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# MOJUK: Newsletter 'Inside Out' No 976 (08/11/2023) - Cost £1

### Gross Misconduct by Met Officers Over Unjust Stop and Search of Black Athletes

*Rebecca Ingall, Justice Gap:* A police disciplinary panel has found that two Metropolitan police officers are guilty of gross misconduct in connection with the arrest of Bianca Williams and her partner Ricardo dos Santos. The two athletes were stopped by the officers in Maida Vale, London, on the 4th of July 2020 on their way back from training and had their baby in the car. The panel chair, Chiew Yin Jones concluded that the two officers, PC Jonathan Clapham and PC Sam Franks had been 'trapped in a lie' and that there was no objective basis for believing Dos Santos had cannabis in his car or on his persons. There were also three other officers involved in the hearing but the allegations against them were found to be not proven.

This case was brought by the director general of the Independent Office for Police Conduct (IOPC). As reported in the Guardian, Karon Monaghan KC opened the case on behalf of the IOPC and submitted that it would be argued that 'not only did the officers lie about smelling cannabis, they did so because Mr Dos Santos was black'. However, the panel concluded that it was not proven that the race of the athletes played a role in their treatment. The officers had also claimed that the Mercedes driven by the athletes was often associated with gang members, which had further fuelled their suspicion. However, it was submitted by Monaghan KC that 'it was obvious that she (Williams) was with her partner and her son rather than all being members of a gang.'

Chiew Yin Jones explained that: 'Given the breach of the standards of honesty and integrity, within an operational context, arising as it did during the course of an encounter with members of the public in which coercive powers were used, the panel found that the conduct of PC Clapham and PC Franks amounted to gross misconduct as the breach was so serious as to justify dismissal.' Speaking to the BBC, Ms Williams said: 'This is huge' and a 'massive step' but 'it shouldn't have taken three years to get to this result.' She also added that it was 'bittersweet' as 'unfortunately' no action would be taken against the other officers. Speaking outside the hearing, Mr Dos Santos had also said that 'little has changed in policing in London since the Stephen Lawrence case.'

### Jail Cells Without Toilets Persist in England Despite 'Slopping Out' Law

*Helen Pidd, Guardian:* Cells in some English jails still do not have toilets, leaving prisoners to defecate in buckets overnight and sleep in "inhumane" conditions, the Guardian has learned. The practice – known as "slopping out" – was supposed to be outlawed from 1996. But at least five prisons still have cells without sanitation, posing particular problems for elderly or disabled prisoners. In HMP Bristol, the chief inspector of prisons recently spoke to inmates who said they had to resort to using buckets and throwing the waste out of the window, which then splashed into the cells below. The smell of urine on the landing was "overpowering", Charlie Taylor reported.

Though prisons without cell toilets are supposed to operate "night sanitation" systems, allowing prisoners to be unlocked if necessary, many do not function properly. Prisoners who need to use the toilet join an electronic queue to be unlocked – usually for eight minutes – and many report long waits. At Grendon, a so-called "therapeutic" jail in Buckinghamshire, most prisoners do not have in-cell sanitation and so rely on an electronic keypad system when locked up. "For some prisoners, this was not a problem, but many others told us of delays



to use the toilet, particularly in the morning and on landings which housed larger numbers of prisoners. Although prisoners had been provided with plastic pots to use in their cell for this purpose, this was not decent and they were unable to wash their hands," inspectors reported.

Long Lartin, a high-security jail in Worcestershire for about 600 men, also issues buckets to prisoners without in-cell sanitation to limit the number of inmates having to be unlocked. About half of all cells there do not have toilets. Sue Harrop, the chair of the independent monitoring board (IMB) at Long Lartin, said: "The cells on the four wings that lack running water and sanitation accommodate some elderly and infirm prisoners. The use of buckets is problematic when the men are locked up for extended periods due to regime restrictions. There is not even a sink to wash their hands after using their bucket. They are required to 'slop out' into an open sluice with no splash-guard or privacy for men emptying their pots. The board view this practice as inhumane." There are also no toilets in the original 1960s residential block at HMP Coldingley, a medium-security men's prison in Surrey.

Coldingley IMB's annual report, published in October 2023, said: "The much-needed refurbishment of the original old residential units is under way, but some of the existing call-bell sanitation facilities will remain in use for years and … appalling and inhumane conditions have recently been witnessed." The age-old practice of "slopping out" – referred to at the time by penal reform groups as the "single most degrading element of imprisonment this century" – was officially brought to an end on 12 April 1996, according to the National Council for Independent Monitoring Boards. On that day, the last plastic pot was ceremoniously discarded at HMP Armley in Leeds, West Yorkshire.

