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CCRC: Sentence Referred to Court of Appeal as Remand Time Not Deducted

The case of Jason Grainger has been referred to the Court of Appeal by the Criminal Cases Review Commission ("CCRC") because time that he spent in prison on remand was not deducted from his sentence. In August 2018 Mr Grainger pleaded guilty at Maidstone Crown Court to charges of causing grievous bodily harm with intent and false imprisonment. By the time he came to be sentenced in October 2018, he had been remanded in custody for 199 days. The Crown Court sentenced him to life imprisonment with a minimum term of 10 years and the minimum term was later reduced to eight years on appeal.

However, neither the sentencing judge nor the Court of Appeal took account of the 199 days Mr Grainger had spent on remand. In February 2022, Mr Grainger's co-defendant, Gavin Trendell, had the time he spent on remand deducted from his sentence by the Court of Appeal, following a successful referral by the CCRC.

CCRC Chairman Helen Pitcher OBE said: "Our role is to uncover potential miscarriages of justice and refer them to the appropriate appellate court, which in this case is the Court of Appeal, so that they can be put right. This includes when something has gone wrong with sentencing. Following the Court of Appeal's decision to reduce the sentence of his co-defendant, we contacted Mr Grainger and invited him to apply to us, because we were concerned that a similar error had occurred in his case. As a result of a careful review, we've decided that there is a real possibility that the Court of Appeal will reduce Mr Grainger's sentence to reflect the 199 days he has already served on remand." Mr Grainger was unrepresented in his application to the CCRC.

Darryl White - Conviction for Sexual Offences Quashed

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person to be the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. This is an appeal against conviction brought with the permission of the full court, granted after a hearing on 22 June 2021. That permission was granted to bring an appeal, out of time, in the light of developments which had taken place after the refusal of permission by the single judge on the papers. In granting permission the Court concluded that the statutory criteria for the admission of fresh evidence in section 23 of the Criminal Appeal Act 1968 were satisfied.

3. On 1 June 2018, in the Crown Court at Snaresbrook, the appellant (then aged 35) was convicted of three offences of sexual activity with a child contrary to section 9(1) of the Sexual Offences Act 2003. On 8 June 2018 he was sentenced by Ms Recorder Weekes QC to a total sentence of 6 years' imprisonment, those sentences being concurrent on each count. Appropriate other orders were made which we need not go into now.

39. Conclusions - We have reached the conclusion that the good character direction as given in the circumstances of this case was deficient. Although it was properly set out in writing the jury were never given that direction orally. By itself that might not have been sufficient to render these convictions unsafe but when taken in combination with the fresh evidence, it does leave us to conclude that the convictions are unsafe. In particular, we must bear in mind that at the heart of this trial was the issue of credibility. Furthermore, this was a relatively unusual case for a historical sex offence case because in many such cases, for understandable reasons, the persons concerned are often unable to be precise about particular dates or periods in the past, but nevertheless give clear evidence that the offending did take place.

40. In this case, as Ms Smart has submitted to this Court, there was a real issue of alibi, namely where was the appellant on 14 August 2008. That date was important because the complainant herself was adamant that that had been the date of the first sexual activity because it was the day of her friend's birthday and they had gone to Nando's to celebrate. In this case therefore, we have reached the conclusion that the photographic evidence, in particular the photograph timed at 14.18 hours on 14 August 2008 is of crucial importance.

41. Also important is the now accepted proposition on the fresh evidence that the appellant could not have had access to a hire car at the material time; his period of access to it had run out on 11 August 2008. This necessarily leads, in our view, to the Crown having to invite the court to speculate as to how the appellant could nevertheless have travelled to Romford, for example, by speculating as to whether he may have used his brother's car.

42. It is true that the evidence by the complainant as to the events of the period 12 - 14 August 2008 was not before the jury in evidence. As Ms Patel has reminded us, that was set out in her ABE interview. Nevertheless, in our view, this would have affected the way in which defence counsel at the time would have cross-examined the complainant, particularly in a case which turned on credibility. That the defence were not able to do because this evidence was not available at the time of the trial.

43. The other evidence which has been relied upon by the Crown before us is, with respect, not independent of the complainant. It would have been a matter for the jury at the trial what they made of it in the light of any other evidence they might have had and which this Court now does have. On one view of that evidence, it was consistent with the appellant's case that the complainant had had a crush on him for 2 years but that he had not had sex with her before she was 16 years old.

