

## MOJUK: Newsletter 'Inside Out' No 994 (13/03/2024) - Cost £1

### Permission To Challenge 'Horrific' Living Conditions at Asylum Accommodation

*Joshua Nash, Justice Gap:* Asylum seekers held in one of the Home Office's 'mass accommodation sites' have been granted permission from the High Court to go to trial to challenge the use of RAF Wethersfield as asylum accommodation. The four asylum seekers, held in RAF Wethersfield, claim the Home Secretary has not provided an adequate standard of living and may be violating the European Convention of Human Rights. They also claim that the Home Office has failed to protect them from racial violence and harassment at the site. The site was described as 'hostile' with limits imposed upon asylum seekers' movement and communication.

Speaking to the Guardian, Katie Sweetingham of the charity Care4Calais, described the condition in Wethersfield as 'horrific.' She explained that people with no previous mental health issues were now facing a rapid decline since arriving at the site, with some considering self-harm and suicide. In January alone, ambulances responded to two suicide attempts in Wethersfield, although fortunately both individuals survived. Many of those held at the site have been victims of torture or modern slavery.

Previous concerns have been raised that the living conditions at Wethersfield are leading to resentment and frustration amongst those living there. In a report by the Guardian, the former independent chief inspector of borders and immigration David Neal, described the site as having an 'overwhelming feeling of hopelessness.' He cautioned about the potential risks of isolating a large population of people in a remote location in very poor conditions, with limited knowledge of where they were going to be sent.

Despite concerns having been raised about RAF Wethersfield, the Home Secretary has previously announced plans to transfer 1,700 asylum seekers to the accommodation and extend its use for three years. RAF Wethersfield is one of two 'mass accommodation sites' being used by the Government to hold asylum seekers whilst their claim is processed. The other being the controversial Bibby Stockholm barge which, much like Wethersfield, has been found to have inhumane conditions. A previous legal challenge brought by six asylum seekers against the government was successful back in June 2021 when the High Court ruled that the living conditions at Napier Barracks in Kent failed to meet minimum standards.

### Eight Former Death Row Inmates Immediately Released

Trinidad and Tobago: In the case of *State v Maharaj*, 10 co-defendants were convicted of murder and sentenced to death. In 2006 the Privy Council quashed their death sentences and substituted life sentences, where the only means of release was at the President's discretion. In 2017, the inmate's appeals were reheard by the Court of Appeal, after fresh evidence emerged showing that the sole witness against them had lied at their trial. The witness failed to attend the hearing and could not be traced. The Court of Appeal dismissed their appeals and the Privy Council upheld the decision for the 9 out of 10 inmates that had appealed. An appeal against the life sentence previously imposed by the Privy Council was also pursued. In 2023 the Privy Council was persuaded to directly remit their cases to the criminal division of the High Court of Trinidad and Tobago for an expedited resentencing hearing. Last Friday, 8 inmates received fixed term sentences that entitled them to immediate release.

### Amnesty Clause for Soldiers Breaches Human Rights Law, Belfast Court Rules

*Rory Carroll, Guardian:* Legislation that gives conditional amnesties to soldiers and paramilitaries for Troubles-era crimes in Northern Ireland breaches human rights legislation, a high court in Belfast has ruled. There was no evidence the immunity provision in the government's Legacy Act would help reconciliation in Northern Ireland, the court said on Wednesday, delivering a fresh blow to the law that has angered victims' groups and caused friction between London and Dublin.

Mr Justice Adrian Colton said two sections of the act, which received royal assent last September, breached the European convention on human rights. "There is no evidence that the granting of immunity under the act will in any way contribute to reconciliation in Northern Ireland. Indeed, the evidence is to the contrary." The convention's protection of the right to life and the right to pursue civil claims was cited in the judgment.

The ruling revived calls from Northern Ireland politicians and advocacy groups to scrap or suspend the legislation but the Northern Ireland secretary, Chris Heaton-Harris, said the government remained committed to its implementation. "It is a very complex case, I am told the judgment runs to over 200 pages and I am yet to see it," he told the House of Commons. "We will consider Mr Justice Colton's findings very, very carefully, but we do remain committed to implementing the Legacy Act."

The ruling was the latest challenge to legislation conceived during Boris Johnson's administration and widely seen as an attempt to shield army veterans from prosecution for alleged crimes during the Troubles. From May, it halts inquests and future civil actions and offers immunity to former security force members and paramilitaries who cooperate with a new agency, the Independent Commission for Reconciliation and Information Recovery (ICRIR). Hundreds of murders remain unsolved, many dating back to the height of bloodshed in the early 1970s. A small number of prosecutions in recent years have failed to secure convictions but some victims' families wish to retain the hope of prosecution.