### Deaths in Prison Custody to September 2023 Assaults and Self-harm to June 2023

*Prison Reform Trust:* Comment: Safety in custody. Responding to the publication of the Ministry of Justice's 'Safety in Custody' Statistics Published 26/10/2023, Mark Day, deputy director of the Prison Reform Trust said: "At a time when the prison system in under severe pressures of under capacity and a lack of staff, it is not surprising that levels of safety are declining so markedly and severely. Among a range of worrying indicators, the last year has seen a 24% increase in the number of self-inflicted deaths, a 21% increase in self-harm incidents overall and a shocking 65% rise in women's prisons. Levels of self-harm are now higher than before the pandemic, and self-harm by women has now reached its highest level on record. It is hoped that a range of emergency measures announced last week by the justice secretary should begin to take the pressure of our beleaguered prisons. These troubling statistics underline the urgency of that task."

*Rosanna Ellul, Policy and Manager at INQUEST:* "These appalling statistics are yet another indictment of our unsafe prison system. Yet while these figures should be a sobering reminder of the inherent harms of prison, the government are determined to expand the prison estate by 20,000 places. As the prison population grows, we know the number of preventable deaths in prison will too. Successive governments have failed to properly consider measures to reduce reliance on prisons and, in the process, save lives. In the short-term, urgent action is needed to ensure people in prison have access to healthcare and adequate support. In the long term, we need a dramatic reduction of the prison population and more investment in alternatives which prevent harms in our society, rather than cause more harm."

*Safety in Custody Statistics, England and Wales*: Number of deaths decreased from the previous 12-month period. In the 12 months to September 2023, there were 304 deaths in prison custody, a decrease of 1% from 307 deaths in the previous 12 months. Of these, 92 deaths were self-inflicted, a 24% increase from the 74 self-inflicted deaths in the previous 12 months. In the most recent quarter there were 75 deaths, a 23% increase from 61 deaths in the previous quarter.

*Rate Of Self-Harm Incidents Increased in Both Male and Female Establishments.* There were 64,348 self-harm incidents in the 12 months to June 2023, up 21% from the previous 12 months, comprising of an 8% increase in male establishments and a considerable 65% increase in female establishments. Over the same period, the rate of self-harm incidents per 1,000 prisoners, which takes account of the increase in the prison population between this and the previous year, increased 3% in male establishments and increased 63% in female establishments. In the most recent quarter, there were 17,729 self-harm incidents, up 7% on the previous quarter, comprising a 16% increase in male establishments and an 11% decrease in female establishments.

*Number of Individuals Who Self-Harmed Increased.* There were 11,760 individuals who self-harmed in the 12 months to June 2023, up 7% from the previous 12 months. The number of self-harm incidents per individual increased from 4.8 in the 12 months to June 2022 to 5.5 in the 12 months to June 2023.

*Rate of Assaults Increased From The Previous 12-Month Period.* In the 12 months to June 2023, the rate of assaults was 285 assaults per 1,000 prisoners (23,557 assaults), up 9% from the 12 months to June 2022. In the most recent quarter, assaults were up 9% to 6,560 incidents and the assault rate was up 6% to 78 assaults per 1,000 prisoners.

*Rate of Assaults on Staff Increased From the Previous 12-Month Period.* In the 12 months to June 2023, the rate of assaults on staff was 96 assaults per 1,000 prisoners (7,908 assaults on staff), up 1% from the 12 months to June 2022. In the latest quarter the number of assaults on staff increased by 13% to 2,222 incidents.

*Number of Serious Assaults Increased.* 11 % of all assaults were serious. In the 12 months to June 2023, the rate of serious assaults was 33 serious assaults per 1,000 prisoners (2,704 serious assaults), up 16% from the 12 months to June 2022. The rate of serious prisoner-on-prisoner assaults increased 23% to 24 per 1,000 prisoners (1,986 incidents), and the rate of serious assaults on staff remained broadly stable at 9 per 1,000 prisoners (748 incidents) in the 12 months to June 2023.

**K.P. v. Poland Abuse by Prison Guard - Violation of Articles 5 & 3**

The applicant, Ms K.P., is a Polish national who was born in 1984. The case concerns the applicant's detention on remand for six years and her allegations of abuse of power by a prison officer during that time, leading to her becoming pregnant. She gave birth to her son while still in detention in 2015. Ms K.P. had been arrested in 2013 and charged with offences related to helping her husband set up and run a financial pyramid scheme that had allegedly defrauded 11,000 people. She was convicted at first instance in 2019 and sentenced to 12 years and six months' imprisonment. The proceedings are still ongoing at second instance.

In parallel, in 2019, the prison officer was found guilty in criminal proceedings of abuse of power and sexual abuse in the context of a relationship of dependence. He was given a suspended prison sentence and a fine. He was also reprimanded in disciplinary proceedings. He is no longer employed by the Prison Service and he has been deprived of his parental rights to Ms K.P.'s son.

Relying on Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights, Ms K.P. alleges that the length of her detention on remand was excessive. She also complains that the circumstances of her becoming pregnant while in detention were in breach of Article 3 (prohibition of inhuman or degrading treatment) and that restrictions on her having visits from her family were in breach of Article 8 (right to respect for private and family life).

