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Sean Hogg Convicted of Raping 13-Year-Old Girl in Scotland Acquitted on Appeal

Libby Brooks, Guardian: A man who prompted an outcry about lenient sentencing for young offenders when he was given a non-custodial sentence after his conviction for raping a 13-year-old girl has had that conviction quashed. Campaigners and politicians reacted with outrage in April after 22-year-old Sean Hogg was given a 270-hour community payback order by a judge, Lord Lake, who said that had he been older than 25 when he committed the offence he would have faced a four- or five-year custodial sentence.

The Scottish Sentencing Council's guidelines on young people, which came into effect in January 2022, advise against custodial sentences for those under the age of 25, and recommend that judges take into account an offender's intellectual and emotional maturity. They have been challenged after a series of cases in which violent and sexual offenders were given lighter sentences on account of their age.

Hogg smiled as he left the court of criminal appeal in Edinburgh on Wednesday morning after the judge Lady Dorrian told him: "There was an insufficiency of evidence for a conviction and the inevitable result of the appeal must be acquittal." Hogg, of Hamilton, South Lanarkshire, was convicted by a jury in the high court in Glasgow in April of raping a 13-year-old girl, who cannot be named for legal reasons, when he was 17.

In a statement released through her lawyer, Aamer Anwar, the girl said that while she appreciated that senior judges had reached their decision after very careful consideration, "that does not take away from the feeling of devastation and knowing that there is no hope of closure". Court papers set out allegations that Hogg had attacked the girl on various occasions between March and June 2018. As well as being ordered to carry out unpaid work, Hogg was put under supervision and placed on the sex offender register for three years.

He claimed he had been wrongfully convicted of the alleged attacks in Dalkeith Park, Midlothian, and appealed. At an earlier hearing, Donald Findlay KC told the court that legal procedures used in Scotland to establish the guilt of a rapist had not been properly followed in his client's case. Findlay said Lord Lake had told jurors in his legal directions that the girl's evidence could be corroborated by an account of a man who said she appeared to be "distressed" after the incident, but this was a misdirection, which resulted in Hogg's wrongful conviction. Corroboration is a unique requirement of Scots law, by which each key fact must be supported by two independent sources of evidence.

The solicitor general for Scotland, Ruth Charteris KC, said the crown had decided not to seek a new prosecution. She accepted that the girl's experience of the criminal justice system "has been very difficult" and offered to meet her and her family. Sandy Brindley, the chief executive of Rape Crisis Scotland, told BBC Radio Scotland that it was clear the girl had been "completely failed" by the justice process. There's a young woman at the heart of this who has reported rape, which is not easy to do, gone through the lengthy justice process only to see the conviction overturned on the basis of a judge's misdirection."

The Scottish government is planning significant justice reforms including the creation of a specialist sexual offences court and a pilot of judge-only trials for rape cases, but these face serious opposition from the legal profession.

Women Being Let Down in Our Justice System

John Hyde, Law Gazette: Shadow attorney general Emily Thornberry has vowed to make far-reaching changes to help women being disproportionately mistreated by the justice system. She said Labour will review laws on stalking, whistleblowing and co-habitation to ensure women are better protected by the law. Speaking at the party conference in Liverpool on Tuesday, Thornberry confirmed that barrister Marina Wheeler, an employment specialist, had been appointed to review laws directly affecting women. Thornberry said that for too long, women in co-habiting couples have had no rights if the relationship ended.

She pointed out that if there were no joint arrangements or shared parental dues then men could leave their partners with nothing, 'especially if he has the means to take to court'. Thornberry suggested women were being forced to marry or stay in an unhappy relationship 'just to avoid ending up on the street'. Labour has said it wants to give women who live with their partners the same rights, including over property, as married women should the relationship end. She moved on to the issue of sexual harassment at work. Labour wants to change the guidance which states that personal grievances (for example bullying, harassment, discrimination) are not covered by whistleblowing law, unless a particular case is in the public interest. 'For too long a woman suffering sexual harassment at work has faced a terrible choice,' said Thornberry. 'If she speaks out the man responsible might be investigated but even then she still risks losing her job and wider employment rights while he just gets a slap on the wrist.'

Finally she told the conference that the criminal justice system must change its approach to stalking. Thornberry said women who report they are being stalked are being told by police they have to wait until something serious happens. 'It is time that we treated stalking with the seriousness it deserves, strengthening the use of stalking protection orders, developing the right for women to know the identity of their online stalker and working to end the practice of stalkers using our court system to bring vexatious claims against their victims.' Thornberry told the conference hall: 'No woman should have to live in fear, no woman should have to suffer in silence and no woman should have to hope for the best when it comes to keeping a roof over her head.'