Mr Justice Colton gave some relief to the government by ruling that the ICRIR could carry out human rights-compliant investigations. "It has wide powers and wide range of discretion to carry out its reviews." Should the commission fall short of human rights obligations it will be subject to court scrutiny, he said. In a statement, the ICRIR said the judgment confirmed it had been properly and lawfully established and said it would proceed with its work. "We will study the court's judgment in detail and seek to reflect this as we refine our proposals to carry out independent investigations from this summer." However, the shadow Northern Ireland secretary, Hilary Benn, questioned how the commission could proceed when immunity, a pillar of the legislation, had been struck down. Labour has said if elected it would repeal the act.

Campaigners outside the court held placards that read: "Legacy families have a right to an investigation: time for truth and justice." The case was brought by a group of victims' relatives: Brigid Hughes, whose husband, Anthony, was killed by soldiers in 1987; Martina Dillon, whose husband, Seamus, died in a 1997 loyalist attack; Lynda McManus, whose father, James, was wounded in a separate 1997 loyalist attack; and John McEvoy, who was wounded in a loyalist attack in 1992. Amnesty International supported their action. Last December, the Irish government launched a separate challenge to the legislation with an inter-state case at Strasbourg under the European convention on human rights, prompting a stinging riposte from London and continued friction between Rishi Sunak and the taoiseach, Leo Varadkar. Simon Harris, Ireland's minister for further education, welcomed the ruling. "It does certainly seem positive, and positive from the perspective of the Irish government wanting to work to ensure that all families get justice," he told the Dail.

### **Possible Hospital Order Forms Basis of CCRC Referral**

The Criminal Cases Review Commission (CCRC) has referred a man's 2016 sentence for child sex offences to the Court of Appeal after new psychiatric assessments determined the defendant's mental disorders should be treated with a hospital order. Clayton Phillips pleaded guilty at Guildford Crown Court in 2016 to multiple sexual offences involving contact with children over the internet. Mr Phillips was sentenced to an extended sentence of 14 years, made up of a custodial sentence of eight years and an extended licence period of six years. After sentencing Mr Phillips was transferred to a medium secure unit under s47/49 of the Mental Health Act.

The CCRC referral is based on whether a hospital order should have been imposed, rather than a custodial sentence. There is no suggestion Mr Phillips is not criminally responsible. In October 2022 the CCRC received an application to review his case, along with a supporting psychiatric report, and has since obtained records from Mr Phillips' registered clinician. The CCRC considers there is a real possibility the Court of Appeal will determine that if this new evidence had been available at the time Mr Phillips was sentenced, it is likely the judge would have considered a hospital order appropriate.

### **Girl at YOI Wetherby Twice Stripped by Male Officers**

*Rajeev Syal, Guardian:* An "incredibly vulnerable" girl held in a young offender institution was pinned down and stripped by an all-male group of officers on at least two occasions, a watchdog has discovered. Charities have called for all female offenders to be removed from YOI Wetherby in West Yorkshire after the damning disclosure by the chief inspector of prisons. Officers restrained the girl as she attempted to self-harm but did not ensure that a female officer was present, according to a report. The inspection also found there was a high use of pain-inducing techniques, unauthorised strip-searches and cold cells at Wetherby, which has the highest self-harm rates in England and Wales.

Charlie Taylor, the chief inspector, said: "We were deeply shocked to find adult male officers restraining and stripping an incredibly vulnerable girl not once but twice. "While they no doubt acted to prevent serious harm, the presence of multiple men pinning her down and removing her clothes will have caused further trauma and, given how predictable the behaviour of this particular girl was, the YOI has no excuse not to have made sure that female officers were in attendance."

In what will be seen as a direct criticism of the Ministry of Justice, the report said there was a lack of "a coherent plan" in Whitehall for caring for female child offenders, some of whom are now placed in Wetherby after the closure of Rainsbrook secure training centre (STC). "It [Wetherby] has now become the destination for those who STCs and secure children's homes will not or cannot accommodate. The result has been pressure on staff who, while doing their best, have not had the training or do not possess the expertise to care for these girls, most of whom require specialist provision," the report said. "As a result, we came across two incidents where a girl was using her clothes to make ligatures and had had her clothing removed by male officers.

This is simply not acceptable." It is understood that the girl was attempting to take her own life using a ligature when the decision to intervene was taken, and had harmed one of the female officers on duty earlier that night. Wetherby is one of three institutions that together hold the seven girls currently imprisoned in England and Wales. It also held 162 boys between the ages of 15 and 18 during the inspection, carried out in November and December last year. The report said 24 boys and girls had been strip-searched at the institution in the last 12 months, with 12 of those taking place while they were being restrained. Although officers had recorded the decision to carry out a strip-

search, "none had recorded the authority to use restraint", according to the findings.