Violation of Article 5 § 3 Just satisfaction: non-pecuniary damage: 6,500 euros (EUR)

The applicant did not submit any claim for costs and expenses.



**Institute of Race Relations: Normalisation of Anti-Palestinian Racism**

Racism, in essence, involves dehumanisation, the attaching of less value to certain lives. And it can also involve criminalisation, for example by turning one group into a suspect community needing control and harsher punishment. What we have witnessed here since 7 October is a transformation of a knee-jerk anti-Palestinianism into a fully-fledged anti-Palestinian racism permeating politics and British culture on a scale never witnessed before. For now the frameworks of the war on terror are superimposed on anti-Palestinianism, leading to the criminalisation of national symbols and cultural expressions in the diaspora such as the Palestinian flag or the Keffiyeh – moving the British Palestinian Committee to demand that public bodies 'uphold their legal responsibilities to protect equal participation in democratic and civic space, by defending the rights of Palestinians in Britain and those who stand with our people in a spirit of solidarity and common humanity'.

Over the last two weeks, alongside our regular Calendar of Racism and Resistance, IRR staff have trawled through both the mainstream press and NGO, human rights and civil liberty advocacy alerts, in the UK and Europe, to collate the cases that expose ever more fault lines in the fight against racism. The facts that we have documented in our special Calendar on 'Anti-Palestinianism, Suspect Communities and the Racist Backlash' demonstrate the normalisation of anti-Palestinian racism. It starts in law and governance, spreads to cultural institutions and the media. The latter, far from following journalistic codes of impartiality are now complicit in the dehumanisation of those of Palestinian descent who, like Liberal Democrat British-Palestinian MP Layla Moran or the Palestinian ambassador to the UK Husam Zomlot, are expected collectively to account for the actions of Hamas.

But media coverage, deplorable as it is, has been little more than a reflection of the anti-Palestinian instincts of the government, already embodied within counter-terrorism policing. A counter-terrorism policing document, it was reported in 2020, listed the Palestine Solidarity Campaign as an extremist organisation. (This classification is all the more obtuse given the green light to Palestinian solidarity implicit in the scores of UN resolutions condemning Israel for illegal occupation of Palestinian land and the illegal building of civilian settlements on land taken by force.)

But what is different today is that the criminalisation of solidarity with Palestine and the dehumanisation of Palestinians are now being reinforced by a Labour shadow cabinet that seems to have lost its moral compass when it comes to defending international law in the Occupied Territories. Cultural centres not just in the UK but across Europe, which are cancelling Palestinian artists, are also complicit, as are universities, now suspending students and silencing dissenting Jewish academics who call for an end to 'ethnic cleansing' and 'genocide' in Gaza. Sport has not been exempt from the political current, with pro-Palestinian footballers and swimmer Abdelrahman Sameh, particularly vulnerable to disciplinary action or other punishment, and in the case of Sameh, death threats.

Thus, a third element is highlighted in our special Calendar on war and suspect communities, and that is the racist backlash in the Islamophobic and antisemitic incidents that have taken place in Europe. There has been a huge increase in referrals of both antisemitic and anti-Islamic 'hate crimes' in London since the start of October (218 this year as opposed to 15 last year and 103 as opposed to 42, respectively). Jewish and Muslim communities feel threatened and in need of extra protection for their institutions. And here again we see the same pattern, where collective blame is placed on Jews for the actions of the Israeli government, or Muslims for the actions of Hamas. We cannot stand by when synagogues or Jewish schools are targets for arson attacks or vandalism, or when staff at a Palestinian takeaway report being too frightened to turn up to work because of daily death threats.

And in all this it is impossible to ignore the global situation – for global racism, that situates the West as 'collectively superior' to the fanatical and irrational Orient, is now so imbricated in domestic racism as to make it impossible to unpick underlay from overlay. Tragically, as history teaches us, in times of war, it is innocent civilians who suffer the most, whether it be the secular peaceniks of Be'eri Kibbutz, the 224 hostages seized by Hamas and held captive, the perennially displaced of Jabalia camp or those sheltering in the al-Ahli Arab hospital compound. But this does not mean that we cannot think beyond the current situation, or take the long view. This is not just an asymmetrical war militarily but also an asymmetrical media-complicit propaganda war which systematically obfuscates the roots of the conflict in dispossession, occupation, human rights violations and the breaking of international agreements and laws. We refer IRR News readers to our journal Race & Class that has, since 1976, under the guidance of Eqbal Ahmad, Edward Said and Ibrahim Abu-Lughod tried to rebalance the narrative – revealing for example the way Britain's Balfour Declaration paved the way for Palestinian dispossession and how Hamas, now denounced by Israel for its ISIS-style barbarism, was originally encouraged by the Israeli government so as to undermine the power of the PLO.