Renting Foreign Prison Places—The Unanswered Question

Mark Day, Prison Reform Trust: Is renting foreign prison places the answer to the unfolding capacity crisis in English and Welsh prisons? The widespread criticism the proposal was met with when it was first floated by the justice secretary Alex Chalk in his speech to Conservative conference (PRT's own chief executive Pia Sinha described the proposals as "half-baked") suggests that many in the justice sector remain to be convinced.

As the CEO of the Howard League Andrea Coomber points out in a recent blog, the policy poses many more questions than it answers. Such arrangements raise a number of thorny constitutional issues including what laws and policies apply to individuals held in foreign prisons under such agreements, how complaints from these prisoners will be handled, and what access and oversight scrutiny bodies such as the prisons inspectorate and prisons and probation ombudsman will have. Louise Finer, a freelance researcher and a former head of the UK's National Preventative Mechanism, warns of a worrying accountability gap and legal vacuum that could open up for prisoners held under any agreement leaving them without sufficient protection from potential ill-treatment.

Sending UK prisoners abroad also raises serious moral and ethical concerns. The charity Prisoners Abroad has spoken out against the proposals, highlighting the levels of "isolation and trauma" caused by "being imprisoned so far away from home and family, not understanding the language and being excluded from opportunities to work and participate in effective rehabilitation programmes". It is pos-

sible that the UK government may choose to follow the Norwegian and Belgium example by seeking to house primarily foreign national prisoners in a neighbouring state. However, as the experience of these countries demonstrates, the path to such an agreement is not straightforward.

There are also a host of practical questions left unanswered by Alex Chalk's speech and the concise Ministry of Justice press release that accompanied it. What are the costs of the scheme? Which prisoners will be selected? How will transportation work? How will safety and wellbeing concerns be accounted for? What about visits and family contact? What about resettlement arrangements? Renting out prison places from foreign states is not new but it has only been tried in a small number of countries. In the past decade, both Norway and Belgium have rented prison places in the Netherlands in order to handle problems of overcrowding and limited capacity. The experiment in both countries had decidedly mixed results. Ultimately, neither Norway nor Belgium extended their contracts with the Netherlands. The Norwegian scheme ran for three years from 2015–2018 and the arrangements in Belgium for seven years from 2009–2016.

In the case of Belgium, the arrangement did not reduce overcrowding—which continued to get worse. In Norway, demand on limited prison capacity was managed though a 'prison queue' system where convicted individuals waited for a period of time before beginning their sentence. The length of time individuals were being forced to wait before starting their prison term had become an issue of political controversy. Therefore, the decision to rent out prison places in the Norwegian case was more to do with reducing the length of this queue than levels of overcrowding.

It is possible that the UK government may choose to follow the Norwegian and Belgium example by seeking to house primarily foreign national prisoners in a neighbouring state. However, as the experience of these countries demonstrates, the path to such an agreement is not straightforward. Both Norway and Belgium pushed to primarily house their foreign national prisoners in the Netherlands. In the case of Norway, the Netherlands pushed back and agreed to house a 'representative' Norwegian population. In the case of Belgium, the population held in the Netherlands was 40% foreign national. Ultimately, neither Norway nor Belgium extended their contracts with the Netherlands. The Norwegian scheme ran for three years from 2015–2018 and the arrangements in Belgium for seven years from 2009–2016.

But perhaps the biggest question left unanswered by Alex's Chalk's announcement is how it will solve the immediate crisis of capacity he is facing. Any such arrangement would not only require the agreement of a foreign state, as well as answers to all the legal, moral and practical questions thrown up. It would also require the introduction of legislation, which it was acknowledged in the Ministry of Justice's press release would be introduced as soon as parliamentary time allows. Recent reports suggest that Ministry of Justice officials are in discussions with Estonia about a possible agreement. But it is likely to be many months, and more likely years, before any such arrangement becomes a reality.

And yet, the latest prison population figures suggest we are a matter of weeks away from the prison system running out of road. Statistics published on Friday 6 October shows that the prison population stands at 88,016, a rise of 223 in just one week. Meanwhile, useable operational capacity in the system stands at 88,667 — meaning there is just 651 places left. It is rumoured that the crisis in the male estate may be even more acute. Far from providing an answer, this latest proposal risks being no more than a sideshow to a crisis which is now very rapidly coming to a head. The prime minister and his justice secretary and prisons minister are said to have discussed emergency measures at a crisis meeting in 10 Downing Street last month. However, ministers are understood to be implacably opposed to introducing an executive release scheme as the then Labour government was forced to do in 2007 in the face of a similar crisis. They have yet to come forward with a credible alternative.

