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Changing the Law to Avoid Paying Compensation to the Wrongly Imprisoned

Anne Cadwallader, Justice Gap: The Government are seeking to retrospectively legalise the wrongful imprisonment-without-trial of up to 200 Irish people in the 1970s – removing their right to compensation. The UK government is trying to insert a new clause into its highly controversial "Legacy Bill" on Northern Ireland which would remove the right to compensation for people illegally interned in the 1970s. Claims are already in the legal pipeline over wrongful internment which would leave London with a multi-million-pound bill compensating 200 people jailed without the proper personal consideration of the Northern Ireland secretary, as required by law. Those losing the right to compensation would include the former MP and Sinn Fein president, Gerry Adams. He has already won a legal action directing the Northern Ireland Minister for Justice to reconsider its refusal to award him compensation under the miscarriage of justice scheme.

Internment orders: The basis for the Adams compensation lies in a declassified document dated 8 July 1974 which was found by researchers for the Pat Finucane Centre in the National Archives in London. The document is a note from Charles Barry Shaw, the then Director of Public Prosecutions, to the Attorney General for Northern Ireland, Sam Silkin. It concerns whether it was in the public interest to prosecute Adams (and three others) for their attempt to escape from prison on Christmas Eve 1973. Shaw seeks direction from Silkin after receiving advice from a senior barrister. This advice raised the issue of whether the four internment orders, known as Interim Custody Orders (ICOs), were legal as they were not properly authorised by Conservative secretary of state for Northern Ireland, William Whitelaw.

"Possibly many other internees held under orders … may be unlawfully detained". Shaw notes "the possibility of their detention being unlawful must appear" (presumably in court and therefore in public) and that "possibly many other internees held under orders which have not been signed by the secretary of state himself may be unlawfully detained". The clear implication is that Shaw was concerned that the illegality becoming public would prompt compensation claims and be more embarrassing and damaging to the public interest (and Whitelaw's reputation) than dropping plans to prosecute the four men for their attempted escape. Using the 1974 document, Adams' legal advisors have successfully argued, during a ten-year court battle, that he and 200 others were imprisoned not only without trial but also illegally and that this was known at the time but was deliberately kept secret both from them and the courts.

Duty to examine: A second government document, marked "Secret" (which remains classified but has been viewed by Declassified UK) makes clear that Whitelaw's legal responsibility went further than merely rubber-stamping internment orders. It shows Whitelaw's duty was to view and examine the evidence for each and every order. He failed to do so, however, delegating authorisation to sign the documents to a junior minister. Under the then Labour government, the lively debate being conducted behind the scenes about wrongful internment orders was not disclosed at the time to either Crown or defence solicitors or to the judiciary.

The 1974 document records Silkin saying: "An examination of the papers concerning these prisoners revealed that applications for ICOs concerning these men had not been examined personally by the previous secretary of state for Northern Ireland [Whitelaw]". The document

also makes clear that the incoming Labour secretary of state, Merlyn Rees, did carry out his statutory duty by looking at each case before he took the decision to deprive anyone of his/her liberty by imprisoning them for an indefinite period of time.

Based on these two documents, the Supreme Court unanimously ruled in a May 2020 judgement that the order interning Adams was invalid. The court concluded that Adams "was wrongfully convicted of the offences of attempting to escape from lawful custody and his convictions for those offences must be quashed." The same would also be true of the other three internees who attempted to escape with Adams and any other internees whose internment orders were not examined and approved by Whitelaw. The estates of those who have since died can take legal action and many are already doing so.

No compensation: In May 2021, the Department of Justice in Belfast ruled Adams was ineligible for compensation. His lawyers succeeded in a judicial review challenge, however, and won. The court ruled that, as there had been a miscarriage of justice, he was innocent of the crime for which he was convicted and therefore he met the test for compensation under the Criminal Justice Act 1988. However, Adams has, to date, not received a penny.

It appears that, in an act of desperation to avoid paying out, the British government has decided to insert a clause into the unrelated "Legacy and Reconciliation Bill" to retrospectively legalise the defective internment orders. The bill provides the perpetrators of alleged past crimes with a conditional amnesty and closes down access to justice for the families of those bereaved in the conflict in Northern Ireland.

'Waiving the rules': Seamus Collins, of McGrory & Co solicitors, who acts for Gerry Adams, said: "It has been a long and very winding road and it is far from over yet. London's proposal would remove Adams' legal rights, compatible with the European Convention on Human Rights, and it will be vigorously challenged through the domestic courts and the European Court if necessary". Paul O'Connor of the Pat Finucane Centre said they had "Immediately realised … it had major implications for all those interned during Whitelaw's time as secretary of state. He was so insouciant about imprisoning people and throwing away the key that he never bothered to ask for, let alone, scrutinise the evidence".