The lesson for anti-racists is that when you dehumanise a whole people, it has a profound effect on the culture and politics of society as a whole. And this is what makes it our duty to push back, before it sets a new standard and norm.

**Conviction Qquashed a Decade After Guilty Plea**

AA was a Syrian refugee. He was a teacher of English literature who had been conscripted into the Syrian army to fight in the civil war against his will. In November 2012, AA fled Syria and, under the control of agents, he travelled to the UK using a false identity document. Although UK Border Force granted him entry at Heathrow, he immediately turned himself into the police and claimed asylum. He was arrested and prosecuted for using a false identity document and remanded in custody. In parallel with criminal proceedings, AA instructed immigration solicitors to lodge his claim for asylum and he was interviewed by the Home Office, which later granted him refugee status.

Notwithstanding clear evidence that AA was a refugee who only committed the identity document offence whilst fleeing persecution, his then solicitor failed to advise AA that he had a lawful defence to the charge under s.31 of the Immigration and Asylum Act 1999 (which gives effect to the protections under the Refugee Convention). Instead, AA was wrongly advised to plead guilty to the offence. AA was sentenced to 6 months imprisonment which the judge described as an exceptionally lenient sentence because he was plainly fleeing persecution in Syria. It is remarkable that neither the Prosecution, nor the defence, nor the judge paused to consider that this amounted to a lawful defence to the charge.

For the last 10 years, AA has lived a law-abiding life in the UK, but he has been unable to obtain employment or British citizenship because of his wrongful conviction. By chance he learned from a fellow refugee in similar circumstances, that he may have an avenue to appeal his conviction. He then instructed Bindmans LLP who deserve enormous credit for their diligence and hard work in using Subject Access Review to track down and marshal long-lost documents from both the criminal and immigration proceedings in order to present fresh evidence to the Court of Appeal and overturn a miscarriage of justice.

The Court of Appeal was today persuaded not only that AA's conviction was unsafe – i.e. had AA been properly advised of his lawful defence it would "probably have succeeded" at trial – but that his then solicitor's failure to advise him of a lawful defence rendered his subsequent plea of guilty a 'nullity'.



**King's Counsel Secures an Acquittal in Murder trial**

Melanie Simpson KC has just finished a 7-week trial at the Old Bailey. Her client was accused of tying up and strangling a pensioner to obtain her life savings before embarking on a shopping spree. The deceased's body had been left to decompose. Melanie's client was pregnant at the time of her arrest and gave birth shortly before the trial began. Jointly charged with her boyfriend, the case presented a fierce cut-throat, with each defendant blaming the other. The case involved the instruction and cross-examination of numerous experts including pathologists, osteoarticular pathologists and DNA scientists. The jury acquitted their client of murder after just two days of deliberation.

What happened: A ruthless murderer strangled a pensioner before he and his girlfriend looted £13,000 from her bank account and went on a "massive spending spree". Xyaire Howard, 23, bound Susan Hawkey, 71, to extract her bank card PIN and knotted a ligature around her neck. Her body was discovered decomposing 20 days later under a duvet in the living room of her home in Neasden, northwest London. By which time, Howard and his girlfriend Chelsea Grant, 28, "burned their way through almost £13,000" of their victim's money in 146 transactions. Some money was sent to St Vincent and the Grenadines using money transfer services, a jury heard. Jurors found Howard guilty of murder while Grant was cleared of the same charge. Howard was also convicted by the jury of one charge of robbery and attempted robbery after the jury deliberated for 13-and-a-half hours. Jurors also found Grant guilty of three counts of robbery and one of attempted robbery of the victim. The couple were remanded in custody to be sentenced by Judge Judy Khan KC on December 8.

**Lack of Medical Intervention Probably Contributed to Death in Police Cell**

*Doughty Street Chambers:* Debbie Padley, a mother of four, died from a bilateral kidney infection after spending more than 16 hours in a cell in Tonbridge police station in Kent. On 23rd July 2021, Debbie was arrested after her ex-husband called the police, stating that she had assaulted him. However, Debbie told officers that, in fact, her husband had assaulted her, and CCTV footage from the property appeared to show him pushing her violently into a car. Nevertheless, the police arrested her and placed her in a cell overnight. Debbie died in the cell around 1pm the next day.

The jury identified multiple failings by Kent police whilst Debbie was in custody, including: A failure to complete an adequate risk assessment at the time of booking into the custody suite; A failure to place Debbie on Level 2 observations (every 30 minutes with rousals) because she had consumed alcohol; A failure to complete adequate Level 1 observations (every 30 minutes without rousals); and A failure to arrange for an in-person assessment by a nurse or healthcare professional. They specifically highlighted the 'inadequate communication' between officers in the holding cell and the booking-in desk.