Techniques that deliberately cause pain in an attempt to restrain a child had been used nine times in the year and were deemed "inappropriate" on each occasion by an independent review panel. There had been 892 incidents of self-harm in the past year at Wetherby. "These were the highest self-harm rates for all prisons in the country," the report said. A survey of children found that nearly a third (31%) felt cold in their cells in the institution. Broken windows and vents meant some detainees slept in their day clothes, the report said. Children held away from their peers were spending up to 23 and a half hours a day locked in their cells, the inspectors found.

Andrea Coomber, the chief executive of the Howard League for Penal Reform, said: "It is virtually impossible to imagine the damage caused to the girl who, made to live in a prison designed for boys, became so distressed to the point of wanting to harm herself, and was then forcibly stripped by a group of men, not once but twice. "Prison is no place for a child. Ministers must act swiftly to move the girls out of Wetherby and into more suitable accommodation, such as secure children's homes." Campbell Robb, the chief executive of the social justice charity Nacro, said: "A group of men forcibly stripping a distressed young girl, hurting and locking away children in cold cells is not how any child should be treated in a civilised society."

A Ministry of Justice spokesperson said it was committed to publishing a children and young people strategy in 2024. They said: "This small number of girls have exceptionally complex needs and require specialised support, which is why HMYOI Wetherby is providing additional training to staff on self-harm and increasing opportunities for meaningful activity, education and personal development. Restraint is only used on children in rare circumstances when there is no alternative to prevent serious harm to the child, other children or staff."

### **Government GPS Tagging of Migrants Breached Data Protection Law**

The Information Commissioner's Office (ICO) has said today that the Home Office breached UK data protection law over a pilot scheme to electronically monitor migrants. Under the pilot scheme that ended in December 2023, up to 600 migrants who arrived in the UK and were on immigration bail were required to wear GPS ankle tags to monitor their whereabouts. The pilot scheme sought to establish whether GPS tagging was an effective way to maintain regular contact with asylum claimants while reducing the risk of absconding. The ICO found the pilot scheme was not legally compliant. The Home Office failed to sufficiently assess the privacy intrusion of the tags' continuous collection of personal information and it failed to assess the potential impact on people who may already be in a vulnerable position due to their immigration status. In addition, the Home Office did not sufficiently consider what measures should be put in place to mitigate against the risks, such as providing clear information about why people's location data was being collected and how it would be used.

### **'Send Elderly Prisoners to Secure Care Homes'**

*'Inside Time'*: A prison governor has called for ageing residents to be housed in secure care homes rather than in standard jails. Natalie Beal, governor of HMP Glenochil in Scotland, says that over 700 prisoners out of a total of 8,000 in Scotland are aged over 60, and that 50 out of the 730 in her prison have personalised healthcare requirements. She says the prison was not built to cope with their needs. There has been a significant increase in recent years in the numbers from this age group in jails throughout the UK, largely due to convictions being handed out for historic sex offences. Elderly men in jail may require help with mobility such as wheelchairs and hoists, or with dressing and feeding.

“We were not built with an ageing population in mind” The Times reports Beal as saying. “We don’t have enough accessible cells and need to think about something like secure care homes instead. We have people whose needs are wider than can be met in a secure prison regime.” The Scottish Prison Service (SPS) has increased spending significantly on Social Care over the past five years. Figures show that £636,000 was spent on this in 2018, but the figure had more than trebled to £2.1 million by 2022. Beal says that £500,000 of that was spent in HMP Glenochil.

Prison reform charity Howard League Scotland said the proportion of prisoners over 50 had doubled in a decade, from 6.5 per cent in 2010/11 to 14.8 per cent in 2022/23. The organisation said it was “sobering” to enter a prison and see banks of wheelchairs and hoists, and notice the significant number of prisoners needing 24-hour assistance. Whilst healthcare in Scottish jails is an issue for the NHS, social care is the responsibility of the SPS, which said that despite a tight settlement from the Westminster Government, the Scottish Government is increasing overall spending on prisons in Scotland by 10 per cent. In English and Welsh prisons, out of 84,000 prisoners detained in 2023, there were 5,700 (7 per cent) aged 60 or over.

#### **Operation Deerness Begins - Investigation Into Abuse at Medomsley Detention Centre**

Unthinkable abuse took place behind the secure perimeter fence of a Medomsley Detention centre in the North East which changed the lives of hundreds of men. More than 1,800 men reported how they were either physically or sexually abused while being held at Medomsley in County Durham. The abuse mainly occurred in the 1970s and 1980s, when they were being held in the youth facility as boys and young men.

