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Refusing Gerry Adams a Payout For Quashed Convictions Was Unlawful

David Young, Belfast Telegraph: Former Sinn Fein president Gerry Adams was wrongly denied compensation after his convictions for attempted prison breaks were quashed, a court has ruled. Mr Adams won a Supreme Court appeal in 2020 over historical convictions for two attempts to escape the Long Kesh internment camp in Northern Ireland in the 1970s. However, he was subsequently denied a payout for the wrongful convictions when he applied for compensation from Stormont's Department of Justice.

That decision was ruled unlawful by a High Court judge in Belfast on Friday 28th April. Mr Adams was interned without trial in 1973 at Long Kesh, which was also known as the Maze prison. At his Supreme Court hearing, Mr Adams' lawyers argued that, because the interim custody order (ICO) used to initially detain him was not authorised by the then-secretary of state for Northern Ireland Willie Whitelaw, his detention was unlawful and his convictions should be overturned.

The legal bid to overturn the convictions was prompted after previously confidential details around the signing of the ICO emerged when state papers were released from the archives. The Supreme Court ruled that Mr Adams' detention was unlawful because it had not been "considered personally" by Mr Whitelaw.

However, in refusing the later bid for compensation, the DoJ argued that payment for a miscarriage of justice was only due in circumstances where a "newly-discovered fact" had led to the overturning of convictions. The department said in Mr Adams' case the quashing of the conviction was based on an interpretation of what was required in law in the 1970s, as opposed to a new or newly-discovered fact.

The former Sinn Fein leader challenged the DoJ decision in Belfast High Court and a judge ruling on the appeal found in his favour today Friday 28th April. Mr Justice Colton said the issue related to the ICO was not a fact known to the applicant or to the court at the time of his trial. He said it formed the basis of the Supreme Court's ruling. "I therefore conclude that the DoJ erred in law in determining that the reversal of the applicant's conviction arose from a legal ruling on facts which had been known all along,.I am satisfied that the applicant meets the test for compensation under section 133 of the Criminal Justice Act 1988." Justice Colton quashed the DoJ decision, declared it unlawful and ordered that Mr Adams' application be reconsidered.

Background: In 1975, the applicant was convicted of attempting to escape from detention. In 2020, those convictions were quashed by the Supreme Court: R v Adams [2020] UKSC 19. The detention from which he attempted to escape was founded on an interim custody order ("ICO") signed by the Minister for State for Northern Ireland on 21 July 1973 and purportedly made under Article 4 of the Detention of Terrorists (Northern Ireland) Order 1972 ("the 1972 Order"). Such detentions were more commonly referred to as "internment without trial."

The appeal was brought following the release of government papers under the 30 year rule. These revealed that there had been debate among officials and Government legal advisors in 1973/74 about the need for the Secretary of State to consider personally the making of an ICO. The papers included an opinion from the legal adviser to the Attorney General responding to a request for directions in relation to a proposed prosecution of the applicant and three others involved in the attempted escape concluding that a court would probably hold that it would be a condition precedent to the making of an ICO that the Secretary of State should have considered the matter personally. Other documents confirmed that the Secretary of State had not given personal consideration to the applicant's case and that the Attorney General was prepared to rely on the presumption of law that any ICO which appeared on the face to have been properly executed must be assumed to comply with any necessary prior procedures.

The Supreme Court concluded that the ICO was therefore not made in accordance with Article 4(1) of the 1972 Order and that the making of the order was invalid. It followed that the applicant was not detained lawfully and was wrongfully convicted. The Supreme Court held that his convictions for the offences of attempting to escape from detention must be quashed.

Application for compensation: The applicant sought compensation for miscarriage of justice under section 133(1) of the Criminal Justice Act 1988 ("the 1998 Act"). This provides that: "When a person has been convicted of a criminal offence and subsequently the conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the DoJ shall pay compensation for this miscarriage of justice to the person who has suffered punishment as a result of such conviction unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted."

By letter dated 15 December 2021, the DoJ concluded that compensation should be refused. It considered that the discovery of the government papers was not 'a new or newly discovered fact', that it may have served to bring the matter to the applicant's attention and highlighted the pre-existing legal argument, but that it did not by itself lead to the quashing of the conviction. The DoJ said the conviction was quashed on foot of the ruling by the Supreme Court that the charges against the applicant were fatally flawed. In other words, the quashing of the conviction was based on an interpretation of what was required in law as opposed to a new or newly discovered fact.