This came after the jury were shown CCTV footage of Debbie appearing to be in pain – and repeatedly stating that she was in pain – whilst in the holding cell, which various officers accepted should have been passed on for the booking-in process. The jury concluded that Debbie's death was probably contributed to a lack of medical intervention at least five hours prior to her death, and that the absence of an in-person assessment by a nurse or HCP was a failure which was possibly causative. The jury also found that the failures to place Debbie on the correct level of observations, and to carry out the observations properly, were as a result of inadequate communication of training and procedures within Kent Police. The coroner, Mr Alan Blunsdon, stated that he would be writing to the Chief Constable of Kent Police regarding the lack of a nurse / healthcare professional in every police station in Kent.

**Stuart Layden: Murder Conviction Quashed For A Second Time**

*Law Society Gazette:* A murder conviction has been quashed for the second time due to an 'entirely avoidable' procedural error which Court of Appeal judges determined made the conviction unsafe. Stuart Layden was convicted in 2016 of murder after a second retrial following the earlier quashing by the Court of Appeal of his conviction. He was sentenced to life imprisonment with a minimum term of eight years and 359 days. He appealed the second conviction and the Court of Appeal ordered a retrial. Layden was not arraigned on a fresh indictment within two months of the retrial order and no extension of time was sought. In Stuart Layden v R, the lady chief justice and two other judges found, as a result, the Crown court did not have jurisdiction to retry Layden for murder.

**Juryless Trials in Rape Cases 'Will Undermine Public Confidence'**

*Law Gazette:* The criminal bar has resoundingly rejected a Law Commission suggestion of juryless trials in rape cases. Consulting on evidence in sexual offences prosecutions, the Law Commission asked if juries should be kept or removed. Highlighting the pros and cons of such a move, the commission said giving evidence in front of 12 laypeople could be traumatising for complainants, however juries are treated as fundamental to a fair criminal justice system. The Criminal Bar Association, in its consultation response, said removing the public as a jury would undermine confidence in the criminal justice system. 'Jurors are perfectly capable, if directed properly (and supported), of discharging their role in a sexual allegation case,' the CBA response said. 'Sexual offences trials involve assessments of the reliability of an individual's account, and often, sexual or domestic relationships between individuals. Many jurors have some experience of this in their own lives. This is much more likely to be the case that in prosecutions involving, for example, corporate fraud, organised crime, breach of health and safety legislation or corporate failure to prevent bribery or money laundering, where juries are asked to reach decisions in areas which may be further removed from their own life experience,' the CBA said.

The consultation refers to studies with mock jurors that found rape myths might have affected their verdicts. 'The entire basis for removing jurors on the assumption that they cannot reach verdicts based on fact and law due to myths and stereotypes is rejected and is not supported by the research done in this country on conviction rates and on myths and stereotypes,' the CBA said. The CBA's response also suggested that lawyers would boycott juryless pilot schemes, as has been demonstrated in Scotland. The Victims, Witnesses, and Justice Reform (Scotland) Bill would allow for a pilot of rape trials before a judge without a jury.

**Policing Minister Pushes for Increased Facial Recognition Technology**

*Nalini Rawal, Justice Gap:* Chris Philp has urged the doubled usage of facial recognition software and cameras, coupled with AI for tracking offending. This letter was published ahead of a global AI safety summit to be held in Bletchley Park later this week. AI facial recognition technology works by biometrically scanning faces and measuring features in order to map out an individualised vector for identification. Minister Philp says this vector would allow authorities to 'stay one step ahead of criminals. Proponents of this facial recognition technology point to the recent successful captures of three wanted suspects. Fears regarding the increased usage's impact on discrimination, privacy and human rights issues have prompted calls for cessation from a cross-party group of 65 peers and MPs, and have been echoed by organisations including Big Brother Watch, Amnesty International and Race Equality Watch. Former Brexit Secretary and member of cross-party group David Davis has called live facial recognition 'a suspicion-less mass surveillance tool that has no place in Britain'.



This technology has previously been criticised by an independent team of academic researchers from University of Cambridge for its failure to meet "minimum ethical and legal standards". This builds on a history of previous issues with police retention of personal images, with a watchdog referring to the lack of checks on balances on police access to sensitive data as an 'omni-surveillance society. The Home Office have dismissed these concerns, pointing to stringent guidelines when using facial data to counter concerns. These guidelines include visible notices in spaces where it is in use and automatic data deletion if no facial match is found. They cite optimization of police time and resources and dismiss concerns over discrimination and privacy, arguing that it would only be used where necessary and proportionate.

**One in Three Jailed Pregnant Women in England and Wales Still to Face Trial**

*Hannah Summers/Nic Murray, Observer:* Figures collected through a freedom of information request show that between April 2022 and March 2023, 34% of pregnant women in prisons in England and Wales for whom data was available were being detained before their trial. The statistics from the Ministry of Justice (MoJ) come amid growing concerns that prison is not safe for pregnant women and unborn babies and renewed calls for an end to custodial sentences for expectant mothers.