The physical abuse sometimes resulted in hospitalisations due to severe injuries, including broken bones, wounds and loss of consciousness. Many inmates were raped by staff. Seven former officers were jailed for abusing detainees, receiving sentences totalling nearly 34 years. Two were convicted of sexual offences in 1990, 2003 and 2005,[3] while the other five were jailed for physical abuse in 2019

Although decades have now passed, the impact of the historic abuse on those affected is unlikely to ever go away. Over 2,700 historic abuse claims were received by a compensation scheme run by HM Prison and Probation Service (HMPPS), which remains open. So far the Ministry of Justice has paid approximately £7.2 million to Medomsley Detention Centre abuse victims as part of a compensation scheme. As of 8 September 2021, 1,651 claimants have received a settlement - all of whom spent time at the youth facility.

The Prisons and Probation Ombudsman announced in October 2023 that they were commissioned by the Secretary of State for Justice to carry out an independent investigation into the abuse that took place between 1961 and 1987. Medomsley Detention Centre was a facility that held boys and young men aged 17 – 21, some of whom have since reported being subjected to abuse while detained at the centre. Ombudsman Adrian Usher said: “We will endeavour to understand how this large-scale abuse was able to take place”.

Senior Investigator Richard Tucker, who was hired to lead Operation Deerness said: “I have started to build my team and we are now looking to start working with more people that have been affected by and have knowledge of the abuse that took place. We are looking for the truth and it is our goal to fully understand what took place. My plea is for more people to come forward and share their experiences with us. We will not be reinvestigating the facts of the abuse, nor the individual incidents, but we want to give everyone the opportunity to speak

to us, if they wish to, so we can give them the chance to be heard. Those that contact us should have the upmost confidence that we will create a safe space for them and offer the support that they need. I am saddened by the experiences of those who have approached us so far and it is my duty to find the truth. We respect that not everyone will want to speak to us, however we are keen to have any level of engagement with those who want to be involved so we can gain a full understanding of what went on.”

The Prisons and Probation Ombudsman carries out independent investigations into complaints from those in custody and they also investigate deaths in custody. In this special investigation, which is outside of their usual remit, they will independently look into what the authorities knew about the abuse that took place, whether there were opportunities for the authorities to have taken action or intervened at that time, and consider what actions, if any, were taken by the authorities in such instances

#### **NI Troubles: Legacy Act Immunity Clause 'Breaches' Human Rights**

Mr Justice Colton, sitting on Wednesday 28th February 2024, in the High Court in Belfast, made the following declarations in respect of some provisions in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (“the 2023 Act”): A declaration that the immunity from prosecution provisions are incompatible with articles 2 and 3 of the European Convention on Human Rights (“ECHR”) and article 2 of the Windsor Framework (“WF”) and should therefore be disapplied.

1. A declaration that section 43(1) (Troubles-related civil actions brought on or after 17 May 2022 may not be continued on or after 18 November 2023 and that no new Troubles-related civil claims may be brought after 18 November 2023) is incompatible with article 6 ECHR and article 2 of the WF and should therefore be disapplied.

2. A declaration that section 8 of the 2023 Act (exclusion of evidence in civil proceedings) is incompatible with articles 2 and 3 ECHR and article 2 of the WF and should be disapplied. 3. A declaration that sections 41 of the 2023 Act (prohibition of criminal enforcement action) is incompatible with article 2 ECHR and article 2 of the WF and should be disapplied. 4. A declaration that sections 46 and 47 (interim custody orders) are incompatible with article 6 and A1P1 of the ECHR. Mr Justice Colton concluded that the ICIR is capable of carrying out an article 2/3 compliant investigation into Troubles-related deaths and offences.

Background to the 2023 Act: The 2023 Act creates the *‘Independent Commission for Reconciliation and Information Recovery’* (“the ICIR”) which will be the sole body responsible for investigations into deaths and other harmful conduct caused during the Troubles. The ICIR, whose work will be time limited to five years, will have the power to grant immunity to those involved in criminality in certain defined circumstances.

#### **Curators Criticise Decision to Anonymise UK Prisoners’ Artistic Works**

*Rajeev Syal, Guardian:* Awards for prisoners’ artistic works are anonymising all entrants for the first time on the orders of the Prison Service, prompting criticisms from curators and past winners. Creative writing, artwork and music displayed at the Koestler exhibition at the Royal Festival Hall have previously been labelled with the prisoners’ first names.