The applicable law: The court said there was no doubt that the applicant has been convicted of a criminal offence and that his conviction has been reversed. It then went on to consider the remaining criteria. It considered whether the conviction had been reversed 'on the ground that' a new or newly discovered fact showed beyond reasonable doubt there had been a miscarriage of justice? This was dealt with in a judgment of the Supreme Court. It said that the words 'on the ground that' must, if they are to make sense, be read as 'in circumstances where.' Further, the Supreme Court said that only if a new fact or a newly discovered fact showed conclusively that the person was innocent or that the prosecution should never have been brought that there would be a right to compensation: "The availability of a facility to consider a new or newly discovered fact that emerges after the quashing of a conviction makes it clear that the phrase "on the ground that" is not to be understood as referring to the grounds upon which the conviction was quashed, although obviously, that is a matter which must be taken into account by the Department in making its decision."

Miscarriage of justice: In the leading case, the Supreme Court identified categories of cases to be considered when dealing with the concept of miscarriage of justice: • Where the fresh evidence shows clearly that the defendant is innocent of the crime of which he has been convicted. •Where the fresh evidence is such that, had it been available at the time of the trial, no reasonable jury could properly have convicted the defendant.

The court said the import of the Supreme Court judgment resulting in the reversal of the

applicant's conviction in this case was clear. It said the applicant could not have been convicted on the evidence revealed to the Supreme Court and that subject to the issue of the proper interpretation of "on the ground that" and "a new or newly discovered fact" he met the test for a miscarriage of justice in the context of section 133 of the 1988 Act.

A Newly Discovered Fact/A Legal Ruling on Facts Which Have Been Known All Along

The applicant's application was advanced on the basis that the newly discovered fact was that the Minister of State who signed the ICO did so without the case being considered by the Secretary of State. He said this fact became apparent when the papers released under the 30 year rule were disclosed to him. The issue therefore was whether the DoJ was correct in its contention that the effect of the Supreme Court decision was "a legal ruling on facts which had been known all along." In other words, that the conviction was not reversed, as the applicant contended, "on the grounds of a new or newly discovered fact." The court noted that the expression "new or newly discovered fact" has been the subject of substantial judicial consideration outlining the cases in paras [49] – [50] of its judgment.

The newly discovered fact relied on in this case, namely that the ICO had not been personally considered by the Secretary of State, was clearly a fact of an evidential nature: "It only became apparent when the note for the record was disclosed. It was not known to the defence or perhaps more importantly to the trial judge at the time of the applicant's conviction. Therefore, this fact, of an evidential nature, was not known at the trial. This is not a case where the trial judge concluded that the ICO was valid, notwithstanding the fact that it had not been considered by the Secretary of State. Had that point been argued and he nonetheless came to the conclusion that the ICO was legally valid, and the Supreme Court subsequently took a different view on the law then in those circumstances the applicant would not meet the section 133 test. However, in this case the contrary was the position in that, as is clear from the Attorney General's note since disclosed, to the effect that "… The Attorney General is prepared to rely on the presumption of law that any instrument which appears on the face to have been properly executed (as these ICOs do) must be assumed to comply with any necessary prior procedures."

The court added that this was not a case where the Supreme Court was correcting some error of law by the court which convicted the applicant. Nor was it a case where, as a result of the changes in the standards of fairness and procedural safeguards a conviction was quashed as it does not involve a change in legal standards. What had occurred here was the discovery of an evidential based piece of factual information which, if it had been known at the time of the trial, and had the law been properly applied at that time, would have demonstrated that there was no case against the applicant: "There is a clear distinction between the correction of a conviction because of new factual material not known at trial and the correction of a conviction because of a different view on the law applied to the same factual situation known at trial. It cannot be sustained that the applicant's conviction has been overturned because of a different view on the law applied to the same factual situation at the trial. The trial judge and the defence were unaware of the true factual situation."

The court noted that the Attorney General said in 1974 that "on balance a court would probably hold that the requirement relating to an ICO were satisfied if the Secretary of State had considered the case and that it was not essential the Secretary of State should personally consider the papers." At the time of the trial, however, no evidence was available to the applicant or to the court by which the presumption of regularity could be displaced. The court added that this issue was not addressed by the trial judge because he, like the applicant's lawyers,

was unaware of the fact that the Secretary of State had not considered the case personally. Thus, the Supreme Court judgment did not bring about any change in the law since the court did not have the opportunity to consider the issue having regard to the prosecution's failure to disclose a material evidential matter:

"It is important to note that the conviction was quashed by the Supreme Court … on the common assumption that the ICO had not been personally considered by the Secretary of State. It may well be that the Supreme Court would have reversed the applicant's conviction on the narrower ground that there was no evidence of personal consideration at the trial. However, the fact that the Secretary of State did not personally consider the applicant's case means that the applicant's conviction has been reversed "in circumstances where" that fact shows beyond reasonable doubt that there has been a miscarriage of justice".