Two babies have died in England's prisons in recent years. In June 2020, a baby was stillborn at HMP Styal in Cheshire, and last week a vigil marked four years since the death of Aisha Cleary, whose 18-year-old mother was on remand when she gave birth alone in a cell at HMP Bronzefield in Ashford, Surrey, in 2019. Rianna Cleary lost her baby after repeatedly trying to call for help by pressing her cell bell. She was found cradling her deceased infant more than 12 hours later, having bitten through the umbilical cord. In July, an inquest found "serious failures" led to the death of Aisha, who "arrived into the world in the most harrowing of circumstances".

At a final hearing, a senior coroner will consider whether to make any recommendations to prevent future deaths. A prison ombudsman report published in 2021 criticised the care of Aisha's mother and concluded "pregnancies in prison should be treated as high risk by virtue of the fact that the woman is behind a locked door for a significant amount of time". Between 2022 and 2023 there were 44 births to women in custody, 98% of them in a hospital. Pregnant women in English prisons are seven times more likely to suffer a stillbirth than those in the general population. Kirsty Brimelow KC, a criminal barrister and former chair of the Criminal Bar Association, said there is widespread recognition that prisons are unsafe places for pregnant women but that the current law and guidelines – and their application – are failing to provide adequate protection for this vulnerable group. "Newborn babies dying in prison cells is tragically Dickensian and should not be happening in a 21st-century criminal justice system. There should be guidelines introduced that make clear the default position is that pregnant women should not be remanded in custody. The Bail Act 1976 should be further amended to enhance the right to bail for pregnant women. The Crown Prosecution Service needs to introduce guidance for prosecutors so they pay particular attention to bail for pregnant defendants. Such changes aren't complex."

Suzy, whose real identity we are protecting, spent six months in prison on remand before being acquitted at trial. She discovered she was pregnant when she was first admitted to the prison and her lawyers tried to get her bail but it was denied. During her time in prison, she felt constantly stressed about what would happen to her baby. She said that there was a lack of privacy and support and that she would often go hungry. She also feels she suffered an injustice being held in prison awaiting trial. "I lost half a year at university and when I went back, I owed thousands of pounds because I didn't complete the year. I was ordered to pay it back outside of my student loan as it's seen as a debt.

**Nicolas James Rogers ECtHR Dismiss Appeal**

Nicolas, is a British national born in 1991 and currently detained in HM Prison Shotts, Lanarkshire. In the early hours of 6 August 2017 the applicant arrived at a house party. In the course of the morning, after most of the guests had left, he stabbed a young woman in the chest, killing her. He had a history of mental health issues and was taking prescription drugs to address them at the time of the incident. The applicant was charged with murder and tried before a jury at the High Court in Glasgow. The prosecution led evidence that he had taken a very large quantity of alcohol at the party and had consumed both prescribed and illicit drugs (cocaine) prior to the stabbing. The applicant did not challenge that evidence. However, his defence was that while he had stabbed the victim, he had not been responsible for his actions on mental health grounds. The sole question for the jury was, therefore, whether he was guilty of murder or of the lesser charge of culpable homicide on the grounds of diminished responsibility as defined in section 51B of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act".

The applicant led evidence at trial from Dr C., a psychiatrist. In her written report, admitted into evidence, she expressed the opinion that the applicant suffered from an Emotionally Unstable Personality Disorder (Borderline) ("EUPD") and a Borderline Personality Disorder. The former involved "a marked tendency to act impulsively without consideration of the consequences, together with affective instability". Outbursts of intense anger could lead to acts of violence or "behavioural explosions". She noted that he habitually used alcohol to excess when he was not coping with unpleasant emotions and considered that diazepam, which he had been prescribed at the time of the incident, would have added to the disinhibiting effects of alcohol on aggression. She indicated that in her professional opinion the applicant's medical conditions contributed to his behaviour at the time of the offence but that it was for the court to determine the relative contribution of his mental health issues and the relative contribution of intoxication. She continued:"In my professional opinion [the applicant] was suffering from a significant abnormality of mind at the time of the alleged offence, namely emotionally unstable personality disorder ... However ... witness statements suggest that he had consumed large amounts of alcohol which in all probability significantly contributed to the alleged offence."

Before the jury retired to deliberate, the trial judge delivered his charge to the jury. On the "crucial issue" of diminished responsibility, he explained the following:"[T]he law ... accepts that sometimes the mind can be affected either temporarily or permanently so that it works abnormally. Now, if that is established the law acknowledges that the person's responsibility for what he has done is diminished. Now, that can arise if a person's ability to control his behaviour is, to use a phrase you've heard quite often now and I'll repeat it again, substantially impaired by reason of abnormality of mind."10. In such circumstances, he said the person could be convicted of culpable homicide on the grounds of diminished responsibility, rather than murder. However, he clarified, while an abnormality of mind could be caused by mental illness or a personality disorder, for example, the influence of alcohol or drugs could not cause abnormality of mind. He continued:"Now, here of course there is evidence of mental illness and a personality disorder as well as evidence of alcohol and substance abuse, and for that matter the misuse of prescription drugs. Now, it is open to you to find that he had an abnormality of mind as a result of his depressive illness and his personality disorder. It is open to you to find that notwithstanding his use of alcohol and drugs, his underlying mental state gave rise to the abnormality of mind that was the substantial cause of his actions on 7 August 2017. However, it is also open to you to find that the substantial cause of his conduct was his use of alcohol and drugs and that he should not have his culpability reduced by means of diminished responsibility from murder to culpable homicide."On 31 May 2018, the jury convicted the applicant of murder. On 22 June 2018, he was sentenced to life imprisonment with a punishment part of sixteen years.