44. For those reasons, we must allow this appeal and these convictions are quashed.

No More Deaths Campaign

A New Campaign to Challenge Failures to Respond to and Prevent State Related Deaths

I am writing to let you know that INQUEST has launched its new campaign - No More Deaths - which seeks to challenge the lack of transparency, action and accountability for recommendations arising from state related deaths. INQUEST is calling on the Government to create a National Oversight Mechanism: a new independent public body responsible for monitoring recommendations arising from inquests, inquiries, official reviews and investigations into state-related deaths.

A National Oversight Mechanism would:

· Collate recommendations and responses in a new national database

· Analyse responses from public bodies and issue reports

· Follow up on progress, escalate concerns and share thematic findings

Our campaign has so far been supported by over 40 organisations including JUSTICE, Liberty, Mind, Grenfell United and the Hillsborough Law Now Campaign. The need for a National Oversight Mechanism or similar type of body has been recommended by the Justice Select Committee, the Mayor of London and the Angiolini Review (2017).

Adam Provan- Conviction for Sexual Offences Quashed

On 29 November 2018 in the Crown Court at Wood Green, the applicant (then aged 39) was convicted by a majority of 10:2 of two counts of rape. This trial was a retrial after the jury at the first trial had been unable to reach verdicts on the same counts earlier in 2018. On 30 November 2018 the applicant was sentenced by HHJ Greenberg QC to 9 years' imprisonment, concurrent on both counts. Other appropriate orders were made.

In the present proceedings he applies for an extension of time (832 days) in which to apply for leave to appeal against conviction following a referral to the Full Court by the Registrar. He also seeks leave, pursuant to section 23 of the Criminal Appeal Act 1968, to introduce fresh evidence regarding the conviction of Darryl White ("DW") for alleged offences against the same complainant, now deemed to have been unsafe by this Court.

New counsel, Ms Julia Smart QC, instructed by new solicitors, represents the applicant. We have also had the benefit of submissions from Mr Anthony Metzer QC on behalf of the Crown, who appeared in the court below. The applicant was originally advised in 2018 by trial counsel that there were no grounds of appeal. Fresh evidence regarding the safety of the conviction of DW formed the basis of the applicant's Amended Grounds. When the applicant's family became aware that DW was applying for leave to appeal (in October 2019) fresh counsel and solicitors were contacted. Matters were then delayed by the Covid-19 pandemic but fresh solicitors, it is submitted, acted expeditiously and an application was made as soon as possible thereafter in April 2021.

Grounds 1 and 2 can be taken together. In substance, they raise the main point in this appeal. Given that the case for the prosecution rested to a large extent on the credibility of the complainant, does the fact that DW's convictions have been quashed undermine the safety of this applicant's convictions as well? In our judgment, grounds 1 and 2 are plainly arguable. We grant leave on grounds 1 and 2 and proceed to consider the appeal on those grounds.

In our judgment, the fact that DW's convictions have been quashed does not necessarily entail the conclusion that this applicant is not guilty of the offences alleged against him. It does not necessarily lead to the conclusion that the complainant was not to be believed in the present case. The fact that DW did not commit the offences alleged against him does not inevitably mean that this applicant did not commit the separate and different offences alleged against him. The fact that the complainant was the same in both cases does not logically require that conclusion.

The fact that DW's convictions have been quashed does however have a material impact on the safety of these convictions. If the timetable had been different, so that by the time of the trial in the present case it had been known that DW's appeal had been allowed and his convictions quashed, that would have formed a very significant difference in the backdrop against which the allegations in the present case had to be judged. What was put into the Agreed Facts would obviously have been different. Furthermore, the way in which the complainant was cross-examined would have been different. It could have been put to her that she was not to be believed. The way in which this applicant was cross-examined would also have been different. To take one example: when this applicant was cross-examined and he suggested that the complainant had lied in the trial of DW, that had to be assessed by the jury against the backdrop that DW had been convicted and was therefore guilty, whatever this applicant might suggest. Now the backdrop would be very different; the jury would have to assess this applicant's suggestion against the backdrop that DW was in fact not guilty because that is the effect of his convictions being quashed. We do not know what the outcome would have been in such circumstances but it is not the role of this Court to speculate. What we can say is that it could have had a material impact on the jury's assessment of the evidence before them.

Before this Court Mr Metzer has submitted that nevertheless the safety of these convictions is not in doubt because there was such strong evidence otherwise and independent of the complainant as to lead to convictions in any event. Having been given the opportunity to consider the matter further, he made in particular these submissions. Mr Metzer pointed to the issue about the applicant's age at his trial: had he said that he was aged only 22 when in fact he was 31? C herself was not the only witness to mention this point at the trial. The difficulty however, in our judgment, is that she was ultimately the source of that evidence. This was not, in truth, independent evidence. It is true that her father JT was able to do the mathematical calculations for himself and work out that he must have been much older than 22 because of the time that he had known him. But, as we have said, the suggestion that the applicant had asserted that he was in fact only 22 was not something that emerged from JT himself. The ultimate source of that information was the complainant. Similarly, in relation to whether the applicant had sought to give a false surname or not. Certainly so far as JT is concerned, because he recognised the applicant, so by that time at least he would not have given a false surname.