Conclusion: The court stated that the DoJ had correctly identified the approach to determining an application under section 133 of the Criminal Justice Act 1988, however, it concluded that the applicant's case on appeal involved a newly discovered fact (that of no personal consideration of the ICO dated 21 July 1973 under which the applicant had been detained by the Secretary of State) that was not a fact known to the applicant or to the court at the time of his trial. On its emergence, this newly discovered fact was the basis on which the prosecution's reliance on the presumption of regularity was rejected by the Court of Appeal: "Returning to the test under section 133 the applicant has been convicted of a criminal offence, his conviction has been reversed, in circumstances where a newly discovered fact (the lack of consideration by the Secretary of State) shows beyond reasonable doubt that there has been a miscarriage of justice, that is the applicant is innocent of the crime for which he was convicted. I therefore conclude that the DoJ erred in law in determining that the reversal of the applicant's conviction arose from a legal ruling on facts which had been known all along. I am satisfied that the applicant meets the test for compensation under section 133 of the Criminal Justice Act 1988."

The court made the following orders: •An order quashing the decision of the DoJ by which it concluded that the applicant is not eligible for compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988; •A declaration that the said decision is unlawful, ultra vires and of no force or effect; and • An order that the application be reconsidered and redetermined in accordance with law.

Victims and Prisoners Bill: Are we Heading in the Right Direction?

Lisa Smitherman, Justice Gap: In March, the Victims and Prisoners Bill was introduced to Parliament. The bill started off its life as a piece of legislation dedicated solely to improving the experience of victims through the Criminal Justice System. In its initial form as the 'Victim's Bill', it sought to ensure that agencies working across the sector had an enforceable duty to uphold, and even promote, the rights of the victim by "enshrining the victims code in law".

The reframed bill includes a host of new measures around, amongst other things, the parole process and parole board members, together reflecting the Conservatives' "Safer Streets" agenda. The reincarnated Victims and Prisoners Bill has a significantly widened scope, making a bold statement about the priority and focus being given to victims by the government. Where previously victims were at the heart, they are now sharing the stage. Combining the victims bill with measures about prisoners and parole, most of which make it more difficult for prisoners to be released, also projects a narrative that victims themselves are advocates of longer and tougher sentences imposed on offenders. In fact, we know from our work at Catch22 that this isn't

always the case. For many victims, the perpetrator may be a loved one, or the outcome they want is simply for the perpetrator to rehabilitate and live a crime-free life.

It is disheartening, therefore, that the new bill sets out an overly punitive approach to justice. For example, by giving ministers the power to veto prisoners' parole. Parole decisions are complex, and such a measure risks them becoming politicised. More importantly, however, the greatest challenge the justice system will face in the next 5 years is the increase in our prison population, which is predicted to hit 100,000 by 2026. We must, at some point, prioritise rehabilitative solutions over punitive ones; solutions that we know work to reduce reoffending and reintegrate individuals into the community. If we do not, we risk an unmanageable strain on our already overburdened prison estate. One example of a rehabilitative solution could be a greater use of Restorative Justice, which reduces reoffending (by up to 27%) and has very high victim satisfaction rates, not to mention saves the state £14 for every £1 of investment. It is disappointing to see Restorative Justice excluded as a right enshrined in the Victims and Prisoners bill.

There is concern that even those provisions included in the bill that are dedicated to improving the victim experience do not go far enough in addressing the critical issue of non-compliance with the Victims Code. There is little concrete detail on how accountability will be ensured when the code is not robustly upheld. Moreover, there is no funding package to accompany these new measures. With many services that support victims already under strain, the focus should in fact be on investing in existing services. For example, the government are proposing the introduction of a new Independent Public Advocate (IPA) body, but still haven't filled the vacancy for the Victims Commissioner. How, then, can we expect a better service for victims?

The Justice sector comprises a complex web of different agencies. Whilst we welcome reforms for provision of victims, it's only right to recognise that justice for victims and effective processing and rehabilitation of prisoners should not be mutually exclusive outcomes. It is disappointing, therefore, that through the Victims and Prisoners bill they are being conflated. We should strive for a system that prioritises both and neglects neither.

