion raised a number of complex issues which will need to be resolved.

Fundamental Rights in the EU

Fundamental rights are general principles of EU law, which bind both the EU and, when acting within the scope of EU law, its Member States. Examples of fundamental rights include the right to freedom of expression and the right to protection of personal information.

The Charter is the EU's catalogue of rights. It was given binding legal force in 2009 by the Lisbon Treaty. Most of the rights in the ECHR have been recognised as fundamental rights in EU case law and are re-affirmed in the Charter.

The Charter does not create any new rights, or extend the circumstances in which national laws can be challenged – it simply restates and makes more visible the rights which have existed in EU law for decades. The UK and Poland have a Protocol on the Charter (Protocol 30 to the EU Treaties). The Protocol is not an opt-out for the UK; rather, it clarifies how the Charter should be interpreted and applied for all Member States. It was intended to confirm that the charter did not create any new rights and only applies when

¹⁰ Chambers consist of seven judges, Grand Chambers of seventeen. Article 30 provides that, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

member states are acting in the scope of EU law. The CJEU agreed with the Government's submissions about the effects of the Protocol.

On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Reporting to United Nations (UN) Human Rights Monitoring Bodies

The Government takes its international human rights obligations seriously and remains committed to continue to play a full role in UN reporting and examination processes. Our commitment enables us to apply pressure on other countries, with poor human rights records, to do the same. In the Prime Minister's speech of 20 September 2016 at the UN General Assembly, she pledged the UK to be a confident, strong and dependable partner internationally – true to the universal values shared with the other UN Member States.

The UK also remains fully committed to the Universal Periodic Review (UPR) process,¹¹ an essential mechanism for sharing best practice on human rights, and for promoting the continual improvement of human rights on the ground. As part of the monitoring process, the UK Government is committed to constructive engagement with the National Human Rights Institutions and interested NGOs.

Since 1 August 2014, the UK has completed the following milestones:

- November 2014: follow-up information submitted to the UN under the Convention on the Elimination of All Forms of Discrimination Against Women (Government Equalities Office lead);
- March 2015: periodic report to the UN under the International Convention on the Elimination of All Forms of Racial Discrimination (Department for Communities and Local Government lead);
- July 2015: UN dialogue on the UK periodic report under the International Covenant on Civil and Political Rights (Ministry of Justice lead);
- November 2015: follow up information submitted to the UN under the Convention on the Elimination of All Forms of Discrimination Against Women (Government Equalities Office lead);
- May 2016: UN dialogue on the UK periodic report under the Convention on the Rights of the Child (Department for Education lead);
- June 2016: UN dialogue on the UK periodic report under the International Covenant on Economic, Social and Cultural Rights (Ministry of Justice lead);

¹¹ Details can be found at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

- August 2016: UN dialogue on the UK periodic report under the International Convention on the Elimination of All Forms of Racial Discrimination (Department for Communities and Local Government lead);
- August 2016: follow up information to the UN under the International Covenant on Civil and Political Rights (Ministry of Justice lead).

The upcoming milestones in 2017 in the UN monitoring process are:

- 3rd Universal Periodic Review of the UK (Ministry of Justice lead);
- Periodic report to the UN under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ministry of Justice lead);
- Periodic report to the UN under the Convention on the Elimination of All Forms of Discrimination Against Women (Government Equalities Office lead);
- Follow up information to the UN under the International Convention on the Elimination of All Forms of Racial Discrimination (Department for Communities and Local Government lead);
- Date to be confirmed (possibly in 2017): UN dialogue on the UK periodic report under the Convention on the Rights of Persons with Disabilities (Department for Work and Pensions lead).

The UK's approach to the implementation of human rights judgments

Coordinating the implementation of human rights judgments

There have been no significant changes to the Government's arrangements for coordinating the implementation of judgments since the last report.

As outlined in previous Government reports, the Ministry of Justice is the light-touch coordinator for the implementation of adverse judgments. It coordinates information from the Government departments leading on particular cases and is responsible for its onward transmission to the UK Delegation to the Council of Europe (UKDel). This system has been in place for some time and has helped to ensure implementation takes place in a timely and effective manner.

Lead responsibility for the implementation of a particular judgment rests with the relevant Government department, whilst UKDel represents the UK at the Committee of Ministers' meetings on the execution of judgments.

On receiving notice of an adverse judgment against the UK, the lead Government department completes an implementation form. This ensures the information needed for the effective oversight of the implementation process is provided to the Ministry of Justice. The information on the form is also used as the basis for drafting the Action Plan for implementation required by the Committee of Ministers.

The Ministry of Justice monitors cases involving other Council of Europe member States to identify those that have a read-across to existing UK cases and issues. In addition to communicating developments directly to relevant departments, the department produces a weekly email update to highlight significant cases and judgments.

However, it is not feasible for any one department to identify all the judgments that may be relevant. As a consequence all Government departments are expected to identify judgments relevant to their area of work, for onward dissemination as appropriate to bodies for which they are responsible. The Ministry of Justice's role is supplementary to and supports this work.

Access to information on the implementation of judgments

Information regarding the implementation of judgments is available in the public domain from a number of sources.

Domestically, the Government sets out information on **declarations of incompatibility** in the list annexed to this paper. The department with responsibility for a new declaration of incompatibility is responsible for drawing the Joint Committee's attention to the new declaration. The Ministry of Justice encourages lead departments to update the Joint Committee regularly on their plans for responding to declarations of incompatibility.

The Council of Europe's Department for the Execution of Judgments has a dedicated website for the **implementation of judgments**,¹² which provides access to a searchable list of all judgments currently outstanding against all Contracting Parties.

All forthcoming **judgments of the ECtHR** are highlighted a few days in advance on the ECtHR's website.¹³ The ECtHR's decisions and judgments are available via a comprehensive searchable database called HUDOC.¹⁴

The following table was compiled from information held on HUDOC and lists the cases involving the UK where the ECtHR has issued judgments between 1 August 2014 and 31 July 2016.

¹² <http://www.coe.int/en/web/execution>

¹³ <http://www.echr.coe.int/Pages/home.aspx?p=home>

¹⁴ <http://hudoc.echr.coe.int>

European Court of Human Rights judgments in cases against the UK between 1 August 2014 and 31 July 2016

Judgments are **in bold** if the Court found a violation or violations against the UK.

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
1	Firth and Others	Court (Fourth Section) 47784/09 47806/09 47812/09 47818/09 47829/09 49001/09 49007/09 49018/09 49033/09 49036/09	12/08/2014 15/12/2014	The applicants were all detained at the relevant time following criminal convictions. They were automatically prevented from voting, pursuant to primary legislation, in the elections to the European Parliament held on 4 June 2009. In accordance with previous decisions, the ECtHR held that the statutory ban on prisoners voting in elections to the European Parliament was, by reason of its blanket character, incompatible with Article 3 of Protocol No. 1.
2	Hassan	Grand Chamber 29750/09	16/09/2014 16/09/2014	The applicant alleged that his brother was arrested and detained by British forces in Iraq. He was subsequently found dead in unexplained circumstances. He complained under Article 5 that the arrest and detention were arbitrary and unlawful and lacking in procedural safeguards. He further claimed that under Articles 2, 3 and 5 the UK authorities failed to carry out an investigation into the circumstances of the detention, ill-treatment and death. The court found there was no violation of Article 5 – (right to liberty and security). The Article 2 (right to life) and 3 (prohibition on torture) claims were found inadmissible on the facts.
3	Gough	Court (Fourth Section) 49327/11	28/10/2014 23/03/2015	The applicant alleged, in particular, that his repeated arrest, prosecution, conviction and imprisonment for being naked in public and his treatment in detention violated his rights under Articles 3, 5(1), 7(1), 8, 9 and 10.

¹⁵ Article 44 of the ECHR details the main circumstances in which a judgment becomes final. Grand Chamber judgments are final on the date they are issued. A Chamber judgment becomes final (a) when the parties to the case declare they will not seek referral to the Grand Chamber; (b) three months from the date of the judgment if no request for referral to the Grand Chamber is made; or (c) when the panel to the Grand Chamber rejects any request for referral.

In addition, within its competence as set out under Article 28(1)(b), a Committee may issue an unanimous judgment that is final when it is given.

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
			<p>The ECtHR found there was no violation of Article 10 (freedom of expression) or Article 8 (right to respect for private and family life). The remainder of the claim was found inadmissible.</p>
4 David Thomas	Court (Fourth Section) 55863/11	04/11/2014 04/02/2015	<p>The applicant alleged that his detention following the expiry of his minimum tariff of imprisonment was unlawful. He claimed that in light of the failure of the authorities to put in place the necessary resources to enable him to demonstrate to the Parole Board that his risk had reduced, that his Parole Board Review was a meaningless exercise and in breach of Article 5.</p> <p>The ECtHR found that, on the facts, prompt steps had been taken to progress the applicant through the prison system and therefore there was no violation of Article 5 (right to liberty and security).</p>
5 Dillon	Court (Fourth Section) 32621/11	04/11/2014 04/02/2015	<p>The applicant alleged that his detention following the expiry of his tariff of imprisonment was unlawful. He claimed that in light of the failure of the authorities to put in place the necessary resources to enable him to demonstrate to the Parole Board that his risk had reduced, and that his Parole Board Review was a meaningless exercise and in breach of Article 5.</p> <p>The ECtHR found that, on the facts, prompt steps had been taken to progress the applicant through the prison system and therefore there was no violation of Article 5 (right to liberty and security).</p>
6 Peter Armstrong	Court (Fourth Section) 65282/09	09/12/2014 01/06/2015	<p>The applicant alleged that the presence of a retired police officer and a serving police officer on the jury at his trial for murder violated his right to a fair trial under Article 6.</p> <p>The ECtHR found there were sufficient safeguards to ensure impartiality and therefore there was no violation of Article 6 (right to a fair trial). The remainder of the claim was found inadmissible.</p>
7 McDonnell	Court (Fourth Section) 19563/11	09/12/2014 09/03/2015	<p>The applicant complained under Article 2 that the State had not fulfilled its procedural, investigative obligation in respect of the death in custody of her son in that there had been an excessive delay in the commencement of inquest proceedings.</p>

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
				<p>The ECtHR found there had therefore been a violation of Article 2 (right to life). By a majority they held that her claim under Article 13 (right to an effective remedy) raised no separate issue.</p>
8	Ibrahim and Others	<p>Court (Fourth Section)</p> <p>Grand Chamber</p> <p>50541/08 50571/08 50573/08 40351/09</p>	<p>Court 16/12/2014</p> <p>Grand chamber: judgment handed down 13/09/2016.</p>	<p>The applicants, four individuals involved in attempting and supporting a terrorist conspiracy in London in 2005, complained that the restriction of their right to prompt legal advice whilst they were first being questioned by police (by virtue of the use of an exceptional power contained within Schedule 8 of the Terrorism Act 2000) and the use of the evidence taken from those sessions at their trial was a breach of Article 6 (right to a fair trial).</p> <p>In December 2014 the ECtHR rejected the applicants' claim.</p> <p>Their request to have their case heard by the Grand Chamber was granted.</p> <p>The Grand Chamber found that the Government had convincingly demonstrated in the case of three applicants the existence of an urgent need to avert serious adverse consequences for the life and physical integrity of the public and the proceedings as a whole were fair.</p> <p>In the case of the fourth applicant (who was convicted of various accounts of assisting the second applicant and for failing to disclose information), the Grand Chamber found a violation of Article 6 (right to a fair trial). The Grand Chamber concluded that the Government had not shown compelling reasons for their actions, importantly, the deliberate decision of the police not to inform him of his right to remain silent once they realised that he was a potential suspect and not just a witness.</p>
9	Horncastle and Others	<p>Court (Fourth Section)</p> <p>4184/10</p>	<p>16/12/2014</p> <p>16/03/2015</p>	<p>The applicants alleged that the admission of a statement from a victim who had later died and witness statements where the witness had fled through fear as evidence rendered the respective proceedings unfair.</p> <p>The ECtHR found there was no violation of Article 6 (right to a fair trial).</p>

