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MOJUK: Newsletter 'Inside Out' No 961 (26/07/2023) - Cost £1

ECHR to Rule on Miscarriage of Justice Compensation 'Scandal'

Jon Robins, Justice Gap: Two men who spent a total of 24 years in prison for crimes they did not commit took their legal fight for compensation to Strasburg's top court this week. Their appeal was heard by 17 judges in the European Court of Human rights' Grand Chamber which is convened for exceptional cases to consider a test case challenging the 2014 changes to the law which means that the wrongly convicted now have to prove innocence to be successful in a claim for state support. The cases of Sam Hallam and Victor Nealon have featured heavily on the Justice Gap – you could read interviews with Sam and Victor. The law change has stopped compensation pay-outs in almost all cases and was recently described as a scandal by Henry Blaxland KC, who represented Hallam at the Court of Appeal, at a meeting of the All-Party Parliamentary Group on Miscarriages of Justice.

Sam spent seven years in prison for the murder of a Essayus Kassahun had his evidence quashed in 2012 and always claimed that he was not at the murder scene. There was no forensic evidence linking him to the killing, no CCTV footage and Thames Valley Police, instructed by the Criminal Cases Review Commission, later interviewed 14 separate witnesses at a crowded murder scene who insisted he was not there including the intended victim of the murder. Nealon has his conviction for attempted rape quashed on the basis of a DNA test pointing to another attacker. He spent 17 years in prison – seven years over tariff because he insisted he was innocent. Sam Hallam attended the Strasbourg hearing. Hallam's solicitor, Matt Foot was this week appointed co director of the legal charity APPEAL with the group's legal director Emma Torr. The current director Emily Bolton is stepping down to focus on casework and campaigns.

At the recent APPG meeting, Henry Blaxland KC, who has acted in many high-profile miscarriage cases including Derek Bentley, James Hanratty, the Bridgewater Four and the M25 Three, told parliamentarians: 'My aim here is to persuade people that something needs to be done about a scandal: the failure to give proper compensation to victims of miscarriages of justice.'A press release from the European Court of Human Rights notes that both men applied to the the Ministry of Justice for compensation but were unsuccessful 'because their cases failed to meet the statutory test for compensation' under Criminal Justice Act 1988, as amended by the AntiSocial Behaviour, Crime and Policing Act 2014. According to the new scheme, there needs to be a new or newly discovered fact did not show beyond reasonable doubt that they had not committed the offences. The decision letters sent to both applicants stated that nothing in them was 'intended to undermine, qualify or cast doubt upon [their] conviction'. Both men challenged the MoJ arguing that the statutory test for compensation was incompatible with Article 6's presumption of innocence because it required them to 'prove' their 'innocence' in order to be eligible for compensation.

'How we treat the wrongfully convicted says everything about the sort of society we want to be,' commented Mark Newby, solicitor for Victor Nealon. 'It should not be forgotten that the hurdle to even quash a wrongful conviction is set impossibly high and for those who have climbed that mountain it is just wrong to ask them to then scale the same mountain again and prove to the government beyond reasonable doubt that they are innocent. If you weren't at the scene of a murder or the DNA on a victims clothing wasn't you but somebody else, what more should have to be said? That is why we must now ask the European Court of Human Rights to intervene. Justice depends on it.'

A freedom of information submission made by the Justice Gap revealed that the Ministry of Justice had received 157 applications in the last two years and only paid out £10,000. To put this into context, in a two-year period from 2007 to 2009 the Ministry of Justice paid out a total of £20.8 million in respect of 19 applications granted and 78 applications received. That number included two ex gratia payments. In 2006, the Labour government axed that scheme to compensate the victims of miscarriages of justice leaving just the statutory scheme. It was costing over £2 million a year to run and benefited about 10 applicants a year.

Prisons Failing on Work and Education, Says Chief Inspector

Inside Time: Charlie Taylor warned that men and women are spending their days "languishing in their cells", meaning they are more likely to commit further crimes after they are released. In his annual report, Taylor said that standards of purposeful activity had been rated as "poor" or "insufficiently good" in all but one of the men's prisons which he and his team inspected over the past 12 months. At 17 of the jails, the standards were lower than had been seen at their previous inspection. He said: "Over the last year I have consistently raised concerns with governors, the prison service and ministers that prisoners who have not had sufficient opportunities to become involved with education, training or work, and have spent their sentences languishing in their cells, are more likely to reoffend when they come out. While I recognise the challenges in reopening regimes and am not encouraging practice that would increase the risk of violence for either prisoners or staff, I have become increasingly frustrated by prisons whose future plans are so vague that it is hard to see when progress is going to be made."