Obituary: Sue Caddick – The Sister Who Fought Back

Matt Foot, Justice Gap: The wonderful and great justice fighter Sue Caddick has died of cancer, aged only 64 years-old. Matt Foot recalls a tireless campaigner who devoted her life to clearing her brother's name. Sue's life into her 30s was going well. She was ticking along happy in life, with four children, her childhood sweetheart husband, Paul. They lived and worked on the Wirral. She was a carer, Paul was doing well in his career as a police sergeant. Then on 4 June 1992, her brother Eddie's wife, Paula, was found hanging in the garage. Things got much worse. Four days later Eddie Gilfoyle was arrested for the murder of his wife, despite police finding a hand-written suicide note that was confirmed by experts to be her own writing. She was eight and a half months pregnant when she died. There was no forensic evidence for murder. The family thought it would be OK, and the trial would sort it out. But it didn't. The evidence placed before the jury led on 3 July 1993 to Eddie's conviction.

Sue devoted her life to correcting this terrible wrong. She gave up her job and they learned how to campaign. Paul had first discovered Paula's body, and, equally convinced of Eddie's innocence and knowing the flaws in the police investigation, he joined Sue to correct the injustice. As a local police officer, he could not stay in the force that had allowed this to happen. They set up a campaign which met regularly in the local church. They wrote letters, put out leaflets, spoke at meetings. They found better lawyers. That wasn't going to be hard

because Eddie had been represented by a sole practitioner who ended up in the same prison as him following a 12 month imprisonment for fraud. They found the best, Campbell Malone and Michael Mansfield QC. They found support from their MP, David Hunt, who has supported the case ever since, and from the former Assistant Chief Constable of Merseyside, Alison Halford, who met Eddie in prison and was convinced of his innocence.

Based on what they knew, Sue made an extensive complaint raising 100 issues about the police investigation. The complaint revealed significant flaws in the police investigation, including a secret report which was never disclosed to the defence, into the failings of how the police dealt with the scene. The PCA referred evidence that could cast doubt on the conviction to the CPS and Merseyside police. Two appeals followed with powerful evidence. The first included a witness who saw Paula alive on the afternoon of her death, when Eddie was at work. The Court sought to discredit her despite the jury not hearing her account, which the police had contrived to put to one side. The second appeal related to psychological and rope expert evidence. The Court came to a neutral position on the rope expertise, but dismissed out of hand the psychologist report of David Canter (despite his status as the person on whom the series Cracker was based). Sue and Paul have continued to fight this injustice ever since.

I am not sure when I first met Sue. It feels like I have known her all my life, but I think it was through Paddy Hill in 2005. She had a very kind nature and was a great story-teller about what her four children and their partners were up to – she was so proud of their achievements. Sue's careful explanation of the issues in the case and the psychology helped me understand the case and carry out further work. I was assisted by the journalist Eric Allison (who also recently died). Dominic Kennedy at The Times, also became interested in the case. In response to stories in The Times it became clear that the Attorney General had misled Parliament. An apology was given with criticism of the information provided by the CPS. This led to fuller disclosure. I arranged to go and see the police's physical exhibits in Bebbington Police Station. I had no idea where it was and so Paul Caddick kindly agreed to drive me up there. The police had left the exhibits in Liverpool but I insisted on returning the following day. The first exhibit I saw was two diaries of Paula, covering ten years. These revealed a very troubled past, including a previous suicide attempt, and an ongoing relationship with a former fiancé who had committed a murder.

Sue was the spokesperson for the campaign. She went on national TV about the failure to provide the diaries prior to trial, and spoke at meetings at the House of Lords with such dignity and clarity. I recommend to you her speech to the Innocence Network UK symposium on appeals in 2014, where she spoke of the misery for innocent people trying to get justice from the CCRC. In 2016, despite the new evidence of Paula Gilfoyle's diaries and other matters, the CCRC refused to refer the case to the Court of Appeal. The specialist in appeals, Henry Blaxland KC, described the decision as 'astounding'. The decision meant Sue would never see justice for her brother. Sue Caddick (26 May 1958 – 31 March 2023)

Tough Justice - Back Cab Wisdom

Inside Time Mailbag: I am writing this on the day that Lee Anderson MP, the Deputy Chair of the Conservative Party was in the news for his pro-death penalty views. This Back Cab Wisdom is symptomatic of the tough justice attitude that we seem to want to emulate by looking west across the Atlantic, rather than towards the more humane and successful models of Europe. If we are tempted to adopt an increasingly American notion of justice, then let us not ignore the very bleak statistics from that country. With just 5% of the inhabitants of this plan-

et, the USA has 25% of the global prison population. At any one time, one in one-hundred adult Americans is in prison, and more Americans (70 million) have a criminal record. There are more Americans under correctional supervision than there were in Stalin's gulags.