But HM Prison and Probation Service (HMPPS) has told Koestler Arts, the charity behind the awards, that it no longer wants the names shown, the prisoners’ newspaper Inside Time has disclosed. In future, only the prison will be named. The charity, which operates with the agreement of HMPPS, announced the change in its 2024 entry form, stating: “We regret that we can no longer give first names of entrants next to artworks. This is because HMPPS have

requested all artists' work be anonymised from September 2023 onwards."

Critics of the decision suspect that the government is reacting to complaints from right-leaning media when notorious criminals have displayed their art. In 2021, the Ministry of Justice withdrew a sketch of a tiger at the exhibition drawn by "Katrina" after it emerged that the artist was Katrina Walsh, jailed for 25 years for murder. The ruling applies to the annual Koestler exhibition at the Southbank Centre in London and regional displays around the UK. Each is staged with the help of a guest curator, and three former curators told Inside Time they were unhappy with the decision and wanted the Prison Service to reconsider.

The poet, playwright and author Joelle Taylor curated last autumn's London exhibition, which was the first affected by the new rule. She said: "I was disappointed to discover during the exhibition that the artworks had been surgically separated from the artists who created them ... It is vital that the service rethinks and understand the transformative quality of seeing oneself as something other than the crime committed. The art belongs to the artist." The poet and ex-prisoner Lady Unchained, who curated a Koestler exhibition in Manchester in 2021, said: "In prison your name is taken and you are addressed by a number. I think this is a sad moment for those who have picked up a pen or a brush to re-find their voice."

An HMPPS spokesperson said that while it recognised the importance of art in prisons, "all displayed artwork is anonymised to protect victims". The awards were founded in 1962 by the novelist Arthur Koestler. Each year, more than 3,500 people in custody or on probation enter their creative work.

### **Prison Reform Trust - Comment: Prison Population Projections**

Reacting to the latest Ministry of Justice prison population projections, published 29th February, Pia Sinha, chief executive of the Prison Reform Trust, said: "These worrying projections will have alarms bells ringing across the prison service. Despite the introduction of emergency measures at the end of last year to reduce demand on the system, the prison population is expected to be 1,800 higher in March 2025 than it was in the previous population projection. "It seems almost impossible that the prison system will be able to accommodate this increase in numbers without the introduction of more radical measures to reduce demand.

"In the longer term, a prison population which could rise to as high as 114,800 by March 2028 seems simply unsustainable. Ministers urgently need to break out of the reactive and dysfunctional debate on prisons and present a positive alternative vision for our criminal justice system. One that is rooted in the things that matter to the communities that they serve—safety, fairness, effectiveness and decency—and which relies on evidence rather than rhetoric"

### **Windrush Scandal**

My Lords, lives have been ruined, people have been falsely accused of lying and breaking the law, many have faced mental health issues and some have died without compensation—no, I am not referring to the Post Office scandal but to something equally shocking and unjust: the Windrush scandal, which I prefer to call the "Home Office scandal", because that is what it is, the Home Office's scandal. I have stood in this House on a number of occasions over the years, highlighting and drawing attention to Toggle showing location of Column 1161 this disgraceful state of affairs, and I am frustrated to bring this debate before the House once again to demonstrate that the matter is still as distressing as ever for the thousands of victims.

As we approach the sixth anniversary of the scandal emerging and the fifth anniversary of the launch of the Government's Windrush compensation scheme, it is with great sadness—and

extremely unfortunate—that we are still talking about the scandal today and not focusing on the extraordinary contribution the Windrush generation has given to our nation. The Windrush generation should be defined not by the scandal but by the enormous contribution they have made to Britain, starting back in 1948 when they were invited to come and help rebuild Britain after the war, many leaving their children and families behind. I am part of that generation and it was with great pride that I chaired the Windrush Commemoration Committee to oversee the creation of the magnificent, award-winning National Windrush Monument designed by Basil Watson, which proudly stands at Waterloo Station to celebrate this important part of our British history.

It has become a symbolic place of pilgrimage for adults who recall their trauma—and they weep. Many children who are studying Windrush visit the monument, which is so uplifting. But, sadly, the shadow of the scandal hangs over us as it remains clear that the injustices suffered by the Windrush generation still need to be addressed in a more urgent and timely manner than is currently the case. Victims are suffering from trauma and serious ill health, both physical and mental.

The number of people affected by the scandal is likely to be much higher than estimated by the Home Office. Figures vary dramatically and can be confusing but, as far as I can gather from lawyers, out of the potential 7,500 Windrush claimants—that is, those who have obtained status documents and have suffered detriment—only 2,097 have received compensation. That is £75.9 million out of the £500 million put aside.