The final Covid restrictions were lifted in prisons in May 2022, yet Taylor said that since then, many jails had not returned to their pre-pandemic regimes. In some cases, severe staff shortages meant there were not enough prison officers to allow for a full programme of activities, yet Taylor said there did not seem to be an overall correlation between staffing levels and levels of purposeful activity. Rather, he said, the amount of work and education which happens in a prison appears to be down to the governor's level of ambition. He told a press conference: "Prisons have a function to make sure that people being released get work, pay their taxes, take care of their families. Quite simply, if prisoners are not getting any support – if they're not getting to workshops, if they're not getting to education, if they're not getting the training that they need or getting into good habits of work – then the risk is that as soon as they leave the jail, they will revert back to their reoffending ways and that simply creates more victims of crime."

Taylor said he was particularly concerned about category C prisons, where men can spend many years. He said: "Many, such as Onley and Ranby, are situated in large, open sites with some very good facilities. It was therefore disappointing to find in such prisons empty workshops, overgrown farms and gardens, broken greenhouses and demotivated and disillusioned prisoners either locked in their cells or aimlessly stuck on the wing with nothing meaningful to do." Women in prison also spent too long locked in their cells, according to Taylor. He said the isolation they felt could be linked to record levels of self-harm seen in women's jails over the past year. Taylor praised increased security measures introduced by HM Prison and Probation Service, including X-ray body scanners, saying that they had made a difference in reducing the flow of drugs into prisons and making wings safer.

But he said that prisoners who were not given the chance to work or take part in education were more likely to turn to drugs to relieve the boredom. He criticised the conditions in Victorian jails like Brixton, Pentonville and Winchester where often two men are held in a 12ft-

by-6ft cell designed for one man, eating their meals beside an unscreened toilet. He pointed out that the Government's prison-building had not kept pace with the number of people entering jail, fuelling problems with crowded conditions.

Commenting on the findings, Andrea Coomber, chief executive of the Howard League for Penal Reform, said: "The problems described in today's report will only grow if numbers are allowed to soar, becoming harder, and costlier, to fix. Westminster has seen nine changes of justice secretary in eight years, but people living and working in prisons have seen only systemic inertia and malaise. Expanding the prison system even further will prove a historic mistake." Pia Sinha, chief executive of the Prison Reform Trust, said: "The chief inspector's annual report paints a depressing picture of too many prisoners spending too little time out of cell and engaged in purposeful activity, often housed in cramped and overcrowded accommodation which struggles to meet even basic standards of decency. "Much of this can be blamed on national trends such as the pressures of a rising prison population, insufficient officer numbers, and a dilapidated estate suffering from decades of underinvestment. The high numbers of women suffering extreme mental health difficulties should be a wakeup call to the government to turbo charge the delivery of its female offenders strategy."

A Prison Service spokesperson said: "As this report suggests, there is much more work to do but we are making significant progress and the proportion of prison leavers finding work six months after release has doubled, while the report also notes the positive impact of our tougher security measures. At the same time, we are recruiting up to 5,000 more prison officers and creating a Prisoner Education Service to ensure offenders have the support and skills they need to turn away from crime for good."

CCRC: Call for New Research Proposals From You!

Do you have an idea for research that would benefit the criminal justice system or the Criminal Cases Review Commission (CCRC), the body that investigates possible miscarriages of justice? The CCRC's Research Committee is now inviting proposals for research projects. Projects can be of any length and on any subject provided the research is of arguable benefit to the CCRC and to the wider criminal justice system. Any proposal must be at PhD level or above and the CCRC is unable to offer funding. A CCRC spokesman said: "The CCRC seeks to stimulate serious independent academic research that will benefit the criminal justice system. "Past research projects have looked at subjects including the potential impact of legal aid cuts and the criminalisation of refugees, and current research includes work on digital evidence, human trafficking, and the experiences of applicants to the CCRC. We have some suggestions for potential areas of research, but we welcome any proposal that might fit our criteria." Successful researchers will have access to a unique set of data relating to applications to the CCRC to review convictions and/or sentences. The CCRC can also provide successful researchers with contact details for sources of data, support for funding applications, and publication of resulting work on its website and, where appropriate, reference to relevant findings in its annual report. The CCRC will also report any relevant findings to the appropriate public bodies and agencies as part of its remit to disseminate such information to key stakeholders to improve the Criminal Justice System to prevent miscarriages of justice.