Open Justice Today – Speech by the Lord Chief Justice

In one of his last speeches before retiring as the head of the judiciary of England & Wales, Lord Burnett of Maldon congratulated the courts on the way technology had enhanced open justice through live streaming, media access to remote hearings, and the broadcasting of sentencing remarks. But his boasts may have had something of a hollow ring to those who regularly struggle with under-resourced courts and baffling bureaucratic obstructions in their efforts to observe hearings which they are theoretically entitled to access.

The Lord Chief Justice's speech, '*Open Justice Today*', was delivered on 10 September 2023 at the Commonwealth Judges and Magistrates Conference 2023. It is a very good speech. It sets out the history of open justice (dating back to ancient times), its nature and the rationales underpinning it, and how it has changed with the benefit of technology in recent years. Indeed, if it had been delivered before 7 September, this speech would have made a very good response to the recent consultation on open justice launched by the Ministry of Justice (other responses to which have been collected on the Courts and Tribunals Observers' Network website). It echoes some of the responses he has made during his time in office to questions from the Justice select committee and other parliamentary committees and in his various press conferences.

But as he recognises in his opening paragraph — framing the speech in the context of the Latimer House Guidelines for the Commonwealth on Good Practice Governing Relations between the Executive, Parliament and the Judiciary — there are principles such as the separation of powers (or by implication, open justice) that "may look well on paper and sound well in speeches" but ultimately must lie in the "hearts and minds" of people. What can we do, he asks, not only to keep that principle in the hearts and minds of each nation, but, going further, "how can we open up justice today"? His potted history of open justice cites Jeremy Bentham on publicity as the "very soul of justice" and traces its origins back at least to Ancient Greece, where the trial of Socrates in 399 BC was conducted before a jury of 501 Athenians and a crowd of spectators on a hill. Among those observing and reporting it were Plato and Xenophon. In pre-Norman England, attendance by freemen at moot courts was compulsory. Though public attendance later became permissive, requirement for justice to be conducted orally in public remained a well established principle as the common law developed, its constitutional status recognised in the leading authority of Scott v Scott [1913] UKHL 2; [1913] AC 417, and reflected in international conventions such as article 6 of the ECHR.

While publicity may occasionally give way to the right to privacy, the interests of children, the safety of individuals or national security, "any limitations imposed on the principle are no more than strictly necessary to protect the [competing] public interest". Here, Lord Burnett sounds a warning note: "There is a developing chasm between the common law and civilian world in the approach to anonymisation. The common law dislikes it because it erodes open justice but the routine anonymisation of parties and witnesses is becoming more commonplace in Europe." Conceding that "Anonymisation is a large subject in itself" (and perhaps recognising that his Commonwealth audience are mostly from common law jurisdictions), he suggests that "That is a topic for another day".

Core elements: The four pillars of open justice, in Lord Burnett's opinion, are:

1)There must be provision for the public to attend civil and criminal trials while they are taking place. 2)Those present must be able to discuss, to debate, and to criticise what was said and done by the parties and the judge, including the judgment. 3) Documents submitted to the court and used within the proceedings should, presumptively, be available to the public and press – and be republished. 4) Participants' details must be made public (subject to well

recognised exceptions). In relation to this last requirement, he stresses the importance of naming the judge in all cases (again, something not always observed in civil law jurisdictions), as a way of ensuring proper scrutiny of the exercise of power by the state. "A judiciary that was hidden from public view is one that could all too easily and improperly become, in Lord Atkin's famous words, 'more executive minded than the executive'."

The present day: Lord Burnett notes that in recent times justice has become less local, and less well attended and reported, than in the past. The decline of local newspapers has substantially reduced the reporting of court proceedings, and "many cases are reported by journalists who do not have deep familiarity with court processes or the law". He suggests that the judiciary can help, for example by publishing more accessible judgments or providing press summaries. But technology can also help, by opening up the opportunity for public and media to see what is going on via remote access. Improved access can also come from broadcasting hearings.

How far should the broadcasting of proceedings go? Despite sounding a note of caution – "We have seen the broadcasting of some criminal trials around the world become live soap opera …" – he feels that in this jurisdiction it has been a resounding success. Having given his unequivocal support to the broadcasting of sentencing remarks soon after his appointment in 2017, he may have been frustrated over how long it has taken to implement, the first broadcast not taking place until July 22. Nevertheless, "it has become clear that this innovation has been a success, and successful beyond our expectations".

This is the aspect of his speech that has been picked up by the media, including the fact that it has helped reassure the public that judges are not as out of touch as they might have seemed (at least in the media's portrayal of them), and also younger and more diverse. He feels there has been a recognition that broadcasting and making available recordings of hearings "undoubtedly provides more open justice than merely enabling members of the public and press to attend hearings". He suggests the test to be applied, when considering the livestreaming or broadcasting of proceedings, is "why not?" He concludes by recalling that "sunlight is the best disinfectant" and observing that open justice is the "ultimate guarantee" of all the other principles underpinning fair trials and the proper administration of justice.