The next witness to which Mr Metzer has drawn our attention is the complainant's stepmother who to some extent gave evidence, it is submitted, contrary to her own interests because of her relationship with DW. She was one of the witnesses who gave evidence about earlier complaint by the complainant back in 2011. The difficulty with this submission, in our judgment, is that, again, ultimately this depends upon information whose source was the complainant and is truly not independent of her evidence. The third piece of evidence to which Mr Metzer drew our attention was from the dance teacher and in particular about a piece of artwork which made the complainant become very tearful and emotional which depicted a swing in a park. Again, we have come to the judgment that this cannot be said to be truly independent evidence. In similar vein, Mr Metzer drew attention to the evidence of the complainant's boyfriend who said that she would become tearful when she reflected on the incident. Again with respect, that is not truly independent evidence of the complainant herself.

Finally, we should mention two other pieces of evidence. One relates to whether the applicant had arrived at the family's home by car. JT gave evidence that he did see the headlights of a car but he did not give evidence before the jury that he had seen a car itself - he had simply made an assumption that the applicant had use of a car on that occasion.

Lastly, our attention was drawn to the issue at the trial about how long the complainant and the applicant had been away from the house. Was it only about half-an-hour, as he asserted? The evidence of JT was that it was dusk by the time that the complainant got back home; it had been daylight earlier. But with respect, the applicant on his evidence had said that he had left the complainant at the end of her road. It is not clear on the evidence that we have seen what she could have been doing or was not doing in the intervening period if the applicant's assertion was indeed correct. Certainly, when taken together and individually, these items of evidence do not lead us to conclude that there was a strong evidential case against this applicant independent of the complainant.

The reality of this case is best summarised by reference to two aspects of the trial process. The first is the written directions of law which the trial judge gave to the jury. At direction No 15 she said, so far as material: "In this case there is no evidence independent of [C's] evidence which corroborates her account of being raped." Quite properly the trial judge drew this to the attention of the jury because she was pointing out that, as a matter of law, there does not have to be independent evidence by way of corroboration. Those days are long gone. But the nature of the evidence before the jury is aptly summarised in that written direction.

Finally, we would draw attention to the way in which the issue at trial was summarised for the jury in the closing speech for the prosecution itself. In the transcript for 27 November 2018 (page 18E-F): "members of the jury, this is a straight issue for you. One of [C] or Adam Provan, the defendant, is lying. There is no room for anything other than the fact that one of them is lying to you and the other one is telling the truth. That is the stark reality, as Her Honour will make clear in due course."

In our judgment, it is clear that the central issue in this trial was the credibility of the complainant. For reasons we have explained earlier, we have come to the conclusion that the matters relied upon in grounds 1 and 2 do have a material impact on the safety of the convictions given that the central issue was one of credibility. Accordingly, this appeal must be allowed.

For the reasons we have given, we have reached the following conclusions:

1. The extension of time required is granted.
2. The application to adduce fresh evidence is granted.
3. Leave to appeal against conviction refused on grounds 3 & 4 granted on grounds 1 & 2.
4. Appeal against conviction allowed on grounds 1 & 2 and these convictions are quashed.

Deprivation of Liberty Safeguards Reform Delayed

Monidipa Fouzder, Law Gazette: Major reform of safeguards covering people detained under the Mental Capacity Act will be a matter for the next government, the current government has revealed. Care minister Helen Whately confirmed the delay in replacing existing Deprivation of Liberty Safeguards (DoLS) with Liberty Protection Safeguards (LPS) in a letter to the Joint Committee on Human Rights, published 21.06.2023. Whately said: 'The government still accepts the need for change and we are pleased that we have made progress towards introducing the LPS. There was clear support for implementing the LPS to replace DoLS at consultation, which will be a matter for a future government to consider. The decision to delay the implementation of the LPS will enable us to focus on our priority of ensuring that everyone can access the right care, in the right place, at the right time.'