The CCRC would be particularly interested in any research proposals which relate to the following subjects: 1) Why do many CCRC applicants not exhaust their appeal rights either before or after an application to the CCRC? 2) Private prosecutions and whether the existing safeguards are sufficient to guard against the risk of miscarriages of justice

3) The admissibility of expert scientific and medical evidence either at trial or on appeal Issues of race and ethnicity in the Criminal Justice System 4) Neurodiversities as new evidence relevant to the safety of convictions 5) Legal aid and expert evidence – the effect of legal aid cuts on the ability of CCRC applicants to explore new expert evidence 6) Joint enterprise prosecutions/gang related evidence and race 7) Retention of documents by public bodies – the current rules- suitability and compliance? 8) Historical sexual abuse cases 9) Coronavirus pandemic and whether the associated restrictions affected the fairness of trials / safety of convictions (both Crown Court and Magistrates' Court convictions).

The deadline for the submission of an initial proposal is close of business on Monday 11 September 2023. Successful applicants will then be asked to submit a full proposal.

Wrtie to CCRC: 23 Stephenson Street, Birmingham,B2 4BH

Concerns About Rapid Increase in Young Adults Held in Children's Estate

Jon Robins, Justice Gap: A coalition of groups has highlighted the 'appalling conditions' children and young adults are being subjected to in the children's estate and called for calls for a halt on the proposed introduction of of PAVA spray. Some 30 signatories including the Alliance for Youth Justice, Howard League for Penal Reform, Prison Reform Trust, Liberty, Action for Race Equality, and Children's Rights Alliance For England have expressed their concerns about the rapid increase in young adults held in prisons in a letter to the justice minister Damian Hinds.

The Ministry of Justice shifted the presumed date a young person transitions from youth to adult custody from the 18th to 19th birthday as part of the government's Operation Safeguard dealing with overcrowding in prisons – as confirmed last December by Damian Hinds in a letter to Sir Bob Neill, chair of the House of Commons' justice committee (here). According to the open letter to the minister, the number of young people aged 18 or over in the children's secure estate increased by 140% in the five months after Safeguard was announced to 132. 'Making up 22% of the youth custody population and an estimated 28% of YOIs, this is by far the greatest proportion of young adults held in the children's estate since records began,' it continues. 'It begs the question, when does child custody cease to be custody for children?'

The groups are 'gravely concerned' about the 'appalling, potentially unlawful treatment of children and young people in custody' including prolonged solitary confinement and reports of children and young people at risk of serious harm 'often driven by frustration at inadequate regimes and needs not being met'. The letter highlights the deployment of 'general purpose dogs' such as German Shepherds used by the prison service as 'deterrence' during incidents and devices such as stun grenades or 'flashbangs'. 'We are dismayed that rather than putting the time and resources into addressing the root causes of children and young people's behaviour, policymakers are seriously considering arming custody staff with harmful irritant sprays to use on children.'

'Eighteen year olds transitioning into the adult custodial estate face a frightening cliff edge, and outcomes for young adults in custody are deeply concerning,' the letter continues. 'We do not deny that, where 18 year olds are approaching the end of their sentence and an individualised approach is taken, remaining in the children's secure estate may often be preferable and vital for their wellbeing. However, concern for 18 year olds is not why the policy decision to increasingly keep them in the children's estate was made. Nor was the decision made because it had been deemed the children's estate was in a good, fit state to meet the needs of the children held there as well as a rapidly increasing population of young adults. Rather, the decision was purely based on capacity failures in the adult estate.'

Close to Home: the Case for Localising Criminal Justice

Fionnuala Ratcliffe, Transform Justice: Transform Justice's envisions a system where probation, magistrates' courts administration and CPS administration is delegated to PCC (police and crime commissioner) level. Budgets for these services would be delegated to local level with no funding pots remaining with Whitehall civil servants. What difference would this actually make? Unlike in the USA, local areas wouldn't be able to change primary legislation.

But we think it could make a radical difference to the efficiency with which money is used and to the funding available for prevention and activities to reduce reoffending. One example is in resolving crime without going to court. Someone who commits a lower level crime can be charged or diverted from prosecution. Out of court resolutions are more effective in reducing reoffending and more cost effective since there is no expensive court hearing. Victims and those who commit crime can move on more quickly if they don't have to wait for a court date. But there is currently no financial incentive for the police to resolve more crime without going to court. If the police give someone who commits a crime a community resolution, conditional caution or deferred prosecution, they have to pay for any programmes, staff or administration involved. Whereas if they charge the person, the costs are mainly borne by the courts service and probation. If courts administration, probation and police budgets were pooled and localised, the local police and crime commissioner could attach funding to the agency who dealt with the crime, thus incentivising the resolution of crime out of court.