Adams says London's current proposal is Orwellian, But it "comes as no surprise to those in Ireland and in countless other states around the world who have experienced British injustice. Another example of Britannia waiving the rules". The Northern Ireland Troubles (Legacy and Reconciliation) Bill is opposed by every political party in Northern Ireland, whether nationalist or unionist, as well as the Irish government and every domestic and international human rights organisation including Amnesty International and the UN.

There Were 9 Self-Inflicted Deaths of IPP Prisoners in 2022

Prompted by the worrying increase in self-inflicted deaths of prisoners serving Imprisonment for Public Protection (IPP) sentences in 2022. The Prisons and Probation Ombudsman (PPO) has published a Learning Lessons Bulletin on the self-inflicted deaths of IPP prisoners. The PPO's bulletin provides insight and learning for HM Prison and Probation Service (HMPPS) to ensure the risk factors associated with IPP sentences are identified and acted upon.

Ombudsman Adrian Usher said: "There Are Several Risk Factors Associated With IPP Sentences. HMPPS must ensure these high levels of self-inflicted deaths do not continue". In 2022, there were nine self-inflicted deaths of IPP prisoners – the highest number of self-inflicted deaths among the IPP prison population since the sentence was introduced. As of

December 2022, there have been 78 self-inflicted deaths of IPP prisoners since the sentence was introduced in April 2005. This is 6% of all self-inflicted deaths during this period.

Key findings highlighted are: ACCT management – Of the 19 self-inflicted deaths reviewed for this bulletin, only five prisoners were on ACCT monitoring at the time of their death. Recall – Our investigations have shown the impact of the "recall merry go round". Following recall to prison, IPP prisoners are faced again with the uncertainty around their sentence and if they will be released. Key work scheme - We found the key work scheme is not operating as anticipated in all prisons. Sentence progression – Setbacks in sentence progression can increase a prisoner's risk of suicide and self-harm.

Feelings of Despair' Leading to IPP Prisoner's Mental Health Problems

Jon Robins, JusticeGap: A psychologist has identified 'feelings of hopelessness and despair' induced by his indeterminate sentence as leading to the mental health problems of a prisoner who has spent more than a decade behind bars for stealing a mobile phone. The UN's special rapporteur on torture and other cruel inhuman or degrading treatment or punishment, told the Guardian that the case of Thomas White was 'emblematic of the psychological harm' caused by IPPs.

The prisoner's family is being supported by the campaign group JENGbA (Joint Enterprise Not Guilty by Association). A psychological assessment was commissioned by his solicitor Dean Kingham and the family in an attempt to move White into a more appropriate setting.

The report, which has been made available to the Justice Gap, calls for the prisoner who spends much of his time in segregation to be moved to a psychiatric hospital to deal with his personality disorder. 'I am concerned that Mr White would remain incarcerated indefinitely due to his continual failure to complete the necessary treatments in prison,' it concludes.

The psychologist was asked to take a view on whether the indeterminate nature of IPP sentences created a psychological burden on the prisoner – a point addressed in the recent House of Commons' justice committee report (see here). 'I have been asked to comment on whether the IPP sentence and a sense of hopelessness is contributing to his current mental health situation having regard to the Justice Committee report. Mr White did describe a sense of hopelessness about his sentence and the outcome of recent parole hearings. It is probable that his negative experiences have contributed to the development of his persecutory delusion systems. Mr White's views mirror those identified in the report which emphasises the psychological harm caused by IPP sentences, leading to feelings of hopelessness and despair, which presents a challenge to their progression.' Thomas White's psychological assessment

Thomas White is now 39 years old with a 13-year-old son. In 2012, he received an IPP sentence for robbery of a mobile phone and ordered to serve a minimum tariff of two years just months before IPPs were abolished. 'If Thomas had been sentenced four months later, he would not be in prison now,' the Conservative MP for Bury North James Daly, told the House of Commons in April. 'That in itself tells a tale… he should've been released after his tariff of two years, so why is he in prison 10 years later? It is because his mental health has taken a huge blow during that period. He suffers with psychosis and various other mental health traumas. Where has that left Thomas's family? His 13-year-old son has been left without a father. He has been moved to 16 times, and on many occasions hasn't been given access to the appropriate resources because of his mental health challenges.'

'Something broke in my brother' His sister, Clara, spoke to the Justice Gap. She recalled a time when she herself was hospitalised for six days with exhaustion as a result of her brother's increasingly alarming behaviour in prison. 'We are a Christian family but his faith became unhealthy. Something had broken in my brother and he began to tell me that he was Jesus Christ and he was going to save everybody,' she recalled. 'He told me he just needed to get out of segregation and start blessing people. We started receiving phone calls from friends he had in Norwich prison that he was wearing his own bedding. It must've been very disturbing for the other prisoners having this man walking up and down thinking he was Jesus Christ.'