Deprivation of liberty safeguards are a set of protections for adults who lack the mental capacity to consent to being accommodated in a hospital or care home. The safeguards enable the family or patient to challenge any such deprivation. Liberty protection safeguards were proposed by the Law Commission in 2017 after the Supreme Court's Cheshire West judgment widened the number of vulnerable people considered to be deprived of their liberty. Liberty protection safeguards were due to be rolled out last year. Whately said the Department for Health and Social Care and Ministry of Justice will publish a revised Mental Capacity Act code of practice 'that supports understanding and the application of the MCA which is essential to the application of DoLS. Further details on the timing of this work will be shared in due course.'

According to official statistics about DoLS, the proportion of standard applications completed within the statutory timeframe of 21 days was 20% in 2021-22, falling from 24% the previous year. Applications were taking 153 days to complete, compared to 148 days the previous year. 'This means that the vast majority of people subject to DoLS are unlawfully deprived of their liberty while their applications are being processed,' the committee said. Law Society president Lubna Shuja said: 'The government is aware of our concern that without substantial changes, the proposals to replace DoLS with LPS would result in weakened safeguards for vulnerable people. Action is needed to improve the current system... We agree with the [committee] that the DoLS system needs urgent reform to protect human rights and ensure vulnerable people can access justice.'

Mental Illness: Police Custody

Lord Bradley: To ask His Majesty's Government what, if any, actions they intend to take to ensure that people suffering from mental health crises are not taken to a police custody suite.

Lord Markham: We have announced the development of a new National Partnership Agreement between policing and health partners to ensure that the right agency responds to a mental health incident, removing police involvement earlier in the process where it's not needed. This will support roll-out of the Right Care, Right Person approach, under which police will only engage in a mental health incident when there is a real and immediate risk to life or serious harm. We have already achieved a significant reduction in the number of people taken to a police cell as a place of safety in recent years. In 2021/22 a police station was used as a place of safety 254 times in England out of a total of 36,594 Section 136 incidents. This represents less than 1% of incidents and is down from an estimated 8,667 times out of a total of 23,907 such incidents in 2011/12.

The Draft Mental Health Bill contains provisions to remove police stations as a place of safety, so that people held under Section 136 will be in more appropriate health-based settings when in crisis or waiting for a place on a specialist ward. The Bill will be introduced when parliamentary time allows. On 23 January 2023 we set out details on how £150 million of capital investment, first announced in the 2021 Spending Review, will be used to build mental health urgent and emergency care infrastructure. This includes £7 million for specialised mental health ambulances across the country to provide better care and support for people experiencing a mental health crisis. We are also funding over 160 wider capital schemes including to provide and improve crisis cafes, crisis houses, mental health urgent care centres, health-based places of safety and broader improvements to crisis lines and emergency departments. This will mean care can be provided in more appropriate spaces for those in need, and will reduce pressure on wider parts of the system including accident and emergency.

Jason Kessie-Adjei - Secretary of State for Justice

On 30 March 2022 Mrs Justice Heather Williams dismissed the appellant's challenge to the lawfulness of his detention from 15 January to 4 March 2021. The appellant had been recalled to prison after revocation of his licence. The recall was lawful as a matter of domestic law. The appellant's case was that his detention was in breach of Article 5(1) of the European Convention on Human Rights ("the Convention"). He also argued that HMPPS policy PSI 03/2015 did not conform with Article 5 of the Convention in respect of the discretionary power to disapply the effect of Section 49(2) of the Prison Act 1952.

The issues in the appeal are (a) whether the detention was incompatible with Article 5(1) because it was arbitrary in the sense of it being unforeseeable and/or because there was no causal link between the original sentence and the later detention; and (b) whether the policy applied in the appellant's case was incompatible with Article 5(1) because it failed to meet the requirement of legal certainty. The judge found that there was no incompatibility with Article 5(1) on any of the bases put forward by the appellant. He argues that she fell into error.

Conclusion: The appellant was the victim of administrative incompetence. He was recalled to prison approximately 12 months after he should have been recalled by reference to the revocation notice. His detention was not caused by this incompetence. That resulted from the sentence imposed in February 2018 and from his clear breach of the licence granted in relation to that sentence. His detention was foreseeable. It was not arbitrary. There was no violation of the appellant's Article 5 rights.

The policy in relation to leaving out of account days when the appellant was unlawfully at large

was not the basis of his detention. No Article 5 rights could arise in relation to the policy. In any event, the policy identified that exceptional or very exceptional circumstances had to be present for days to be left out of account. This was sufficient to allow a prisoner to understand the basis on which the Secretary of State would apply the policy. The starting point was that a person who had been unlawfully at large had not been serving the sentence. There had to be something exceptional to depart from that position. The notion of "exceptional circumstances" is widely used in a variety of contexts, both in legislation and in government policy. For example, it applies when a minimum term of custody in relation to offences of prohibited firearms or domestic burglary falls to be imposed. The minimum term of custody may be disapplied if there are "exceptional circumstances". No further definition is given so as not to fetter the exercise of the discretion.