Localisation of services would also help reduce homelessness amongst those leaving prison and reduce remand. If you leave prison with a roof over your head you are more likely to reoffend because homelessness is a barrier to getting benefits, jobs and healthcare. But there is scant financial or other incentive for local authorities to provide those at risk of remand or prison leavers with accommodation. It is seen as a problem for prisons or probation. But if PCCs and/or local councils were financially rewarded to reduce remand, recall and reoffending, they would have the incentive and the funds to help provide accommodation for those in trouble with the law. People leaving prison would be a community challenge not someone else's problem.

But could localisation lead to post code justice – to someone in one area being prosecuted while in another area they would be dealt with out of court, or to someone being sent to prison on remand in one area but not in another? These inconsistencies already occur with police forces having different practices and courts having different practices. There is no reason why localised justice should increase differences, and a new monitoring system could lead to greater transparency. If criminal justice services were localised, primary legislation would still be made in parliament and judges would still be independent to make decisions according to the evidence and sentencing guidelines.

It's always hard for those who have power to let go of it. Our proposals for localising the criminal justice system are radical but we believe the arguments in favour are strong. Do let us know what you think. All challenge is welcome.

To Name or Not to Name? Anonymity for Suspects/Defendants in Criminal Proceedings

Scott Tuppen, Justice Gap: The ongoing saga surrounding the BBC and the serious allegations apparently made against one of its 'top stars' has dominated the public discourse over the past 72 hours. Social media was rife with speculation as to the identity of the person at the centre of what has quickly become a scandal, the likes of which the BBC has not seen since it was criticised for its inaction in the cases of both Rolf Harris and Jimmy Saville. The conventional media is also a flurry with speculative chatter, with radio and TV hosts trying to tread a fine line between being able to talk about the allegations in a way that makes for entertaining listening, but without leaving themselves open to possible legal action. As recently as yesterday, BBC 'talent' broke ranks to call on their co-worker to 'come clean' and end the speculation.

Whether you think the BBC has handled the complaint properly or not, is, I would argue, not the key issue here. The way that the media have tiptoed around the identity of the presenter at the centre of the storm gives rise to a bigger more important question. A question of fairness. Should suspects and defendants at the centre of serious sexual allegations be named prior to conviction? It is generally accepted that complainants of such crimes should not be named, and the law reflects this. The police, CPS and courts, to their credit, do everything they can to safeguard the privacy of complainants. Rightly so. But what has been lost in recent years, as a succession of reforms to the criminal justice system that strengthened protections for complainants and witnesses, is that defendants, regardless of what one might instinctively think or feel about them, are innocent, until such time that they are proven guilty.

The threshold for carrying out an arrest has been made deliberately low. Today, in our system, a police officer can arrest for even the most trivial of offences, and provided that they can tick one of the necessity 'boxes', it is highly unlikely that the lawfulness of that arrest will ever be successfully challenged. "Ah", I hear you say – "but what about charging? That is a different threshold." Yes, but increasingly – no. Political pressure and public expectations now play a significant role in the decision to charge suspects. You may be forgiven for thinking that political pressure is not mentioned in the Code for Crown Prosecutors. But whilst this is true, a substantial body of legal guidance and policies now accompany the Code for Crown Prosecutors, which prosecutors are duty bound to consider when applying the Code.

In high priority cases, this guidance along with pressure from Police & Crime Commissioners and politicians, serve to create an environment where the path of least resistance will be to charge. Cases of domestic assault frequently involve allegations and injuries on both sides, self-defence arguments and issues of credibility, which were the cases not of a domestic nature, would perhaps lead to a different charging decision being taken. So, what happens? The cases end up in court, and frequently because the case cannot be proven an acquittal inevitably, and rightly, follows.

But what about the defendant? Little thought is given to this person who has not been proven guilty of the allegation and is therefore for all intents and purposes innocent. Let's be clear, some of these now acquitted defendants will have committed the act for which they were charged. But that is not the point. Due process has been followed and the case not proven. But more importantly, some will be genuinely and completely innocent of the charge(s). Yet irreversible damage to their lives will have been caused. They may have had to borrow money, empty their savings account and in some cases sell their home, just to fund their defence. Even if a costs order is made in their favour, it never covers all the costs, so an innocent defendant will end up paying the price of a court case they had no role in bringing. Defendants receive no compensation for the trauma they have suffered, even where a case may have been extremely weak.

But perhaps worst of all is the reputational damage that follows from the media coverage that accompanies the case. Sometimes it is little more than a line or two in a local paper. But because of the internet, that local paper now has global reach. Even a change of name cannot offer the innocent person some respite, because their image will be out there for all to see for forevermore. Their children, prospective partners, and potential employers will all have to weigh up how they feel about this exposure. In the case of children, the impact of being associated with someone who was once accused of such a serious crime can be life shattering, particularly young children at school where some fellow pupils may take great delight in making the child pay for the

perceived wrongs of their parent. Many are unable to build friendships or relationships again. As for employment prospects, the reality is that most employers simply will not want the hassle that follows from employing someone who has been through the justice system, even where the outcome was their exoneration. In short: a prosecution for a sexual crime makes the subject of the allegations persona non grata in our all too judgemental society.

