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Kenyan Man Sentenced to Death Freed on Bail Pending Appeal Judgment

Doughty Street Chambers: In 2013, Ali Babitu Kololo was sentenced to death in Kenya for his alleged involvement in the murder of David Tebbutt and the robbery and kidnap of his wife, Judith Tebbutt. The tragic, widely reported murder and robbery took place on the Kenyan coast close to Somalia. Mrs. Tebbutt was held hostage in Somalia and only freed after six months in captivity. A unit from SO15 of the Metropolitan Police was deployed to assist the Kenyan authorities with their investigation and an officer gave important evidence at Mr. Kololo's trial.

Reprieve took up Mr. Kololo's case and provided assistance to his Kenyan lawyers on appeal. From 2014, they were assisted by Tim Moloney KC. Subsequent Data Protection Act proceedings in London in 2015 secured important information from the Metropolitan Police which greatly assisted Mr. Kololo's appeal. That material had not been disclosed in Mr. Kololo's trial. The High Court in Kenya admitted the material as fresh evidence in the appeal and, in 2017, the Kenyan Court of Appeal refused an appeal by the Kenyan DPP against its decision to do so.

In 2017, *Reprieve* formulated a complaint to the IOPC about a Met officer's conduct in the investigation and prosecution. Fiona Murphy of DSC and Kate Maynard of Hickman and Rose Solicitors joined Reprieve and Tim to provide their expert assistance in relation to that complaint. Following the complaint, a lengthy investigation managed by the IOPC and conducted by the National Crime Agency began in 2018. In June 2022, the IOPC concluded that if the officer was still serving, he would have had a case to answer for gross misconduct. The officer had retired with the rank of Detective Chief Superintendent in 2017.

On 20 February 2023, Mr. Kololo's substantive appeal against his conviction in Kenya was finally heard. The Kenyan DPP conceded the appeal and the High Court will deliver its judgment on 27 April. On 24 February 2023, Mr. Kololo was admitted to bail pending that judgment.

On 1 March 2023, the IOPC issued a statement on their role. Director of Major Investigations, Steve Noonan, said: "We provided our investigation report to facilitate preparations for the appeal following requests from Mr Kololo's defence and the Kenyan authorities. A Kenyan court has now decided that Mr Kololo should be freed pending a judgment which is expected to formally quash his conviction. A key part of the evidence against Mr Kololo during his trial in 2013 was distinctive footwear he was allegedly wearing, which was used to link him to the scene….. However, our investigation looked at forensic evidence in relation to the footwear which was not included in the statement the officer gave to the court. The former officer chose not to answer questions about this omission, or provide an explanation, when interviewed under criminal caution during our investigation."

A spokesperson for the Metropolitan Police said: "Our thoughts are with Mr Kololo, Mrs Tebbutt, her family and all those who have been affected by this terrible crime. The Metropolitan Police remains committed to supporting the Kenyan authorities in any way that may be possible, in order to get justice for Mrs Tebbutt and her late husband." Referring to the fact that no disciplinary proceedings could be instituted against the officer, the spokesperson said "We recognise and understand that this may be frustrating for all concerned that this matter has not been fully resolved," The officer's lawyer told the BBC in 2022 that his client "absolutely disagrees with the [IOPC] findings"

G4S Admits Failures in the Running HMP Birmingham Were Breach of Article 2

Deighton Pierce Glynn (DPG) has obtained damages and settled a claim in which a man died from the effect of NPS (spice) in HMP Birmingham, a privately managed prison operated by G4S at the time. G4S's running of the prison failed to meet the standards of public service required such that HMP Birmingham was put in special measures, and its running was taken over by the Ministry of Justice. The Chief Inspector of Prisons at the time, Peter Clarke, invoked the Urgent Notification process in respect of the prison. G4S accepted in this case that its failures in the running of HMP Birmingham – which was put in special measures – amounted to a breach of the Article 2 systems duty. The use of illicit substances in HMP Birmingham in 2018 was so prevalent and pervasive that even inspectors felt the effects. The Chief Inspector of Prisons noted that: "I have inspected many prisons where drugs are a problem, but nowhere else have I felt physically affected by the drugs in the atmosphere".

Admissions: 1) G4S failed to provide adequate training and management control in dealing with the use and effects of illicit substances at HMP Birmingham. 2) Although training was in accordance with the MoJ Training Manual, it didn't address the effect of drugs in prisons nor how the prison officers should respond to prisoners who appeared under the influence. 3) There was staffing shortage at HMP Birmingham at the relevant time (2018) and inadequate staffing was in place at the material time. 4) There was no formal process in place for dealing with prisoners who took spice (NPS). 5) G4S, as the contractors for HMP Birmingham, failed to implement their zero tolerance policy. 6) Prison officers' monitoring/managing symptoms from individual use of drugs was inconsistent. 7) Prison officers' reporting of individual prisoner's observed to be under the influence of illicit drugs was inconsistent.