	Case name	Originating court and application number	1. Original judgment date	2. Date judgment became final¹⁵	Brief summary/Outcome
10	Hutchinson	Court (Fourth Section) 57592/08	03/02/2015	Referred to the Grand Chamber 01/06/2015 (decision awaited)	The applicant alleged, in particular, that his whole life sentence gave rise to a violation of Article 3. The ECtHR found there was no violation of Article 3 (prohibition of torture).
11	O'Donnell	Court (Fourth Section) 16667/10	07/04/2015	07/07/2015	The applicant alleged that the trial judge breached his right to a fair trial by allowing the jury to draw an adverse inference from his failure to testify (which he alleged was on the basis of his intellectual disabilities). He also alleged that the failure of the judge to direct the jury to consider whether there was, in fact, a case to answer violated his Article 6 rights. The ECtHR found there was no violation of Article 6 (right to a fair trial).
12	Piper	Court (Fourth Section) 44547/10	21/04/2015	21/07/2015	The applicant was convicted of the attempted importation of cocaine and was subject to imprisonment and a confiscation order which he attempted to challenge in the courts. He complained that the length taken to conclude the domestic proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6. The ECtHR found there had been an unreasonable delay of approximately three years attributable to the State and therefore there was a violation of Article 6 (right to a fair trial).
13	Magee and Others	Court (Fourth Section) 26289/12 29062/12 29891/12	12/05/2015	12/08/2015	The applicants were all arrested in Northern Ireland in connection with murder investigations. The DDP applied for, and was granted, warrants of further detention in order to question the applicants further. The applicants alleged that their further detention was in breach of Article 5. The ECtHR found there was no violation of Article 5 (right to liberty) in respect of the first and third applicant (right to liberty and security). The second applicant's claim and the remainder of the application was found inadmissible.
14	Abdulla Ali	Court (Fourth Section) 30971/12	30/06/2015	14/12/2015	In August 2006, the applicant was arrested, along with others, in the context of a large-scale counter terrorism operation. It was alleged that he had conspired to construct and simultaneously explode improvised

	Originating court and application number	1. Original judgment date 2. Date judgment became final¹⁵	Brief summary/Outcome
			<p>explosive devices on transatlantic passenger aircraft in flight, using suicide bombers.</p> <p>The applicant's complaint was that, because of extensive media coverage between his first trial and a retrial, the criminal proceedings against him had been unfair. The ECtHR unanimously held that there had been no violation of Article 6 in this case. The applicant subsequently requested his case to be referred to the Grand Chamber for consideration but this was refused on 14 December 2015.</p>
15 Sher and Others	Fourth Section 5201/11	20/10/2015 14/03/2016	<p>On 8 April 2009 the applicants, Pakistani nationals, were arrested and detained in connection with an anti-terrorism operation. Their homes were searched over a period of 10 days pursuant to warrants. The applicants remained in custody for a total of 13 days after a District Judge authorised their further detention at two successive hearings. Part of the first hearing was held in closed session to enable the judge to scrutinise and ask questions regarding material withheld from the applicants detailing the police operation and ongoing investigation. The applicants were legally represented at the open hearings but did not have a special advocate to represent them during the closed session. They were ultimately released without charge.</p> <p>The applicants alleged the procedure for hearing applications for warrants of further detention was incompatible with Article 5 and that the searches of their homes violated their right to respect for their private lives and homes protected by Article 8.</p> <p>The ECtHR held that there had been no violation of Article 5 (right to liberty) or Article 8 (right to respect for private and family life) in respect of the scope of the search warrants.</p>
16 Fazia Ali	Court (Fourth Section) 40378/10	20/10/2015 20/01/2016	<p>The applicant was a homeless person in priority need of accommodation. She turned down an offer of accommodation by her local authority. She was sent a letter (which she denied receiving) inviting her to a further viewing which informed her that if she refused that offer without good cause, the authority would consider that it had discharged its duty towards her. The</p>

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
			<p>applicant did view the property but refused that offer also. The authority then notified her in writing that it considered that it had discharged its duty. Its decision was upheld by the Homelessness Review Officer in an internal review procedure. The applicant's appeal to the County Court, was dismissed on the grounds that the issue had been properly and fairly determined by the Review Officer. The applicant's further appeals were dismissed with the Supreme Court holding that the determination by the Council was not a determination of a 'civil right' and therefore Article 6 was not engaged.</p> <p>The applicant complained that her inability to appeal to an independent and impartial tribunal in respect of the relevant factual finding had amounted to a violation of Article 6.</p> <p>The Court held that Article 6 (right to a fair trial) was engaged but found that the judicial scrutiny in the applicant's case had been of sufficient scope to satisfy the requirements of Article 6 and unanimously held that was no violation.</p>
17 RE	Court (Fourth Section) 62498/11	27/10/2015 27/01/2016	<p>The applicant was questioned by the Police Service of Northern Ireland on a number of occasions in relation to the murder of a Constable. He sought an assurance that consultations with his solicitor whilst he was under arrest would not be subject to covert surveillance. The police declined to give this assurance and the applicant issued judicial review proceedings of that refusal on the basis that it breached Articles 6 and 8. The High Court dismissed the claim holding that the provisions of the Regulation of Investigatory Powers Act 2000, subordinate legislation and revised Code of Practice which regulate such surveillance were compatible with Convention rights.</p> <p>The applicant applied to the ECtHR. The ECtHR held that the potential covert surveillance of his interview with his legal advisor at the police station breached Article 8 (the right to respect for private and family life).</p>

	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
			<p>The Court held that the applicant's complaint in respect of covert surveillance of his interview with an appropriate adult was admissible but did not amount to a violation of Article 8(2) because the relevant provisions contained sufficient safeguards against abuse. His complaint in respect of a breach of Article 6 (right to a fair trial) was declared inadmissible.</p>
18 NJDB	Court (Fourth Section) 76760/12	27/10/2015 27/01/2016	<p>The applicant appealed a decision to revoke a court order allowing him contact with his child.</p> <p>The Inner House of the Court of Session dismissed the father's appeal but varied the order to make it clear that there was no change to the father's parental rights. The applicant sought to appeal this decision to the Supreme Court but the Scottish Legal Aid Board refused to grant legal aid and the appeal was dismissed.</p> <p>The applicant alleged, that the length of the child contact proceedings resulted in a violation of his rights under Articles 6 and 8 and that the refusal of legal aid to pursue an appeal to the Supreme Court violated his Article 6 rights.</p> <p>The Government made a unilateral declaration that they accepted that, in the particular circumstances of this case, there had been a breach of the 'reasonable time' requirement of Article 6(1) (right to a fair trial) in relation to the duration of the proceedings and of the procedural requirements implicit in Article 8 (right to respect for private and family life).</p> <p>The ECtHR declared the remained of his complaint, under Article 6(1) (right to a fair trial) concerning access to legal aid, admissible but held that there had been no violation.</p>
19 Dallas	Court (First Section) 38395/12	11/02/2016 06/06/2016	<p>In July 2011, the applicant served on a jury. Despite being told not to research the case, she did and disclosed to other jury members information not mentioned at trial. She was found guilty of contempt of court, proved to the criminal standard.</p>

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
20 Doherty	First Section 76874/11	18/02/2016 18/05/2016	<p>The applicant argued that the test for contempt of court had been reformulated by the Divisional Court and was not consistent with the common law of contempt of court and was not compatible with human rights principles, particularly with Articles 6 (right to a fair trial) and 7 (no punishment without law).</p> <p>The ECtHR held unanimously that whilst the application was admissible, there had been no violation.</p> <p>The applicant who was sentenced to life imprisonment for murder in 1982. In 1996, he was released on licence but his licence was revoked in 1997 following his arrest for alleged sexual offences. These charges were later withdrawn but the Home Secretary decided that his release on licence should not be reinstated but that his case should be considered by the Life Sentence Review Board (LSRB).</p> <p>The applicant's case was reviewed on a number of occasions between 1998 and 2000, but the LSRB refused to direct his release. In November 2001 his case was referred to the Life Sentence Review Commissioners (LSRC), an independent body who had replaced the LSRB. They reviewed his recall twice but declined to release him. Late in 2008 a new LSRC panel was constituted, and after a hearing, they directed his release.</p> <p>The applicant, relying in particular on Article 5(4) (right to have lawfulness of detention decided speedily by a court), alleged that from the time of his recall in March 1997 until his release in October 2008, the reviews of the lawfulness of his continuing re-detention were not conducted speedily and this constituted a violation of his rights.</p> <p>The Court found that the period from November 2001, when the applicant's case had been passed to the LSRC, until his release in October 2008, did represent a violation of the applicant's rights under Article 5 (right to liberty). The remainder of the application was dismissed as inadmissible.</p>

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
21	Hammerton	Court (First Section) 6287/10	17/03/2016 12/09/2016	<p>The applicant was committed to prison for three months for contempt of court for breach of an undertaking. On appeal, the Court of Appeal held that the proceedings breached his right to a fair trial under Article 6 as he should have had the right to legal assistance. They expressed a view that this breach had caused the applicant to spend an extra four weeks in prison.</p> <p>In 2008, the applicant unsuccessfully sought damages for this under the HRA. As the judge's errors did not amount to bad faith, section 9(3) of the HRA precluded the payment of damages for the breach of Article 6 and the additional time spent in prison.</p> <p>The applicant complained to the ECtHR on the basis of Articles 5, 6, 13 and 14.</p> <p>The ECtHR held that the applicant's right to liberty under Article 5 had not been breached. They held that the violation of Article 6 in this case did not amount to a 'flagrant denial of justice' and the detention could not be deemed arbitrary or unlawful and was therefore justified by Article 5(1)(a).</p> <p>The ECtHR held that there had been a violation of the applicant's right to a fair trial under Article 6 in respect of the applicant's lack of representation during his committal hearing. The ECtHR also concluded that as the applicant could not obtain financial compensation for the breach of Article 6, he could not receive adequate redress in the domestic courts. Therefore, there was a violation of the applicant's right to an effective remedy under Article 13.</p> <p>The applicant's claim under Article 14 (prohibition on discrimination) was dismissed as manifestly ill-founded.</p>
22	Armani Da Silva	Grand Chamber 5878/08	30/03/2016 30/03/2016	<p>This case concerned the fatal shooting of Brazilian, Jean Charles de Menezes, by the Metropolitan Police at Stockwell underground station on 22 July 2005 after he was mistaken for a terrorist suspect.</p> <p>The CPS decided not to press criminal charges against any individuals involved in</p>

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
			<p>the shooting since they considered that there was no realistic prospect of a conviction being upheld. A successful prosecution was, however, brought against the police authority under the Health and Safety at Work Act 1974. Thus, in November 2007 the authority was ordered to pay a fine of £175,000 plus costs, but the jury absolved the officer in charge of the operation of any “personal culpability” for the events.</p> <p>Ms Armani Da Silva, the victim’s cousin, complained that the decision not to prosecute any individuals in respect of her cousin’s death was a breach of the procedural aspect of Article 2. Ms Da Silva also complained under Articles 3 and 13 regarding the same decision not to prosecute.</p> <p>Whilst acknowledging the undoubtedly tragic events of the case, the ECtHR found by a majority of 13 to 4 that the UK authorities had not failed to discharge the procedural obligation under Article 2 (right to life) to conduct an effective investigation into the shooting of Mr de Menezes. There was therefore no violation of Article 2. The Court also found the additional complaints regarding Articles 3 (prohibition of torture) and 13 (right to an effective remedy) were inadmissible.</p>
23 Seton	Court (First Section) 55287/10	31/03/2016 12/09/2016	<p>The applicant argued that the decision of the trial judge to allow hearsay witness evidence to be presented before the jury at his trial (were the witness had previously refused to give evidence) violated his right to a fair trial under Article 6. The ECtHR held that, having regard to the existence of the other substantial evidence, and the procedural safeguards in place in relation to the hearsay evidence, it could not be said that the criminal proceedings were rendered unfair by the admission in evidence of the evidence. Accordingly, the ECtHR was satisfied that the admission in evidence of those recordings did not result in a breach of Article 6 (right to a fair trial).</p>
24 JN	Court (First Section)	19/05/2016 19/08/2016	<p>The applicant, an Iranian national, made an application for asylum in 2003, which was refused. After serving a term of imprisonment for indecent assault, he</p>

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
	37289/12		<p>was detained on 31 March 2005 pending deportation. The Iranian Embassy initially refused to issue a travel document allowing the applicant's return but eventually agreed to do so provided he signed a disclaimer consenting to his return. In December 2007 the applicant was conditionally released from detention, but he returned to detention on 14 January 2008 after refusing to sign the disclaimer that would have allowed him to travel.</p> <p>Thereafter the UK authorities made various attempts to engage the applicant in a voluntary return, but he refused to cooperate. The applicant made three applications for bail all of which were refused. He was eventually released on bail in December 2009 after the High Court ruled that his detention after 14 September 2009 was unlawful owing to the authorities' failure to act with reasonable diligence and expedition.</p> <p>The applicant complained that his detention exceeded that reasonably required for the purposes of Article 5.</p> <p>The ECtHR held that his detention was unlawful and in breach of Article 5 (right to liberty) from mid-2008 onwards as they considered that from this point on his deportation was not being pursued with 'due diligence'.</p>
25 O'Neill and Lauchlan	Court (First Section) 41516/10 75702/13	28/06/2016 Request for referral to the Grand Chamber pending.	<p>In September 1998, while serving sentences for other offences, the applicants were questioned by police in relation to the disappearance and suspected murder of a woman, A.M. Neither was charged or arrested following the interviews due to insufficient evidence. In April 2005, charges were brought against them for the murder of A.M. and for concealing and disposing of her body. However, the prosecuting authorities decided not to prosecute due to concerns over insufficiency of evidence. This decision remained under review.</p> <p>Following new evidence coming to light the applicants were indicted in September 2008 for the murder of A.M.</p>

Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ¹⁵	Brief summary/Outcome
			<p>Between their indictment and trial, lasting 20 months, the applicants lodged a number of motions and appeals, arguing in particular that they could not receive a fair trial owing to the significant delay which had occurred in their case, all without success.</p> <p>In June 2010 the applicants were convicted of murder and attempting to pervert the course of justice. They applied to the ECtHR on the basis that the criminal proceedings ran beyond the “reasonable” period of time permitted under Article 6. The Court agreed, holding that the cumulative time was excessive and in violation of Article 6 (right to a fair trial).</p> <p>The Court considered four distinct phases of the proceedings: pre-indictment, indictment to trial, trial and post-trial. It is in relation to phase four that the court found a long period without the mitigating circumstances present in phases one and two.</p> <p>The Court was clear that there are ‘... no specific instances of outright dilatoriness on the part of the Scottish prosecuting or judicial authorities’, and in addition they observed that the applicants’ own actions contributed to the delay.</p> <p>A request to the Grand Chamber is currently pending.</p>
26 Sabure Malik	Court (First Section) 32968/11	30/06/2016 30/09/2016	<p>On 23 November 2010 the applicant arrived back in the UK at Heathrow Airport. At immigration control he was detained under Schedule 7 to the Terrorism Act 2000. After questioning, a search of his personal belongings and the taking of DNA samples and fingerprints, he was released. The detention lasted from approximately 3 p.m. to 7.20 p.m.</p> <p>A review undertaken at the request of the Independent Reviewer of Terrorism Legislation concluded on 7 January 2011 that, in stopping and questioning the applicant and in taking DNA samples and fingerprints, the officers at the airport had acted appropriately within the terms of the</p>

Responding to human rights judgments

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final¹⁵	Brief summary/Outcome
				<p>legislation. There were no further domestic proceedings in the case.</p> <p>On 24 February 2016, the applicant informed the ECtHR that he no longer wished to pursue his application. Consequently, the ECtHR, in accordance with Article 37(1)(a), struck the application off the list.</p>

The UK at the ECtHR: statistics, 1959 to 2015

The following tables summarise figures from the ECtHR's statistical reports to illustrate the number of applications made against the UK at the ECtHR between 1959 and the end of 2015.¹⁶ The tables show the outcomes of the applications, both in terms of the number that were declared inadmissible or struck out and the much smaller number that resulted in a judgment.

Table 1. Applications against the UK allocated to a judicial formation¹⁷

1959–2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
7743	986	687	744	1003	845	851	1233	1127	2744	1542	1702	908	720	575	23,410

While applications rose from 2002–2010 they have been on a downward trend since then. Applications in 2015 are down four fifths (79%) from their peak in 2010.

Due to the time lag between an application being made and being considered, the numbers of inadmissible applications cannot be directly compared to applications on a year-by-year basis. However, since 2010 more cases have been declared inadmissible than were allocated.

Table 2. Applications against the UK declared inadmissible or struck out

1959–2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
6431	737	863	721	732	963	403	1240	764	1175	1028	2047	1633	1970	533	21,240

Judgments show a general downward trend and the historic low number of judgments finding a violation (4 in 2014) has continued in 2015.

Table 3. Judgments in UK cases (judgments finding violation)¹⁸

1959–2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
189	40	25	23	18	23	50	36	18	21	19	24	13	14	13	526
(103)	(30)	(20)	(19)	(15)	(10)	(19)	(27)	(14)	(14)	(8)	(10)	(8)	(4)	(4)	(305)

¹⁶ <http://echr.coe.int/Pages/home.aspx?p=reports>

¹⁷ The Court may sit in various judicial formations: a single judge; in three-judge Committees; in seven-judge Chambers; and seventeen-judge Grand Chambers.

Single judges can declare inadmissible/strike out applications where this decision can be taken without further examination.

By unanimity, Committees take similar decisions to single judges but can also declare an application admissible and give a judgment if the underlying question is already well-established in the case-law of the Court.

Where neither a single judge nor a Committee has taken a decision or made a judgment, Chambers may decide on admissibility and merits.

¹⁸ A judgment can cover more than one application.

Applications against the UK: statistics, 2014 and 2015

The ECtHR's 2014 Analysis of Statistics¹⁹ reports that at the end of 2014 there were 69,924 applications under consideration. 1,243 of these (approximately 1.8%) were applications against the UK.

The ECtHR's 2015 Analysis of Statistics²⁰ reports that at the end of 2015 there were 64,834 applications under consideration. 256 of these (approximately 0.4%) were applications against the UK.

¹⁹ http://www.echr.coe.int/Documents/Stats_analysis_2014_ENG.pdf

²⁰ http://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf

The UK's record on the implementation of ECtHR judgments²¹

At the end of 2014, the UK was responsible for 26 (0.2%) of a total 10,904 pending judgments before the Committee of Ministers, placing the UK joint 27th out of 47. A low ranking indicates that a State has relatively few pending judgments.

At the end of 2015, the UK was responsible for 19 (0.2%) out of a total 10,652 pending judgments before the Committee of Ministers, placing the UK 31st out of 47.

In 2014 and 2015, all payments of just satisfaction were made within the three month deadline. The Ministry of Justice continues to liaise with other Government departments to ensure prompt payment.

Further statistics and the complete list of pending judgments by State can be found at Annex B. This annex also contains a full list of judgments that found a violation against the UK that were still under the supervision of the Committee of Ministers at the beginning of October 2016.

²¹ Data are taken from the 9th Annual Report of the Committee of Ministers, *Supervision of the execution of judgments and decisions of the European Court of Human Rights*. See <http://www.coe.int/en/web/execution/annual-reports>

Consideration of judgments that have become final since the last annual report

Firth and Others

The implementation of this case falls within the Hirst/Greens and MT group – see the next section.

McDonnell²²

Case summary: The case concerns the excessive delay in the investigation into the death of the applicant's son in prison in Northern Ireland in 1996 (procedural violation of Article 2).

Status of execution: An action report was submitted to the ECtHR on 18 October 2016 and is under assessment.

Individual measures: The just satisfaction awarded by the ECtHR has been paid. The inquest that was the subject of proceedings before the ECtHR concluded in May 2013 and the applicant has not disputed its findings. The UK authorities consider that no further measures are necessary.

General measures: The authorities recall that the measures needed to address the problems with non-legacy inquests identified in the case of *McDonnell* are different from those concerning Troubles-related deaths and should be considered separately. They have taken a number of measures to ensure that the procedural requirements of Article 2 can be complied with expeditiously in general non-legacy inquest proceedings in Northern Ireland in the future:

- the appointment of the Lord Chief Justice as President of the Coroners' Courts on 1 November 2015;
- the appointment of a new High Court judge as Presiding Coroner for the coroners service on 8 February 2016;
- the appointment of a new coroner on 8 February 2016 and a further full-time coroner on 4 April 2016;
- the allocation of more complex inquests to higher tier judges;
- the appointment, in November 2015, of new Counsel to the Panel who provide advice to coroners;
- a reduction in the number of adjournments and improved case management and allocation;

²² This case is summarised on the Council of Europe's website at:
http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=mc+donnell

- the establishment of a “Coroner’s Users Group” involving all key stakeholders;
- the appointment of a Coroner’s Investigator to provide advice to coroners;
- revised processes for listing cases to ensure that investigations are complete and statements provided speedily.

Moreover, in May 2015, a review of the coroners’ service was completed and made 13 recommendations to improve efficiency and reduce delay in inquest proceedings. Implementation of those recommendations, all of which were accepted, is now well advanced.

A number of additional measures are being taken to further improve the inquest function including the following:

- A scoping study for a review of the Coroners legislation has been completed. The review will be progressed in line with mandate priorities.
- A number of forums and working groups have been set up involving the Police Service for Northern Ireland and others who work in support of the Coroner.
- Progress on other structural and system measures to help ensure a consistent service is delivered to bereaved families has also been made including:
 - a reduction in the number of adjournments/cancellations of inquests;
 - development and implementation of revised case allocation; and
 - improved management and on-call arrangements so that the workload is evenly spread amongst the full-time Coroner complement.
- The listing processes for inquests have also been reviewed and revised to ensure investigations are completed and statements provided on a timelier basis to allow inquests to be held more expeditiously.
- Troubles-related inquests have been separated from non-legacy inquests to reduce the impact of Troubles inquests on routine coronial work.

The Government in conjunction with the Office of the Lord Chief Justice and the Northern Ireland Courts and Tribunals Service have implemented significant operational improvements to the Coroners Service in Northern Ireland and monitoring arrangements to ensure their ongoing efficiency and effectiveness. This will ensure that the procedural requirements of Article 2 can be complied with expeditiously in general non-legacy inquest proceedings in Northern Ireland in the future. The United Kingdom authorities therefore consider that all necessary general and individual measures have been taken and that the Committee of Ministers can now close its supervision of the execution of this judgment.

Ibrahim and Others

Case summary: The applicants, four individuals involved in attempting and supporting a terrorist conspiracy in London in 2005, complained that the restriction of their right to prompt legal advice whilst they were first being questioned by police (by virtue of the use of an exceptional power contained within Schedule 8 of the Terrorism Act 2000) and the

use of the evidence taken from those sessions at their trial was a breach of Article 6 (right to a fair trial).

In the case of the fourth applicant, (who was convicted of various accounts of assisting the second applicant and for failing to disclose information), the ECtHR found a violation of Article 6(1) and (3)(c). The ECtHR concluded that the Government had not shown compelling reasons for their actions, importantly, the deliberate decision of the police not to inform him of his right to remain silent once they realised that he was a potential suspect and not just a witness.

The Grand Chamber handed down its judgment on 13 September 2016. The Government is considering its response.

Piper

Case summary: The applicant, Graham Jason Piper, was arrested in the Netherlands in 1999; he was then transferred to the UK and charged with attempting to import 163kg of cocaine. In 2001 he was sentenced to fourteen years in prison. He was released in 2006. Prior to his trial, the prosecution obtained an order to seize and preserve Mr Piper's assets under the 1994 Drug Trafficking Act, which allows the State to confiscate assets equivalent in value to the proceeds received from drug trafficking. Following a number of procedural steps, the final judgment in the case was delivered on 17 March 2010. Relying on Article 6 § 1 (right to a fair trial within a reasonable time) of the ECHR, the applicant complained to the ECtHR that the length of the proceedings had meant that his case had not been heard within a reasonable time.

The ECtHR found that whilst the applicant had been responsible for a large majority of the delays experienced during the proceedings, the delays which could be attributed to the authorities totalled approximately three years, consisting of a delay of ten months between August 2000 and April 2001, a delay of two years between the summer of 2002 and 21 July 2005 and a delay of five months between 24 July and 19 December 2008. It concluded that proceedings had not been completed within a reasonable time, and accordingly found a violation of Article 6 § 1.

Status of execution: This case is now closed.

Individual measures

Just satisfaction: The ECtHR held that the finding of a violation of Article 6 § 1 of the Convention constituted adequate just satisfaction and made no other award.

Other measures: The Government considers that, in the circumstances, no further individual measures are necessary.

General measures

This case turns on its particular facts. The three periods of delay for which the ECtHR found the United Kingdom authorities to be responsible were the result of:

- (i) an error in the first trial necessitating a retrial;
- (ii) proceedings being stayed pending a decision of the appellate committee of the House of Lords; and

(iii) a delay in the judge handing down the decision in 2009.

The first and last of these delays were the result of error rather than any systemic fault. The longest delay, assessed by the ECtHR at two years, resulted from the proceedings being adjourned to await a relevant House of Lords ruling. As the judgment notes, this adjournment had been requested by the applicant himself, and the Court of Appeal commented that it was in his interests. It follows that whilst this delay was the responsibility of the authorities the course of action was appropriate in the circumstances of the case.

RE

Case summary: The applicant was questioned by the Police Service of Northern Ireland on a number of occasions in relation to the murder of a Constable. He sought an assurance that consultations with his solicitor whilst he was under arrest would not be subject to covert surveillance. The police declined to give this assurance and the applicant issued judicial review proceedings of that refusal on the basis that it breached Articles 6 and 8. The High Court dismissed the claim holding that the provisions of the Regulation of Investigatory Powers Act 2000, subordinate legislation and revised Code of Practice which regulate such surveillance were compatible with Convention rights.

The applicant applied to the ECtHR. The ECtHR held that the potential covert surveillance of his interview with his legal advisor at the police station breached Article 8 (the right to respect for private and family life).

The Court held that the applicant's complaint in respect of covert surveillance of his interview with an appropriate adult was admissible but did not amount to a violation of Article 8(2) because the relevant provisions contained sufficient safeguards against abuse. His complaint in respect of a breach of Article 6 (right to a fair trial) was declared inadmissible.

Status of execution: This case is now closed.

Just satisfaction: The Government has paid the award of just satisfaction.

Doherty

Case summary: The applicant was sentenced to life imprisonment for murder in 1982. In 1996, he was released on licence but his licence was revoked in 1997 following his arrest for alleged sexual offences. These charges were later withdrawn but the Home Secretary decided that his release on licence should not be reinstated but that his case should be considered by the Life Sentence Review Board (LSRB).