Surely, this cannot be right, for it is not fair. Lady Justice wears a blindfold, and for good reason. Perhaps it is time to handout blindfolds to the press too, which can only be removed on conviction.

Michael Stone: No Grounds to Refer Convictions Back To COA

Following a comprehensive review, the Criminal Cases Review Commission (CCRC) has concluded there is no real possibility that the Court of Appeal would overturn the convictions of Michael Stone for murder and attempted murder. The CCRC is the independent investigator of potential miscarriages of justice in England, Wales and Northern Ireland, and has referred more than 800 cases to the appellate courts since its creation in 1997. Mr Stone was sentenced to life imprisonment in October 2001 at Nottingham Crown Court for the murders of Dr Lin Russell and her six-year-old daughter Megan, and of the attempted murder of Dr Russell's nine-year-old daughter Josie, in July 1996.

A spokesperson for the CCRC said: "Where a jury has chosen to convict a defendant, the Court of Appeal will only interfere if it can be shown that the conviction is unsafe. Our role is not to retry a case, but to consider whether there is new evidence or argument which may lead to a real possibility that the Court of Appeal would quash the conviction. We have identified no credible new evidence or information that raises a real possibility that Mr Stone's conviction would not be upheld upon a reference to the Court of Appeal."

The CCRC does not comment on the operational detail of its work, but makes the following comments due to the high public interest in this case: The CCRC's thorough review included examining a substantial number of documents relating to Mr Stone's case, including reports of alternative events and suspects, court transcripts and judgments, files from police forces and the Forensic Science Service. Interviews took place with officers from several police forces, and forensic tests were carried out. The CCRC has considered whether there are any further proportionate lines of inquiry with the prospect of yielding new evidence capable of making a difference to the safety of Mr Stone's conviction. The CCRC has not identified any. The findings of the CCRC's detailed review have been shared in the usual way with the applicant and their legal representatives through a Statement of Reasons which explains why the case has not been referred, dealing thoroughly with all the points raised. Mr Stone and his representatives had an opportunity to comment on the CCRC's analysis and conclusions when a provisional Statement of Reasons was issued.

Legal Aid Cuts Denying Vulnerable Women Access to Justice

Haroon Siddique, Guardian: Vulnerable women in England and Wales, including survivors of domestic and sexual abuse, are being denied justice because of cuts to the civil legal aid budget, a thinktank has said. The Women's Budget Group says a decade on from major changes to legal aid, women have been disproportionately affected, leaving them without essential support to fight discrimination, violence and housing insecurity.

For its report, Gender Gaps in Access to Civil Legal Justice, published on Thursday 13/07/2023, the thinktank conducted an online survey of 115 organisations, services and individuals in the field and found widespread concern about barriers to justice. It found that

85% of respondents said vulnerable women were unable to access civil legal aid, while 77% said a significant consequence of the legal aid changes was women reaching crisis point or problems escalating before they received any legal help or advice.

Dr Sara Reis, the head of policy and research and deputy director of the Women's Budget Group, said: "The report reveals a troubling reality: the legal aid changes introduced in 2012 have cut a critical lifeline for vulnerable women including survivors of domestic and sexual abuse and asylum-seeking women, leaving them without essential legal support in the face of discrimination, violence and housing insecurity. Policymakers should widen the eligibility criteria for legal aid, particularly for employment discrimination, and provide training and education for professionals to resolve the issues faced by women sooner and close the gender civil justice gap."

Employment, including maternity or pregnancy discrimination, was identified by respondents as one of the most common issues for which women seek help. Others were housing, including advice on no-fault eviction notices and rent arrears, social security and benefits, immigration and asylum, and private family law, including domestic violence. Respondents to the survey included advice services, law firms, trade unions and academics. The report, funded by the Community Justice Fund, identified as significant barriers for women attempting to access legal aid: Ineligibility, for example some employment discrimination not being included in legal aid. Inaccessibility due to insufficient legal aid providers. Lack of awareness and signposting of what qualifies for legal aid.

As the scope of what is covered by legal aid has narrowed, the number of providers has plummeted, creating "deserts" where there is little or no access to free legal advice. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Laspo), which came into effect in 2013, certain areas of the law were excluded from legal aid. Before it was introduced the Ministry of Justice's equality impact assessment found that women would be worst affected. Clare Carter, the chief executive of the Access to Justice Foundation, which hosts the Community Justice Fund, said: "Legal interventions hold the potential to address issues uniquely important to women, and advice services can play a fundamental role in improving women's lives.