Comment: Whilst he may not have gone full Panglossian on the benefits of broadcasting and the openness of our justice, the Lord Chief Justice does seem to believe that it is all going swimmingly. Sadly, though, that has not been the experience of regular court observers and reporters. The speech reveals certain biases and habits of thought which appear to be common among the senior or managerial judiciary, who are perhaps less aware of what is actually going on on the ground.

Although he is right to say the "media act on behalf of the public; scrutinising and reporting what goes on in court on their behalf", the coverage provided by them is inevitably filtered by commercial viability and public interest or "newsworthyness". Other court observers are not so constrained, yet time and again the judiciary seem to proceed on the assumption that media access is sufficient to guarantee the maintenance of open justice, and that other observers somehow need to justify their wish to do so.

This bias is apparent in his discussion, in paras 27 and 28, of the benefits of providing remote access. "But there is no doubt," he says, "that the use of video-platforms has enabled properly interested individuals and media representatives, local, national and international, to attend and report on hearings." I have emphasised the phrase "properly interested individuals" because it imports an assumption that, if you are not the media, you need to explain and justify your reasons for wanting to attend. (I wonder if Plato and Xenophon were challenged on their desire to observe the trial of Socrates, as they joined that crowd on the Athenian hill.)

Lord Burnett goes on to say that "the regime, adjusted during Covid, enables remote attendance including by journalists for most cases. Our courts do not have the resources to enable that facility routinely. But in cases of public interest arrangements have been made to allow journalists to log into a hearing remotely. In some very high-profile cases scores or hundreds have done so which has resulted in more expansive and, dare I say it, more accurate reporting."

Again, this is all splendid, for the news consuming public, but it does seem to prioritise the needs of the media in providing a sort of open justice at one remove (via their necessarily selective reporting) rather than the actual live experience of open justice for those who would like to witness it at first hand. If technology can be harnessed, it should be available to all, routinely if possible. That should be the ambition, even if not the interim reality.

By way of comparison, it has been very interesting to watch, and see blogged and tweeted comments on, the live evidence being given to the Post Office Horizon IT inquiry. Of course it is reported in the press, but the fact that it can be watched as a live broadcast provides a fullness and immediacy of exposure that traditional media reporting cannot match.

The media are given special status in other ways, too. Access to certain hearings and information is confined to "accredited journalists", to the exclusion of other observers, despite Lord Burnett's recognition that many of them "do not have deep familiarity with court processes or the law". Accreditation is governed solely by who a reporter works for, not whether they have had any special training to ensure they understand the rules of contempt of court and the statutory reporting restrictions applying to cases involving children, etc. (Many of course do, but the point is that they are not required to demonstrate this.)

Accreditation nevertheless entitles reporters to attend private family hearings and youth court hearings otherwise closed to the public, and to see advance listing information not available to other court observers. In the family courts, access to private hearings (but not as yet to the listing information) has been accorded to "duly authorised lawyers", who are basically lawyers or legal academics blogging on other people's cases, with the benefit of a legal training that enables them to negotiate the pitfalls of reporting restrictions. Neither form of accreditation is necessarily proof against the failure of court administrators or judges' clerks to provide links for remote access in time to observe particular hearings, sometimes despite giving days or weeks of advance notice.

As that post demonstrates, there is also a problem in that any system according access to those with some form of accreditation, or by way of some kind of pilot scheme, is liable to give rise to a sort of flipside obstacle, where those without such accreditation, or in a court not covered by the pilot, are treated as disentitled to access. This is what seems to have happened with the Reporting Pilot (sometimes called the Transparency Pilot) launched pursuant to the President of the Family Division's current Transparency Review: non-pilot courts have taken it upon themselves to block the access previously accorded to accredited reporters, as Julie Doughty explained here: Media & bloggers observing hearings

In short, the system isn't working, and even the schemes designed to circumvent the non-working of the system, aren't working either. It is possible that the President of the Family Division, Sir Andrew McFarlane, is aware that it isn't all going swimmingly, not least because his Transparency Review has enjoyed the backing and voluntary participation of lots of people, but not much to show for itself after two years of assorted committee meetings: see The Transparency Review, reviewed. The Lord Chief Justice barely mentioned the review in his latest report to Parliament, and his plea in this speech to open up justice even more rather overlooks the areas in which, at present, it isn't open yet.