It follows that I would dismiss the appeal. It is appropriate, nonetheless, to repeat that there was an egregious level of administrative incompetence in the appellant's case. Someone in his position ought to have been arrested and detained within a few days of the revocation of the licence. The appellant's case would be a useful case study for the Public Protection Casework Section to review for the purpose of improving the practice in relation to recall.

'Five Lives Lost Is a Tragedy. 600 a Statistic.'

Nicholas Reed Langen, Justice Gap: On Friday 16th June, a crowd of people, hailing from across the diaspora of Africa and the Middle East, clambered onto a rickety vessel docked on the Libyan coast. Coordinated by smuggling gangs demanding more than their pound of flesh from each asylum seeker, the people were promised safe passage to Europe, whether they were travelling in seek of asylum or in pursuit of a better life. Once a vivid blue, photos show a stain-ridden and rust-riddled fishing ship (unchristened, but from here, the Pylos), perhaps fit to carry 350 people. Heedless of this, smugglers shoved over 600 on board, children and adults huddled in the hold or crammed cheek by jowl above deck, all praying that this most trepidatious part of their journey would be short and smooth.

Three days later, on Monday this week, a troop of adventurers, from countries ranging from Britain to Pakistan, clambered onto a different rickety vessel. Looking more like a medieval siege weapon than an advanced, twenty-first century submersible, it was one up from something cobbled together in a mad inventor's garage. The five tourists' ambition was to descend to the ocean floor and peer out, through a viewport barely bigger than an iPad screen, at the wreck of the Titanic. This ambition was not rooted in scientific endeavour, but in morbid curiosity and proof of chutzpah. Each of the five tourists paid as much as a quarter of a million dollars for the privilege of being sardined before receiving a glimpse of the Titanic burial ground, then rising to the surface to gloat about what their wealth entitled them to see. One-upmanship. Nothing more.

Two days after the Pylos departed, it encountered squalls in the Ionian Sea, just off the coast of Greece. The overladen boat was met by the Greek coastguard. Rather than guide the ship to safe harbour, or coordinate a rescue operation from the outset, the coastguard seemed hopeful that the Pylos would float out beyond Greek waters. Once they realised that the currents and the winds were not in their favour, the coastguard are said to have attempted a difficult, dangerous towing manoeuvre, one that seemed as likely to send the boat into the depths as to save the migrants. While suggesting that the coastguard wanted the boat to sink may be a step too far, their behaviour suggests they were more interested in seeing the boat, safely or otherwise, out of Greek waters than in saving the people on board.

It was only after the Pylos began to capsize, drenching its passengers into the

Mediterranean waters, that a meaningful response began. But by now, it was too late. Despite a 'frenzy' of ships in the area coming to the downed vessel's aid, it sank. Only 104 of the passengers were pulled from the sea, with over 500 still unaccounted for, presumed dead. This would not be the first time that the Greece coastguard tried to evade its responsibilities with tragic consequences, with a study published last year showing a consistent pattern of Greek 'tow-aways'. But Greece is not the only guilty party. As reports have made clear in recent years, the EU's semi-privatised, semi-militarised Frontex border control, which was also involved in the Pylos tragedy, is as interested in deterring future crossings as it is in saving those at sea. Much like in the UK, deterrence through cruelty and death is its modus operandi.

Our erstwhile adventurers in the North Atlantic departed, along with the Titan, onboard a ship from Canada's east coast (crossing across different regulatory regimes to minimise required regulation compliance). Reaching its diving point in the North Atlantic, the Titan, with its passengers sealed in, was released. Sinking like a silvery stone, it descended leagues under the sea, with its tracking responder at first pinging back its location every fifteen minutes. After almost two hours, the responder went quiet. Nothing was heard – the Titan had vanished. Whether because the submersible had imploded, had become entangled on the ocean floor, or had suffered some other catastrophic failure, something had gone wrong.

The response to this disappearance could not have been more different to that of the Pylos. Aware that the submersible carried four days (breathlessly reported as 96 hours) worth of oxygen, it was mere hours after the Titan was reported uncontactable that the resources of the international community were mobilised. US and Canadian coastguards sent out patrols, and other commercial vessels are sailing over the region, with sonar buoys coordinating with the ships to try and trace the Titan. In the air, two American C-130's are scouring the seas, accompanied by a Canadian P8 Poseidon and P3 Aurora, in case the submersible – which is such a feat of engineering that its release hatch is only accessible from the outside – has surfaced, with its occupants bobbing in the Atlantic unable to free themselves. From Europe, the NATO Submarine Rescue System is on hand to lend support if needed, while the French have mobilised their navy.