Clara said the officers decided to unlock him last 'because it was causing other prisoners to feel uncomfortable'. 'There wasn't much food left and he started to lose weight. He had also started hallucinating and hearing voices.' White is 6"4' but presently weighs only nine and a half stone. 'Thomas spends a lot of a lot of time in segregation. To be honest, he's adapted to segregation. He says: "It's better because they bring me medication to me on time so I don't hear the voices. When we're on the wings, we have to wait ages for our medicine."'

She said her brother had been 'in and out of prison' before 2012. 'When he was younger, he went to special needs school – he never went to mainstream school. He hated it. There was always something a bit different about Thomas, he couldn't sit still. He was only 11 years of age when he was placed in a secure institution, and he has been institutionalised from that age. Clara White says her brother stole the phone that led to his conviction from two Californian street preachers in central Manchester after he had been binge-drinking. Apparently he discussed the bible with the two men, 'hugged them and kissed one on the forehead' before stealing the phone. She says his prior offending behaviour was non-violent. 'He was a shed thief, a bike thief. He never hurt anyone. I don't defend him – he should've got a custodial sentence.' Does she ever think Thomas would be able to live independently? 'I pray that he will. He needs to get to hospital and he needs to have the medical care that he is entitled to. I'm trying to get him into hospital, not released. He wouldn't survive at the moment. He needs constant care around the clock. If you love somebody, you want the best for them. I want him in hospital.'

Sean Rigg: Police Watchdog Issue Unprecedented Apology to Family

INQUEST: Fifteen years after the death of Sean Rigg, the Independent Office for Police Conduct (IOPC) has made an unprecedented unreserved apology for its failings and those of its predecessor, the Independent Police Complaints Commission (IPCC). This is in connection with the police misconduct investigations into Sean Rigg's death, including the long delay in bringing them to a conclusion; and for not giving Sean's family prior notification of a settlement of a civil claim brought against the IOPC by three of the police officers.

One period of delay in the long history of this case was described in a judgment of the Hight Court in April 2018 as 'extraordinary and indefensible' with the Court noting that the IPCC had accepted that it had breached its statutory duty in conducting an efficient investigation. In a letter to Marcia Rigg dated 21 August 2023, published in full by the IOPC today together with a background statement which provides an agreed context to the apology, Tom Whiting, Acting Director General of the IOPC says as follows: 'I am aware that Dame Anne Owers, on behalf of our predecessor, the IPCC, previously apologised to you and your family in May 2013 for shortcomings identified in the Casale review regarding the IPCC's first investigation…and the length of time it took to get to that stage, acknowledging that those failings and delays added to the distress and grief of the Rigg family. I wish to apologise to you and your family not just for the delay in the original investigation but also for all of the IPCC's delays thereafter including in completing the second investigation and the time it took to bring matters to a conclusion.

Also, given recent events, I consider it appropriate to personally apologise to you and your family… for not giving proper consideration to informing you at an earlier stage of a civil claim brought against the IOPC by some of the officers investigated following the death of your brother… I am sorry that consideration was not given to informing you of the claim at a much earlier stage. I also apologise for the way you came to learn of the settlement of the claim, the fact compensation was paid and apologies provided to the officers. I am aware that we did not inform you following the settlement and that you instead learned of it through an article issued by the Police Federation, which we did not know about until after publication (published 15 May 2023). I understand that this caused you and your family anxiety, distress and upset in addition to that which you inevitably suffered in the wake of your brother's death and investigations and proceedings that followed. For that I unreservedly apologise.'

In response the IOPC's apology, Marcia Rigg said: "Fifteen years since my brother Sean Rigg died at Brixton police station on the evening of 21st August 2008, the never-ending trauma and painful impact continues to haunt me, through no fault of my own or my family. The lengthy judicial process very rarely affords any proper accountability following deaths caused by excessive force and face down restraint by police officers. This only serves to 'fuel' already decades of injustices and more unnecessary deaths. In my view and that of many families and the public generally, there continues to be zero confidence in the investigative and judicial process, no justice even with damming evidence and countless reviews, proving that the whole judicial system in the UK is fundamentally flawed; institutionally racist; corrupt and a national public scandal.

Following arduous campaigning by myself, numerous legal challenges by my brilliant legal team and INQUEST and re-investigations by the IPCC and IOPC, all the officers involved in Sean's death walked away unpunished on 1st March 2019 following a gross misconduct panel chaired by Commander Julian Bennett. On 15th May 2023, I became aware via a Police Federation news article that three officers involved in the restraint of my brother received compensation and an apology from the IOPC for the IPCC's delays, which was almost 11 years by the time of the decision in March 2019. It was extremely upsetting for me to read this, not least because the compensation was paid in secret.