The applicant's case was reviewed on a number of occasions between 1998 and 2000, but the LSRB refused to direct his release. In November 2001 his case was referred to the Life Sentence Review Commissioners (LSRC), an independent body who had replaced the LSRB. They reviewed his recall twice but declined to release him. Late in 2008 a new LSRC panel was constituted, and after a hearing, they directed his release.

The applicant, relying in particular on Article 5(4) (right to have lawfulness of detention decided speedily by a court), alleged that from the time of his recall in March 1997 until his release in October 2008, the reviews of the lawfulness of his continuing re-detention were not conducted speedily and this constituted a violation of his rights.

The Court found that the period from November 2001, when the applicant's case had been passed to the LSRC, until his release in October 2008, did represent a violation of the applicant's rights under Article 5 (right to liberty). The remainder of the application was dismissed as inadmissible.

Status of execution: Action report to be submitted.

Just satisfaction: The Government has paid the award of just satisfaction.

The Government is considering what further action it needs to take.

Hammerton

Case summary: The applicant was committed to prison for three months for contempt of court for breach of an undertaking. On appeal, the Court of Appeal held that the proceedings breached his right to a fair trial under Article 6 as he should have had the right to legal assistance. They expressed a view that this breach had caused the applicant to spend an extra four weeks in prison.

In 2008, the applicant unsuccessfully sought damages under the HRA. As the judge's errors did not amount to bad faith, section 9(3) of the HRA precluded the payment of damages for the breach of Article 6 and the additional time spent in prison.

The applicant complained to the ECtHR on the basis of Articles 5, 6, 13 and 14.

The Court held that the applicant's right to liberty under Article 5 had not been breached. They held that the violation of Article 6 in this case did not amount to a 'flagrant denial of justice' and the detention could not be deemed arbitrary or unlawful and was therefore justified by Article 5(1)(a).

The Court declared that there had been a violation of the applicant's right to a fair trial under Article 6 in respect of the applicant's lack of representation during his committal hearing.

The Court also concluded that as the applicant could not obtain financial compensation for the breach of Article 6, he could not receive adequate redress in the domestic courts. Therefore, there was a violation of the applicant's right to an effective remedy under Article 13.

The applicant's claim under Article 14 was dismissed as manifestly ill-founded.

Just Satisfaction: The Government is in the process of paying just satisfaction.

The government is considering what further action it needs to take.

JN

Case summary: The applicant, an Iranian national, made an application for asylum in 2003, which was refused. After serving a term of imprisonment for indecent assault, he was detained on 31 March 2005 pending deportation. The Iranian Embassy initially refused to issue a travel document allowing the applicant's return but eventually agreed to do so provided he signed a disclaimer consenting to his return. In December 2007 the applicant was conditionally released from detention, but he returned to detention on 14 January 2008 after refusing to sign the disclaimer that would have allowed him to travel.

Thereafter the UK authorities made various attempts to engage the applicant in a voluntary return, but he refused to cooperate. The applicant made three applications for bail all of which were refused. He was eventually released on bail in December 2009 after the High Court ruled that his detention after 14 September 2009 was unlawful owing to the authorities' failure to act with reasonable diligence and expedition.

The applicant complained that his detention exceeded that reasonably required for the purposes of Article 5.

The ECtHR held that his detention was unlawful and in breach of Article 5 (right to liberty) from mid-2008 onwards as they considered that from this point on his deportation was not being pursued with 'due diligence'.

Just satisfaction: The Government has paid the award of just satisfaction.

The Government is considering what further action it needs to take.

Consideration of other significant judgments that became final before 1 August 2015 and which are still under the supervision of the Committee of Ministers

Retention of DNA profiles and cellular samples (S & Marper)

*S & Marper v UK*²³

Court: ECtHR (Grand Chamber)

Case summary: The applicants, both of whom had been arrested for but not convicted of criminal offences, sought to have their DNA samples and profiles, and their fingerprints, removed from police records. The refusal of the police to delete this information was upheld by all domestic courts up to the House of Lords. However, the ECtHR ruled the blanket policy of retaining this information from all those arrested or charged but not convicted of an offence was disproportionate and therefore unjustifiable under Article 8 (the right to respect for private and family life) of the ECHR.

Government response: The Government brought forward legislative proposals to address the violation in England and Wales, which received Royal Assent in the Protection of Freedoms Act 2012 on 1 May 2012. The legislation adopted the protections of the Scottish model for the retention of DNA and fingerprints.

The Government has confirmed that DNA profiles and fingerprints which can no longer be retained under the provisions of the Protection of Freedoms Act are being removed from the national databases. This was completed by 31 October 2013, the date on which the Act was brought into force.

The Department of Justice in Northern Ireland brought forward broadly similar legislative proposals for Northern Ireland, which received Royal Assent on 25 April 2013 in the Criminal Justice Act (Northern Ireland) 2013 and is working towards bringing them into force.

²³ Applications numbers 30562/04 and 30566/04, judgment final on 4 December 2008.

Extra-territorial effect of the Convention (Al Skeini)

*Al Skeini v UK*²⁴

Court: ECtHR (Grand Chamber)

Status of execution: The Committee of Ministers closed their supervision of this case on 18 October 2016.

Case summary: After the invasion of Iraq, from 1 May 2003 British forces became an occupying power in the country as part of a UN authorised Multi National Force (MNF). This case concerns the deaths of the applicants' five close relatives between May and November 2003 in Basrah, Iraq during that period of occupation. The deaths were either caused by, or involved, British soldiers and the key legal issue was whether the applicants were within the jurisdiction of the UK pursuant to Article 1 of the ECHR.

In the first, second and fourth cases, the applicants' relatives were shot by British soldiers who were on patrol or carrying out checks. The third applicant's wife was shot during a firefight between a British patrol and a number of unknown gunmen. The fifth applicant's son was a minor and the ECtHR considered that there was "at least prima facie" evidence that he was taken into the custody of British soldiers who were assisting the Iraqi police to take measures to combat looting and that, as a result of his mistreatment by the soldiers, he drowned.

The Grand Chamber concluded that all the applicants were within the UK's jurisdiction. Investigations were carried out in all five cases, but the ECtHR found that they did not satisfy the procedural requirements of Article 2 because they were not sufficiently independent and/or effective.

In respect of the first, second and third applicants, the ECtHR concluded that the investigation process fell short of the requirements of Article 2 as it remained entirely within the military chain of command and was limited to taking statements from the soldiers involved.

In respect of the fourth and fifth applicants, investigations were also carried out by the Special Investigations Branch (SIB) of the Royal Military Police. However, the ECtHR noted the SIB was not operationally independent from the military chain of command during the relevant period and therefore was not sufficiently independent from the soldiers implicated in the events to satisfy the requirements of Article 2. The ECtHR also highlighted the delays in investigating the fourth and fifth applicant's cases.

In respect of the fifth applicant, the ECtHR also criticised the narrow focus of the criminal proceedings that were ultimately brought against the accused soldiers. It found that in the circumstances, the investigation was not sufficiently accessible to the victim's family and to the public and should have investigated the broad issues of State responsibility for the death including instructions, training and supervision given to soldiers undertaking law enforcement tasks in the aftermath of an invasion.

²⁴ Application 55721/07; judgment final on 7 July 2011.

Government Response: In March 2010 the Ministry of Defence announced the establishment of the Iraq Historic Allegations Team (IHAT). The IHAT was originally established to investigate alleged violations of Article 3, arising from mistreatment of individuals by British forces in Iraq during the period March 2003–July 2009. However, on 26 March 2012, the Minister for the Armed Forces stated that the judgment in *R(Ali Zaki Mousa) v Secretary of State for Defence & Anor* [2011] EWCA Civ 1334 obliged the authorities to undertake additional investigations concerning Article 2 and a new team was to be created within IHAT for this. Since then, significant additional resources have been made available to IHAT for the progression of all investigations, including the five Al Skeini cases.

The IHAT is led by a civilian, who reports to the Provost Marshal (Navy), the head of the Royal Navy Police (RNP), following structural changes. It contains a number of investigations and case review teams staffed by a mix of RNP and civilian staff (§14 of the judgment). In the event of the work of the IHAT leading to prosecution or disciplinary proceedings, decisions on whether to prosecute will be taken by the Director of Services Prosecutions under the Armed Forces Act 2006.

A further judgment in *R(Ali Zaki Mousa(No.2)) v Secretary of State for Defence* [2013] EWHC 2941 (Admin) was delivered on 2 October 2013. The High Court ordered a rigorous examination of those cases which allege unlawful killing. In January 2014, a retired High Court Judge was appointed as Inspector to undertake a Coronial-style fatality investigation into cases where the circumstances of the death require it.

Improvements have already been made in many areas of concern. Doctrine and military training are kept under constant review. We continue to implement recommendations from ongoing internal reviews of detainee handling. The first review of systemic issues which have been addressed by the MoD was published in July 2014²⁵.

Implementation of the recommendations made by the Public Inquiry into the death of Baha Mousa whilst in UK custody in Iraq in 2003 has been completed²⁶.

Mechanisms are in place that will permit lessons to continue to be learnt as they emerge from the ongoing IHAT investigations.

The Government takes account of this judgment in setting future policies and making subsequent decisions, including in relation to overseas military operations where relevant.

²⁵ <https://www.gov.uk/government/publications/review-of-systemic-issues-arising-from-military-operations-overseas>

²⁶ <http://www.bahamousainquiry.org/>

Prisoner voting (*Hirst (No 2)*, *Greens & MT* and *Scoppola (No 3)*)

*Hirst (No.2) v the UK*²⁷

Court: ECtHR (Grand Chamber)

Case summary: In March 2004, the UK's blanket ban on prisoner voting, under section 3 of the Representation of the People Act 1983, was found to be a violation of Article 3 of Protocol 1 ECHR by the ECtHR as a result of a successful challenge by a prisoner. In October 2005, the Grand Chamber upheld the ruling that the UK's ban was in breach of Article 3 of Protocol 1 to the ECHR (right to free and fair elections). In its judgment, the Grand Chamber allowed the UK a 'wide margin of appreciation'²⁸ in implementing *Hirst (No. 2)*. It also referred to the lack of a substantive debate in the UK Parliament on the continued justification for the ban in light of modern day penal policy and current human rights standards.

*Greens and M.T. v the UK*²⁹

Court: ECtHR (Chamber)

Case summary: This is a "pilot case", so called because it was used to decide how similar "clone cases" would be decided by the ECtHR. It concerned the blanket ban on voting imposed automatically on the applicants due to their status as convicted offenders detained in prison. The applicants, both prisoners in Scotland, were refused the right to enrol on the electoral register for domestic elections and elections to the European Parliament.

The ECtHR found the blanket ban under section 3 of the Representation of the People Act 1983 in violation of Article 3 of Protocol 1 to the ECHR and, pursuant to the judgment in *Hirst (No. 2)*, set a deadline of six months from 11 April 2011 for the UK to bring forward legislative proposals to end the blanket ban on prisoner voting. The Court declined to award compensation to the applicants and stayed around 2,400 "clone cases" brought by UK prisoners against the Government.

The Government sought deferral of the deadline specified in *Green & MT* in order to intervene in the case of *Scoppola (No 3)*.

*Scoppola v Italy (No 3)*³⁰

Court: ECtHR (Grand Chamber)

Case summary: UK intervened in the Italian prisoner voting case of *Scoppola (No 3)* and was represented by the former Attorney General, Dominic Grieve QC at the Grand Chamber's hearing on the case on 2 November 2011. On 22 May 2012, the Grand Chamber gave its judgment which reaffirmed its ruling in *Hirst (No 2)*, that the UK's

²⁷ Application 74025/01; judgment final on 6 October 2005.

²⁸ See footnote 11 at page 6 for explanation of 'margin of appreciation'.

²⁹ Applications 60041/08 & 60054/08; pilot judgment 23 November 2010, final on 11 April 2011.

³⁰ Application 126/05; judgment final on 22 May 2012.

blanket ban was in breach of Article 3 of Protocol 1 to the ECHR, while recognising that national parliaments enjoyed a wide margin of discretion when it came to regulating prisoner voting.

UK was granted a deferral of the deadline imposed by *Greens & MT*, and was given six months from 22 May 2012, to introduce proposals to remove the blanket ban.

Following the judgment in *Scoppola (No 3)*, the Committee of Ministers resumed its supervision of the UK's implementation of the *Hirst (No 2)* and *Greens & MT* judgments.

Government response: After the ECtHR set a deadline for the introduction of legislative proposals to Parliament in the *Greens & MT* case, the previous Government published draft legislation in November 2012, which included options to enfranchise those sentenced to less than four years, those sentenced to less than 6 months, and an option to continue the ban. The Government set up a Joint Parliamentary Committee to carry out pre-legislative scrutiny on the draft Bill.

The Joint Committee published its report in December 2013, with a majority recommending that legislation be brought forward in the final session of the Parliament to enfranchise those sentenced to 12 months or less and those in the 6 months before they are scheduled to be released; but the legislation was not finally introduced to Parliament.