Across the media, there have been similarly discordant responses. After the sinking of the Pylos, there was brief news coverage. 600 people had died in the Mediterranean after a single vessel, watched by the Greek coastguard and the Frontex border patrol, sank. Most newspapers and broadcasters reacted with a shrug of the shoulders, seeing the deaths as par for the course – just 600 more interments for the Mediterranean burial ground. In contrast, the moment that the Titan, containing five people, dropped out of contact, the eyes of the western world were turned to this crisis in the North Atlantic. Live streams updating the world on the rescue are front and centre on the New York Times' and the The Times' websites, with reporters providing minute by minute updates. At the time of writing, the New York Times reports that a Canadian surveillance plane has detected 'underwater noises' and a 'banging sound'.

This is an indictment of our society and our media. On one hand we have desperate, poverty stricken people clutching at straws to improve their lives. There is nothing to suggest they were not genuine asylum seekers, fleeing persecution or death because of their race, religion or gender. Even if they were 'mere' economic migrants, they were still people desperate enough to look at the decrepit boat they had paid their life savings to be herded on to and to conclude that the journey was a risk worth taking. This was not a cavalier decision, easily taken, and nor should it have been – as the tragedy proved. With hours to react, the authorities sat on their hands, waiting – hoping – for nature to take its course. There was no live

stream, and little meaningful coverage, with the 600 deaths met with callous indifference or a morbid curiosity. Many asked why those on board would take such a risk.

On the other hand, we have a small group of immensely wealthy people. Curious to experience something that will mark them out among their contemporaries in the stratosphere of society, they each are given a disclaimer and, fully aware of what it says, sign it and hand over vast sums of money. In this disclaimer, the company notes that the submersible has not been certified and that the journey is rhapsodically dangerous, mentioning the risk of death no fewer than five times on the first page. (Justifying this, OceanGate, Titan's creators, claimed that the technology is so innovative that 'bringing an outside entity up to speed' before 'real-world testing' would not be feasible. It would be 'anathema to rapid innovation'.) Within hours of their entirely predictable disappearance, governments across the world have reacted, with an Admiral of the US Coast Guard telling news reporters they are bringing 'every resource to bear'. The world stands by with bated breath, praying for the discovery and rescue of the tourists who chose to descend into the Atlantic's water depths. Few ask why those on board would take such a risk.

If we were being kind, we could look to Stalin as a defence for this contrast in attitudes. Five lives lost is a tragedy. 600 is a statistic. The thought that we, as relatively privileged members of western society, have helped send 600 people (to say nothing of the tens of thousands before them) to a watery tomb is too much to contemplate. So we don't. Instead, we watch as governments and maritime agencies spend millions of pounds rescuing five of the dilettante rich from the all to obvious consequences of actions chosen for their own entertainment.

Human nature might explain part of our response to the twin crises, but not easily. Perhaps we feel more empathy for the adventurers in the submersible, or experience a primitive excitement at the thought of pushing the boundaries of human endeavour, or just view those on board the Pylos as 'illegals' undeserving of human empathy. But these first two seem tenuous. It is the latter that cuts to the heart of the issue. Those on board the Pylos are barely human in western society's eyes, with the tragedy a mirror reflecting the growing divisions in global society. We have been cultured to deify the rich and condemn the poor.

As the search for the deep-sea tourists continues, no one has discussed its cost, or whether they should recoup some of this cost from a group of people (including at least one billionaire) who collectively spent one and a quarter million pounds for an undersea adventure. It is simply something that we, as a society, must do. Meanwhile, these self-same governments rage at the cost of accommodating asylum seekers or providing them with legal counsel. Only one of these events is a true tragedy. It is damning society hasn't noticed yet.

Children Subject to Deprivation of Liberty Orders Suffer "Severe Restrictions"

Lottie Winson, Local Government Lawyer: An overview of the legal outcomes of deprivation of liberty (DoL) applications has found that children subject to DoL orders are subject to "severe restrictions on their liberty" for "significant periods of time". The Nuffield Family Justice Observatory (NFJO) study, published on 21 June, relates to 113 cases of children who were subject to applications for DoL orders between 4 July and 31 August 2022. The NFJO found that the type of restrictions on children's liberty authorised by the national DoL court were "severe". The report notes: "each child was subject to an average of 6 different types of restrictions, including in almost all cases constant supervision, often by multiple adults (99.0% of cases)".