Last month, exactly 15 years after Sean's death, Tom Whiting of the IOPC unreservedly apologised for not informing my family of the fact that compensation was paid to three of the officers; for the history of delay; and the failings of the first IPCC investigation. The jury's findings in August 2012 and the independent Casale review of 2013 laid bare those failings. I appreciate these apologies and trust that the IOPC will now consider informing families and complainants of any similar compensation to officers by the IOPC as a matter of course, as a courtesy and in the wider public interest."

Background - Sean Rigg, aged 40, died at Brixton police station on 21 August 2008. During a medical emergency in a mental health crisis and numerous 999 calls to the police to take Sean to a place of safety, a hospital, Sean was instead chased by police officers from Brixton Police Station through the streets of Balham, South London and restrained on the Weir Estate by PC's Andrew Birks, Mark Harratt, Richard Glasson and Matthew Forward in a dangerous prone position for 7-8 minutes. After arresting Sean for the theft of his own passport, Sean was transferred to a police van, where he was placed in a dangerous position in a cramped caged area in the back of the van, and then rushed to Brixton police station, where he was kept in the back of the van in the station car park for about 10 minutes.

Sergeant Paul White failed to make a proper risk assessment on Sean's condition and gave false evidence to the inquest that he had done so while Sean was in the van. When shown CCTV footage that revealed he had not gone to the van, White conceded he could not have visited the van when he said he had. White said he made a mistake and was completely shell-shocked

when he saw the footage. Sean was removed from the van in a collapsed state and within an hour of being arrested, Sean was dead, practically naked wearing only speedos and handcuffs in a cramped cage surrounded by multiple police officers. They claimed that he was sleeping and faking unconsciousness. An inquest in 2012 found that Sean died of a cardiac arrest following restraint in the prone position, which was deemed 'unnecessary' and 'unsuitable'.

In May 2013, the IPCC published its independent review of its investigation into the death of Sean Rigg, conducted by Dr Silvia Casale with the support of James Lewis KC and Martin Corfe, carried out between November 2012 and April 2013. The unprecedented Casale Review was commissioned because the inquest revealed serious disparities between the evidence and findings of the inquest jury and the IPCC's own investigation findings. The Casale Review identified a litany of failings, including: • The IPCC investigation discovered photographic evidence of the restraint process taken on a witness's mobile telephone. However, the IPCC was not aware of the embedded timings of the photographs and therefore did not expressly request this information from their external photographic expert, who failed to present a full account that included these timings. In turn, none of the officers were asked to account for the evidence of those timings. • The failure to identify Sean Rigg by means of his own passport indicated 'poor police performance at an early point in police contact with Mr Rigg'. • The IPCC failed to scrutinise the CCTV evidence and accepted the evidence of PC Harratt and Sergeant White that the latter had visited Sean Rigg in the back of the van, when the CCTV evidence showed that this was not the case. • The lack of reference to race throughout the IPCC's investigation report was not a sign of non-discrimination, but rather an indication of malaise and/or lack of confidence about how to address racial issues appropriately, leading the Review to support INQUEST's views on the need for robust investigations into concerns of race discrimination. Eventually, after a second IPCC investigation, five officers (PC Andrew Birks, PC Richard Glasson, PC Matthew Forward, PC Mark Harratt and PS Paul White) faced gross misconduct allegations around failing to identify and treat Sean as a person with mental ill health, use of excessive restraint, and false evidence given to the Independent Police Complaints Commission (IPCC)* and at the inquest. In March 2019 an MPS disciplinary panel dismissed all the misconduct charges against the officers.

Over the past fifteen years Sean Rigg's death and the subsequent family campaign have given rise to significant public interest, and informed changes in policing practice, and reviews of policing and mental health. One lasting legacy that the family of Sean Rigg demand is for all senior police officers to disown the following statement made in the findings of the MPS disciplinary panel in March 2019: "From the experience of the two police members of the Panel, restraint in the prone position for seven minutes would not in itself necessarily be regarded as being for an excessive time."

Deborah Coles, Director of INQUEST, said: "The justice system has completely failed Sean Rigg and his family. From the outset there was a flawed investigation and a culture of obfuscation and denial from police officers responsible for the deadly restraint used against him. That any of those officers are then secretly compensated for delays is abhorrent. Fifteen years on and with no one properly held to account, this case provides a stark reminder of how the mechanisms for holding police to account are not fit for purpose. All those involved, the IOPC, CPS, Police federation and the Met Police should be ashamed. Black men continue to die after police use of dangerous restraint and there remains a culture of impunity and failure to enact meaningful systemic change. Police forces and the IOPC must consistently hold officers to account for the use of prolonged prone restraint well known to carry serious risks. Anything else is a licence to seriously injure or kill."