Shocking' Scale of Violence at HMP Cookham Wood Young Offender Institution

Flora Thompson, Independent: Children armed themselves with hundreds of homemade weapons at a scandal-hit jail where violence was rife, according to a damning watchdog report. The "shocking" findings were laid bare by inspectors after the Cookham Wood young offenders' institution (YOI) – which holds "some of the most challenging yet vulnerable children in the criminal justice system" – was plunged into emergency measures earlier this year. Chief inspector of prisons Charlie Taylor was so concerned by the "appalling" conditions he discovered at the Kent prison in April that he demanded urgent improvements from justice secretary Alex Chalk.

At the time the watchdog told how boys were found in solitary confinement for "days on end" during an inspection, including two being held in such conditions for more than 100 days. The use of solitary confinement was to "manage conflict" between inmates in the wake of many children fashioning makeshift weapons from kettles and other metal objects to protect themselves. Inspectors also found the facility in "poor overall condition with dirty living units and broken equipment".

Detailed findings of the inspection, published on Tuesday 11/07/2023, set out how violence was "rife" and weapon making was "widespread" at the detention facility in Rochester which holds 77 boys. The report said 228 weapons were found in the six months leading up to the inspection – a much higher number compared to similar establishments – and security checks were "inadequate", while nearly a quarter of the boys said they felt unsafe. Mr Taylor's team

found the conditions at the YOI had deteriorated and were now of “considerable concern”. Members of the 360-strong team of staff were described as “demoralised” and “frightened”, with some seeming to have “given up” and “no longer even bothered to wear the correct uniform to work”. Meanwhile, some of the 24 senior bosses “stayed out of sight in their offices”, according to the watchdog.

As he called for “urgent, concerted and long-term commitment” from prison leaders to improve standards, Mr Taylor said: “These findings would be deeply troubling in any prison, but given that Cookham Wood holds children, they were completely unacceptable. As a result, I had no choice but to write to the secretary of state immediately after the inspection and invoke the urgent notification process.”

The Prison Reform Trust described the report as “shocking” and said it revealed a “failure of leadership at the highest levels of the youth justice system”. The charity’s chief executive Pia Sinha added: “It is difficult to comprehend how a youth offender institution with five staff to every child could deliver such poor outcomes, particularly on safety and purposeful activity. Prison leaders cannot maintain safe and purposeful regimes by issuing instructions from behind closed doors.” - A justice ministry spokesperson said: “This is a deeply concerning report and we are already taking decisive action to address the serious issues it raises.

Alex Chalk Reverses Dominic Raab’s Damaging Changes to Open Conditions Transfers

Prison Reform Trust: The Justice Secretary Alex Chalk has withdrawn controversial changes made by his predecessor Dominic Raab to the criteria for transferring indeterminate prisoners from closed to open prison conditions. The reversal follows months of campaigning by criminal justice organisations including the Prison Reform Trust, highlighting the damaging impact of the changes and the impact they were having on the rehabilitation and resettlement of long-term prisoners.

The changes were introduced in June 2022 and resulted in a dramatic decrease in the numbers of prisoners being transferred to open conditions. In the first quarter of 2022, 91% of Parole Board recommendations for a transfer to open conditions were accepted by the Ministry of Justice. In the first quarter of 2023, just 16% of Parole Board recommendations were accepted. Since the introduction of the change, the Prison Reform Trust and others have raised concerns that the changes were having a chilling effect on the sentence progression of indeterminate sentenced prisoners (ISPs), limiting their opportunity to experience the benefits of open conditions including release on temporary licence (ROTL).

The vast majority of ROTL is authorised from open conditions and its use enables prisoners to gain experience of work and volunteering in the community and build family ties. Its use has been shown to reduce the risk of reoffending on release. Without the opportunity to experience open conditions and demonstrate reduced risk, more ISPs are likely to stay in prison for longer beyond the expiry of their minimum term, increasing pressures on the prison system.

Concerns were raised that the changes could also lead to more ISPs being released from closed conditions without the opportunity of being tested first in open conditions. Both the chief executive of the Parole Board and prison governors have expressed concern that this could undermine public protection. Prior to the changes, Ministry of Justice directions to the Parole Board stated that a move to open conditions “should be based on a balanced assessment of risk and benefits”. Under these directions, the large majority of Parole Board recommendations for a transfer were accepted by the Ministry.

Under the new June 2022 criteria, the secretary of state (or an official with delegated

responsibility) will accept a recommendation from the Parole Board only where: (a) the prisoner is assessed as low risk of abscond; (b) a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and (c) a transfer to open conditions would not undermine public confidence in the Criminal Justice System.