Consequently, G4S said in its notice of admission, whilst it denied responsibility for the cause of death and sought to attribute blame to the deceased for using the drugs; and whilst "strictly speaking" responsibility for any systems breach lay with the Ministry of Justice, nevertheless: "Solely for purposes of this claim it is admitted that the failures accepted above amount to a breach of the Article 2 systems duty". It is thought that this is the first time there has been a formal admission that the Article 2 systems duty has been breached in circumstances such as these. The case shows that failures of management and training, and the failure to operate basic procedures, such that permit dangerous drugs like spice onto wings by a variety of routes, and which lead to numerous deaths every year, can be directly actionable against those who run prisons.

Chris Kaba: Family Call for Action Six Months On From Police Shooting

INQUEST: Chris Kaba, 24, was fatally shot by a firearms officer from the Metropolitan Police ('Officer NX121') shortly after 10pm on 5 September 2022 in Kirkstall Gardens, Streatham Hill, London. His death prompted significant public outcry. The police watchdog (the Independent Office for Police Conduct - IOPC) is conducting a homicide investigation into the fatal shooting. Six months on, Chris' family are still waiting for answers and action.

Their three key asks since his death have been: 1) Officer NX121 be interviewed under caution. It is believed that this has now taken place. 2) An urgent decision on whether the officer/s involved will be charged with murder, manslaughter, or other charges. The family still await a decision from the IOPC on whether they will seek advice on criminal charges from the Crown Prosecution Service (CPS). 3) Regular meaningful updates on the investigation. While the family have received updates, these have not been sufficiently frequent or meaningful.

An INQUEST report published last month found that families of Black people who have died following police contact in recent years were unable to get accountability for racism from a system that

is not "fit for purpose". This case is an opportunity for these agencies to demonstrate change.

In a joint statement, the family of Chris Kaba said: "For the past six months our primary questions as a family have been: why did this happen and who will be held accountable? We were told that we would have to wait six to nine months before these questions could begin to be answered.

For a grieving family, already that was too long. We are still waiting. The police watchdog have had enough time to gather evidence and take steps towards seeking CPS advice on criminal charges for those involved in Chris' death. Yet we are still waiting. As a family we urge the IOPC to take immediate action to progress advice on criminal charges, and the Crown Prosecution Service to provide this advice without any further delay. We must never accept a young unarmed Black man being shot by police on the streets of London as normal. This should never have happened. It must never happen again. Chris was so loved by our family and all his friends. He had a bright future ahead of him before his life was cut short. Alongside the community of supporters standing with us, our family cannot wait any longer."

Helen Lumuanganu, the mother of Chris Kaba, added: "We have waited for six months already for the decision. We don't want to wait for another six months. This, for us, is a painful reminder of something that will never change. Enough is enough." Lucy McKay, spokesperson for INQUEST, said: "There has rightly been significant public concern about the circumstances of Chris Kaba's death. This is both in relation to his death specifically and as part of the broader unacceptable pattern of disproportionate fatal use of force by police against Black men.

INQUEST has found that the systems of investigation are failing to hold police officers and forces to account for deaths, and failing to examine the role of racism. The police watchdog and Crown Prosecution Service must demonstrate change by urgently progressing this investigation and making charging decisions on the officers involved in Chris' death."

Daniel Machover of Hickman & Rose, who represent the family, said: "If a member of the public is killed by another member of the public who is known to the police on the day of the death, it would rightly be considered outrageous for the bereaved family to be waiting for more than five months for the criminal investigation to be completed. The IOPC is failing this family and the wider public by failing to complete its criminal investigation promptly."

IPP: "`Prisoners/Politicians/Campaigners Continue Fight for Justice"

Inside Time: Families and politicians have vowed to continue demanding justice for prisoners on endless IPP sentences after their latest setback. Raab rejects reform plea – but how long will he survive? Justice Secretary Dominic Raab last month rejected a landmark report by the Justice Select Committee (JSC) which had called for the resentencing of everyone still serving a term of Imprisonment for Public Protection. The sentences were abolished in 2012 when they were found to be illegal, but 3,000 people who received them are still in jail, half of them on recall. The JSC report, published last year, recommended that everyone on an IPP should be resentenced – a move which would mean release for almost all of those still in custody. In his response, Raab dismissed the idea, saying it "could lead to the immediate release of many offenders who have been assessed as unsafe for release by the Parole Board."

Conservative MP Sir Bob Neill, chair of the JSC, called Raab's decision a "missed opportunity to right a wrong" and said: "There is now a growing consensus that a resentencing exercise is the only way to comprehensively address the injustice of IPP sentences, and that this can be done without prejudicing public protection." With Raab's job hanging in the balance amid a probe into claims that he bullied civil servants, campaigners said that the JSC's recommendations would serve as a lasting blueprint for reform which could be picked up by whoever succeeds him. Family campaign group UNGRIPP said: "We want to reassure everybody affected by IPP that the JSC report has a longer shelf life than the average justice secretary – and so do we. The report is not going away, we are not going away, and we are already pursuing other opportunities for legislative change … Resentencing is no longer a fringe option: it is a serious and sensible policy that the Government has failed to deliver."