On 12 August 2014, in the case of *Firth and Others v. the UK*³¹ the ECHR passed judgment on the first batch of ten “clone cases” following on from *Greens & MT*. These cases related to prisoners unable to vote in the 2009 European Parliamentary elections. The ECtHR held that there was a violation of Article 3 of Protocol 1 to the ECHR in each of the ten cases, but did not award any damages or costs. The applicants sought referral of the judgment to the Grand Chamber, but this was refused and the judgment became final on 15 December 2014.

More than half of the original *Greens & MT* “clone cases” have been declared inadmissible or struck out by the ECtHR. On 22 September 2014, the remaining 1,015 “clone cases” were communicated to the UK.³² These cases relate to prisoners unable to vote in one or more of the 2009 European Parliamentary elections, the 2010 Parliamentary elections and the 2011 elections to the Scottish Parliament, the Welsh Assembly or the Northern Irish Assembly.

In December 2015, the Committee of Ministers agreed to revert to considering the matter in December 2016. The Government is currently in dialogue with the Committee of Ministers on this issue. The Government is clear that the UK's policy on prisoner voting is well established and remains a matter for the UK Parliament to determine.

³¹ Applications 47784/09, 47806/09, 47812/09, 47818/09, 47829/09, 49001/09, 49007/09, 49018/09, 49033/09 and 49036/09.

³² [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"respondent":\["GBR"\],"documentcollectionid":\["COMMUNICATEDCASES"\],"itemid":\["001-147091"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

Right to a review for “whole life tariff” prisoners (Vinter, Bamber and Moore)

*Vinter, Bamber and Moore v UK*³³

Court: ECtHR (Grand Chamber)

Case summary: Currently, the applicants are all serving sentences of life imprisonment for murder. They have been given whole life orders, meaning they cannot be released other than at the discretion of the Secretary of State on compassionate grounds (for example, if they are terminally ill or seriously incapacitated). Relying on Article 3 (prohibition of inhuman or degrading treatment) of the ECHR, all three applicants complained their imprisonment without hope of release is cruel and amounts to inhuman and degrading treatment.

The ECtHR found that whole life orders without a clear review or release mechanism at the point of sentence are a breach of Article 3 of the ECHR. That means essentially there needs to be a review that allows the domestic authorities to consider whether any changes in the whole life order prisoner are so significant as to mean that continued detention can no longer be justified on legitimate penological grounds.

Government response: The Government vigorously defended the case and was disappointed the Grand Chamber of the ECtHR took a different approach to the ruling of the lower Chamber, which found in the UK’s favour. The judgment does not mean prisoners currently serving a whole life order must now be released or that they must all immediately come before the Parole Board for consideration of release. The ECtHR made clear that there was no prospect of imminent release for the three applicants in the case.

In February 2014, a specially constituted Court of Appeal in the UK heard appeals from whole life order prisoners Newell and McLoughlin.³⁴ The Court of Appeal upheld the domestic courts’ power to impose a whole life order in especially serious cases and decided the current law provides a sufficient possibility for a review in exceptional cases. The Court of Appeal found such cases would need to be considered on a case by case basis, and it would: “be difficult to express in advance what such circumstances might be, given that the heinous nature of the original crime justly required punishment by imprisonment for life”.

The Government submitted an updated action report to the Committee of Ministers on 12 March 2015 setting out why it considers that no further general measures are necessary. It is now for the Committee of Ministers to consider the matter.

In addition, the ECtHR is considering the case of Arthur Hutchinson,³⁵ who like Vinter, Bamber and Moore was sentenced to life imprisonment and is the subject of a whole life order. In this case, the Government has submitted observations setting out its view that the Court of Appeal’s judgment has clarified the operation of the domestic law and has invited the ECtHR to find no violation of Article 3 as a consequence.

³³ Application numbers 66069/09 130/10 3896/10, Grand Chamber judgment of 08/07/2013.

³⁴ R v Ian McLoughlin and R v Lee William Newell [2014] EWCA Crim 188

³⁵ Application number 57592/08 lodged on 10 November 2008 and communicated to the UK on 22 July 2013. Referred to the Grand Chamber on 1 June 2015.

Excessive delays in the investigation of deaths in Northern Ireland (Colette and Michael Hemsworth and McCaughey and others)

Colette and Michael Hemsworth v UK³⁶
McCaughey and Others³⁷
Court: ECtHR (Chamber)

Case Summaries

Hemsworth: This case concerned the death of the applicant's relative who died on 1 January 1998 after suffering head injuries following a violent incident in Belfast on 7 July 1997. Mr Hemsworth was walking home at night when he was kicked and hit with a truncheon by police officers of the Royal Ulster Constabulary (RUC) who were chasing other people. There were a number of significant delays to the investigation into Mr Hemsworth's death, including lengthy delays in holding inquest hearings, the Coroner's initial refusal to call RUC witnesses and substantial adjournments waiting for the outcome of relevant court proceedings concerning coronial law and practice. An inquest jury finally rendered its verdict on 27 May 2011, finding that the injuries suffered as a result of the violent attack were most probably the underlying cause of Mr Hemsworth's death.

McCaughey and Grew: This case concerned the death of the applicants' relatives, Martin McCaughey and Desmond Grew, at the hands of British armed forces near Loughgall in Northern Ireland on 9 October 1990. The shootings were two of several which took place around that time and which gave rise to allegations of a shoot to kill policy by the security forces in Northern Ireland. On 11 October 1990 the IRA stated publicly that the deceased were IRA volunteers on active service at the time of their deaths.

The ECtHR noted that while the deaths occurred in 1990 the inquest hearing proper did not begin until March 2012, more than 21 years later. There were lengthy periods of delay, including very lengthy periods of inactivity and delays in dealing with disclosure and delays due to the applicants' and others legal actions the ECtHR noted were necessary to drive forward their inquests and to ensure clarification of certain important aspects of coronial law and practice.

In both the *Hemsworth* and *McCaughey and Others* cases the ECtHR found a number of delays into holding inquests which were excessive and incompatible with the State's obligation under Article 2 to ensure the effectiveness of investigations into suspicious deaths in the sense that the investigation must be commenced promptly and carried out with reasonable expedition. Causes of delay included: periods of inactivity; the adequacy and timeliness of disclosure of material; lack of contact with families of victims; Director of Public Prosecutions decision-making; and, significantly, delays stemming from legal actions necessary to clarify coronial law and practice.

The applicants also complained about substantive and other procedural aspects of Article 2 but the ECtHR found these aspects inadmissible, on the basis that civil and other action was still pending or possible and so domestic remedies had not yet been exhausted.

³⁶ Application number 58559/09, judgment final on 16 October 2013.

³⁷ Application number 43098/09, judgment final on 16 October 2013.

The ECtHR held there had been a violation of the procedural requirements of Article 2 by reason of excessive investigative delay. It commented that throughout the relevant period it considered the inquest process itself was not structurally capable of providing the applicants with access to an investigation which would commence promptly and be conducted with due expedition. The ECtHR found that in order to comply with its judgment the State must take, as a matter of some priority, all necessary and appropriate measures to ensure that in these, and similar cases where inquests were pending, the procedural requirements of Article 2 were complied with expeditiously.

The ECtHR held no separate issue arose on the Article 13 right to an effective remedy.

Government Response: As noted in the judgment, inquests have taken place in both cases. In the Hemsworth case, the inquest, sitting with a jury, took place on 16 May 2011. It made findings as to the cause of death and those likely to be responsible and the Coroner referred the matter to the Public Prosecution Service. The Office of the Police Ombudsman for Northern Ireland has also begun an investigation.

In McCaughey and Others, the inquest, sitting with a jury, was held between 12 March and 2 May 2012. It gave a narrative verdict, subsequently challenged by the applicants.

In 2003, in response to earlier judgments in cases raising similar issues, the UK Government submitted an Action Plan to respond to issues identified by the Court regarding compliance with the procedural requirements of Article 2. There is now a separate Action Plan responding to the Hemsworth and McCaughey cases, developing on those measures by putting in place practical and proportionate steps to ensure investigation, coordination and disclosure issues are resolved, delivering timely access to justice for the families affected.

The Stormont House Agreement, which was agreed in December 2014, includes measures to address a number of issues relating to Northern Ireland's troubled past, including that of the legacy inquest process and provision for a new body, the Historical Investigations Unit (HIU), to take forward investigations into outstanding troubles-related deaths. As of 31 July 2016 there are in the region of 1700 HET (Historical Enquiries Team) and OPONI (Office of the Police Ombudsman for Northern Ireland) cases outstanding. The HET was closed in September 2014 following restructuring within the PSNI in response to budget cuts. The Legacy Investigations Branch of the PSNI continues to investigate those cases at present.

The HIU, once established, will be an independent body. Officers investigating criminal allegations will have the powers and privileges of a police constable. The HIU will also provide dedicated family support staff and the next of kin will be involved in the process from the beginning and will be provided with support. Oversight will be provided by the Northern Ireland Policing Board, and the HIU will be structurally and operationally independent from the police. This independence is intended to address the criticisms that had previously been made of the roles of the HET and OPONI. The UK Government will make full disclosure to the HIU. To enable full disclosure, legislation in the UK Parliament is required, which will also prevent any damaging onward disclosure of information by the HIU.

The UK Government has indicated £150m of additional funding will be available for the Stormont House Agreement measures for dealing with the past.

On 17 November 2015 the 'Fresh Start' Agreement was reached, following ten weeks of talks between the UK and Irish Governments and the Northern Ireland political parties. Unfortunately, although a great deal of progress was made during the negotiations on addressing Northern Ireland's past, it was not possible to achieve final agreement on those matters at that time. However, over the course of the political negotiations, substantial areas of common ground were developed on the legacy institutions, including on a range of issues where progress has previously proved impossible. Contentious questions were worked through by all the parties in the spirit of moving things forward for families and victims.

The new Prime Minister and the new Secretary of State for Northern Ireland have made it clear that they support the establishment of the bodies identified in the Stormont House Agreement. The Secretary of State has been meeting with key stakeholders and intends to continue to work towards a political agreement on these issues. He has publicly recognised the desire among stakeholders for progress to be made quickly on these issues, and recently announced that he intends to publish proposals on these matters to facilitate a public phase of discussion.

The UK Government will continue to work with Northern Ireland parties, victims' groups and other stakeholders to seek a resolution that will allow the Stormont House Agreement bodies to be established.

Measures to Address Delay:

The Lord Chief Justice (LCJ) of Northern Ireland became President of the Coroner's Court on 1 November 2015. The LCJ has appointed a High Court Judge as the Presiding Coroner to oversee the management of cases and consider issues relating to scope and disclosure. The Presiding Coroner in conjunction with the Lord Chief Justice will determine which cases will be listed for hearing and when.

Following a review of the state of readiness of the outstanding legacy cases, which was undertaken by Lord Justice Weir in January, and a series of meetings in Strasbourg on 15 January 2016, the LCJ has proposed that, with the support of a properly resourced Legacy Inquest Unit in the Northern Ireland Courts and Tribunals Service and co-operation from the relevant justice bodies including the PSNI and the MoD, operating in conjunction with the other reform measures he has recommended, it should be possible to complete the existing legacy inquest caseload within a period of five years, subject to the required resources being made available.

An experienced investigator has recently taken up post within the Coroners Service (CSNI), to assist progressing these cases towards readiness for hearing. CJINI has commenced an inspection of the arrangements in place in the PSNI to manage and disclose information in support of the coronial process in Northern Ireland. The fieldwork is complete and a draft report was circulated to the inspected organisations before the end of September 2016 for review and comments.

The NI Executive was previously asked by the Department of Justice to consider a proposed bid for funding for an initial phase of work which would aim to complete up to 16 legacy cases within a period of 19 months. The Department of Justice has now moved away from the proof of concept approach and is developing a five year funding model, which will be considered initially by the Northern Ireland Executive before it is submitted for consideration by Her Majesty's Government as part of the overall funding package for dealing with the Past made available in the Stormont House Agreement.

The review of the CSNI made a number of recommendations to improve the resilience of the CSNI. An update on the recommendations most relevant to the McKerr group was provided in the latest update to the McDonnell action plan (application number 19536/11).

Review and update of coronial law in Northern Ireland

The requirement for the review and update of Coronial Law in Northern Ireland was reflected in the CSNI review report. A scoping study for a review of the Coroners legislation has been completed.

MGN Ltd³⁸

Case description: A disproportionate interference with the freedom of expression of the applicant (a publishing company) (violation of Article 10). The applicant was a defendant in domestic privacy proceedings in 2005. Having lost the case, the applicant had to pay 'success fees' of around GBP 1,000,000. The Court noted the chilling effect on freedom of expression if the fees were inflated by pressuring defendants to settle cases which could have been defended. It considered that the requirement that the applicant pay success fees was disproportionate having regard to the legitimate aims sought to be achieved and exceeded the broad margin of appreciation accorded in such matters.

Status of execution: An updated action plan was submitted by the authorities on 14 January 2015. Further information was submitted on 1 December 2015 and 12 July 2016.

Individual measures: In an Article 41 judgment, the Court awarded pecuniary damages which have been paid.