Unlike with release decisions, the board’s role with respect of open conditions transfers is advisory only. Ultimately, the secretary of state is entitled to decide what prison a prisoner is allocated to. The Parole Board is required to apply the first two criteria in its own decision-making but is not obliged to follow the third, which is determined by the secretary of state.

A Freedom of Information request made by PRT showed that nearly two in five cases (38%) where the Ministry rejected a Parole Board recommendation was on the grounds of public confidence — a criterion that is not specified in any published guidance and over which an individual prisoner has absolutely no control. Another Freedom of Information request revealed that not a single case had been referred to the secretary of state personally and that each decision had been overseen by one unnamed official in the Ministry of Justice.

The new criteria effective from today require that the secretary of state (or an official with delegated responsibility) will accept a recommendation from the Parole Board to approve an ISP for open conditions only where (a) the prisoner has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner ion open conditions maybe in the community, unsupervised, under licence temporary release); and (b) the prisoner is assessed as low risk of abscond; and (c) there is a wholly persuasive case for transferring the ISP from closed to open conditions. Crucially, the new test removes the ambiguous requirement that a move to open conditions should be “considered essential”, and the requirement that a move should not undermine public confidence in the criminal justice system. These criteria resulted in the large majority of Parole Board recommendations for a transfer to open conditions being rejected by the Ministry of Justice.

Commenting, Pia Sinha, Chief Executive of the Prison Reform Trust, said: “We are delighted that Alex Chalk has seen sense and reversed the disastrous changes made by his predecessor. Open prisons are a vital step in the effective rehabilitation and resettlement of long-term prisoners. It made no sense to deny them the benefits of open conditions for arbitrary and unevidenced reasons. We will be watching carefully to see whether the new criteria restore fairness and proportionality to the process.”

Is Our Jury System a Vestige of White Supremacy?

To be convicted of a criminal offence in England and Wales, a prosecutor needs to persuade only 10 of 12 jurors that the defendant is guilty. This was not always the case. Prior to 1967, a unanimous verdict was required, meaning that all 12 jurors had to agree. A brief glance at Hansard’s parliamentary archives tells us that British ministers gave two justifications for this change to our jury system. First, to improve cost and efficiency by reducing the number of hung juries and subsequent re-trials. Second, to prevent ‘jury nobbling’ – attempts to influence one or more jurors through threats or intimidation. Ministers argued that in allowing a majority verdict of 10-to-2, the effects of nobbling would be negated.

The majority verdict rule has largely gone unchallenged in England and Wales, and it has not been a significant matter of political debate since it was introduced in 1967. However, in the United State of Louisiana, the legitimacy of the majority verdict rule has been disputed in recent years. In 2020, the Supreme Court of Louisiana made a historic judgment in a case known as

Ramos v Louisiana. Evangelisto Ramos was convicted of a serious crime by a 10-to-2 jury verdict and sentenced to life without parole. He contested his conviction by a non-unanimous jury as a denial of the Sixth Amendment right to trial by an impartial jury, arguing that the non-unanimous verdict allowed for racial discrimination. In this decision, the Supreme Court ruled that non-unanimous verdicts could no longer be used to convict people of serious crimes, amid recognition that the origins of this practice were rooted in racial prejudice.

Behind the movement that successfully ended Louisiana's use of non-unanimous jury verdicts was ground-breaking research undertaken by Professor Angela Allen-Bell of Southern University. Professor Allen-Bell was supported by Calvin Duncan, who spent more than 28 years wrongfully imprisoned and helped draft the submission for Ramos. In her paper, How the Narrative About Non-Unanimous Criminal Jury System Became a Person of Interest in the Case Against the Deep South, Professor Allen-Bell notes that non-unanimous verdicts were formally introduced during Louisiana's 1898 constitutional convention. Similarly to British ministers in 1967, the Louisiana delegates made clear that 'efficiency should be the first and primary consideration' when making changes to the judicial system. However, Professor Allen-Bell observed that 'there was a finesse about drafting what appeared to be race-neutral legislation, which was, in fact, legislation that was racist to the core'. Indeed, she found that the 134 white delegates declared that their 'mission was… to establish the supremacy of the white race'.

Professor Allen-Bell's research concluded that Louisiana's majority verdict rule was linked to Jim Crow laws which served to uphold white supremacy following the 'abolition' of slavery. Doing away with unanimity meant two things. Firstly, that African American jurors could not use their new voting powers to prevent convictions of other African Americans. Secondly, it allowed for quicker convictions, which in turn facilitated a production line of free prison labour – a handy replacement for free slave labour. Although the court's opinion in Ramos 'barely mentioned' racist intent (which in itself is a disservice to racial justice) Ramos successfully ended a century-long failure to recognise racism in Louisiana's jury system.