20,000 Trials Collapsed in Less Than Three Years as a Result of Missing Evidence

Jon Robins, Justice Gap: More than 20,000 trials collapsed as a result of evidence going missing in less than three years including more than 40 murder cases, according to data contained in a new study. In a new article for the International Journal of Police Science & Management, Dr Carole McCartney, an academic at Leicester University and a member of the Westminster Commission on Forensic Science, and investigative journalist Louise Shorter argue that losing investigative material is a hidden problem in the justice system and that its safe retention is 'critical' both to the system of criminal appeals and the re-investigation of 'cold cases'. The new article features data from the Crown Prosecution Service on the impact of lost materials on prosecutions. It reports that between October 2018 and August 2021, some 20,838 cases collapsed pre-trial due to missing and lost evidence, including 42 homicides and 364 sex offences.

The research follows an exchange with the Criminal Cases Review Commission in 2019 when the authors were challenged by the miscarriage of justice watchdog 'to prove there is a problem'. 'The CCRC do not (publicly) acknowledge that loss of materials is impacting their work, and the courts do not view the loss of materials as sufficient reason for a trial to be discontinued or an appeal to be heard,' McCartney and Shorter argue. They call for proper resourcing for police storage facilities as well as adequate training for staff. 'Forensic regulation could not be said to have any (effective) oversight of this area, the College of Policing has no apparent interest and the National Police Chiefs Council and Forensics Capability Network may have written guidelines, but take a little role in overseeing the implementation.'

The authors highlight this year's review by Baroness Casey which detailed the 'dire state' of police property storage including 'freezers crammed full of evidence samples, which were overflowing, frosted over and taped shut'. 'The unit's freezers, which held and preserved evidence obtained from victims and survivors of sexual violence including swabs, blood, urine and underwear, would be so full it would take three officers to close them: one person to push the door closed, one person to hold it shut, and one to secure the lock. All the fridges used for rape kits were in bad shape, packed and ruining evidence. In the heatwave in 2022, 'G' said that one freezer broke down and all of the evidence had to be destroyed because it could no longer be used. 'G' said a general email had been sent round to this effect and that it meant that all those cases of alleged rape would be dropped. 'G' also said she had 'lost count' of the number of times she had asked a colleague where the necessary evidence was before being told that it had been lost.' McCartney and Shorter also highlight the 'worrying inconsistency' and 'confusion' between police forces in their approach to retention of investigative material. They also argue that minimum retention periods – 30 years for serious crime – need to be longer. It is 'near impossible for prisoners who have been wrongly convicted to appeal quickly and it can take decades to re-investigate a case, particularly if the CCRC are involved, and this may take place after release,' they say.

Sentence Reduced as Remand Time not Deducted

The Court of Appeal reduced a man's sentence because the time that he spent in prison on remand was not deducted from the sentence when it was imposed in the Crown Court. The case of Jason Grainger was heard by the Court of Appeal following a referral by the Criminal Cases Review Commission (CCRC). In August 2018 Mr Grainger pleaded guilty at Maidstone Crown Court to charges of causing grievous bodily harm with intent and false imprisonment. By the time he came to be sentenced in October 2018, he had been remanded in custody for 199 days. The Crown Court sentenced him to life imprisonment with a minimum term of 10 years and the minimum term was later reduced to eight years on appeal. However, neither the sentencing judge nor the Court of Appeal took account of the 199 days Mr Grainger had spent on remand. In February 2022, Mr Grainger's co-defendant, Gavin Trendell, had the time he spent on remand deducted from his sentence by the Court of Appeal, following a successful referral by the CCRC.

Note: Although time spent on remand is automatically deducted from most prison sentences, this is not the case with a discretionary life sentence. When imposing such a sentence the law states that a judge must "take account" of any time spent on remand when calculating the minimum term. The judge therefore has a discretion not to credit the time spent on remand, but in the absence of any compelling reason(s) generally will do so.

Whitehall's Cover-Up of SAS Killings in Afghanistan

Richard Norton-Taylor, Declassified UK: An independent inquiry has heard shocking allegations of how SAS soldiers engaged in a "widespread and systematic pattern of unlawful extrajudicial killings" - which were known at the highest levels of the UK government, even in Downing St, but covered up for years. The judge-led inquiry was forced on a reluctant Ministry of Defence (MoD) after allegations surfaced repeatedly in the media before families of Afghans killed by SAS troops, including the execution of Afghan males of "fighting age" between 2010 and 2013, took the claims to the high court. The inquiry has heard devastating allegations, some of them privately backed at the time by serving SAS troops, that were persistently ignored. Commanders attempted to block investigations by the military police, according to detailed claims backed up by witnesses.