Raab also ruled out another proposal from the JSC, that the period an IPP prisoner must wait after release before their licence can be terminated should be reduced from 10 years to five. He said a new IPP "action plan" would soon be published, setting out measures to help IPP prisoners progress towards release, and this would offer "the best possible opportunities for those serving an IPP sentence to progress towards a safe and sustainable release". He asked the Chief Inspector of Probation to investigate a claim by the JSC that freed IPP prisoners are being recalled to custody unnecessarily.

Peter Dawson, director of the Prison Reform Trust, said the government "should be thoroughly ashamed of this wholly inadequate response to a serious cross-party attempt to right a terrible historic wrong." He said Raab's refusal to consider resentencing "suggests we have a Ministry of Justice in name only." Andrea Coomber, chief executive of the Howard League for Penal Reform, said her organisation "will continue to fight to end this injustice." Shirley Debono, founder of IPP Committee in Action, pointed out that an application to free three IPP prisoners under the little-used Royal Prerogative of Mercy is still ongoing, adding: "Don't give up." Her organisation will stage a protest at Downing Street, and lobby of Parliament, on March 15.

Met Orders Review After Convictions Quashed

Rachelle Cobain, Inside Time: A review has been ordered after two men had their murder convictions quashed and were found not guilty after a retrial. Their case was taken up by Inside Justice, the charity dedicated to investigating miscarriages of justice. The men's story has now been told in a new podcast episode produced by the award-winning team at Tortoise Media. The episode, called 'Wronged', describes the case of Patryk Pachecka, an applicant to Inside Justice, and his friend Grzegorz Szal. The pair were wrongly convicted of murdering a man in north London in 2016. In the podcast, Basia Cummings interviews Inside Justice founder Louise Shorter, who describes the moment she heard of Patryk's case after a concerned message from his barrister Siobhan Grey KC.

Once Inside Justice was involved it was able to bring in Jo Millington, an expert in blood pattern analysis, who then approached two new forensic pathologists to review the case. Working as a team with Patryk's lawyers, they uncovered fresh evidence that had not been heard at the original trial. Siobhan Grey KC said: "Inside Justice provides an amazing support network of experts who are on hand to deal with every issue which arises in a criminal case – scientific forensic experts as well as CCTV and telephone experts were immediately accessible to help us launch a complex criminal appeal."

Their appeal was successful after Patryk and Grzegorz's convictions were quashed and a retrial was ordered. The jury returned a not-guilty verdict at the retrial in November 2021 and both men were released having served four years in prison. In December 2022, the Metropolitan Police Service told Inside Justice that the original investigation and court findings had been referred for review to the Met's Serious Crime Review Group and the Forensic Science Regulator.

Mark Lister, Chief Executive of Inside Justice, commented: "Where our casework experience and expertise identifies the need for improvements in the criminal justice system, our charity seeks to hold to account the bodies responsible for failings to ensure lessons are learned for the future. Consequently, we will continue to press the Metropolitan Police to take action."

Smear, Frame, Mislead: British Army In Ireland

Richard Norton-Taylor, Declassified UK: Startling new evidence reveals how the British army, backed by MI5, covered up a vicious black propaganda campaign in Northern Ireland and blocked an independent inquiry fearing it would revive claims they colluded with Loyalist paramilitaries. "It is now clear from recent disclosures that the MoD deliberately and repeatedly misled parliament about my true role in N.Ireland", former army information officer tells Declassified

The extent of the cover-up is disclosed in documents given to victims of abuse at Kincora, a boys' home in East Belfast run by William McGrath, founder of Tara, a shadowy far-right group known to MI5 and MI6 officers for many years. McGrath was later jailed for abusing young boys. MI5 "consistently obstructed" police inquiries into sexual abuse at Kincora, an investigation found. The abuse at Kincora and McGrath's links with the security services were first revealed by Colin Wallace, an army information officer tasked with conducting psychological warfare – "Psyops" – designed to destabilise the British political establishment, and the Labour government in particular.

Wallace also blew the whistle on a psychological warfare operation run by the security and intelligence agencies, given the code name, Clockwork Orange. It included the planting of hoax bombs, fake CIA identity cards, and a smear campaign against leading British, mainly Labour, political figures. One forged document from the "American Congress for Irish Freedom" was purportedly sent to Merlyn Rees, then Northern Ireland secretary, thanking him for his "generous contribution on behalf of the British Labour Party for the Occupied Six Counties of Ireland". Much of the anti-Labour material was provided by the Information Research Department, a secret propaganda unit based in the Foreign Office.