*Appeal Against Conviction*. The applicant appealed against conviction. In so far as relevant, he argued that the trial judge had erred in explaining diminished responsibility to the jury in a case where both abnormality of mind and alcohol and drugs played a part. The judge ought to have directed them that diminished responsibility had been made out where the abnormality of mind remained "a" (and not "the") substantial cause of his actions.13. The trial judge prepared a report for the appeal setting out the background and his approach to the legal questions. On the issue of his charge to the jury concerning diminished responsibility, he accepted that he may not have expressed the correct view as to the meaning of the word "substantial" in this context. But he continued:"20. That said my impression is that a direction along the lines desiderated would not have altered the outcome. Although the evidence that he had a significant mental illness was clear, other factors were also very clear. As it seemed to me he was largely in control of his actions but made bad choices both generally and in particular on the day of the stabbing. He ignored advice from both professionals and his friends about taking alcohol and drugs. He told [E.] at the party that he knew he should not be drinking. He had been told alcohol and drug taking aggravated his underlying problem. He was upset at the failure of his family to support him after his suicide attempt. I consider that on the evidence it was clear that his personal unhappiness was what drove him to drink excessively, take prescription drugs other than as prescribed, take illegal drugs, gamble excessively and make two attempts on his life. The underlying personality disorder was undoubtedly a significant factor but to the extent that it impaired his judgment it was because it had been stirred up by his alcohol and drug abuse. His words at the time of the stabbing indicate that he was aware that threatening the witnesses with a knife was wrong and that what he then went on to do was also wrong."

Compaint to ECHR: The applicant complained under Article 6 §§ 1 and 2 of the Convention that his trial was unfair because he did not receive a reasoned decision based on the evidence. He contends that the safeguards said by this Court in Judge, cited above, and Beggs v. the United Kingdom (dec.), no. 15499/10, §§ 160-163, 16 October 2012, to apply did not operate in his case to ensure that he had a fair trial. He moreover contended that his right to be presumed innocent had not been respected because the prosecuting authorities had not established by evidence set out in a reasoned decision his guilt of the crime of murder, according to law. United Kingdom (dec.), no. 15499/10, §§ 160-163, 16 October 2012, to apply did not operate in his case to ensure that he had a fair trial. He moreover contended that his right to be presumed innocent had not been respected because the prosecuting authorities had not established by evidence set out in a reasoned decision his guilt of the crime of murder, according to law.

Under Article 13, taken in conjunction with Article 6 §§ 1 and 2, he submitted that there was no rational basis for the Appeal Court's conclusion and did not therefore offer an effective remedy for the breach of his Article 6 rights. The applicant essentially complains under Article 6 § 1 that in light of the material misdirection he did not have a reasoned decision based on the evidence and that this was not remedied by the Appeal Court. The Court considers it appropriate to examine the matter from the perspective of Article 6 § 1 only, which provides in so far as relevant as follows: " In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

In its judgment in Taxquet v. Belgium [GC], no. 926/05, § 83-84, ECHR 2010, the Grand Chamber observed that the institution of the lay jury could not be called into question. It further concluded that the Convention did not require jurors to give reasons for their decision and that Article 6 did not preclude a defendant from being tried by a lay jury even where reasons were not given for the verdict. Nevertheless, it held that the accused and the public must be able to understand the verdict that had been given (at § 90 of its judgment). In proceedings conducted before professional judges, the accused's understanding of his conviction stemmed primarily from the reasons given in judicial decisions, which had to indicate with sufficient clarity the grounds on which judges had based their decisions and show that the essential issues of the case have been addressed (at § 91). The Grand Chamber continued:"92. In the case of assize courts sitting with a lay jury, any special procedural features must be accommodated, seeing that the jurors are usually not required - or not permitted - to give reasons for their personal convictions ... In these circumstances likewise, Article 6 requires an assessment of whether sufficient safeguards were in place to avoid any risk of arbitrariness and to enable the accused to understand the reasons for his conviction ... Such procedural safeguards may include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced ..., and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict is based or sufficiently offsetting the fact that no reasons are given for the jury's answers ... Lastly, regard must be had to any avenues of appeal open to the accused."