The use of restraint was permitted in over two-thirds of cases (69.4%), and restrictions were "rarely relaxed" over the study period (7 cases, 9.2%), the report noted. The NFJO noted

that this "calls into question the purpose of DoL orders to facilitate meaningful change in children's circumstances and long-term outcomes". The study found that in the majority of the 113 cases (92.0%, 104 cases), the application for a DoL order was granted. In the other 9 cases (8.0%), the application was withdrawn at or before the first hearing.

Analysing the reasons for this, the NFJO said: "Mainly, this was because a DoL was no longer thought necessary but, in some cases, the local authority was directed to apply to the Court of Protection due to the child's age, or a secure accommodation order was made to place the child in a secure children's home." The study found that the average distance that children were placed away from home while subject to a DoL order was 56.3 miles. Furthermore, in 53.8% of cases, children were placed in at least one unregistered placement during the study period. On this, the NFJO said: "This highlights the urgent need to develop more suitable, local placements for children with complex needs."

The report raised concerns about children's opportunities to "formally participate and have their voices heard in DoL proceedings". The study found that just 10 (9.6%) children attended at least one hearing in their case, 5 (4.8%) spoke to the judge directly before the hearing, and 6 (5.8%) had written to the judge to share their views.

Finally, the study revealed that in just 12 of the 113 cases, parents and/or carers were legally represented for at least one hearing. The NFJO said: "Our report confirms that most parents or carers do not have legal representation. Given the nature of DoL cases, and the severity of intervention in family life being considered by the court, it is hard to understand how this position is justified and there is an urgent need to review it."

Responding to the NFJO's report, Caroline Lynch, Family Rights Group's principal legal adviser said: "This new report brings further welcome focus to the significant difficulty parents have in accessing legal aid where deprivation of liberty orders are sought. In only 11.5% of the cases reviewed by NFJO were parents or carers legally represented for at least one hearing. This means many parents are navigating court proceedings without any access to legal advice or representation. It is clear urgent reform is needed."

Pioneering Facility Offering Alternative to Women's Prisons Opens in England

Diane Taylor, Guardian: Hope Street scheme in Southampton aims to keep women in criminal justice system out of jail and with their children. It all started when Edwina Grosvenor spent an hour with two heroin addicts at a drug rehabilitation centre in Liverpool, almost 30 years ago. Her parents – Natalia and Gerald Grosvenor, who was one the richest men in the UK and the sixth Duke of Westminster – decided to take her to the centre at the age of 12 or 13 to show her that there was a world beyond her privileged bubble. "At that moment I learned about empathy," Lady Grosvenor said.

On Tuesday the vision she traces back to that childhood visit, to support people in the prison system, especially women, culminated in the opening by the Princess of Wales of the first ever project in the UK to keep women in the criminal justice system out of prison. The drug rehab facility in Liverpool was on Hope Street. She has given the new project the same name: it is a pioneering new 24-space residential scheme in Southampton designed and developed by the charity One Small Thing.

It offers a community alternative to prison for women so their children can remain with them and to help them break the cycle of reoffending and serving repeated, often short prison sentences. Women can be placed there when they are subject to a community order, when on remand or after being released from prison. The light and spacious building, constructed in pale brick and light wood, is for women who would otherwise be imprisoned unnecessarily

due to a lack of safe accommodation or concerns around their wellbeing. It is being independently evaluated over the next few years and if successful, it is hoped the model can be rolled out nationally with the aim of dramatically reducing the number of women who end up in prison.

Even very short prison sentences can have a detrimental impact on families, separating an estimated 117,000 children from their mothers each year, often into emergency foster care. It is estimated that a third of women in prison have themselves been in care. This group of women overwhelmingly report a long history of trauma in their lives, with 60% of women in prison reporting domestic abuse and half entering custody with a substance use issues.

Each Hope Street resident will receive tailored programmes designed to address the issues that led to their becoming involved with the criminal justice system: skills, education, training and support when they leave. Along with the visit to the Liverpool drug rehabilitation centre, Grosvenor said the sudden death of her father in 2016 had been another seminal moment for her, which she described as "post-traumatic growth". "My father's death was a 'sink or swim' moment and it made me feel 'right it's now' to make a project like Hope Street a reality," she said.

Reclaiming What Was Lost Through the Harm of a Wrongful Conviction.