Computer records of SAS activities are reported to have been permanently and deliberately wiped before they could be shown to military investigators. The inquiry is particularly significant with the combination of a catalogue of allegations backed up by detailed evidence shedding unprecedented light on the SAS, the least accountable of organs of the British state. The SAS – and its naval equivalent, the SBS – are protected by a wall of official secrecy even greater than that protecting the security and intelligence agencies, MI5, MI6, and GCHQ. The parliamentary Intelligence and Security Committee has been refused the ability to question the SAS even though Britain's special forces are operating increasingly closely in operations involving the intelligence agencies. So determined was the government to protect the SAS that it insisted that the regiment should not be mentioned in the inquiry despite it being regularly referred with the unofficial backing of the MoD.

Special forces: An agreement was reached whereby Lord Justice Haddon-Cave, chairman of the inquiry, and government lawyers would refer, in their evidence, only to British "special forces". However, the media and lawyers for the Afghan families can refer specifically to the "SAS". Despite promises from the MoD that it will cooperate fully with the inquiry, evidence will be heard in secret when it is deemed necessary to protect "national security". The inquiry's terms of reference do not include the examination of intelligence available to the SAS even though its operations are described as being "intelligence-led". The inquiry heard accounts of the alleged killing of 80 Afghans in SAS night raids including an operation on 7 February 2011 when SAS troops shot dead nine Afghans, including a 14-year-old boy, while they were sleeping. Only three AK47 assault rifles were recovered after the nine had been killed. "We anticipate the evidence from the families will be that they were shot in bed, most likely when asleep," Oliver Glasgow KC, counsel for the inquiry, has said. He added that photographs of the bodies suggested Afghans may have been shot at close range. An SAS night raid on 16 February 2011 resulted in four members of one family being killed, including a man described by British intelligence as a Taliban military commander. His family says he was "a student in Lashkar Gah and so could not have been an insurgent.

Financial Trader Carlo Palombo - Conviction Referred to Court of Appeal

A financial market trader's conviction has been referred to the Court of Appeal by the Criminal Cases Review Commission (CCRC). Carlo Palombo was found guilty of conspiracy to defraud by rigging the 'EURIBOR' ('Euro Interbank Offered Rate') benchmark interest rate between 1 January 2005 and 31 December 2009. He was convicted of conspiracy to defraud in March 2019 at Southwark Crown Court and sentenced to four years' imprisonment. Mr Palombo applied to the CCRC in July 2023, the same day that it was announced the CCRC was referring for appeal a similar conviction relating to 'LIBOR' (the London Interbank Offered Rate). A US Court judgment on LIBOR in January 2022 saw the convictions of two other former traders convicted in similar circumstances, quashed. The CCRC has concluded that there is a real possibility that the Court of Appeal will follow the legal approach taken by the US Court and overturn Mr Palombo's conviction.

CCRC Chairman Helen Pitcher OBE said: "Earlier this year we concluded that there was a real possibility that the Court of Appeal would overturn the conviction of Tom Hayes in light of the legal approach to the definition and operation of the LIBOR rules taken by the US Court of Appeal in January 2022. The CCRC recognised that Mr Palombo's case was not dissimilar to Mr Hayes' case. Following on from the Hayes referral and bearing in mind the similarity of issues we have concluded that the Court of Appeal will consider the EURIBOR rules in the same way, reasoning by close analogy with the US Court decision."

Death Of Alan Trinder - Inadequate Police Station Mental Health Assessment

Doughty Street Chambers: Alan Trinder, died on 27 August 2020 following a collision with an HGV, having parked his car before walking into the southbound carriageway of the M1 near Gilmorton, Leicestershire. Mr Trinder was 55 years of age and had been diagnosed with Unspecified Non-Organic Psychosis, following a First Episode of Psychosis in May 2019 following an act of serious self-harm after which he was admitted to hospital under s.2 of the MHA 1983. Alan had been caught up in an incident with local drug dealers being chased by the Police near his home after which he experienced an onset of paranoia and suicidal thoughts. He was prescribed anti-psychotic medication – olanzapine - and upon discharge was committed to the care of relevant mental health services for a period of three years. Alan ceased taking his medication in July 2020 but then initiated contact with his mental health team on 25 August 2020, voicing concern about his mental state. The re-starting of medication and warning signs of relapse were discussed.

On the morning of 26 August 2020 he suddenly and without warning drove off in his car whilst about to embark on a walk with his wife and their dog. He was known to have returned home telling neighbours he was headed to the Leicester area and it transpired that he had taken a large kitchen knife with him. After calling the mental health team, Alan's wife reported him as missing to Thames Valley Police. He was categorized as a high-risk missing person and information was thereafter passed to Leicestershire Police. Alan was found by in Leicestershire on the morning of 27 August 2020 and was taken to Euston Street Police Station in Leicester.