Tough justice does not work and, yet, as a nation, we seem hellbent on this approach. Since 1989, life sentences in the UK have quadrupled, and the number of prisoners serving more than ten-years has increased eightfold. The average length of sentence for an indictable offence is 58-months, which is 24-months longer than it was in 2008 (the Norwegians have an average sentence of just 3-months). In England & Wales, we have more prisoners serving life sentences than in France, Germany, Italy, Poland, the Netherlands, and all Scandinavian countries combined. Could this nonsense be because we listen to people like Lee Andrews too much?

Heard from the back of a cab: An inch in the right direction is better than a mile in the wrong direction''If you think your life is bland, then you haven't added enough flavour''People who live in glass houses should never undress'

More Police Power Means More Police Violence

On Wednesday 26th April, the government passed the Public Order Act, which gives the police sweeping powers to restrict our right to protest. You know as well as I do that more police power means more police violence. Scandal after scandal has shown that officers already abuse their powers to perpetrate horrendous acts of violence. Now, the Public Order Act gives them the legal right to use even more. It has extended police use of stop and search into protests and lowered the threshold for 'disruptive' demonstrations. Volker Turk, United Nations High Commissioner for Human Rights, said: The legislation was "deeply troubling" and that it imposed restrictions on freedom of expression and peaceful assembly that are "neither necessary nor proportionate".

Ensuring Prisoners Spend Their Time Productively.

Inside Time: The "Regime Lead" (a senior manage) at each jail will sit on the prison's senior management team and report directly to the governor. They will be responsible for getting prisoners to attend work, education or 'purposeful activity' on their wings. The posts will be filled by this summer at every jail in England and Wales. The development is part of a new National Regime Model being put in place by HM Prison and Probation Service (HMPPS). The plans were outlined by Michelle Jarman-Howe, Chief Operating Officer for Prisons, as she gave evidence last week to MPs on the Justice Select Committee which is holding an inquiry into staff-shortages in prisons.

A report last month by Charlie Taylor, the Chief Inspector of Prisons, found that the majority of prisoners spend less than two hours out of their cell on a typical Saturday or Sunday. Asked about the finding, Jarman-Howe said: "Certainly it is the case that staffing shortages have impacted on regimes, I don't think there is any way of avoiding that comment." She added: "We have taken a range of steps to make sure that we have got a National Regime Model going forward, so that's going to do a number of different things. First of all, it's going to put a local Regime Lead in every single prison so we can focus on developing regime, not just at weekends but also on weekdays." She said the activities would include work, training and education, but also "innovative regime activity within prisons, particularly for those sites that maybe don't have workshop capacities that we would necessarily want – so, trying to make sure we've also got a focus on staff delivering regime activity on wings, and using prisoners as well to support the development of some of those initiatives".

The National Regime Model arose from a two-year consultation, called Future Regime

Design, which was started by HMPPS during the Covid pandemic when prisoners were locked in their cells for most of the day as an infection control measure. Government ministers and the Prison Officers' Association claimed that men's prisons, in particular, were safer when prisoners had less opportunity to mix with one another. Among the measures under consideration were the scrapping of "association time", when prisoners can mingle freely, and restricting prisoners to small groups when they get a chance to mix with one another. Critics have complained that prisoners were not consulted over the plans, and that the changes will mean more time locked in cells, which may harm prisoners' mental health. As part of the National Regime Model, governors will be required to record how much time prisoners spend taking part in purposeful activity. The figures will be published internally within the Ministry of Justice. Jarman-Howe said the measure involved "asking governors to be clear about the level of regime that's going to be available, and holding them to account through internal publication of data".

Prisoner Killed Himself After Mental Health Team Ignored Warning

Inside Time: Sean McKeown had been trying for three months to see a psychiatrist went on to take his own life days later, an investigation has found. Officers and fellow prisoners at Wandsworth raised concerns about Sean – and one officer was so worried that he spoke to a nurse from the mental health team. However, no-one from the team recorded the tip-off or followed it up before McKeown, 51, was found hanged in his cell in June 2019.

A report into his death by the Prisons and Probation Ombudsman criticised the mental health team at the jail for failing to create a care plan for McKeown after it discharged him following earlier involvement with him, meaning that there was no outline of what should be done if his mental health deteriorated again. He stopped taking his antidepressants, his personal hygiene got worse and he was found intoxicated. Four days before his death, he told an officer that he had been trying to see a psychiatrist for the previous three months and had not been able to see anyone from the mental health team. The officer tried phoning the mental health team, but left a phone message on the wrong number which he obtained from a list of healthcare contact numbers. The officer also spoke in person to the nurse, who agreed to check on McKeown but neither did so nor recorded the concern.