General measures: The Legal Aid, Sentencing and Punishment of Offenders Act 2012 implements reforms to civil litigation funding and in particular to “conditional fee agreements” and success fees. This legislation was enacted on 1 May 2012 and is aimed at controlling the costs of litigation generally as well as, in particular, the costs that the other party may have to pay. It includes a variety of provisions to ensure the proportionality of costs; effective costs management and the encouragement of early settlements. However, following recommendations made in the context of a domestic inquiry (the Leveson Inquiry), entry into force of the relevant parts of the Act relating to defamation and privacy cases has been delayed until the introduction of a proposed costs protection regime which was the subject of a consultation process that closed on 8 November 2013. The authorities are considering how to proceed in light of the results of the consultation. It is anticipated that the costs protection regime will be introduced at the same time as the provisions of the 2012 Act on defamation and privacy cases are brought into force.

In addition, changes already introduced by the Defamation Act 2013 will help to reduce costs in defamation cases. The judgment has also been widely published and disseminated.

The Government will provide further information on the implementation timetable for commencing the reforms relating to defamation and privacy cases by the end of 2016.

³⁸ Text taken from http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=mgn

Domestic cases – new declarations of incompatibility between 1 August 2014 and 31 July 2016

There have been five declarations of incompatibility under section 4 of the Human Rights Act 1998 within the reporting period.

- Northern Ireland Human Rights Commission, Re Judicial Review [2015] NIQB 102 (*16 December 2015*)
- David Miranda v Secretary of State for the Home Department [2016] EWCA Civ 6 (*19 January 2016*)
- R (on the application of P and A) v Secretary of State for the Home Department and Others [2016] EWHC 89 (Admin) (*22 January 2016*)
- R (oao G) v Constable of Surrey Police & Others [2016] EWHC 295 (Admin) (*19 February 2016*)
- Z (A Child) (No 2) [2016] EWHC 1191 (Fam) (*20 May 2016*)

Further details are given in Annex A.

Annex A: Declarations of incompatibility

Since the Human Rights Act 1998 came into force on 2 October 2000 until the end of July 2016, 34 declarations of incompatibility have been made. Of these:

- 22 have become final (in whole or in part) and are not subject to further appeal;
- 4 are or may be subject to appeal; and
- 8 have been overturned on appeal.

Of the 22 declarations of incompatibility that have become final:

- 13 have been remedied by later primary or secondary legislation;
- 3 have been remedied by a remedial order under section 10 of the Human Rights Act;
- 4 related to provisions that had already been remedied by primary legislation at the time of the declaration;
- 1 the Government has notified the JCHR that it intends to address the incompatibility through a remedial order; and
- 1 is under consideration as to how to remedy the incompatibility.

Information about each of the 34 declarations of incompatibility is set out below in chronological order. All references to Articles are to the Convention rights, as defined in the Human Rights Act 1998, unless stated otherwise.

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31. David Miranda v Secretary of State for the Home Department
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33. R (oao G) v Constable of Surrey Police & Others
(Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016)
34. Z (A Child) (No 2)
(Family Court; [2016] EWHC 1191 (Fam); 20 May 2016)

1. R (on the application of Alconbury Developments Ltd.) v Secretary of State for the Environment, Transport and the Regions

Administrative Court; [2001] HRLR 2; 13 December 2000

The Secretary of State's powers to determine planning applications were challenged on the basis that the dual role of the Secretary of State in formulating policy and taking decisions on applications inevitably resulted in a situation whereby applications could not be disposed of by an independent and impartial tribunal.

The Divisional Court declared that the powers were in breach of Article 6(1), to the extent that the Secretary of State as policy maker was also the decision-maker. A number of provisions were found to be in breach of this principle, including the Town and Country Planning Act 1990, sections 77, 78 and 79.

The House of Lords overturned the declaration on 9 May 2001: [2001] UKHL 23

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2. R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & the Secretary of State for Health

Court of Appeal; [2001] EWCA Civ 415; 28 March 2001

The case concerned a man who was admitted under section 3 of the Mental Health Act 1983 and sought discharge from hospital.

Sections 72 and 73 of the Mental Health Act 1983 were declared incompatible with Articles 5(1) and 5(4) in as much as they did not require a Mental Health Review Tribunal to discharge a patient where it could not be shown that he was suffering from a mental disorder that warranted detention.

The legislation was amended by the Mental Health Act 1983 (Remedial) Order 2001 (SI 2001 No.3712), which came into force on 26 November 2001.

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3. Wilson v First County Trust Ltd (No.2)

Court of Appeal; [2001] EWCA Civ 633; 2 May 2001

The case concerned a pawnbroker who entered into a regulated loan agreement but did not properly execute the agreement with the result that it could not be enforced.

Section 127(3) of the Consumer Credit Act 1974 was declared incompatible with Article 6 and Article 1 of the First Protocol by the Court of Appeal to the extent that it caused an unjustified restriction to be placed on a creditor's enjoyment of contractual rights.

The House of Lords overturned the declaration on 10 July 2003: [2003] UKHL 40

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4. McR's Application for Judicial Review

Queen's Bench Division (NI); [2002] NIQB 58; 15 January 2002

The case concerned a man who was charged with the attempted buggery of a woman. He argued that the existence of the offence of attempted buggery was in breach of Article 8.

It was declared that Section 62 of the Offences Against the Person Act 1861 (attempted buggery), which continued to apply in Northern Ireland, was incompatible with Article 8 to the extent that it interfered with consensual sexual behaviour between individuals.

Section 62 was repealed in Northern Ireland by the Sexual Offences Act 2003, section 139, section 140, Schedule 6 paragraph 4, and Schedule 7. These provisions came into force on 1 May 2004.

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5. International Transport Roth GmbH v Secretary of State for the Home Department

Court of Appeal; [2002] EWCA Civ 158; 22 February 2002

The case involved a challenge to a penalty regime applied to carriers who unknowingly transported clandestine entrants to the UK.

The penalty scheme contained in Part II of the Immigration and Asylum Act 1999 was declared incompatible with Article 6 because the fixed nature of the penalties offended the right to have a penalty determined by an independent tribunal. It also violated Article 1 of the First Protocol as it imposed an excessive burden on the carriers.

The legislation was amended by the Nationality, Immigration and Asylum Act 2002, section 125, and Schedule 8, which came into force on 8 December 2002.

* * * * *

6. Matthews v Ministry of Defence

Queen's Bench Division; [2002] EWHC 13 (QB); 22 January 2002

The case concerned a Navy engineer who came into contact with asbestos lagging on boilers and pipes. As a result he developed pleural plaques and fibrosis. The Secretary of State issued a certificate that stated that the claimant's injury had been attributable to service and made an award of no fault compensation. The effect of the certificate, made under section 10 of the Crown Proceedings Act 1947, was to preclude the engineer from pursuing a personal injury claim for damages from the Navy due to the Crown's immunity in tort during that period. The engineer claimed this was a breach of Article 6.

Section 10 of the Crown Proceedings Act 1947 was declared incompatible with Article 6 in that it was disproportionate to any aim that it had been intended to meet.

The Court of Appeal overturned the declaration, a decision which was upheld by the House of Lords on 13 February 2003: [2003] UKHL 4

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7. R (on the application of Anderson) v Secretary of State for the Home Department

House of Lords; [2002] UKHL 46; 25 November 2002

The case involved a challenge to the Secretary of State for the Home Department's power to set the minimum period that must be served by a mandatory life sentence prisoner.

Section 29 of the Crime (Sentences) Act 1997 was incompatible with the right under Article 6 to have a sentence imposed by an independent and impartial tribunal in that the Secretary of State decided on the minimum period which must be served by a mandatory life sentence prisoner before he was considered for release on licence.

The law was repealed by the Criminal Justice Act 2003, sections 303(b)(i) and 332 and Schedule 37, Part 8, with effect from 18 December 2003. Transitional and new sentencing provisions were contained in Chapter 7 and Schedules 21 and 22 of that Act.

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8. R (on the application of D) v Secretary of State for the Home Department

Administrative Court; [2002] EWHC 2805 (Admin); 19 December 2002

The case involved a challenge to the Secretary of State for the Home Department's discretion to allow a discretionary life prisoner to obtain access to a court to challenge their continued detention.

Section 74 of the Mental Health Act 1983 was incompatible with Article 5(4) to the extent that the continued detention of discretionary life prisoners who had served the penal part of their sentence depended on the exercise of a discretionary power by the executive branch of government to grant access to a court.

The law was amended by the Criminal Justice Act 2003 section 295, which came into force on 20 January 2004.

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9. Blood and Tarbuck v Secretary of State for Health

Unreported; 28 February 2003

The case concerned the rules preventing a deceased father's name from being entered on the birth certificate of his child.

Section 28(6)(b) of the Human Fertilisation and Embryology Act 1990 was declared incompatible with Article 8, and/or Article 14 taken together with Article 8, to the extent that it did not allow a deceased father's name to be given on the birth certificate of his child.

The law was amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003, which came into force on 1 December 2003.

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10. R (on the application of Uttley) v Secretary of State for the Home Department

Administrative Court; [2003] EWHC 950 (Admin); 8 April 2003

The case concerned a prisoner who argued that his release on licence was an additional penalty to which he would not have been subject at the time he was sentenced.

Sections 33(2), 37(4)(a) and 39 of the Criminal Justice Act 1991 were declared incompatible with the claimant's rights under Article 7, insofar as they provided that he would be released at the two-thirds point of his sentence on licence with conditions and be liable to be recalled to prison.

**The House of Lords overturned the declaration on 30 July 2004:
[2004] UKHL 38**

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11. Bellinger v Bellinger

House of Lords; [2003] UKHL 21; 10 April 2003

A post-operative male to female transsexual appealed against a decision that she was not validly married to her husband, by virtue of the fact that at law she was a man.

Section 11(c) of the Matrimonial Causes Act 1973 was declared incompatible with Articles 8 and 12 in so far as it made no provision for the recognition of gender reassignment.

In *Goodwin v UK* (Application 28957/95; 11 July 2002) the European Court of Human Rights had already identified the absence of any system for legal recognition of gender change as a breach of Articles 8 and 12. This was remedied by the Gender Recognition Act 2004, which came into force on 4 April 2005.

* * * * *

12. R (on the application of M) v Secretary of State for Health

Administrative Court; [2003] EWHC 1094 (Admin); 16 April 2003

The case concerned a patient who lived in hostel accommodation but remained liable to detention under the Mental Health Act 1983. Section 26 of the Act designated her adoptive father as her "nearest relative" even though he had abused her as a child.

Sections 26 and 29 of the Mental Health Act 1983 were declared incompatible with Article 8, in that the claimant had no choice over the appointment or legal means of challenging the appointment of her nearest relative.

The Government published in 2004 a Bill proposing reform of the mental health system, which would have replaced these provisions. Following substantial opposition in Parliament, the Government withdrew the Bill in March 2006, and introduced a new Bill to amend the Mental Health Act 1983 which received Royal Assent on 19 July 2007 as the Mental Health Act 2007. Sections 23 to 26 of this Act amend the relevant provisions to remove the parts declared incompatible. These provisions came into force on 3 November 2008.

13. R (on the application of Wilkinson) v Inland Revenue Commissioners

Court of Appeal; [2003] EWCA Civ 814; 18 June 2003

The case concerned the payment of Widow's Bereavement Allowance to widows but not widowers.

Section 262 of the Income and Corporation Taxes Act 1988 was declared incompatible with Article 14 when read with Article 1 of the First Protocol in that it discriminated against widowers in the provision of Widow's Bereavement Allowance.

The section declared incompatible was no longer in force at the date of the judgment, having already been repealed by the Finance Act 1999 sections 34(1), 139, and Schedule 20. This came into force in relation to deaths occurring on or after 6 April 2000.

* * * * *

14. R (on the application of Hooper and others) v Secretary of State for Work and Pensions

Court of Appeal; [2003] EWCA Civ 875; 18 June 2003

The case concerned Widowed Mother's Allowance which was payable to women only and not to men.

Sections 36 and 37 of the Social Security Contributions and Benefit Act 1992 were found to be in breach of Article 14 in combination with Article 8 and Article 1 of the First Protocol in that benefits were provided to widows but not widowers.

The law had already been amended at the date of the judgment by the Welfare Reform and Pensions Act 1999, section 54(1), which came into force on 9 April 2001.

* * * * *

15. R (on the Application of MH) v Secretary of State for Health

Court of Appeal; [2004] EWCA Civ 1609; 3 December 2004

The case concerned a patient who was detained under section 2 of the Mental Health Act 1983 and was incompetent to apply for discharge from detention. Her detention was extended by operation of provisions in the Mental Health Act 1983.

Section 2 of the Mental Health Act 1983 was declared incompatible with Article 5(4) of the ECHR in so far as:

- (i) it is not attended by provision for the reference to a court of the case of an incompetent patient detained under section 2 in circumstances where a patient has a right to make application to the Mental Health Review Tribunal but the incompetent patient is incapable of exercising that right; and
- (ii) it is not attended by a right for a patient to refer his case to a court when his detention is extended by the operation of section 29(4).