Smeared and Framed: After exposing the dirty tricks campaign Wallace was himself smeared and framed for the manslaughter of a friend. He was even accused by an official of being an "active terrorist". His conviction was subsequently overturned and an independent investigation by David Calcutt QC, president of Magdalene College, Cambridge, found that members of MI5 had interfered with disciplinary proceedings against Wallace to prevent incriminating material about its activities from being revealed. Wallace was framed after he contested the way he was treated. The Ministry of Defence conducted an internal inquiry. But it had very restricted terms of reference and concealed the true extent of Wallace's role and what he knew about the army and MI5's undercover activities. Files on Wallace's wrongful convictions at the National Archives remain closed.

The defence secretary, privately described pressure for a new inquiry following Quinlan's intervention as 'an unwelcome development' When Sir Michael Quinlan, the ministry's top civil servant known for his concern about unethical activities, discovered that parliament – and the public – had been misled, ministers reluctantly agreed that a new inquiry should be held into the way Wallace was treated. Tom King, the defence secretary, privately described pressure for a new inquiry following Quinlan's intervention as "an unwelcome development". He advised prime minister Margaret Thatcher that this new inquiry should be conducted by Calcutt but it should not "get drawn into Kincora. 'Clockwork Orange', alleged assassinations etc", documents seen by Declassified show. King's concerns were expressed in a note to Thatcher, stamped "secret" and dated 12 December 1989. Any fresh inquiry, King said, must be strictly limited to how, but not why, the MoD terminated Wallace's employment on "disciplinary" grounds and whether he should be paid compensation. It would be "most unattractive" to publish Calcutt's report, King told Thatcher, if it contained references to "psychological warfare".

Collusion: Another document reveals that earlier in 1989, senior officials, including Sir Robin Butler, the cabinet secretary and MI5 officers, warned against revealing how parliament had been misled because it would be used "to support allegations of collusion between the Security

Forces and Loyalist Paramilitaries". Officials stressed the need to protect the government from any risk of legal action by "Mr Wallace or his supporters, possibly involving claims for the discovery of documents". The documents also show how MI5's legal adviser, Bernard Sheldon, successfully prevented MI5's knowledge of Kincora from being revealed by an inquiry into the police handling of the case. He pointed to the "political embarrassment… quite apart from the difficulties they might cause those engaged in secret work [i.e., MI5]".

Evidence that disinformation and psychological operations by the security services continued in Northern Ireland at least until the 1980s was revealed by Sir Desmond de Silva in a report on the murder of the Belfast solicitor, Patrick Finucane. Finucane, a human rights lawyer and defender of IRA prisoners, was assassinated in 1989. De Silva noted that MI5 disseminated propaganda directed against the IRA "within the broader loyalist community" and included individuals who were not members of any terrorist organisation. Some "encompassed the dissemination of information referring to Patrick Finucane". De Silva added: "It is a matter of significant concern to me that no political clearance was sought or obtained for [MI5's] involvement in these initiatives".

'Maverick Elements': Separately, hitherto classified documents reveal that Merlyn Rees, also the former Labour home secretary, privately expressed concern about what he called "maverick elements in both MI5 and MI6". He added that "there was a great deal going on" that he was "simply not told about". The reference to "maverick elements" is contained in a note recently released at the Irish National Archives of a conversation in 1987 between Rees and a senior diplomat at the Irish embassy in London. Rees is reported as saying that "there was a great deal going on that he was simply not told about" when he was a cabinet minister between 1974 and 1979. "There were efforts to seriously discredit political figures in both Britain and Ireland" There was no doubt, Rees said, "that there were efforts to seriously discredit political figures in both Britain and Ireland and in effect to establish a right-wing government in Britain which would hammer terrorism be it IRA or loyalist". He added that there were "efforts to discredit publicly and politically the reputations of Labour Party politicians and other British politicians and also other politicians in the Republic".

Misleading Parliament: Misleading information given to parliament about the activities of Colin Wallace remains uncorrected and parliament still has not been told about the extent of the dirty tricks the army and security services were up to in Northern Ireland. Wallace is determined to pursue his case and to continue to apply pressure on the government to reveal the truth behind this long-running scandal. He told Declassified: "It is now clear from recent disclosures that the MoD deliberately and repeatedly misled parliament about my true role in N Ireland. That is utterly disgraceful and unacceptable bearing in mind that over 1,400 soldiers and around 320 police officers died while carrying out the will of parliament in Northern Ireland." Wallace added: "I am now almost 80 years of age and I feel that only parliament can ensure that the MoD's deception, as outlined in this account, is now fully admitted and corrected for future record. In the meantime, I shall refer these disclosures to my legal advisers."

Activists Jailed for Seven Weeks for Defying Ban on Mentioning Climate Crisis

Anita Mureithi, Open Democracy: Two environmental activists have been jailed for seven weeks after ignoring a judge's ban on telling a jury that the climate crisis was their motivation for taking part in a roadblock protest in October 2021. On the 1st March, Insulate Britain members Giovanna Lewis, Amy Pritchard and Paul Sheeky, appeared at the Inner London Crown Court, charged with causing a public nuisance by blocking a major junction in central London. The trio were given a temporary reprieve on Thursday, when the case collapsed after the jury failed to reach a majority verdict despite 12 hours of deliberation.