The Ombudsman accepted that McKeown had not self-harmed for more than a year, and that staff had no reason to believe he was at imminent risk of suicide. A post-mortem found that he had been using psychoactive substances before his death. A spokesperson for South London and Maudsley NHS Foundation Trust, which previously provided mental health services at HMP Wandsworth, said: "We offer our sincere and heartfelt condolences to the family and friends of Sean McKeown following this very sad incident in 2019." The Prison Service said it had implemented the Ombudsman's recommendations, including new training for staff and a drug strategy to tackle illicit substances.

Russia: Failure to Deal With Inhuman Treatment of So-Called "Outcast" Prisoners

In Chamber judgment in the case of S.P. and Others v. Russia (application no. 36463/11) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 of the European Convention on Human Rights (prohibition on inhuman or degrading treatment) in respect of all the applicants, and a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 3 in respect of all the applicants.

The case concerned the treatment of the applicants when serving sentences in penal

institutions in various parts of Russia. Within an informal prisoner hierarchy, they had been categorised as “outcasts”. The Court found in particular that the existence of a hierarchy and the applicants’ placement at its lowest rung amounted to inhuman and degrading treatment. The Government had failed to address, deal with, or even acknowledge that situation and had thus failed to protect the applicants from the suffering they had had to endure. The applicants are 11 Russian nationals. They have all been convicted of crimes and have either served their custodial sentences or are currently serving sentences. The facilities where they were placed were located in Kostroma, Sverdlovsk, and Irkutsk Regions, and the Republics of Komi, Mariy El, and Mordovia.

Inter-prisoner relations in the Russian penal system are governed by an informal code of conduct known as “the rules” (понятия). Under these “rules”, prisoners are divided into four main “castes” (масть): the “criminal elite” or “made men” (авторитеты or блатные), the highest grouping; “collaborators” or “reds” (козлы or красные), who enforce order alongside the prison officers; “lads” (мужики), who make up the vast majority of inmates; and a category of “outcasts” called “cocks” (петухи), “untouchables” or “downgraded” (опущенные, обиженные).The applicants assert, among many other things, that within this system they were categorised as “outcasts”. As a result of this they were given tasks considered by the other prisoners to be too degrading. According to the applicants, prisoners can be downgraded to “outcast” for a huge variety of “offences”, including stealing, being a “snitch”, sex-crime convictions, and so forth. The stigma followed them from facility to facility. If they did not carry out their degrading tasks, they could be subject to violence or sexual violence. “Outcasts” were forbidden from touching any other prisoners or their possessions, and had to stay in separate living quarters and eat at designated places with special cutlery. According to the applications these practices were tacitly endorsed by prison staff. The applicants complained several times to various authorities, including the federal ombudsman, to no avail. They alleged that the prison authorities were complicit in the informal hierarchy system.

Prisoners' Advice Service (PAS) Helps Prisoner Labelled "Grass" Transfer to Safer Prison

Prisoner A first called us as he had been having issues with other prisoners on every wing at his current place of incarceration. He had become known as a “grass” and did not think there was any way he could be kept safe there. Despite making several requests to be transferred to another prison, authorities at his current prison did not believe he was under threat and so had refused to move him. As a result, Prisoner A had been keeping himself in isolation, gone on hunger strike, and his mental health had suffered significantly. PAS contacted the prison governor to advise that Prisoner A had called us, that he was experiencing a number of issues with various prisoners and that he wanted to be transferred. The prison responded to us, explaining that they had spoken with Prisoner A, and that the latter had not indicated that he was at risk from anyone and, as a result, would not be transferring him.

Prisoner A then called us again twice, explaining he had been assaulted by a fellow prisoner, who punched him. We contacted Safer Custody just before Christmas and informed the prison of the assaults so that they might be properly investigated. We again asked that the prisoner be transferred, reminding the prison that it had a duty of care towards the men incarcerated there, including the duty to protect them from both physical and mental harm, and that Prisoner A had been suffering on both counts due to the assault and his isolation regime. Prisoner A was then transferred to another prison over the Christmas period, and called us

in the New Year to thank us for our support throughout this process.

PAS: Successfully answered an impressive 32,465 calls to the Advice Line, received 1,402 letters from prisoners and sent out 6,446 items in response. We delivered 45 Outreach Clinics in nine separate prisons, reaching 351 prisoners on a one-to-one basis, including 11 clinics in the women’s estate, which saw 95 women receive advice from our Women Prisoners’ Caseworker. Finally, PAS opened 88 legal cases on behalf of prisoners whose situations would benefit from this action.