Concerns were raised by the Custody Sargeant as to Alan's mental health, and detention was declined. He then underwent a mental health assessment after which he was deemed to have capacity with no necessary admission to hospital and was thereafter voluntarily interviewed by the Police in respect of a suspected offence of possession of a bladed article. Whilst it was agreed between the mental health practitioner and the Police that Alan was to be escorted home, this was predicated on the basis that Alan would agree to be so escorted, without a contingency/alternative plan being formulated. Alan subsequently left the Police station,

finding his way to the place of his death within half an hour. The inquest explored the role of the local mental health triage car, consideration of use of s.136 MHA 1983 by the Police, core/risk assessments by a mental health practitioner and the nature of plans to safeguard Alan. A jury in the Leicester City and South Leicestershire Coroner's court directed by His Majesty's Assistant Coroner Susan Evans heard evidence over six days and concluded that Alan died way of suicide following a potential relapse of his mental health illness. The jury also found that the mental health assessment was not adequately performed with a lack of detailed exploration of on-going or historical events and lack of thorough pre-assessment. Furthermore, there was a failure to implement a safety plan, in the event that Alan chose to leave the Police station of his own accord. The lack of a safety plan, collaboration with third parties, exploration of a potential relapse as well as a consideration and management of risk plans were found to have more than minimally contributed to Alan's death.

David Rhodes Criminal Advocate Succeeds in No Case to Answer in Rape Trial

David was instructed to defend a serious and sensitive charge of rape involving three teenagers. His client had no previous convictions and was vulnerable. The case concerned a drunken encounter in a churchyard in a Surrey market town. Following cross-examination of Crown witnesses, David mounted a legal argument that there was no case to answer. The court dismissed the charge. The prosecution immediately indicated they would not seek to appeal the terminatory ruling. It is reasonably rare to succeed in a submission of no case to answer in a rape allegation, especially where the complainant has given a video recorded interview. Even rarer for the Crown not to appeal the dismissal of such a case. In this instance evidence which fatally undermined the allegation had been available to the prosecution within 24 hours of the complaint being made. Notwithstanding that, it took 3 years, an intelligent trial strategy, a crisp legal argument and an independent minded judge to bring the prosecution to an end.

Deportation of Convicted Foreign Nationals to be Speeded Up!

Jon Stone, Independent: The government will try and free up space in Britain's overcrowded prisons by speeding up the deportation of criminals from abroad, it has announced. The move is the first of a series of plans to be unveiled by the Lord Chancellor on Monday 16th October 2023, aimed at tackling the lack of prison space. Now ministers are to unveil a slate of emergency measures in a bid to free up space – including sending "foreign criminals" back to their country of origin sooner.

Currently, criminals from abroad can be sent back to their countries of origin in the last year of their sentence. Ministers say they are hoping to expand this period to 18 months. There will also be new immigration rules to ban people removed in the scheme from returning to the UK. Further measures are expected to be announced in a statement to parliament on Monday.

The government removed 3,100 foreign offenders in the year up to March 2023 – 10,500 remain in prison in England and Wales Lord Chancellor Alex Chalk KC said: "It's right that foreign criminals are punished but it cannot be right that some are sat in prison costing taxpayers £47,000 a year when they could be deported. "Instead of letting foreign nationals take up space in our prisons at vast expense to the law-abiding public we will take action to get them out of the country and stop them from ever returning."

The government is reported to be considering multiple short-term solutions, including telling judges they should avoid issuing prison sentences of less than 12 months, in favour of community sentences for offences such as shoplifting, public disorder and drink-driving.

Emergency Medical Association Rejects 'Excited Delirium' - USA

An emergency physicians group is disavowing "excited delirium," a controversial term that some police officers, clinicians, medical examiners and court experts have used to explain how an agitated person could die in custody through no fault of any force used to subdue them. Dr. Michele Heisler, medical director for Physicians for Human Rights, says that the American College of Emergency Physicians' (ACEP) move will take excited delirium off the table in court cases. "This is the final professional medical or psychological or psychiatric association to repudiate the term," she said. Excited delirium has been described by other medical associations as "associated with racism" and disproportionately used in the deaths of Black people. It was cited in one of the most high-profile cases of recent years: the death of George Floyd in 2020.

Prison Sentences Deliberately Delayed by Prison Capacity Crisis

Beth Gribble, Justice Gap: Prisons are now so overcrowded that judges have been instructed to delay the sentencing of of newly convicted offenders who are on bail. Speaking to the Times, a senior crown court judge stated that from Monday 16th October 2023, judges have been 'ordered/strongly encouraged' not to send a defendant who has been on bail to prison so as not to add to the prison population. The judge explained: 'We have been told that this is a 'short-term measure', but nobody knows what that means.' This instruction reportedly came from Lord Justice Edis, the senior presiding Judge in England & Wales, in a private call with senior crown court judges. A government source reportedly told the Guardian that this would only apply to those offenders who have been on bail throughout the court process and therefore who have already been assessed as lower risk. They will now remain on bail until their sentencing hearing, where it is deemed safe to do so.