Daniel Machover of Hickman and Rose solicitors, who represents Marcia Rigg said: "The IOPC must fully absorb the lessons from past failures in this and other investigations into the use of force. The IOPC needs to go beyond this unprecedented and very welcome apology. It needs to unequivocally support Marcia Rigg's call for the end of prolonged prone restraint. Beyond that, the IOPC has a long road to travel to fulfil its important public function, especially as regards ensuring accountability for the unlawful use of force by police officers We see a consistent failure in current cases to critically examine and thoroughly investigate police officers use of force, whether resulting in death or serious injury. Investigators are unquestioning even when the evidence of excessive use of force is staring them in the face and they consistently misapply their own low threshold test for whether to commence formal disciplinary processes and/or criminal investigations, feeding directly into a culture of absolute impunity.

The message now being sent to serving police officers by the IOPC seems to be 'don't worry, we've got your backs'. How that helps to promote the independence of the IOPC, ensure accountability and enhance public confidence in the police complaints system is a mystery to me."

Operation Safeguard: Police Get Payments but no Prisoners

Some police forces have been paid hundreds of thousands of pounds to house prisoners in their cells – even though no prisoner has yet been sent, an investigation has found. Last November, in the face of a capacity crisis in prisons, the Government triggered Operation Safeguard. This arrangement, last used 15 years ago under a Labour government, permits prisoners to be put up in police cells when local jails are full. Between February and June, police cells were used to house prisoners on 871 occasions. Mostly it happened in the north of England – including 209 times in Greater Manchester, 125 times in Lancashire, 98 times in Northumbria and 77 times in West Yorkshire.

However, the figures also showed that the Government paid Essex police £219,003, Avon and Somerset police more than £250,000, and South Wales police £690,639 to provide cells. None of the three forces were sent any prisoners during the period covered by the figures. The number of prisoners in England and Wales has risen by 4,800 since the start of 2023. The increase had been predicted by Ministry of Justice forecasters, who said the prison population would rise as a result of Government policies including tougher sentencing and the hiring of more police officers. Ministers have pledged to build 20,000 extra prison places at a cost of £4 billion, but the programme is behind schedule and three out of six promised new prisons have not been granted planning permission.

'Can't Buy My Silence' - End the Misuse of NDA's

A global campaign committed to end the misuse of Non Disclosure Agreements (NDA's)

Inside the solicitor branch of the legal profession, a lot of hard thinking is being done about the inappropriate use of non-disclosure agreements (NDAs), while an argument is breaking out between the Bar Council and the Legal Services Board (LSB).

The Bar Council is to meet 'Can't Buy My Silence' in the wake of its criticism of the barrister body's stance. NDAs create a perfect bubble wrap for organisations and corporations covering up misconduct and inappropriate behaviours that might otherwise harm their reputation. Part of this bubble wrap is that since these agreements are 'Secret', and talking about an NDA means breaching it, how then to prove that this is happening, its extent and its consequences?

Despite acknowledging that barristers are rarely involved in settlement negotiations and the inclusion of NDAs, the Bar Council scoffs at the idea (describing it as "very muddled thinking") that some NDAs might be illegal or unenforceable, and questions why the SRA has issued any advice at all. We beg to differ. We see NDAs that not only circumvent protected disclosures under whistleblowing legislation, but are so broad (no exceptions, even for talking to family members or a therapist) and unreasonable (an NDA is always a forever gag), as well as negotiated between parties of widely disparate bargaining powers, they are of questionable legality. Recent US and Canadian case law bears this out. The Bar Council argues that there is "no evidence" aside from "anecdote and headlines" that NDAs are a problem. Again, we must correct it.

Besides the rapid growth of scholarly articles examining NDA practice, Can't Buy My Silence has now gathered survey data, in partnership with Speak Out Revolution, from almost 2,000 individuals and detailed personal testimonies from nearly 100 others. This data is highly consistent, describing many characteristics which call the legality of their NDA into question. For example, virtually no one we have spoken with or heard from in the past two years understood that certain disclosures were protected regardless of an NDA, nor did they foresee (or sometimes even read the NDA clause until months later) the impact of being gagged and thus unable to warn others on their psychological well-being – 95% say that they have suffered mental health consequences.