The House of Lords overturned the declaration on 20 October 2005: [2005] UKHL 60

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16. A and others v Secretary of State for the Home Department

House of Lords; [2004] UKHL 56; 16 December 2004

The case concerned the detention under the Anti-terrorism, Crime and Security Act 2001 of foreign nationals who had been certified by the Secretary of State as suspected international terrorists, and who could not be deported without breaching Article 3. They were detained without charge or trial in accordance with a derogation from Article 5(1) provided by the Human Rights Act 1998 (Designated Derogation) Order 2001.

The Human Rights Act 1998 (Designated Derogation) Order 2001 was quashed because it was not a proportionate means of achieving the aim sought and could not therefore fall within Article 15. Section 23 of the Anti-terrorism, Crime and Security Act 2001 was declared incompatible with Articles 5 and 14 as it was disproportionate and permitted the detention of suspected international terrorists in a way that discriminated on the ground of nationality or immigration status.

The provisions were repealed by the Prevention of Terrorism Act 2005, which put in place a new regime of control orders; it came into force on 11 March 2005.

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17. R (on the application of Sylviane Pierrette Morris) v Westminster City Council & First Secretary of State (No. 3)

Court of Appeal; [2005] EWCA Civ 1184; 14 October 2005

&

18. R (Gabaj) v First Secretary of State

Administrative Court; unreported; 28 March 2006

These two cases concerned applications for local authority accommodation. In *Morris*, the application was by a single mother (a British citizen) whose child was subject to immigration control. Section 185(4) of the Housing Act 1996 was declared incompatible with Article 14 to the extent that it requires a dependent child who is subject to immigration control to be disregarded when determining whether a British citizen has priority need for accommodation.

In *Gabaj*, it was the claimant's pregnant wife, rather than the claimant's child, who was a person from abroad. As this case was a logical extension of the declaration granted in *Morris*, the Government agreed to the making of a further similar declaration that section 185(4) of the Housing Act 1996 is incompatible with Article 14 to the extent that it requires a pregnant member of the household of a British citizen, if both are habitually resident in the UK, to be disregarded when determining whether the British citizen has a priority need for accommodation or is homeless, when the pregnant member of the household is a person from abroad who is ineligible for housing assistance.

The law was amended by Schedule 15 to the Housing and Regeneration Act 2008. The Act received Royal Assent on 22 July 2008 and Schedule 15 was brought into force on 2 March 2009.

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19. R (on the application of Baiai and others) v Secretary of State for the Home Department and another

Administrative Court; [2006] EWHC 823 (Admin); 10 April 2006

The case concerned the procedures put in place to deal with sham marriages, specifically which persons subject to immigration control are required to go through before they can marry in the UK.

Section 19(3) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was declared incompatible with Articles 12 and 14 in that the effect of this provision is unjustifiably to discriminate on the grounds of nationality and religion, and in that this provision is not proportionate. An equivalent declaration was made in relation to Regulations 7 and 8 of the Immigration (Procedure for Marriage) Regulations 2005 (which imposed a fee for applications). Home Office Immigration Guidance was also held to be unlawful on the grounds it was incompatible with Articles 12 and 14, but this did not involve section 4 of the Human Rights Act.

The House of Lords held that the declaration of incompatibility should be limited to a declaration that section 19(1) of the Act was incompatible with Article 14 taken together with Article 12, insofar as it discriminated between civil marriages and Church of England marriages. In other respects it was possible to read and give effect to section 19 in a way which was compatible with Article 12: [2008] UKHL 53.

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2011 was made on 25th April 2011 and came into force on 9th May 2011. This abolished the Certificate of Approval scheme so that those subject to immigration control who wish to marry in the UK and the Isle of Man will have the freedom to give notice of marriage without having first to seek permission of the Secretary of State.

* * * * *

20. Re MB

Administrative Court; [2006] EWHC 1000 (Admin); 12 April 2006

The case concerned the Secretary of State's decision to make a non-derogating control order under section 2 of the Prevention of Terrorism Act 2005 against MB, who he believed intended to travel to Iraq to fight against coalition forces.

The procedure provided by the 2005 Act for supervision by the court of non-derogating control orders was held incompatible with MB's right to a fair hearing under Article 6.

The Court of Appeal overturned the declaration, a decision which was upheld by the House of Lords on 31 October 2007: [2007] UKHL 46.

* * * * *

21. R (on the application of (1) June Wright (2) Khemraj Jummun (3) Mary Quinn (4) Barbara Gambier) v (1) Secretary of State for Health (2) Secretary of State for Education & Skills

Administrative Court; [2006] EWHC 2886 (Admin); 16 November 2006

This case concerned the Care Standards Act 2000 Part VII procedures in relation to provisional listing of care workers as unsuitable to work with vulnerable adults.

Section 82(4)(b) of the Care Standards Act 2000 was declared incompatible with Articles 6 and 8. The Court of Appeal overturned the declaration of incompatibility on 24 October 2007.

The House of Lords reinstated the declaration of incompatibility on 21 January 2009: [2009] UKHL 3. By the date of the House of Lords' judgment, the transition to a new scheme under the Safeguarding Vulnerable Groups Act 2006 was already underway. The new SVGA scheme does not include the feature of provisional listing which was the focus of challenge in the Wright case. However, the new Act was subject to a subsequent challenge in the Royal College of Nursing case set out below.

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22. R (Clift) v Secretary of State for the Home Department; Secretary of State for the Home Department v Hindawi and another

House of Lords; [2006] UKHL 54; 13 December 2006

This was a conjoined appeal in which the appellants were all former or serving prisoners. The issue on appeal was whether the early release provisions, to which each of the appellants was subject, were discriminatory.

Sections 46(1) and 50(2) of the Criminal Justice Act 1991 were declared incompatible with Article 14 taken together with Article 5 on the grounds that they discriminated on grounds of national origin.

The provisions in question had already been repealed and replaced by the Criminal Justice Act 2003, save that they continued to apply on a transitional basis to offences committed before 4 April 2005. Section 27 of the Criminal Justice and Immigration Act 2008 therefore amended the Criminal Justice Act 1991 to remove the incompatibility in the transitional cases. The amendment came into force on 14 July 2008, but reflected administrative arrangements addressing the incompatibility that had been put in place shortly after the declaration was made.

23. Smith v Scott

Registration Appeal Court (Scotland); [2007] CSIH 9; 24 January 2007

This case concerned the incapacity of a convicted prisoner who was unable to register to vote at the Scottish Parliament elections in May 2003 under section 3 of the Representation of the People Act 1983.

The Court ruled that as part of the Court of Session for the purposes of section 4 of the HRA it had the power to make a declaration of incompatibility under that section. It held that the Scottish Parliament was a legislature for the purposes of section 3 of the Representation of the People Act 1983 and, therefore, declared that section 3 was incompatible with Article 3 of Protocol 1 ECHR on the grounds that it imposed a blanket ban on convicted prisoners voting in the Scottish Parliament elections. This declaration was substantially similar to the judgment of the ECtHR in the earlier case of *Hirst v the UK (No. 2)* (Application 24035/01; 6 August 2005).

The Government is considering this declaration alongside the ECtHR's decision in *Hirst v UK (No 2)* and its pilot judgment in *Greens & MT v UK* which are covered in the section on ECtHR judgments.

On 16 October 2013, the UK Supreme Court handed down its judgment on a further legal challenge relating to prisoner voting rights in *Chester & McGeoch*.³⁹ The Court applied the principles in *Hirst (No 2)* and *Scoppola (No 3)* regarding the blanket ban on voting, but declined to make any further declaration of incompatibility. The Supreme Court took the view that the incompatibility of the blanket ban on prisoner voting in the UK with the ECHR was already the subject of a declaration of incompatibility made by the Registration Appeal Court in *Smith v Scott* and was under review by Parliament and that, in those circumstances, there was no point in making a further declaration of incompatibility.

The Government is clear that the UK's policy on prisoner voting is well established and remains a matter for the UK Parliament to determine.

* * * * *

24. Nasser v Secretary of State for the Home Department

Administrative Court; [2007] EWHC 1548 (Admin); 2 July 2007

The case concerned a challenge, by a national of Afghanistan, to a decision to remove him to Greece under the terms of the Dublin Regulation. The issue was whether paragraph 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – which requires the listed countries (including Greece) to be treated as countries from which a person will not be sent to another State in contravention of his Convention rights – is compatible with Article 3.

Paragraph 3 of Schedule 3 to the 2004 Act, applied by section 33 of the Act, was declared incompatible with Article 3 on the grounds that it precludes the Secretary of State and the

³⁹ R. (on the application of Chester) v Secretary of State for Justice; Supreme Court [2014] UKSC 25

courts from considering any question as to the law and practice on *refoulement* in any of the listed countries.

The Court of Appeal overturned the declaration of incompatibility on 14 May 2008: [2008] EWCA Civ 464.

The claimant appealed to the House of Lords and was unsuccessful. Lord Hoffmann said that the presumption in paragraph 3 of Schedule 3 to the 2004 Act did not preclude an inquiry into whether the claimant’s article 3 rights would be infringed for the purpose of deciding whether paragraph 3, would be incompatible with his Convention rights. In addition, the House of Lords found there to be no evidence of a real risk of *refoulement* from Greece therefore no violation had occurred in this case.

On declarations of incompatibility more generally, Lord Hoffmann said that they would *normally* concern a real Convention right in issue in the proceedings, not a hypothetical Convention right (i.e. a breach should generally be demonstrated on the facts for a declaration to be issued) and that the structure of the Human Rights Act suggests that “a declaration of incompatibility should be the last resort.”

* * * * *

25. R (Wayne Thomas Black) v Secretary of State for Justice

Court of Appeal; [2008] EWCA Civ 359; 15 April 2008

This case concerned the application of Article 5(4) to the early release of determinate sentence prisoners subject to the release arrangements in the Criminal Justice Act 1991. Under section 35(1) of the Act, the decision whether to release long-term prisoners serving 15 years or more who have reached the halfway point of their sentence, when they become eligible for parole, lies with the Secretary of State rather than the Parole Board. Section 35(1) was repealed and replaced by the Criminal Justice Act 2003. However, it continues to apply on a transitional basis to offences committed before 4 April 2005.

The Court of Appeal found that Article 5(4) requires the review of continuing detention to be undertaken by the Parole Board following the halfway point of such sentences. As a result the Court declared that section 35(1) was incompatible with Article 5(4).

The House of Lords overturned the declaration of incompatibility on 21 January 2009: [2009] UKHL 1.

* * * * *

26. R (on the application of (1) F (2) Angus Aubrey Thompson) v Secretary of State for the Home Department

Court of Appeal; [2009] EWCA Civ 792; 23 July 2009

This case concerned a juvenile and an adult who have been convicted of sexual offences. Under section 82 of the Sexual Offences Act 2003, the nature of the offences they committed and the length of their sentences mean that they are subject to the notification

requirements set out in Part 2 of that Act for an indefinite period. At the time, there was no statutory mechanism for reviewing indefinite notification requirements.

Section 82 of the Sexual Offences Act 2003 was declared incompatible with Article 8 by the Court of Appeal on 23 July 2009 and this decision was upheld by the Supreme Court on 21 April 2010: [2010] UKSC17. In doing so, the court concluded that, in so far as the relevant provisions allow for indefinite notification without review, they present a disproportionate interference with the right to respect for private life and are incompatible with Article 8(1) ECHR.

To remedy the incompatibility, the draft Sexual Offences Act 2003 (Remedial) Order 2012 was laid before Parliament on 5 March 2012 in accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998. The remedial order was subsequently approved by Parliament and came into force on 30 July 2012, amending the Sexual Offences Act 2003 to introduce a mechanism which will enable registered sex offenders who are subject to indefinite notification requirements to apply for those requirements to be reviewed.

* * * * *

27. R (on the application of Royal College of Nursing and others) v Secretary of State for Home Department

Administrative Court; [2010] EWHC 2761; 10 November 2010

The case concerned the procedures established by Part 1 of the Safeguarding Vulnerable Groups Act 2006 (“SVGA 2006”), specifically those in Schedule 3 to that Act, which provide for the inclusion of individuals who had committed a specified criminal offence on a list to bar them from working with children or vulnerable adults. It was found that procedures which denied the right of a person to make representations as to why they should not be included on a barred list breached Article 6 and had the potential to give rise to breaches of Article 8.

The legislation which preceded the SVGA 2006 was also declared incompatible, see: at 21 above, R (on the application of (1) June Wright (2) Khemraj Jummun (3) Mary Quinn (4) Barbara Gambier) v (1) Secretary of State for Health (2) Secretary of State for Education & Skills (*House of Lords; [2009] UKHL 3; 21 January 2009*).

Section 67(2) and (6) of the Protection of Freedoms Act 2012 amends Schedule 3 to the SVGA 2006 and gives the person the opportunity to make representations as to why they should not be included in the children’s or adults’ barred list before a barring decision is made. These provisions commenced on 10 September 2012.