But on Thursday 3rd March, Lewis and Pritchard were back in the dock charged with contempt of court, having defied a judge's ban on telling the jury that they were protesting to bring awareness of climate change and fuel poverty. Silas Reid had forbidden the defendants from citing the climate crisis or fuel poverty as the reasons for their actions, telling them it was for "history to judge, not the jury". But during their closing statements, both Lewis and Pritchard made reference to the climate crisis when explaining why they staged a protest, prompting Reid to order the jury to leave the courtroom twice. Both defendants admitted to being in contempt of court. Reid gave both an opportunity to apologise and explain why they defied his ruling.

Lewis, a 65-year-old town councillor from Dorset, spoke first, telling Reid: "I continue to be astonished that today in a British court of law, a judge can or would even want to ban and criminalise the mention of the words 'fuel poverty' and 'climate crisis'. I wanted to bring public attention to the scandal of thousands of deaths in the UK due to fuel poverty and thousands of deaths around the world due to climate change. There is no choice but to give voice to the truth." While she didn't apologise, Lewis told the judge that she had hoped that the legal system would be sympathetic to people who are trying to save lives. "I now see how naive I have been," she added.

Pritchard, a 38-year-old horticultural worker from London, was up next to outline her reasons for ignoring Reid's ruling. "I wanted to set the context of the action we took in this courtroom," she started. "We are rapidly and willingly extinguishing the conditions necessary for life on earth. When so-called leaders are neglecting their basic duty, which is surely to preserve life, then it is more important for me to protect [life] than it is for me to be silent. History shows that the law is not always in line with justice, so I cannot and I will not follow your rules. I don't know how you can sit here and listen to lengthy explanations of traffic data, but prevent young people like Xavi from talking about the threat to our future and people around the world," she said about 22-year-old activist Xavier Gonzalez-Trimmer, who was found dead in Richmond Park, south London, in February after being missing for almost a week.

Gonzalez-Trimmer, also accused of causing a public nuisance, was due to face trial at the same court later this month. The cause of his death has not yet been determined. Pritchard continued, telling the judge that we are "staring total eco collapse in the face". If the legal system is fit for purpose then surely we should not be in this situation in the first place. Lack of political action means that ordinary people have to act. I don't know why we're so relaxed about this situation… I don't know why there's no urgency from people in power, and I include you in that," she said to Reid. "I ask you to turn your laser-focused attention to bringing justice to the people who are rapidly destroying the conditions we need for life on earth."

Roughly 50 public nuisance cases linked to Insulate Britain are being heard this year in London, Hove, Lewes and Reading crown courts. This, says Pritchard, is a "political decision from a government that is in bed with the fossil fuel industry… and the media." Maybe me doing this isn't doing anything, but I think that my silence is more dangerous," Pritchard finished. Passing his sentencing, Reid told the defendants that there is nothing to distinguish between them and David Nixon, who was also jailed for contempt of court last month.

Huge New Jail in World's Murder Capital

Inside Time: The nation with the world's highest murder rate has doubled its prison capacity with the opening of a giant new prison. El Salvador – a Central American country the size of Wales, with a population of six million – is in the grip of a violent crime epidemic fuelled by drugs gangs. Last year President Nayib Bukele declared war on the cartels, and since then more than 60,000 suspected gang members and collaborators have been detained. An estimated 100,000 people are in

prison, or 2 per cent of the entire adult population – meaning the country also has the world's highest incarceration rate. To cope with the extra prisoners, the new Terrorism Confinement Centre was built in just seven months. It has a capacity of 40,000 and is said to be "escape-proof" with "seven rings of security", featuring armed troops on patrol, solid steel cells, 19 watchtowers, electric fences and a high perimeter wall. Osiris Luna, El Salvador's Prisons Director, said on state television: "All those home boys, those terrorists in the organization that made our beloved Salvadoran people suffer, will be housed and subjected to a severe regime."

Allan Marshall: Corporate Homicide Investigation Against Scottish Prison Service

INQUEST: The Crown Office and Procurator Fiscal Service (the prosecuting body of Scotland) today confirmed it has instructed Police Scotland to investigate the Scottish Prison Service for corporate responsibility, including corporate homicide, over the restraint related death of a man in prison in 2015. This is a historic development, as no public or government body in the UK has ever been prosecuted for corporate homicide. Allan Marshall, 30, was a much loved father of two from the West of Scotland. He died on 28 March 2015 four days after being violently restrained by up to 17 prison officers in HMP Edinburgh. His family have been fighting for justice ever since.