Many describe "take it or leave it" pressure to sign in a very short time frame with no advice about alternative ways to protect their own privacy (for example, a one-sided confidentiality clause) that does not require them in return to protect the other party, typically their employer or a senior figure. Tellingly, NDAs are becoming so ubiquitous that one third of survey respondents say that they passed on making a formal workplace complaint because they anticipated being required to sign an NDA. Having dismissed the growing evidence of NDA abuse as anecdotal, the Bar Council statement then repeats the most frequently stated and, dare we say, anecdotal claim about NDAs, that limiting them will mean that cases will no longer settle. This has always been an illogical assertion, since for the party insisting on an NDA, taking the case into the public domain is exactly what they do not want. In fact, data from the US Equal Employment Opportunity Commission shows settlements in sexual harassment cases, the most common target of legislation now passed in 18 US states, have risen somewhat and not fallen following legislation banning NDAs.

As we continue to work on similar law reform in England and Wales, we welcome the efforts of the LSB and the SRA to try to rein in the worst practices, and strongly disagree with the Bar Council that, unless and until NDAs are rendered unenforceable by legislation, nothing should or can be done. The ethical conduct of lawyers has always been much wider than simply getting away with avoiding doing something illegal. Our findings about the abuse of NDAs is borne out by the SRA's thematic review of NDAs published last month, which found solicitors themselves expressing a range of concerns about NDAs eerily similar to those described by NDA signatories: "From employees having insufficient access to independent legal advice, to employers imposing tight time limits and a sense of urgency to complete settlements, [we] also found significant imbalances in power between parties signing NDAs."

Also consistent with our own review of hundreds of NDAs, the SRA found that as many as 10% of law firms admitted that they had identified unenforceable clauses in NDAs but weren't sure what to do about them. All this evidence makes the (dare we say anecdotal and headline-grabbing?) statement of the Bar Council that "it would be quite erroneous to assume that all, or even most, NDAs or confidentiality agreements operate as some form of unfair gag or fetter on one party" look really out of touch. We hear from lawyers every week that they have changed their mind about NDAs having read our evidence about the long-term effects on complainants of being told they can never speak about what happened to them. Others are realising that they are making the silencing agreements over and over for particular individuals who are then able to continue to repeat their misconduct (think Weinstein, Phillip Green and more recently Crispin Odey, as well as hundreds more cases not yet public).

We find ourselves in agreement with the Bar Council on one point, however. It asserts that only Parliament can ultimately stop lawyers using NDAs. Earlier this year, legislation came into force that prohibits universities and colleges in England from using NDAs to cover up sexual misconduct, harassment and bullying. This ban needs to be extended to other workplaces and expanded to include the many cases of racial and other discrimination we also see being covered up with NDAs. This would bring the UK into line with many other common law jurisdictions where legislation restricting NDAs is either enacted or in progress including Ireland, Canada, the US and Australia. NDAs have become default clauses not only in employment law settlements, but also in consumer and services disputes, hiding critical information from the public, creating ongoing trauma for individuals and undermining public faith in the justice system. This needs to change. Julie Macfarlane and Zelda Perkins, Legal Futures

Stop Detaining Children in Luxembourg Prison - Urges Anti-Torture Committee

The Council of Europe's Committee for the Prevention of Torture (CPT) has urged the authorities in Luxembourg to stop detaining children in Luxembourg Prison (Centre pénitentiaire de Luxembourg). The CPT has also called for stronger action to tackle police ill-treatment and the excessive use of force, as well as urgent measures to ensure that all patients in closed psychiatric units can benefit from daily exercise outdoors in an appropriate space. These are among the main findings of a report published following the committee's latest periodic visit to places of detention in Luxembourg, from 27 March to 4 April 2023 the CPT underlines that materials conditions at Luxembourg Prison were unacceptable and unsuitable for children, without strict separation from adult detainees. The regime offered to children was also impoverished, meaning they were left to their own devices.

The committee also found deplorable living conditions for children held at the Security Unit of the State Socio-educational Centre (Unisec), reporting degraded material conditions and an impoverished regime, in particular following incidents of repeated violence. The CPT again called for changes to legislation in Luxembourg to strengthen guarantees over child placement procedures. In addition, the CPT received a number of allegations of physical ill-treatment, insults and threats from people detained by the police. The committee urged the authorities to stop using "security cells", measuring barely 2 metres squared, during police questioning and expressed on-going concern over security measures used by the police.

The CPT received no allegations of physical ill-treatment of detainees by staff in the prisons that it visited. It emphasised that material conditions were excellent in the new Uerschterhaff Prison (Centre pénitentiaire d'Uerschterhaff). During the visit, the committee also examined various structural problems affecting the closed psychiatry sector in Luxembourg. The CPT asked the authorities for further information on measures taken to deal with this situation, whilst expressing concern over the use of mechanical and chemical restraint measures and calling for stronger safeguards with regard to involuntary placement.