While the context in which majority verdicts were introduced in England and Wales differs significantly to that of the United States, this adjustment to our jury system was made at a time where the rights of racialised minority people in Britain consumed public and political debate. The Race Relations Act was introduced in the same period, which superseded the influx of migrants from the Commonwealth nations and rise of British Black Power movements which the state sought to repress. While 'jury nobbling' and 'efficiency' are frequently cited as the justifications for the majority verdict rule in England and Wales, Louisiana legislators' 'talent' for utilising 'race-neutral language' has encouraged APPEAL to consider whether the majority verdict rule in England and Wales could also be rooted in racial prejudice, and what this might mean for defendants today.

The remnants of Britain's abhorrent colonial history are very much present within our Criminal Justice System. Just last week, the judiciary of England and Wales was labelled 'institutionally racist', with a research report, Racial Bias and the Bench, finding that black 'court users' were most likely to be subject to judicial discrimination.

APPEAL has launched its own research project, 'Non-Unanimous Jury Verdicts and Racial Justice', which will explore the potential connection between non-unanimous verdicts, race, and miscarriages of justice in England and Wales. With the support of the pioneering Ramos team, experienced criminal barristers, academics, and wrongfully convicted people (some by a majority verdict), we will explore the origins of the introduction of majority verdicts in England and Wales, to ascertain if they are rooted in racism. Might our jury system also be a 'largely unnoticed vestige of white supremacy'? We'll be sure to let you know what we find!

CCRC: Almost 20% Rise In Miscarriage of Justice Claims in the Last Year

The Criminal Cases Review Commission have seen an 18.9% rise in applications (1,198 to 1,424) Significant rise in applications from usually under-represented groups, including women. 25 cases were referred by the CCRC last year, including six people convicted of murder The Criminal Cases Review Commission (CCRC) received 1,424 applications between April 1 2022 and March 31 2023 from people wanting their conviction or sentence to be reviewed – an increase of 226 cases from last year, its Annual Report and Accounts revealed today (Tuesday, July 18). The Annual Report shows that even though the body completed 7.8% more reviews than in the previous year (1,183 to 1,275), the backlog of cases still under review at the end of the financial year grew significantly from 605 to 718.

In the last year, 25 cases were referred back to the courts – including six people with independent murder convictions – and 17 convictions or sentences were overturned following CCRC referrals. The referral rate was consistent with the historical average of around 2% of all applications. CCRC Chairman Helen Pitcher OBE said: "This has been another challenging year with applications on the rise and recruitment and retention a key issue. I'm proud of my team, their hard work, dedication and total commitment to our core purpose of uncovering and referring miscarriages of justice. I look forward to another year of challenge and development for all at the CCRC."

The CCRC keeps track of how closely applications reflect the demographics of people convicted of crimes and the prison population, and adjusts applicant engagement work to counter any potential under-representation of certain groups of people. An enhanced period of applicant outreach work – including giving training to prison and charity staff and improvements to the CCRC's website – has resulted in significantly more applications received from traditionally under-represented groups.

In addition to raw numbers increasing in almost every demographic including male (908 to 1,051) and white (587 to 738) applicants, the proportion of applications made to the CCRC from: women has risen from 6.8% to 8.5% (81 to 121 people) - people aged under 25 has risen from 8.3% to 9.4% (99 to 134 people) - those with literacy issues has risen from 11.3% to 17.9% (135 to 255 people) - people from an ethnic minority has risen from 24.4% to 25.0% (292 to 355 people)

However, there is still work to be done in a number of areas. While increasing significantly this year, people aged 16-25 represent around 12% of the population but only account for 9.4% of CCRC applicants. Further work will be done on social media, with youth charities and with young offenders' institutions to train staff to signpost potential young applicants to the CCRC's work. The CCRC's outreach team will also focus on engaging with potential Gypsy and Irish Travelling applicants, who currently account for 1% of the CCRC's intake despite representing around 3% of the prison population.

CCRC Chief Executive Karen Kneller said: Last year we talked about the need for us as an organisation to extend our reach and ensure that all of those who might benefit from our services know about us – and can access us. Our application rate has now increased to pre-Covid levels and beyond, but we remain concerned there are sectors who rarely apply to us, and we will be doing some scoping work to see what we can do to reach these groups. It might seem counter-intuitive to carry out engagement which might increase applications we are under pressure to manage the cases we already have, but it would be wrong to shy away from encouraging applications from those who we might be able to help."

Transparency is a key objective for the CCRC, and the report outlines key performance indicators against their target as well as the year-on-year change since the last report.