A Fatal Accident Inquiry (FAI, the Scottish system for investigating deaths) found in 2019 that officers testifying about their restraint were 'Mutually and Consistently Dishonest'. Despite this, legal immunity granted to officers during the FAI was so broad that the current Lord Advocate for Scotland, Dorothy Bain KC, has determined no officer can be individually pursued for their actions. Acknowledging inadequacies in how Allan's death was originally investigated, her office has conducted a comprehensive review, including re-interviewing witnesses and retaining independent experts. They have concluded that grounds exist to mount an investigation into civil and criminal responsibility of the Prison Service itself.

The law on corporate homicide was enacted in 2007 and holds the organisation responsible for a gross breach of a duty of care. This encompasses practices, policies and attitudes in how an organisation carries out its duty. Though a decision on charges has not yet been made, initiating proceedings is a significant step that will send shockwaves through the Scottish Prison Service as well as in police and prison agencies throughout the UK. The law is UK wide and can be used to explore managerial responsibility over deaths in custody.

Allan's aunt Sharon MacFadyen, and Alistair Marshall, his brother, said in a joint statement: "We as a family have always believed that the investigation into Allan's death was a sham and was completely mishandled by the police and the Crown from the very beginning. Nearly eight years on, the Lord Advocate now agrees with us. However, she has also told us it's not legally possible to prosecute any individual officers for any part they may have played in Allan's death because they were all given immunity before the Fatal Accident Inquiry. This is extremely disappointing for us, and we say that this gives officers a licence to kill. We are grateful that action is now being taken, but it shouldn't have taken eight years, and it could still lead to a decision not to charge Scottish Prison Service for what happened to Allan. No other person should die like he did and no family should go through what we have. We will continue to demand justice for the loss of Allan who was a much-loved member of our family."

Background: Allan was placed in jail on remand, accused of a breach of the peace in March 2015. In the midst of a mental health crisis after several days in custody, he was removed from his cell. Eventually 17 officers responded, holding him down including using their feet to restrain him. Post-mortem examination concluded he died of a brain injury during physical restraint. The Crown Office and Procurator Fiscal Service determined no criminal proceedings were war-

ranted soon after his death, and arranged for all those involved in Allan's restraint to be immune from prosecution from any action related to this. The FAI report in 2019, four years after his death, was uncommon in identifying defects in prison service systems, several reasonable precautions that could have prevented death and made recommendations to avoid a similar incident. The Sheriff concluded that Allan's death was "entirely preventable".

Deborah Coles, Director of INQUEST, said: "The unprecedented decision to investigate the Scottish Prison Service for corporate homicide is hugely significant. Yet it is clear from the evidence that it is necessary and long overdue. Without the determination of Allan's family in campaigning and pursuing legal action, his preventable and violent death would have gone unchallenged. We hope the investigation progresses without further delay. Justice in this case is in both the family and the public's interest. We hope this decision will set a precedent to ensure more public and corporate bodies face such investigations and are held to account."

Victor Nealon & Sam Hallam Their Fight for Compensation Goes On

The Chamber of the European Court of Human Rights to which the case Nealon v. the United Kingdom and Hallam v. the United Kingdom (application nos. 32483/19 and 35049/19) had been allocated has relinquished jurisdiction in favour of the Grand Chamber of the Court1. The applications concern the refusal to compensate the applicants for wrongful conviction. The two applicants, Victor Nealon and Sam Hallam, had their convictions quashed after those convictions had been found to be unsafe. Their subsequent applications for compensation for wrongful conviction were refused on the basis that a new or newly discovered fact did not show beyond reasonable doubt that they had not committed the offences (this being the statutory test for a "miscarriage of justice" applicable at the relevant time).

Principal facts: The applicants are Victor Nealon, an Irish national who was born in 1960, and Sam Hallam, a British national who was born in 1987. Their applications before the Court concern the statutory scheme for compensation for wrongful conviction in the Criminal Justice Act 1988. Mr Nealon was convicted in 1997 of attempted rape and given a sentence of life imprisonment with a minimum term of seven years. In 2013 his conviction was quashed after further analysis of the clothes the victim was wearing on the night of the attack revealed DNA of an unknown male. Mr Hallam was convicted of murder, conspiracy to commit grievous bodily harm and violent disorder in 2004. His convictions were quashed after new evidence came to light casting doubt on some of the evidence that had formed part of the case against him. Both applicants subsequently applied for compensation for wrongful conviction.

In 2013 the Grand Chamber considered a complaint by an applicant who, following her acquittal, had been refused compensation for wrongful conviction under section 133(1) of the Criminal Justice Act 1988 (Allen v. the United Kingdom (no. 25424/09)). At that time, section 133(1) of the Criminal Justice Act 1988 provided for compensation where a new or newly discovered fact showed beyond reasonable doubt that there had been a miscarriage of justice. There was no statutory definition of miscarriage of justice. The applicant had argued that the refusal of compensation violated her rights under Article 6 § 2 of the European Convention on Human Rights (the presumption of innocence). The Grand Chamber considered that Article 6 § 2 was applicable to the facts of the case, but found that there had been no violation of that Article since the judgments of the High Court and the Court of Appeal had not demonstrated a lack of respect for the presumption of innocence which the applicant had enjoyed in respect of the criminal charge of which she had been acquitted.