It is clear from Taxquet that what is required by Article 6 is not a reasoned decision as such, but that a convicted person be able to understand the reasons for the verdict.26. The Court in Judge, cited above, addressed whether a convicted person could understand the reasons for the verdict handed down by a jury in Scotland (see also Beggs, cited above, §§ 160-163). It observed:".

The Court considers that, in the present case, none of the features which led the Grand Chamber to find a violation of Article 6 in Taxquet are present in the Scottish system. On the contrary ... in Scotland the jury's verdict is not returned in isolation but is given in a framework which includes addresses by the prosecution and the defence as well as the presiding judge's charge to the jury. Scots law also ensures there is a clear demarcation between the respective roles of the judge and jury: it is the duty of the judge to ensure the proceedings are conducted fairly and to explain the law as it applies in the case to the jury; it is the duty of the jury to accept those directions and to determine all questions of fact. In addition, although the jury are 'masters of the facts' ... it is the duty of the presiding judge to accede to a submission of no case to answer if he or she is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused's conviction. These are precisely the procedural safeguards which were contemplated by the Grand Chamber at paragraph 92 of its judgment in Taxquet ."

There is therefore no doubt that the Scottish system of jury trials does not, in principle, give rise to any concerns as regards the ability of a convicted person to understand the verdict. In the present case, the central facts were not contested (see paragraph 3 above). The only issue before the jury was whether the applicant's responsibility for the stabbing was diminished on mental health grounds. The reason for his conviction of murder after trial was therefore particularly obvious: the jury must have rejected his contention that his abnormality of mind was the substantial cause of his actions. The applicant argues that the material misdirection by the trial judge meant that he was denied the necessary safeguards at trial. But this argument is misconceived. The misdirection in his case did not cast any doubt whatsoever on the reasons for the verdict given: it remained plain to the applicant why he had been convicted of murder.



The appeal judgment was delivered by professional judges, who handed down a reasoned judgment which explained very clearly why his conviction had been upheld. The Appeal Court explained that the question, under section 51B of the 1999 Act as properly understood, was whether, if the applicant had not ingested alcohol and drugs, he would have acted as a he did because of his mental abnormality (see paragraphs 15-16 above). It found that there was no psychiatric evidence to this effect. It referred to the "notorious" effects of the combination of diazepam, cocaine and alcohol, and the disinhibition of aggression it caused. It was satisfied, as a matter of law, that even if the applicant's ability was impaired as a consequence of the combined effect of voluntary drug and alcohol ingestion and a mental abnormality, the correct verdict was one of murder. It is thus apparent that the Appeal Court did not accept that, on the evidence presented at trial and on a balance of probabilities (see paragraph 17 above), the applicant had established as the law required that his abnormality of mind was a substantial cause of his actions. The applicant claims that the court's conclusion was irrational but this claim is without any foundation. On the contrary, as the appeal judgment makes clear, the Appeal Court's conclusion was firmly based on the medical evidence led at trial.

The Court therefore finds that the proceedings in the applicant's case, including his appeal, afforded safeguards against arbitrariness and made it possible for him to understand why he had been convicted. While the misdirection might initially have left some confusion in his mind as to whether his defence of diminished responsibility had properly been rejected based on the evidence, this ambiguity was resolved by the Appeal Court. There is accordingly no appearance of a violation of Article 6 § 1 of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4. For these reasons, the Court, unanimously,declares the application inadmissible.

**Major Reforms to Spending Periods But 'Injustice of Lifelong Unspent Convictions' Remains**

Under new reforms, prison sentences of four years will become 'spent' after seven years if no further offences are committed. The changes, made under the Police, Crime, Sentencing and Courts Act, mean up to 120,000 people who have spent time in prison will no longer need to declare this to employers. Announcing the measures, the Justice Secretary said: 'These reforms will help ex-offenders get the steady income, routine and purpose they need which cuts reoffending and ensures fewer members of the public become victims of crime.' Under the new reforms, serious sexual, violent, or terrorist offences are excluded from the changes. This is the first time that the type of conviction will factor in to whether an offence is spent or not, and means many convictions will remain unspent for life. The head of the charity Unlock, which supports ex-offenders, said these changes 'will give people the chance to move on with their lives much sooner'. However, they said that the new rules on factoring in the type of offence 'adds a new layer of complexity to an already confusing system.' They said in a statement that they will continue to fight against 'the injustice of lifelong unspent convictions'. Research shows that employment has a significant effect in deterring reoffending. Data from Ministry of Justice indicates that the reoffending rate was nine percentage points lower for those who found employment after release. Naomi, a previous offender who found employment with the help of Recycling Lives, said the purpose of the legislation is 'eradicating stereotypical views and allowing ex-offenders to blossom.' Justice charity Nacro wrote on X: 'Whilst we welcome these changes, the criminal records disclosure system remains overly complex, often arbitrary and difficult to navigate.' They have suggested the criminal records disclosure regime needs a more radical overhaul.