Kenyan Exonerated over UK Tourist David Tebbutt's Murder

Sarah McDermott, BBC News: An innocent man who was sentenced to death following the 2011 murder of a British tourist has had his conviction overturned at the Kenyan High Court. Ali Kololo was convicted of robbery with violence in 2013, after David Tebbutt was shot dead by suspected pirates. His sentence, later commuted to life imprisonment, has now been quashed. Mr Tebbutt and his wife Jude were staying at a secluded beachside resort on the Kenyan coast in 2011, when they came under attack by pirates. Mr Tebbutt was killed and Mrs Tebbutt was held hostage in nearby Somalia for six months. She was only released after her adult son, Olly, negotiated a ransom deal. Following Ali Kololo's exoneration, Mrs Tebbutt - who has always maintained that he was not part of the gang that murdered her husband and campaigned for his release - said barely a day had gone by over the past decade when she had not thought of him. I'm not able to tell him face to face, but if I could, I would like to say: 'Ali I am so sorry that this happened to you and that you, your family and children have suffered so much. What happened to you was not right and [was] unfair, but I hope that over time you can all make a life for yourselves and find peace,'" Mrs Tebbutt said.

Mr Kololo's release comes after a ten-year campaign by human rights group, Reprieve. Distinctive footwear he was allegedly wearing had been presented as crucial evidence at his 2013 trial and used to link him to the scene. But in February 2023, at an appeal supported by Reprieve, Kenya's director of public prosecutions decided his conviction had been based on hearsay evidence about him wearing the shoes, and presented to the court without disclosure of where the information had come from. The UK's Independent Office for Police Conduct (IOPC), which had been investigating Det Ch Insp Neil Hibberd's role in the case since June 2018, had concluded that "had the officer still been serving, he would have had a case to answer for gross misconduct". The IOPC had not made public its findings. Neil Hibberd, who retired in 2017, "absolutely disagrees with the [IOPC] findings", his lawyer told the BBC at the time. However, speaking following Mr Kololo's exoneration, Mrs Tebbutt said she was "very concerned that the British police have been deeply implicated in this travesty of justice."

At his trial, Mr Kololo did not have a lawyer until after the prosecution had set out its case and, despite speaking no English, had to cross-examine prosecution witnesses, including Neil Hibberd. He was later represented by pro bono lawyer, Alfred Olaba, who said the pleasure of seeing Mr Kololo reunited with his family was mixed with sadness. It is hard to talk of justice when an innocent young man has lost 11 years of his life to a rigged investigation and unfair trial," Mr Olaba said. "But today, Kenyan courts finally began to right this terrible wrong."

Maya Foa, director of Reprieve, said it was "a tragedy that it took so long to reach this point", adding: "Ali Kololo's trial was one of the most unfair imaginable. The imbalance of power in the courtroom was staggering, between the senior Metropolitan Police detective testifying for the prosecution and the illiterate defendant, being tried in a language he did not under-

stand, without the aid of a lawyer for most of the trial."

Exhibition Families Bereaved by Deaths In State Custody & Care Opens In Brixton

A new exhibition created with families bereaved by deaths in police contact, prisons, mental health and care units will open in Brixton in May. *SoulsINQUEST uses photography and writing as a lens onto state violence, death, grief and resistance. The exhibition is an embodiment of family resistance that refuses to be silenced, misrepresented or forgotten. The exhibition 12 – 28 May 2023, takes place on Brixton's Railton Road, a historic centre of resistance to state violence and racism, at the gallery of 198 Contemporary Arts & Learning.

It is an embodiment of family resistance that refuses to be silenced, misrepresented or forgotten. A collaboration between bereaved families, photographer Sarah Booker, the charity INQUEST, and curated by Languid Hands. The 17 families involved include those whose family members have died recently and historically, from deaths in the past five years to those dating back to the 1990s. The people whose stories feature died in police contact following restraint or shootings, as well as in mental health or care settings including much criticised Priory and Essex mental health services, or in prisons including Woodhill or whilst under a controversial IPP sentence. Their families, whose portraits also make up part of the exhibition, have been at the forefront of the fight for justice and change. (See notes.)

Greater Manchester Police Failure Led to Andrew Malkinson Spending 17 Years in Prison

Emily Dugan, Guardian: Police failed to disclose key evidence that could have prevented a man spending 17 years in prison for rape when no DNA linked him to the crime, the court of appeal was told on Tuesday 3rd April. Andrew Malkinson was convicted of raping a 33-year-old woman by a motorway in Greater Manchester in 2003. He always insisted he was innocent, spending an extra decade in prison as a result. His case was referred to the court of appeal in January after another man's DNA was found on the victim's clothing. The victim said she recalled causing such a "deep scratch" to her attacker's cheek that she broke her nail, yet Malkinson was seen by police the next day with no marks on his face. At a directions hearing in the court of appeal on Wednesday 3rd April, it emerged that photographs of her left hand after the attack showing a broken nail were not disclosed in the original trial. Instead the judge was able to suggest in his summing up that she may have been "mistaken" about the scratch.