* * * * *

28. R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice

Court of Appeal; [2013] EWCA Civ 25; 29 January 2013

Offenders Act 1974 (Exceptions) Order 1975 with regard to blanket disclosure of convictions and cautions are incompatible with the Article 8 right to private life.

The Court of Appeal found the Police Act 1997 and the Exceptions Order to the Rehabilitation of Offenders Act 1974 (ROA) incompatible with Article 8 on the grounds that blanket disclosure of all cautions and convictions is disproportionate.

The Court did not prescribe any solution, instead stating that it would be “for Parliament to devise a proportionate scheme” and directed that its decision should not take effect until the Supreme Court determined the Government’s application to appeal.

While the Government’s application to appeal to the Supreme Court was outstanding, changes were made to the Exceptions Order and to the Police Act by secondary legislation in response to the Court of Appeal judgment, and came in to force on 29 May 2013.

The Supreme Court heard the case on 13/14 December 2013 and issued its judgment on 18 June 2014. Overall it upheld the declaration of incompatibility with Article 8 in respect of the Police Act 1997. It also held that, in its application to the case of T, the Exceptions Order to the Rehabilitation of Offenders Act was incompatible with Article 8 but significantly decided that no judicial remedy was required in respect of the Order. Therefore, the Secretary of State for Justice’s appeal against the Court of Appeal’s declaration that the Exceptions Order was *ultra vires* was successful.

While the Supreme Court noted that the Exceptions Order had been amended following the Court of Appeal judgment to provide that some spent convictions and cautions would not need to be disclosed, it did not carry out any in-depth analysis of the new regime or comment on its compatibility with Article 8.

* * * * *

29. R (on the application of Reilly (no.2) and Hewstone) v Secretary of State for Work and Pensions

Administrative Court; [2014] EWHC 2182; 4 July 2014

In this case, the claimants sought a declaration of incompatibility on the ground that the Jobseekers (Back to Work Schemes) Act 2013 (“the 2013 Act”) was incompatible with their rights under Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) to the ECHR.

The case followed that of R (Reilly & Wilson) v The Secretary of State for Work and Pensions [2013] UKSC 68; [2013] 3 WLR 1276 where the Court of Appeal, and later the Supreme Court, held the Jobseeker’s Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (“the 2011 Regulations”) to be *ultra vires* and certain notification letters to be deficient.

The 2013 Act came into force after the Court of Appeal judgment and had the effect of retrospectively validating the 2011 Regulations, which the Court of Appeal had held to be *ultra vires* and the notification letters that had failed to comply with the requirements of reg. 4 of the 2011 Regulations.

The judgment found the 2013 Act was incompatible with the claimants’ rights under Art. 6(1) and a declaration of incompatibility was granted. However, it was decided that Article 1 of the First Protocol was not engaged.

The Government appealed the judgment to the Court of Appeal and the claimants filed a counter-appeal. The Court joined this case with Jeffrey and Bevan v Secretary of State for Work and Pensions and upheld the declaration of incompatibility on 29 April 2016: [2016] EWCA Civ 413.

The Government is considering its response.

* * * * *

30. Northern Ireland Human Rights Commission, Re Judicial Review

High Court of Northern Ireland; [2015] NIQB 102; 16 December 2015

This was an application by the Northern Ireland Human Rights Commission for a declaration that sections 58 and 59 of the Offences of the Person Act 1861 and Section 25 of the Criminal Justice Act (NI) 1945 are incompatible with Articles 3, 8 and 14.

The High Court held that the failure to provide exceptions to the prohibition of abortion in cases where there is a fatal foetal abnormality or where the pregnancy is a result of sexual crime, up to the date when the foetus becomes capable of existing independently of the mother, violated Article 8.

The Department of Justice and the Attorney General for Northern Ireland appealed to the Court of Appeal. The case was heard in June 2016.

* * * * *

31. David Miranda v Secretary of State for the Home Department

Court of Appeal; [2016] EWCA Civ 6; 19 January 2016

Mr Miranda was examined under Schedule 7 to the Terrorism Act 2000 by the Metropolitan Police at Heathrow Airport on 18 August 2013. Schedule 7 allows an examining officer to stop and question and, when necessary, detain and search individuals travelling through border control areas to determine whether they appears to be someone who is or has been involved in the commission, preparation or instigation of acts of terrorism.

During his period of examination, Mr Miranda was questioned and items in his possession were taken from him. Mr Miranda is the spouse of Glenn Greenwald, a journalist who at the time was working for *The Guardian*. The information taken included encrypted material derived from data from the National Security Agency of the United States that had been obtained by Edward Snowden. This included US intelligence material, some of which formed the basis of articles that appeared in *The Guardian* on 6 and 7 June 2013. Mr Miranda was accepted to be carrying the material in order to assist Mr Greenwald in his journalistic activity.

The Court held that Schedule 7 was incompatible with Article 10, in relation to journalistic material, as it was not subject to adequate safeguards against arbitrary use.

The Court's judgment concerned Schedule 7 as it was at the time of the Miranda examination, which took place in August 2013. Since that time, Schedule 7 has been amended, as has the Schedule 7 Code of Practice for Examining and Review Officers.

Paragraph 40 of the Code now states:

“examining officers should cease reviewing, and not copy, information which they have reasonable grounds for believing is subject to legal privilege, is excluded material or special procedure material, as defined in sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984 (PACE)”.

Section 11(1)(c) of the Police and Criminal Evidence Act includes journalistic material within the meaning of “excluded material”.

* * * * *

32. R (on the application of P and A) v Secretary of State for the Home Department and Others

Administrative Court; [2016] EWHC 89 (Admin); 22 January 2016

&

33. R (oao G) v Constable of Surrey Police and Others

Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016

Under the Police Act 1997 and the Rehabilitation of Offenders Act 1974, after a certain period of time most convictions and all cautions become ‘spent’ and do not require disclosure. However, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provides that, in certain circumstances and for certain sensitive professions, spent convictions and cautions must be disclosed and can be taken into account.

Following the decision of the Supreme Court in R (T) v Chief Constable of Greater Manchester Police [2014] UKSC 35, amendments were made to the Police Act 1997 and the Exceptions Order to reduce the number of convictions and cautions which require disclosure.

P & A challenged the revised scheme. G challenged the refusal of the Chief Constable to exercise her discretion to expunge records of his reprimand from the police national computer.

In both cases the High Court held that there are insufficient safeguards included in the scheme such that it is still not ‘in accordance with the law’ for the purposes of Article 8. They made a declaration of incompatibility to this effect.

The Government has appealed the decisions to the Court of Appeal. The cases have been joined and a hearing listed for February 2017. The effect of both declarations has been stayed pending the outcome of the appeal.

* * * * *

34. Z (A Child) (No 2)

Family Court; [2016] EWHC 1191 (Fam); 20 May 2016

A declaration of incompatibility was sought in this matter on the basis that section 54 of the Human Fertilisation and Embryology Act 2008 was a discriminatory interference with a single person's rights to private and family life, and therefore incompatible with Articles 8 and 14 of the Convention. Under section 54 of the 2008 Act only couples (and not single people) can obtain a parental order following a surrogacy arrangement. This contrasts with adoption where single people are able to adopt. The case came following an application to read down section 54 compatibly with the Convention under s.3 of the HRA – which was rejected.

Shortly prior to the hearing the Secretary of State for Health conceded that the unavailability of parental orders to single people following a surrogacy arrangement was in breach of Article 14 of the ECHR (taken with Article 8). The Secretary of State made it clear that in their view the policy did not breach Article 8 taken on its own, as there was no right to be conferred parenthood using this particular legal mechanism. The result was a declaration by the court that section 54(1) and (2) of the 2008 Act are incompatible with the rights of the applicant and his child under Article 14 of the ECHR (taken with Article 8) insofar as they prevent the applicant from obtaining a parental order.

The Government intends to address the incompatibility through a remedial order.

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Annex B: Statistical information on implementation of ECtHR judgments⁴⁰

Table 1: UK Performance

Statistic	UK performance		
	2013	2014	2015
New cases			
i) Total number of UK cases	17	15	5
ii) of which leading cases	14	3	2
Cases closed by final resolution	2013	2014	2015
i) Total number of UK cases	30	16	12
ii) of which leading cases	13	10	4
Pending cases	2013	2014	2015
i) Total number of UK cases	27	26	19
ii) of which leading cases	19	11	8
Payment of just satisfaction	2013	2014	2015
i) Within deadline	14	17	2
ii) Late	1	0	0
iii) Pending waiting confirmation of payment	2	0	1
Amount of just satisfaction (€)	2013	2014	2015
Total amount paid by the UK	1,139,706	50,050	23,450
Average execution time	2013	2014	2015
Leading UK cases pending <2yrs	11	6	2
Leading UK cases outstanding 2–5yrs	3	3	3
Leading UK cases outstanding >5yrs	4	2	3

⁴⁰ Data in tables 1 and 2 are taken from the Annual Report of the Committee of Ministers, *Supervision of the execution of judgments and decisions of the European Court of Human Rights*. Data for 2013 are from the 8th Annual Report and show the position at 31 December 2014, data for 2014 and 2015 are from the 9th Annual Report and show the position at 31 December 2015. <http://www.coe.int/en/web/execution/annual-reports>

Table 2: Judgments under supervision of the Committee of Ministers at the end of years 2013–2015 by State Party to the Convention

Ranking by 2015 pending cases	State	All pending cases			of which leading cases		
		2013	2014	2015	2013	2014	2015
1	Italy	2593	2622	2421	69	78	81
2	Turkey	1728	1500	1591	188	168	178
3	Russian Federation	1328	1474	1549	172	187	197
4	Ukraine	957	1009	1052	127	135	144
5	Romania	702	639	652	84	83	76
6	Hungary	285	331	388	35	37	43
7	Poland	763	503	346	60	40	35
8	Slovenia	271	302	309	17	21	20
9	Greece	495	558	302	61	56	52
10	Bulgaria	357	325	272	99	95	89
11	Republic of Moldova	238	256	270	71	76	79
12	Serbia	123	194	248	29	33	29
13	Croatia	158	172	162	55	67	70
14	Azerbaijan	81	114	147	33	42	45
15	Portugal	117	122	129	8	10	12
16	“The Former Yugoslav Republic of Macedonia”	97	113	123	24	26	29
17	Slovak Republic	59	49	71	17	20	27
18	France	50	54	69	27	35	41
19	Latvia	47	58	63	38	44	50
20	Belgium	58	59	50	21	13	13
21	Albania	34	38	49	18	18	18
22=	Austria	63	72	42	23	23	22
	Finland	42	41	42	11	13	13
24	Georgia	30	29	38	21	19	22
25	Spain	31	29	34	17	15	18
26	Lithuania	36	26	31	19	23	24
27	Bosnia and Herzegovina	33	24	26	12	10	11
28	Armenia	38	34	25	19	16	12
29	Malta	22	17	23	13	10	11
30	Germany	31	19	20	17	15	17
31	United Kingdom	27	26	19	19	11	8
32	Montenegro	15	17	17	10	13	13
33	Switzerland	11	18	14	8	16	13
34	Estonia	8	9	11	5	7	8
35=	Czech Republic	27	14	9	9	10	7

Ranking by 2015 pending cases	State	All pending cases			of which leading cases		
		2013	2014	2015	2013	2014	2015
	Netherlands	16	11	9	13	9	9
37	Cyprus	6	5	7	6	5	4
38	Ireland	13	6	6	5	2	2
39	Iceland	6	6	5	5	5	2
40=	Sweden	5	3	3	4	2	3
	Norway	3	4	3	3	3	3
42	San Marino	2	1	2	2	1	2
43=	Luxembourg	10	0	1	2	0	1
	Andorra	1	1	1	1	1	1
	Liechtenstein	0	0	1	0	0	1
46=	Monaco	1	0	0	0	0	0
	Denmark	1	0	0	0	0	0
	Total	11019	10904	10652	1497	1513	1555

Table 3: Judgments finding a violation against the UK under supervision of Committee of Ministers at the beginning of October 2016

Case name	Application	Judgment final on
Enhanced Procedure		
1	<i>McKERR GROUP:</i>	
	McKerr	28883/95
	Jordan	24746/94
	Kelly and Others	30054/96
	Shanaghan	37715/97
	McShane	43290/98
	Finucane	29178/95
	Collette and Michael Hemsworth	58559/09
	McCaughey and Others	43098/09
2	<i>HIRST/GREENS AND MT GROUP:</i>	
	Hirst No.2	74025/01
	Greens and MT	60041/08
	Firth and Others	47784/09
	McHugh and Others	51987/08
	Millbank and Others	44473/14
3	McDonnell	19563/11
Standard Procedure		
4	S and Marper	30562/04 and 30566/04
5	MGN Ltd	39401/04
		18/04/2011; just satisfaction judgment on 12/06/2012
6	Al-Skeini and Others	55721/07
7	Vinter, Bamber and Moore	66069/09, 130/10 and 3896/10
8	Doherty	76874/11
9	JN	37289/12
10	Hammerton	6287/10
11	Ibrahim and Others	50541/08

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