America: Thirteen crime survivors, individuals who were exonerated, and family members of both gathered earlier this month for the first of a series of in-person healing retreats to be held throughout the year. Participants traveled to Richmond, Virginia from around the country. One individual joined with his sister for their first retreat after his exoneration in March; another participated for the first time – 25 years after her exoneration in 1998, and six returning participants provided peer support and encouragement to the new participants. Activities included a continuous healing circle, reflective writing, and expressive arts.

Participants reflected on how their identities have been shaped by the labels given by others and the importance of reclaiming their personal narrative as a first step toward healing. Activities included naming, writing down and throwing away labels that were given to them, sharing the parts of them that were lost during the crime and wrongful conviction, and imagining a meeting with their future selves and listening to what they might say. These activities aimed to help participants explore their identities and distinguish between their true selves from the identities placed upon them by the outside world.

This national scope retreat is a pilot program that stemmed from a community-based three-series retreat model held in Detroit last year. This three-day retreat brought people from all walks of life with the shared experience of being harmed by a wrongful conviction. The same group will continue to connect all year through virtual circles and in-person retreats. As with all our retreats, this program involves an interconnected series of restorative activities that provide opportunities for participants to engage in peer support, restoration, and healing.

Participants completed their first expressive art project of the program – the mask. Their mask represents the persona they show to the outside world and the true feelings they keep hidden inside. Participants also had the opportunity to play improv games and gather around a bonfire for a "letting go" ceremony. During this time, participants were invited to write down the burdens they were ready to let go of on pieces of paper and then throw them into the fire.

Warmly, Katie Monroe, Executive Director, Healing Justice - From Harm to Healing - We incorporate the interrelated and imperative concepts of healing and justice to address the widespread harm caused by systemic failures that result in wrongful convictions.

Home Office: Resumption of 'Deport First, Appeal Later' Policy

After suspension in 2017, Section 94B certification restarted on 5 June for five countries. A recently published letter by the Home Secretary to the Home Affairs Committee provides more information the resumption of the 'deport first, appeal later' policy as announced by the Home Office earlier this month. The policy was suspended in 2017 following a landmark judgment by the Supreme Court (see here for more).

On the 5th of June 2023, the Home Office restarted the use of certification under section 94B of the Nationality, Immigration and Asylum Act 2002, meaning a person can be removed from the UK before the appeal process is exhausted. New guidance was issued by the Home Office on 5 June and was further updated last week. It explains: "This guidance has been updated following the Supreme Court judgment in Kiarie and Byndloss v the Secretary of State for the Home Department [2017] UKSC 42, which found that the opportunity to give oral evidence would normally be required for an out of country appeal certified under section 94B to be fair and effective. Steps have now been taken to allow people whose claims have been certified under section 94B to have access to a video link during their appeal. This guidance reflects the fact that where a video link is in place certification under section 94B can resume."

Modern Slavery Victim's Drug Conviction Quashed Following CCRC Referral

Liverpool Crown Court has overturned the conviction of a man trafficked to the UK as a child following a referral by the Criminal Cases Review Commission. 'Mr Q' was arrested in 2017 inside a cannabis farm and pleaded guilty in Warrington magistrates' court to cultivating a class B drug.

However, just two years earlier the Home Office had determined he was a victim of human trafficking when he came from Vietnam to the UK in 2013 for the purposes of forced labour. Despite the charges relating to activity linked to being trafficked into the country, Mr Q's legal advice overlooked that he could have applied a defence under section 45 of the Modern Slavery Act. This is the latest CCRC referral related to miscarriages of justice against victims of human trafficking, following previous cases involving a Vietnamese teenager working on a cannabis farm in Leicester and a child who was charged with a range of offences stemming from him being trafficked.

Helen Pitcher OBE, Chairman of CCRC said: "We are seeing too many cases where victims of human trafficking go on to become victims of a miscarriage of justice. The law is quite clear that nobody should face charges for actions directly linked to being a victim of modern slavery. We urge any trafficking victims who feel they have received an unjust conviction to contact us and we will investigate their case."

Raab's Bill of Rights Officially Killed Off

John Hyde, Law Gazette: Justice secretary Alex Chalk has confirmed that the government will not proceed with the Bill of Rights Bill, ending weeks of speculation about its potential demise. As widely expected, Chalk told the House of Commons during justice questions today that the proposed legislation had been abandoned. He told MPs: 'Having carefully considered the government's legislative programme in the round, I can inform the house that we have decided not to proceed with the bill of rights.' The bill was introduced last summer in parliament but had only cleared its first reading in the Commons. Despite Dominic Raab – a passionate advocate for reform – returning as lord chancellor under Rishi Sunak, the bill continued to stall. Once Raab was replaced with Chalk earlier this year, the legislation appeared all but dead.