The prosecution also failed to tell the court that a couple who claimed to have been able to identify Malkinson walking past their car had 16 convictions for 38 offences between them. The male witness also had a lengthy history of heroin addiction that was not known to the judge or jury. The prosecution's case relied on these eyewitnesses and the victim choosing Malkinson in a video lineup. The lack of DNA evidence was explained by saying he was "forensically aware" and had deliberately left no trace. Wednesday's hearing also heard of missed opportunities by the authorities to revisit Malkinson's conviction. Further forensic testing in 2009 revealed traces of mixed DNA in saliva in the victim's bra that did not match Malkinson's but the Criminal Cases Review Commission did not think it was enough to refer the case for appeal.

Speaking outside the Royal Courts of Justice in London, Malkinson, 57, said he had "often fantasised" from prison about making it to appeal. He said the conviction means he is still on the sex offender register and "still being punished". He said: "It's been 20 years this August since I was taken and I'm still not free. I can't go on holiday. I can't leave this country. It's taken a big toll on me, a big toll on my mental health, as well as my physical freedom. I just want it to conclude as soon as possible." Edward Henry KC, representing Malkinson, said the case

raised "concerns about police conduct" because of "an array of procedural breaches and an abdication of responsibility".cA man was arrested on 13 December last year on suspicion of the rape after new DNA testing of a sample from the victim's clothing matched his on the police database. He has been released under investigation.

A full hearing on the appeal is now scheduled for July. The Crown Prosecution Service is waiting for a further forensic report before deciding if they will oppose the appeal. Malkinson's lawyer, Emily Bolton, director of the charity Appeal, said: "This process is taking way, way too long. This testing that they are doing now could have been commissioned on an urgent basis. This is not a system that is treating wrongful convictions as an emergency." As well as wanting his conviction overturned, Malkinson wants to be compensated. "They can't give me my life back, can they?" he said "So the only thing they can do is give me a secure future for what's left of my life. I'm 57, I have type 1 diabetes. I'm not well and I might not live another 10 years." Greater Manchester police have been approached for comment.

Fresh Medical Evidence Bars Extradition to Poland of a Vulnerable Woman

The High Court has allowed the appeal of a Polish woman, represented by Malcolm Hawkes, against an order for her extradition to serve an 18-month prison sentence for fraud. The woman was accused of defrauding a number of Polish banks into issuing loans totalling £9,000 on the basis of forged documents. Her case was that her male accomplice led the enterprise and took advantage of her mental health vulnerabilities for his exclusive financial gain. The appeal focused on the woman's mental health conditions; evidence adduced at the magistrates court suggested that she may have a learning disability and a low IQ, but this was not tested. On appeal, fresh medical evidence revealed her IQ was just 67 and her learning disability was confirmed. Mr Justice Julian Knowles accepted the submission that people with a learning disability are at greater risk of exploitation and abuse; they may not understand that what is happening to them is wrong and may find it hard to communicate to others about what is happening to them or understand how to report it. There was no evidence that these conditions were ever taken into account at trial in Poland, and no evidence that she could re-open her conviction or sentence if she were extradited now. In allowing the appeal and quashing the order for the woman's extradition, the judge accepted the Appellant's submissions in full: "The Appellant's measured IQ is 67; she is a vulnerable, easily led woman who was likely the victim, rather than the perpetrator of the index offences of fraud. The fresh evidence confirms that she was very likely taken advantage of in the commission of a fraud which she lacked the ability to understand, still less knowingly commit; there is no evidence her mental health condition was ever taken into account in the Polish proceedings or could be now. The impact of extradition and imprisonment on her mental well-being would be devastating. The near-two years she has spent subject to a curfew and reporting conditions is sufficient to address any suggestion of impunity and reduces the public interest in her extradition."

Inside Time has sparked a political storm and been raised at Prime Minister's Questions in the House of Commons. We reported in March that then-Justice Secretary Dominic Raab had written to the Lord Chief Justice warning of the impact that current levels of crowding in jails are having on prisoners. Subsequently the Senior Presiding Judge of England and Wales issued guidance suggesting that judges should jail fewer people, as he quashed a six-month prison term handed to a convicted people-smuggler who threw boiling water in a prison officer's face and replaced it with a suspended sentence.