had actually asked for that information. He replied to Dr Blackwood's request, though he made some slight errors through stress and through failing to look up Mrs Day's records.

On 22 June—four days before the *That's Life* broadcast—a new "patient" calling himself Leslie Kent consulted him, Dr Gee went on. It was only on the following day, when the BBC having made a fake appointment for a consultation, staged a confrontation with Dr Gee in the presence of his nurse and two patients that he realised that Leslie Kent was a BBC employee. The next day, Friday, a letter arrived from Gavin Campbell, assistant presenter of *That's Life*, posing nine questions about Dr Gee's treatment and asking for an answer over the telephone later that morning. He could not answer the questions in that time, said Dr Gee, though he offered to reply if given more time. The BBC's response was that the programme scheduled for 26 June was the last of the series, and he received a further letter on Saturday giving him until noon on Sunday, the day of the broadcast, to answer the questions. He was unable to do so in such a short time, but he supplied the BBC with a Department of Health report and two scientific articles which he hoped would make them realise that there might be another side to the story.

The final part of Dr Gee's evidence dealt with his treatment of other patients whose cases the BBC will refer to in their evidence. He concluded by describing the impact of the broadcast on him: "a feeling of shame and inadequacy."

1 Brahams D. Doctor's action for libel in High Court to be heard before GMC proceedings relating to the same matters. *Lancet* 1984;ii:1050-1.

Crown immunity protects service surgeons

BY OUR LEGAL CORRESPONDENT

An ex-serviceman who wished to sue the Ministry of Defence and a Royal Air Force surgeon for damages for alleged negligence has failed in his efforts to challenge the legality of the defence of Crown immunity relied on by the proposed defendants.[1]

Mr Kenneth Pinder, aged 46, alleged that while he was serving as a corporal in the RAF he contracted multiple liver abscesses as a result of a severe infection after an ulcer operation performed on him by an RAF surgeon in 1976, at RAF Hospital, Cosford (since demolished). He was invalided out of the service and now receives a pension of about £375 a month. The payment of the pension does not imply any finding or admission of negligence. Mr Pinder's lawyers valued his claim for damages at about £100 000.

In response to a claim for damages the Ministry relied on section 10 of the Crown Proceedings Act, 1947. Section 10 provides that where death or personal injury is caused by a member of the armed forces while on duty to another member of the armed forces neither the Crown nor the serviceman who caused the injury or death shall be liable in tort provided two conditions are satisfied. Those conditions are that, firstly, the person injured or killed was either on duty or was on any land, premises, ship, or vehicle being used for the purposes of the armed forces of the Crown and, secondly, that the Minister of Pensions certifies that the death or injury will be treated as attributable to service for pension purposes.

Mr Pinder's lawyers argued that, since his injuries were not received while on active service or in training, section 10 of the Act was a denial of his rights under the European Convention of Human Rights. Cases concerning the convention are heard by the European Court of Human Rights, but the court has jurisdiction only over cases brought before it either by a state which is a party to the convention or by the European Commission of Human Rights. The European Commission declared Mr Pinder's claim inadmissible.

The immunity granted by the statute does none the less give rise to some anomalies. The immunity of the actual alleged wrongdoer has been criticised in principle, but without it there would probably have been a revival of the pre-1947 practice of suing the individual in the hope that the Crown would stand behind him. In the present case a surgeon would have been a sufficiently tempting target whether or not he was insured with a protection society.

Service surgeons certainly ought to be insured because their immunity from suit is not universal, since it arises only where the two qualifying conditions are both satisfied. They would not be satisfied where a civilian ex-serviceman is treated in a service hospital. Even serving servicemen may be treated for non-pensionable conditions, such as injuries from motor accidents while on leave.