The Home Office scandal caused by the hostile environment policy resulted in untold harm to the hard-working people of the Windrush generation. These citizens lost their homes and became homeless, living on the streets or being accommodated by friends or family in overcrowded properties. They lost access to their bank accounts and had to borrow and beg for money to survive. They lost their driving licences and their pensions. They suffered the humiliation of having to borrow from or take handouts from their adult children. They could not access benefits. They could not access the NHS, so their health suffered and many died as a consequence of the lack of timely medical treatment.

Their children, grandchildren and great-grandchildren also had their British citizenship denied. Many young people's higher education stopped as they could not establish their citizenship. Many were unlawfully detained in detention centres, causing them humiliation, shock, embarrassment and mental anguish. That, in turn, affected their physical and mental health. Many were unlawfully deported, as admitted by the Government. Some were taken to countries they did not know and had to live on the streets without family support. Many died without receiving compensation. Toggle showing location of Column 1162

This is a human story, full of injustice and emotional trauma. The survivors of the scandal feel let down and unheard, and their situations misunderstood. They are not illegal immigrants, refugees or asylum seekers; they are British citizens who entered the UK lawfully to study or work. After years of work and dedication to Britain, it has been pointed out by Age UK that one of the many hidden consequences of losing employment and entitlement to benefits due to the scandal is that many drew their private pensions early to make ends meet. This has led to reduced private pension pots. In some cases, a loss of employment may have led to the loss of a private pension. However, loss of private pensions is not currently included in the scheme's calculation of loss of earnings. This is despite repeated calls from campaigners for the inclusion of private pensions.

While being locked out of employment, claimants have also missed out on their workplace pensions which they have accumulated over many years. This is particularly important because the majority of the Windrush victims are of, or approaching, pensionable age.

Estimating these losses is complex but, as they are a direct result of action taken by the Home Office, Age UK believes that the Government should find a way to cover them in the compensation scheme. So will the Government consider including loss of future earnings, which is not currently compensated for, under the scheme?

One of Britain's largest unions, Unison, has told me that its fears were realised as reports came in of compensation claims being delayed longer than a year, complex forms, small payments and high levels of proof. The compensation scheme has placed victims under scrutiny, treating their claims with suspicion and placing their applications and lives in limbo. This has to end. Thankfully, there are a number of lawyers, and individuals such as Patrick Vernon, who have got organisations to join together to set up the Windrush Justice Clinic to support and assist Windrush victims. They have all told me that victims are nervous about coming forward, for they know that the same people responsible for deporting them are also dealing with the compensation scheme and believe that this scheme should be overseen by an independent body. I have received dozens of case studies to justify this.

The Government must understand that victims are coming from a starting point of having their core beliefs destroyed by this scandal. They have little or no trust in authority, meaning that lawyers assisting them must first get over the hurdle of persuading them to trust and believe that they and others are there to help—others such as Glenda Caesar. She came to the UK as a baby, lost her job as an NHS administrator in 2009, faced deportation and was denied the right to work for nearly a decade. She now represents other Windrush victims and their claims for compensation. Just last week, someone working here on the Parliamentary Estate contacted me about problems they are having with a Windrush compensation claim. I connected them with Glenda and with other agencies.

Windrush victims need support similar to those affected by the Post Office scandal. The former government adviser to the Windrush compensation Toggle showing location of Column 1163 scheme, Martin Forde KC, who has since become one of its fiercest critics, said that the process for the Windrush victims to claim compensation “is still very document heavy”. It moves very slowly and the scheme cries out for legal aid. Retired judges, senior parliamentarians and forensic accountants all are working on the postmaster scheme. Why are the Government not applying this kind of expertise to the Windrush compensation scheme? Anyone who has seen the form will know how complex it is, especially as many claimants are in their 60s and 70s and have no access to the internet. Even lawyers and solicitors say that they are having problems with the three different types of form: the primary application form is 44 pages long; the close family member application form is 24 pages long; the representative of estate application form is 46 pages long. All come with vast online support notes and the requirement of a large number of supporting historic documents. Lawyers have told me that these forms are one of the biggest hurdles to getting people to apply.

The House of Commons Home Affairs Committee agreed, and said that the scheme should be transferred to an independent body. This is something I called for from these Benches back in 2019. I was told by the Minister that it would take up to two years to implement. That was five years ago. This scandal is not going away. As the Justice 4 Windrush campaign, led by Colin McFarlane, has shown, this has wide support from all sectors of society across the country—the campaign's online letter to the Prime Minister has also called for an independent body to be established.

No amount of compensation can ever erase the hurt and humiliation that the Windrush generation have suffered since their arrival in the motherland, when signs in the windows read, “No Irish, no

dogs, no coloureds”. I witnessed those signs. We have heard so much about righting the wrongs for the Windrush generation but the Government's good intentions must be matched by good outcomes. The Wendy Williams compensation recommendations were accepted by the Government with good intentions, only for three important ones in the report—including having a migrant commissioner—to be rolled back on in the most disrespectful way, as I highlighted in this House last year. It is clear that the Government must demonstrate their well-crafted words of intent through well-crafted actions, and stop this further humiliation and undignified treatment of the Windrush generation.