Prosecution Offer No Evidence in Perverting the Course of Justice Case

MR was charged with perverting the course of justice after it was alleged he claimed he was not the driver or registered keeper of a motor vehicle seen running a red light and making off from police near Victoria Station. A police sergeant gave a statement alleging he could see the driver while they were stopped for a few seconds at a red light. He arrested MR the next day and asserted the driver he saw was MR. No ID procedure was carried out. Omran challenged the identification evidence on the basis the police had already obtained MR's full name and address without setting out how. It was a case which required an identification procedure and none was carried out. The identification could not be trusted. Omran also submitted disclosure requests regarding the process by which MR was identified. Following receipt of the disclosure requests and applications the prosecution offered no evidence against MR.

Home Office Wrong to let Police 'Call the Shots' on Rogue Cops

Adam Bychawski, Guardian: The Home Office has come under fire for plans to let police officers "call the shots" in their own misconduct cases, which critics say will further weaken dwindling public confidence in forces. Last week, Suella Braverman announced senior officers will take over the chairing of police misconduct hearings from independent lawyers, known as legally qualified chairs, whom the government appointed in 2016 to prevent bias. The home secretary made the change following a review of the police disciplinary process in the wake of the conviction of David Carrick, who committed numerous sexual offences while serving as an officer in the Metropolitan Police.

But experts have told openDemocracy that police chiefs are already failing to discipline their staff and cannot be relied upon to chair the hearings. John Bassett, the president of the National Association of Legally Qualified Chairs, pointed out that neither Carrick nor Wayne Couzens, the Met Police officer who kidnapped, raped and murdered Sarah Everard in 2021, faced a misconduct panel before they were convicted. Both men had been accused of misconduct on several occasions. "If senior officers are going to take charge of misconduct panels now, they will be the same senior officers who've been in position for a number of years when these issues were ongoing," Bassett said. He warned that the move would cause public trust in policing – which is already at record lows – to plummet further. Bassett said: "It will result in a situation where public confidence will go down, because it'll look like the police are looking after themselves and overseeing their own decisions."

Lawyers were introduced to chair police disciplinary hearings in 2016, following a recommendation made in an independent review of the disciplinary process. The review was commissioned by then home secretary Theresa May in 2014, after a damning report found that the Met Police spied on the family of Steven Lawrence and that corruption may have compromised the investigation into his murder. Bassett said Braverman's decision to reverse the policy now suggests the Home Office "wants to go back to a system where the police call the shots". Major-General Chip Chapman, who authored the 2016 review that led to lawyers chairing misconduct panels, told openDemocracy that he recommended that senior officers should not chair disciplinary hearings to avoid "police marking their own homework". The Home Office itself said in 2016 that the introduction of legally qualified chairs was necessary "to ensure that decisions are objective and made independently of the police. People have an affinity to other people, because they don't want to see the bad in them. And that's part of the reason why, I guess some of the things in the Met happened in the last year," Chapman said.

'Total reform needed' - Metropolitan Police commissioner Mark Rowley backed Braverman's plan to have senior officers leading the disciplinary process. Last month Rowley accused the independent lawyers of being "fundamentally soft", which Bassett described as a "disgraceful slur", suggesting the commissioner was "diverting attention from the real problems". Bassett refuted Rowley's suggestion that senior officers would be tougher on misconduct, explaining that the softening of police guidelines on dismissals in recent years has made it harder to sack officers. In 2017, the College of Policing, the professional body which represents the police, introduced guidelines that advised misconduct hearing panel members to "consider less

severe outcomes before more severe outcomes. Always choose the least severe outcome which deals adequately with the issues identified, while protecting the public interest," the college said. Police accountability campaign groups have also criticised Braverman's proposals, claiming the changes are piecemeal and show the Home Office does not grasp the scale of the problem in policing. Lee Jasper, the chair of the Alliance for Police Accountability, told openDemocracy: "We don't believe that these Mickey Mouse cosmetic changes are gonna make one blind bit of difference. You can't just change the misconduct system, you have to change the whole system, the whole institution has to be completely democratised and modernised." Kevin Blowe, campaigns coordinator for the Network for Police Monitoring, said the reforms "continue to reinforce the notion that the extensive problems within the police highlighted over the last few years are the result of a 'few bad apples' and there isn't a much deeper, structural failure of accountability and transparency for acts of violence and discrimination that are an everyday part of policing in Britain."

A Home Office spokesperson said: "The government introduced legally qualified chairs in 2016 to bring crucial independence to the police disciplinary system. It is important that we retain that fair and transparent system. However, we also recognise the need for chief constables to have a greater say in the process, which is why we have announced a package of reforms, giving chiefs a greater role in the system including responsibility for chairing misconduct hearings, whilst retaining legally-qualified panel members. We are confident that this approach will strike the right balance."