The immunity does not extend to civilians. So if a service surgeon were assisted by a civilian surgeon and they injured their patient by their joint negligence the patient might sue the civilian surgeon alone and recover the whole of his damages from him. If the immunity applied to the service surgeon the civilian would be unable to obtain any contribution from him or the Crown. Equally, a patient could sue a supplier of contaminated drugs or defective equipment if he could prove fault, just as a soldier might sue the negligent manufacturer of a rifle which exploded on firing even in battle conditions (though in the latter case the difficulties of proof might be more than usually burdensome).

In submissions to the commission, it was argued on behalf of the Crown that pensions were at least as advantageous to servicemen as the right to sue for damages since they were tax free, reviewed regularly, and payable without proof of negligence. That claim has been disputed so far as concerns the financial value of the pension by comparison with damages. Moreover, it has happened on occasion that no pension is paid despite the granting of the Minister's certificate. In 1955 a Z reservist was killed on exercise at Bulford, the Minister granted his certificate, but a pension was refused to his parents because they did not come within the pensionable category (that is, they were deemed not to be "in pecuniary need"). The parents were still denied the right to sue the War Office.[2]

Since the decision by the European Commission in favour of the British government, the English High Court has upheld a further claim to Crown immunity in a case where complaints of medical negligence were made against an army doctor.[3]

A serviceman received a blow on the head while engaged in horseplay on army property but not on duty. In an action brought by his father it was alleged that he was not seen by a doctor for an hour and a half, and when the doctor decided that he did not require treatment he was returned to the guardroom. Shortly afterwards he was sent back to the medical centre but was not seen by a doctor for more than an hour. He was then sent to a civilian hospital with inadequate information and died. No evidence was called in support of these allegations because the defence of Crown immunity was tried as a preliminary issue of law and was decided in favour of the Crown.

1 Terence Shaw. Servicemen's right to sue Ministry is rejected. *Daily Telegraph* Oct 23 1984: 13 (cols 7-8).
2 Adams *v* War Office 1955 1 WLR1116.
3 Anonymous. Crown Immunity. *The Times* Oct 30 1984: 12 (cols 5-6).

Mental disorder and prison

BY OUR LEGAL CORRESPONDENT

Yet another case has been reported of a mentally disordered person being sent to prison because there is no other institution willing to receive her.

At Aylesbury Crown Court Judge Verney sentenced a severely mentally disordered woman aged 22 to life imprisonment for arson.[1] Neither Buckinghamshire Social Services nor Oxford Regional Health Authority could provide facilities for her treatment.

The woman had previously come before the courts in 1981 accused of arson of a printing works causing £100 000 worth of damage. On that occasion the Department of Health had refused her a place in a special hospital, and no other appropriate facilities were available in the county or region. But Milton Keynes Health Authority had paid about £50 000 for her to receive treatment at St Andrews Psychiatric Hospital, Northampton (where there are no secure facilities) under the terms of a three year probation order. In June this year St Andrews discharged her and within two weeks she caused £700 worth of damage to a car by scratching graffiti on it. While in a remand hostel she set a wastepaper bin alight and was severely disruptive. St Andrews was now unwilling to readmit her, believing she would not respond to treatment, and in any case no funds were available to pay for her care there. In default of other appropriate facilities the judge reluctantly imposed a life sentence to protect the public. An appeal is proposed in the hope that the Court of Appeal can use its influence to obtain suitable facilities.

The governing legislation (now the Mental Health Act, 1983 section 37) requires that the court shall not make a hospital order after a criminal conviction unless the court is satisfied by evidence that arrangements have been made for the admission of the defendant to hospital within 28 days in the event of an order being made. The options open to the court may therefore be limited if facilities are not made available.

Large numbers of prisoners are known to be mentally ill, and the judges are known to be unhappy about this. Last year Lord Justice Lawton said, "Putting people who are severely mentally ill into prison is a form of cruelty. Not only that, but it imposes a great strain on the prison staff."[2] In an earlier appeal concerning a psychopathic petty offender, Lord Justice Lawton said, "Her Majesty's courts are not dustbins into which the