There is an automatic payment of between £10,000 and up to £100,000 for those British citizens who have been granted documentation through the status scheme, as they have suffered a high level of impact on life. This should be decided in six weeks, said the Government, but it has taken much, much longer. Why? To make matters worse, it has emerged that children born in the UK after 1983 are now being rendered stateless. This highlights the need for a renewed approach, working in partnership with national organisations that support those affected on a daily basis, to ensure Toggle showing location of Column 1164 not just that wrongs are addressed but that related issues faced by those caught up in the scandal are fully considered. It is now more important than ever to properly resolve this situation for the thousands of people affected, with compassion, consideration and empathy, as quickly as possible in view of their age and trauma. Once they have been sorted out, their descendants' lives can also be sorted out.

We have had five Secretaries of State dealing with the Home Office scandal, yet only one has taken the time to meet with the Windrush victims, some of whom are sitting in the Chamber today. They are proud, hard-working people who have contributed to British society, but they have been humiliated in the most disrespectful way. Will the Minister show empathy and take time to meet them personally after this debate? For progress to be made, it is essential that trust and confidence in the relationship between the Home Office and the Windrush generation is restored. Sadly, we are far, far from this. The solution should be for an independent body to deal with this scandalous, heart-breaking, cruel and shameful episode of British history, because trauma lasts a lifetime.

### **Civil Legal Aid Review: MoJ Kicks Timetable Into Long Grass**

*Monidipa Fouzder, Law Gazette:* Urgent reforms to save the civil legal aid sector may never see the light of day in the current parliament it has emerged following the government's decision to push back the timetable for its review on building a sustainable system. The civil legal aid review was announced in January 2023. Economic analysis and comparative research were supposed to conclude by the end of this month. This would be followed by a consultation on final policy proposals. However, in a letter seen by the Gazette, the civil legal aid review team said on Monday that the review findings will be published in phases and a ‘green paper’ will be published this summer. The letter says a phased approach ‘allows more time to build a strong evidence base that is capable of supporting high-quality policy development’.

An international comparator report will be published this month. An economic analysis report, user research package, and an overview report and advocacy research will be published in May. An overarching final report summarising the review's evidence-building phase, green paper consultation and the government's response to the call for evidence will be published in July. Cabinet Office guidelines require government consultations to be open for 12 weeks, which means the green paper consultation would close in October. The next general election must be held by 28 January 2025. If an election is called just before Christmas, any policy decisions following the green paper consultation would fall in or just before election ‘purdah’, when ministers and civil servants must exercise caution in

making announcements or decisions that might affect on the election campaign.

To justify the 'phased approach' the letter cites the 'high number of responses' submitted to the review's call for evidence. However, practitioners are likely to question why the call for evidence, which was issued a year after the review was announced, was not opened earlier. A Ministry of Justice spokesperson said: 'We want to make sure the civil legal aid system is more effective, efficient and sustainable which is why it is vital our evidence for reform is as comprehensive and robust as possible. Given the broad remit of the review, we have taken the decision to publish its findings in phases – ensuring we accurately reflect the experience of the sector and the evidence gathered before setting out proposals in a green paper this summer.'

### **'Hope Can Be A Cruel Concept' – Joint Enterprise and 'Substantial Injustice'**

*Nicola Campbell, Justice Gap.* Over the past six months, I have been interviewing the families of those convicted of Joint Enterprise – mainly mothers and wives. These interviews provide data for understanding 'substantial injustice', and the lived experience of those who face it. Joint Enterprise is common law doctrine where secondary offenders, although they do not commit a crime themselves, intend to encourage or assist others who do. Then, they can be prosecuted as if they were the main offenders themselves. Whilst there is much debate over the law, my research focusses on the impact these sentences have on the families of those convicted.

My research has found that the majority of individuals had great faith in the criminal justice system during their first interactions with it. One participant commented: 'This is England, no stone will be left unturned.' Another mother talked about her expectation of the courts: 'I wasn't worried because he didn't do anything, and he certainly didn't murder anyone. I thought we would get in there tell our side of the story and we would all go home.' BAME mothers, however, were less hopeful than their white counterparts: 'When has the system ever helped me? I knew not to have faith, but that didn't stop me from wanting it. I wanted to believe so badly it would be ok.' Despite the setbacks emerging from the archaic criminal appeal system, these women remain steadfast that the law will change, and their boys will come home. One mother referred to it as protecting her lion cub that has been kidnapped by another predator; 'What else can I do? I have to do everything I can, I will do everything I can.'