Following the Grand Chamber judgment in Allen, the Criminal Justice Act 1988 was amended, with the new section 133(1ZA) providing for compensation for wrongful conviction only where

a new or newly discovered fact showed beyond reasonable doubt that the applicant had not committed the offence. Mr Nealon and Mr Hallam's applications for compensation fell to be considered under the new section 133(1ZA). Both applications were rejected by the Ministry of Justice because their cases failed to meet the statutory test for compensation in that section – that is to say a new or newly discovered fact did not show beyond reasonable doubt that they had not committed the offences. The decision letters sent to both applicants stated that nothing in them was "intended to undermine, qualify or cast doubt upon [their] conviction".

Both applicants sought judicial review of the Ministry of Justice's decisions. They argued that the statutory test for compensation was incompatible with Article 6 § 2 (the presumption of innocence) because it required them to "prove" their innocence in order to be eligible for compensation. They therefore sought a declaration of incompatibility pursuant to section 4 of the Human Rights Act 1998.

Mr Nealon's and Mr Hallam's applications for judicial review were rejected and their appeals were dismissed as the domestic courts held that – notwithstanding what the Grand Chamber had said in Allen – Article 6 § 2 (presumption of innocence) had no bearing on a decision for compensation under section 133(1ZA) of the Criminal Justice Act 1988. A subsequent appeal by the applicants to the Supreme Court was dismissed in January 2019. That court also held, by a majority, that Article 6 § 2 (presumption of innocence) was not applicable to a decision for compensation under section 133(1ZA) of the Criminal Justice Act 1988.

Complaints and procedure: Relying on Article 6 § 2 of the European Convention of Human Rights, the applicants complain that the rejection of their claims for compensation for wrongful conviction on the basis of the test in section 133(1ZA) of the Criminal Justice Act breached their right to be presumed innocent. The applications were lodged with the European Court of Human Rights on 14 and 25 June 2019. On 14 May 2020 the British Government was given notice2 of the applications, with questions from the Court. The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 28 February 2023.

Neurodiversity: Prisoners

What assessment has been made of the number of prisoners who have neurodivergent conditions; and what plans they have, if any, to introduce a common screening system for these conditions throughout the criminal justice system. [Neurodiversity:The range of differences in individual brain function and behavioural traits, regarded as part of normal variation in the human population] In December 2020 the Ministry of Justice commissioned the Justice Inspectorates to conduct 'An Evidence Review of Neurodiversity in the Criminal Justice System'. The Evidence Review Report, published July 2021, suggests that potentially half of the adult prison population has some form of neurodivergence. Currently, on prison reception, prisoners are screened to identify neurodivergent need, with 22/23 figures suggesting that 31% of prisoners have some form of neurodivergent need. Full diagnosis of a neurodevelopmental disorder, disability or cognitive impairment would be conducted by Healthcare in Prison, which is delivered by the National Health Service England. On 25 January 2023 the Ministry of Justice (MoJ) published a six-month update to the Cross-Government Neurodiversity Action Plan. The six-month update details agreement from all criminal justice agencies to adopt a needs identification approach to screening for neurodivergence. Instead of a focus on diagnostic criteria, criminal justice agencies should seek to identify what reasonable adjustments can be made to support neurodivergent people at each stage of the process and this information should be shared between agencies. However, whilst consistency of approach is necessary, it would be inappropriate to use a single tool universally across all agencies because the time available to identify an individual's needs and the types of reasonable adjustment available will vary at every stage of the system.

Shaquille Graham Unanimously Acquitted at End of Six-Week Murder Trial

The Crown alleged that Shaquille Graham (then 26) had participated in a murderous group stabbing near the Angell Town estate Brixton in August 2020. Immediately prior to the attack the deceased, Salem Koudou, had chased and stabbed people in Angell Town with a large machete as part of a planned and unprovoked "ride out" with gang associates. During the six-week high-security trial at Woolwich Crown Court the jury were shown evidence that Mr Graham joined a group chasing Mr Koudou away from Angell Town. Members of the group were seen on CCTV engaging in a knife fight Mr Koudou who was eventually cornered and stabbed 32 times. Mr Graham denied participation in the murderous attack. Preparation and presentation of his defence involved extensive requests for, and consideration of, unused material in order to conduct detailed CCTV analysis. This resulted in compilation of defence graphics bundles for the jury produced by junior counsel, and detailed cross-examination of the Crown's technical expert. The case also involved complex legal arguments in relation to the admissibility of verdicts returned in other trials, hearsay evidence and gang evidence. Andrew Hall KC and Pippa Woodrow were instructed by Jeffrey Muhammed of Amosu Robinshaw Solicitors. As well as assisting the conduct of the case at trial Mr Muhammad, along with Pippa Woodrow, undertook an extensive site visit involving compilation of important images and measurements vital to the defence case.