'Less Transparent and Democratic': Damning Verdict on Rule of Law

Monidipa Fouzder, Law Gazette: Law-making has become less transparent, less accountable, less inclusive and less democratic, legal thinktank Justice has said in a damning report published today on the government's approach to the rule of law. Justice says the UK has regressed significantly on multiple fronts. 'There are multiple reasons why we have reached the parlous state we are in,' chief executive Fiona Rutherford said. 'Each one viewed in isolation does not amount to the wholesale negation of the rule of law - but taken together they create a picture suggesting that the rule of law is being incrementally undermined. We believe we have reached a tipping point and are determined to highlight a route back, before the UK's standing both at home and abroad is fatally diminished for a generation.'

The report says public consultations are too often poorly conducted, if at all. So-called 'Henry VIII' powers, which allow ministers to amend or repeal laws through secondary legislation with little parliamentary scrutiny, have become more prevalent. Approaches to tackling inequality and discrimination are 'unfit for purpose', the report adds. The Equality and Human Rights Commission's budget has plummeted from a peak of £70.3m in 2007 to £17.1m today. Policymakers are not conducting equality impact assessments as a matter of course. For instance, the Illegal Migration Act lacked such an assessment until after its passage through the House of Commons. Recommendations include repealing recent legislation 'undermining rights protections for vulnerable groups', such as the Illegal Migration Act and Public Order Act 2023, protecting judicial review from further curtailment, and more equality and impact assessments for legislation. The government should stop engaging in 'hostile and disparaging' attacks on the judiciary and legal profession, which can undermine public trust. A MoJ spokesperson said: 'Our system of independent judicial decision-making is a key part of the rule of law. It is a long-established safeguard for fairness and freedoms in our society, and a cornerstone of our democracy. 'Everyone is entitled to representation whatever their case or their cause. We have always been clear that no lawyer should suffer harassment or abuse for doing their job.'

The Law Society welcomed the 'timely' report. President Lubna Shuja said: 'We share the concerns of JUSTICE over what has been a gradual and worrying trend towards the erosion of fundamental principles of the rule of law. 'Successive pieces of legislation, including the Illegal Migration Act and the now aborted Bill of Rights Bill, have sought to disregard our obligations under international law. They have rolled back legal protections for human rights and created undue barriers to accessing justice. We are also concerned about the government's attacks on lawyers. No lawyer should be criticised, or made the subject of a targeted campaign, for doing their job. Lawyers who represent their clients are not only doing nothing wrong, they are doing exactly what they are supposed to do, in playing their part to ensure that the rule of law is upheld.'

Jails at Breaking Point Over Exodus of Trained Guards

Holly Bancroft, Independent: The staffing crisis in UK prisons has been laid bare as new figures show thousands of the most experienced officers have quit the service, leaving jails vulnerable to increased violence, instability and control by gangs. Analysis by The Independent shows that some 60 per cent of officers across UK prisons had more than 10 years of experience in 2017, but that figure had plunged to around 30 per cent by June this year. More than 1,000 of these more experienced prison officers have been lost in the past year alone. At the same time, the proportion of officers with less than three years of experience has risen from 27 per cent in 2017 to more than 36 per cent.

Experts warned that inexperienced staff had less confidence to deal with violence and organised crime bosses on prison wards while being left without support or mentoring. Labour said the scale of experienced staff leaving the service was "frankly alarming". The figures are revealed as an investigation was launched into how terror suspect Daniel Khalife managed to escape HMP Wandsworth, with Charlie Taylor, the chief inspector of prisons, saying the single biggest problem facing that prison was a lack of experienced staff. Mr Taylor also told The Independent that governors, prison officers and prisoners were concerned about "very inexperienced staff who just don't know the ropes".

"That's fine if you've got one or two because you can mentor them or look after them. But we often come across instances where inexperienced staff are being mentored by those who are only slightly more experienced than them," he said. He said increased prison violence created a "vicious cycle" where staff wanted to quit, leaving the jail with less supervision, and causing violence to increase. Steven Gillan, general secretary at the Prison Officers Association, said young staff were "being left to their own devices" without sufficient mentoring, which left them open to manipulation by organised gangs.

"These young staff ... 18, 19, coming in now, they're not getting the same mentoring that I had. They've been neglected. You have prisoners who will manipulate that [inexperience] and suss out the confidence of staff and bully and intimidate them into their way of thinking, which is quite wrong." Andrew Neilson, director of campaigns at the charity Howard League for Penal Reform, said the loss of "so many experienced staff" was one of the key factors driving the "crisis" in prisons. He said the situation had "created instability at every level of the system", with "overstretched senior leadership teams in a state of flux while new staff with little training are parachuted in". Sir Bob Neill, a Tory MP and chair of the Commons justice committee, described the retention of experienced officers as a "problem". There were over 11,100 prison officers who had served for 10 years or more in the service in 2017. This has now fallen to just 6,681 in the latest statistics from June this year.