Institute of Race Relations (IRR): Policing | Prisons | Criminal Justice System

Ministers consider the use of Pava (pepper) spray to incapacitate children in young offenders' institutions in UK following demands from the prison officers' union. When used in adult men's prisons, the spray is seven times more likely to be used on Black than white prisoners. Human rights groups bring a class action suit against the French police's use of racial profiling, calling for measures to end police identity stops and regulate the targeting of children. Home Office figures for police forces in England and Wales find that people self-identified or identified by police as Black were 5.5 times more likely to be subject to a stop-and-search last year, down from 6.2 in a similar period in 2021-22. (Liverpool World, 29 September 2023) CPS data released after a six-month pilot scheme monitoring racial bias in six regional areas reveals that more than half of those prosecuted under joint enterprise are from minority ethnic backgrounds (56 per cent), with Black people (30 per cent) appearing 16 times more likely be prosecuted. Prosecutions of children and young people also show racial bias. (Guardian, 30 September 2023) After policing minister Chris Philp proposes integrating data from the passport office, the immigration and asylum biometrics system and other national databases with the police national database (PNC) for facial images, dozens of MPs and peers join 31 privacy, race and civil rights groups calling for an immediate stop to the use of live facial recognition. The Met increases its patrols in parts of London after a video is widely circulated apparently showing people celebrating Hamas' attack on Israel and waving Palestinian flags. Suella Braverman tells chief constables that waving a Palestinian flag or freedom chants, as well as expressing support for Hamas, may be illegal, as thousands gather in London to protest Israel's siege of Gaza. Nearly 1,500 children were reportedly stopped and searched by Sussex police last year, accounting for 27 per cent of searches on all people.

Guardian View on Probation: Service Has Not Recovered From Privatisation Disaster

Probation was briefly a cause célèbre in 2021 when the partial privatisation overseen by Chris Grayling, in his disastrous tenure as justice secretary, was reversed. But while opponents of outsourcing were proved right when contractors failed to live up to expectations, the hoped-for improvement when the work was brought back in-house has not materialised. Last month's annual report by the chief inspector, Justin Russell, was the last of his four-year term. In measured language, and while making an effort to highlight good practice, it delivered the grim message that the service has "if anything got worse". In the first three months of this year almost 7,000 people were recalled to prison, contributing significantly to overcrowding. The vast majority had not reoffended, but had broken one of their release conditions. These can include rules on drugs and alcohol, and keeping in touch with a supervisor. Inspection reports show that the proportion of probationers whose needs are met by the service has declined since 2021's changes – making the recall figures unsurprising. The lack of senior people, many of whom left when the service was privatised, is not helping. Currently the service is 1,700 officers short of its target of 6,160, with unmanageable caseloads contributing to high rates of sickness and poor staff retention. The return to challenging face-to-face work after the pandemic also caused difficulties. Like most public services, probation needs to be properly funded. Mr Russell reserved his most serious criticism for grave failures in public protection. Last week saw the opening of the inquest into the deaths of Terri Harris and three children, who were murdered by Damien Bendall in 2022. He was on probation at the time and wrongly assessed as low/medium risk. The threat posed by Jordan McSweeney, who murdered Zara Aleena in east London last year, was similarly underestimated. Her family have been reported to be considering legal action.

INQUEST: No More Deaths Campaign

"The only thing that makes sense of the loss of your loved one is that maybe lessons will be learned and the same thing will not happen to someone else". Public and private bodies have a duty to keep us safe from harm and protect our lives, but every year hundreds of people die preventable state related deaths. These include deaths of people in police and prison custody, mental health settings and following disasters including at Grenfell and Hillsborough. In response, the public and bereaved families need transparency, accountability and action, so that changes are made to protect us and our families and prevent future deaths. Hundreds of vital recommendations are made following inquests and inquiries. Yet there is no system in place to oversee them or ensure changes are made. Potentially life-saving recommendations are too often forgotten, dismissed or simply not implemented. This leads to yet more preventable deaths and harms. INQUEST is calling for a National Oversight Mechanism: A new independent public body responsible for collating, analysing and following-up on recommendations arising from inquests, inquiries, official reviews and investigations into state-related deaths.

Why Is Change Needed Now? The current lack of transparency, responsibility and accountability for recommendations has serious implications for bereaved families. It also undermines public trust in the UK's investigatory framework and has a significant human and financial cost.

What Would a National Oversight Mechanism Do? Collate recommendations and public bodies' responses in a new database - Analyse responses from public bodies & issue reports - Follow up on progress, escalate concerns & share thematic findings