In 2016, the Supreme Court decision of *Jogee* stoked this hope. In *Jogee*, the Court found that the law had taken a 'wrong turn' for over thirty years; their judgment was to rectify that misdirection. I spoke to one young man that was imprisoned at 15 years old for murder under Joint Enterprise. He served 12 years and was recently released on licence: 'I lived in hope that I would get home. I really thought I was going to get home. I thought that for the first eight years.' He talked about standing in the wings of the prison when the news came through about the *Jogee* judgement: 'I had never seen anything like it, we were all jumping and screaming. Some of us started to cry because we finally won. We were getting home.' Unfortunately, as with the justice system more generally, the Supreme Court decision fell short of its promise. It soon became apparent that, even after *Jogee*, overturning a joint enterprise conviction based on the old law would be impossible, unless the applicant could prove they had suffered a 'substantial injustice'.

'Straight away I was in contact with my lawyer; when are we appealing, what is the next step? But then the reality of the *Jogee* judgement came through, it wasn't going to help any of us.' I asked them how this felt, to keep having their hopes raised and dashed and he responded, 'Look, I got through 8 years. After *Jogee* I realised I would be doing my whole sentence, that was another 4 years. I spent the last 4 years punching walls. Hope got me through the

first 8, and I don't think I would be here if I didn't have that hope.' This hope can be a cruel concept. It gives individuals something to hold on to, but it can also break them. My research also examines the harm and pain felt as a result of being convicted for a crime under Joint Enterprise. I asked one mother whose son was serving a minimum tariff of almost 20 years whether they had suffered a substantial injustice: 'I don't know what a substantial injustice is. I don't think the courts know what it is either. But I do know I haven't slept properly since he was convicted over ten years ago, and I don't think I will ever sleep properly again.'

### **Extradition Appeal Allowed: The Right Of Retrial Must Be Unambiguous**

*Doughty Street Chambers:* The Supreme Court has upheld the appeal in *Merticariu v Romania* after clarifying the correct approach to s. 20 and s.85 of the Extradition Act 2003. It accepted the Appellant's submission that where a defendant was convicted in their absence and not deliberately absent from their trial, a right merely to apply for a retrial failed to comply with our statutory protection. The court stipulated that an extradition request should clearly provide the information needed for a judge to determine the question of a defendant's deliberate absence from trial and entitlement to retrial. The court ruled that a finding of fact of non-deliberate absence by an English Judge should be respected by a requesting judicial authority which is, after all, represented in extradition proceedings by the CPS and so will have contributed its own evidence to the ruling. This would be consistent with the comity between judicial authorities established by the extradition scheme. A right to apply for a retrial, which application may be refused, cannot satisfy the certainty that ss. 20 and 85 of the Act demand. Both the Extradition Act 2003 and amendments to the 2002 EAW Framework Decision in 2009 supported this approach. To deny a retrial to someone whose absence was not deliberate, may well give rise to a flagrant denial of justice contrary to Article 6 ECHR. This judgment enhances defence protections against extradition and overturns two Divisional Court decisions in *Zeqaj v Albania* and *BP v Romania*. Those judgments were wrong to hold that any dispute about a requested person's deliberate absence and entitlement to a retrial could be resolved afresh by the requesting state at a new hearing post-extradition; rather this was a determination to be made here in the UK which should be respected by the requesting authorities.

### **Prison No Place For Vulnerable Young Women**

Trauma is embedded into an environment that is designed and staffed for men and boys, while ignoring that women and girls need an entirely different approach. The image of a girl in a children's prison being pinned down and stripped by male officers, not once but on two separate occasions, beggars belief (*Girl at YOI Wetherby* was twice stripped by male officers, watchdog says, 5 March). This is a horrific story that cannot be ignored. The "highly vulnerable" girl with complex needs, we are told by the chief inspector of prisons, was routinely self-harming, yet no plan was in place for female staff to be available. Put bluntly, a bad situation was made worse by imprisonment, where those responsible for a teenage girl's care put her in increased harm's way. This is a child in need of support, not traumatised and wholly inappropriate treatment in a prison. The idea that a vulnerable girl in distress faces force and degrading trauma as a means of "protection" should shock us to our core. It triggers flashbacks of the strip-search incident in a school with Child Q. Let's stop looking the other way. While men's prisons are bursting at the seams, we must not turn a blind eye to the overlooked minority of girls and young women who are imprisoned. We have to call time on locking up vulnerable girls and young women in prisons that harm them. It's time to invest in trauma-informed community solutions. The government knows these are vital.