Indecent Exposure: A Crime That Must be Taken Seriously

Guardian Editorial: When police are contacted three times about a man exposing himself in public, you would expect them to investigate. And when his vehicle registration and credit card number are provided, you would expect them to act swiftly. The failures of the Met and Kent police to investigate these reports of Wayne Couzens served to strengthen his "dangerous belief in his invincibility", Mrs Justice May said on Monday, when she handed Couzens a 19-month sentence for indecent exposure, on top of the life sentence he is serving for the rape and murder of Sarah Everard.

The attitude of the police to sexual offences is under close and growing scrutiny. But officers are not alone in treating "flashing" as a crime deserving less attention. Despite carrying a maximum two-year sentence, indecent exposure is still too easily brushed off as an unpleasant but ultimately inconsequential act. The stereotypical image of a man in a mac, and even the language of "flashing", diminish the seriousness of this crime and make it easy to trivialise. Couzens's offences are further proof that such crimes can be precursors to more dangerous behaviour.

He exposed himself in a McDonald's drive-through days before abducting Sarah Everard; similarly, Pawel Relowicz committed voyeurism offences prior to raping and murdering the student Libby Squire in Hull. One review of evidence from 2014 found that a quarter of people who exposed themselves reoffended, and between 5% and 10% escalated their behaviour to more serious sexual offences. Two officers will now face misconduct allegations over their handling of reports in the Couzens case. The problem goes further than these individuals: a recent Guardian analysis found that only 600 of 10,000 indecent exposure cases logged by police in 2020 reached court.

Whether or not indecent exposure signals that a perpetrator will commit further offences, it is a serious crime that makes women feel vulnerable and violated, restricting their movements through public space. Of women surveyed recently by YouGov, 20% said they had experienced indecent exposure, while 40% of those aged between 18 and 34 had received an unsolicited sexual photo from a "cyberflasher". Almost every woman has a story of being flashed, followed, or verbally or physically assaulted. The resulting adaptations women make – such as not running after dark, ducking into a shop to avoid a stranger, or trying to make a joke of an intrusive situation – have the effect of eroding their liberty. Recent high-profile cases of sexual violence have prompted a welcome increase in people reporting such crimes. Yet austerity caused an exodus of senior officers, and new officers hired to replace them are often inexperienced. In one 2022 report, an officer described how "when a sexual offence job comes in, there's almost like this panic of like 'oh my god, what do I do?'". Police should be properly resourced to deal with sensitive cases. Preventing sexual violence also requires early interventions. The government updated the sex and relationships curriculum in 2020; it should now make more funding available for already overstretched schools. Taking indecent exposure seriously starts with teaching people that it is nothing to laugh about.

Why the 12 Months Delay: Repeal of 'Same Sex' Convictions

Convictions: Prerogative of Mercy: Under Part 12 of that Act, the Government legislated to extend the scope of the current Disregards and Pardons Scheme under the Protection of Freedoms Act 2012. This change will enable a greater number of individuals convicted or cautioned for now repealed or abolished offences that regulated sexual activity between people of the same sex to apply to the Secretary of State for their conviction and/or caution to be disregarded, as long as they also satisfy the relevant conditions. The Home Office has been making the necessary preparations and aims to bring the provisions into force as soon as possible.

Victims of Crime Being Reported to Immigration Enforcement by Police

Leaked Home Office documents reveal that UK police have reported victims of serious crimes to immigration authorities. Victims included those who had suffered child sexual exploitation, domestic abuse, human trafficking, and modern slavery. The documents, obtained by The Guardian, reveal that a staggering 2546 victims had been reported to authorities between 2020 and 2022. The figures included no less than 67 instances of sexual exploitation of children and 601 human trafficking victims. Another Home Office document revealed that a quarter of domestic violence victims reported to immigration enforcement between April and December 2020 were "served with enforcement papers." The Metropolitan police – the largest police agency in the UK – reported 460 such cases to the authorities. Jim Pearce, the National Police Chief's Council lead for immigration crime, said that "if an officer becomes aware that a victim of crime is suspected of being an illegal immigrant, it is right that they should raise this with immigration enforcement officers."

Legal Challenge Launched Against 'Discriminatory' Home Office Questionnaire

A Sudanese asylum seeker is beginning legal proceedings against the Home Office, over a questionnaire distributed to over 12,000 asylum seekers, on the basis that it is discriminatory. The Home Office questionnaire is being distributed only to asylum seekers from five countries (Eritrea, Syria, Afghanistan, Libya and Yemen) with high asylum success rates. However, the policy is under fire as it ignores other countries with high asylum grant rates, such as Sudan where 84% of applicants are successful. Further criticism has been made of the nature and implementation of the policy which requires the asylum seekers to answer fifty complex questions, all of which are in English, within a stringent 20 day time limit. There are additional concerns over the sensitivity of the questions asked, and whether asylum seekers will be willing to disclose abuse, torture or persecution on a faceless form.