

Miscarriages of JusticeUK (MOJUK)  
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### **Unreliable Witness Testimony Biggest Cause of Miscarriages of Justice**

Scottish Legal News: Unreliable witness testimony has been the biggest cause of miscarriages of justice over the past half-century, a new study suggests. The research also suggests that regulations governing the powers of police have been effective in reducing wrongful convictions caused by unreliable confessions. Dr Rebecca Helm, from the University of Exeter Law School, led the analysis of more than 250 miscarriages of justice that have occurred in England & Wales over the last 50 years. This research has led to a new publicly available database of over 350 convictions overturned due to factual error in England and Wales and elsewhere in the UK, from 1970 to 2016.

The study identified four key contributors to factual error miscarriages of justice in England and Wales – unreliable witness testimony, false or unreliable confessions, inadequate disclosure, and false or misleading forensic science. One hundred and seven (41 per cent) of the cases identified involved unreliable witness testimony. A total 69 (26 per cent) of the cases involved a false or unreliable confession, 55 (21 per cent) of the cases involved false or misleading forensic science and 47 (18 per cent) of the cases involved inadequate disclosure. 42 per cent of the cases involved a charge of murder; 11 per cent involved manslaughter or assault; 22 per cent involved sex offences; four per cent involved drugs offences; 19 per cent involved robbery or burglary; 13 per cent involved another offence.

Of the cases involving a false or unreliable confession; 68 per cent involved murder convictions; 14 per cent involved a manslaughter or assault conviction; six per cent involved a sexual offences conviction; 17 per cent involved a robbery or burglary conviction and one per cent involved a drug offence conviction. Almost all of these cases happened prior to the Police and Criminal Evidence Act and the disbandment of the West Midlands Serious Crime Squad, and almost all successful appeals based on unreliable confessions occurred after these two events. Of cases involving false or misleading forensic science, 49 per cent involved murder convictions, 16 per cent involved a manslaughter or assault conviction, 11 per cent involved a sexual offences conviction and 6 per cent involved a robbery or burglary conviction. Of cases involving inadequate disclosure 64 per cent murder convictions, two per cent involved a manslaughter or assault conviction, 15 per cent involved a sexual offences conviction, 11 per cent a robbery or burglary conviction, 8 per cent a drug offence conviction, and six per cent involved another type of conviction.

Cases analysed in the study were identified via media searches, communications with organisations involved in miscarriage of justice-focused work, searches of legal databases, and searches of the CCRC case library. Cases could only be included in the analysis where they were reported with sufficient information to allow inclusion, and so most cases involve relatively serious offences which are more likely to be reported. In the cases analysed in the research there was, on average, approximately 10 years between the initial conviction in a case and the successful appeal and appellants had spent approximately seven years in prison prior to their conviction being quashed. As a group, successful appellants spent approximately 1,832 years in prison before their convictions were quashed. Dr Helm said: "The data show that miscarriages of justice are persisting despite changes in legal regulation and are still a cause for concern in England and Wales. Studying the miscarriages of justice that have occurred provides us with the opportunity to learn from our mistakes, and see where the criminal justice system is going wrong in evaluating evidence."

### **Justice after 10 Long Years: APPEAL's Statement on the Post Office Scandal**

On Friday 23rd April 2021, The Court Of Appeal Quashed The Convictions Of 39 Sub-Postmasters And Postmistresses. They Had Been Privately Prosecuted By The Post Office, Alongside Hundreds Of Others, For Theft And False Accounting In The Years Between 2000 And 2014. Although They Had Steadfastly Maintained Their Innocence, The Post Office Had Denied That Missing Money Could Have Been Due To Technical Issues With A Newly Installed Accounting System, Horizon. This Was Manifestly False. The Court Found Multiple Glitches With The System. Evidence Suggests The Post Office Was Aware Of Them But Pursued The Prosecutions Anyway. During Their Decade-Long Campaign For Justice, Some Of The Victims Of This Miscarriage Of Justice Have Died. Others Have Described How The Convictions Wreaked Havoc On Their Lives – From Prison Sentences To Bankruptcy And Social Isolation. One Pregnant Sub-Postmistress Gave Birth In Prison, Another Took His Own Life. Emily Bolton, Director Of Appeal Commented "It Is A Scandal That It Has Taken This Long For These People To Be Vindicated And Demonstrates That This Country's System For Identifying And Rectifying Miscarriages Of Justice Is Fundamentally Broken. Wrongful Convictions Are Emergencies And Should Be Treated As Such. As We Head Deeper Into The Digital Age, This Case Should Also Be A Warning To Police And Prosecutors That Digital Evidence Is A Minefield And Any Prosecution That Relies On It Should Ensure That The Evidence Is Reviewed By Experts For Both Sides. Otherwise We Will Be Seeing Many More Of These Large-Scale Miscarriages Of Justice".

### **DNA 'Breakthrough' in Case of Man Who Spent 17 Years in Prison For Rape**

Jon Robins, Justice Gap: A man who spent 17 years in jail for rape protesting his innocence has secured a major breakthrough in his bid to clear his name. Andrew Malkinson was jailed in 2004 after being found guilty of raping a 33-year-old mother-of-two and served ten years beyond his tariff because he refused to admit to the crime before being released last year. According to the Sunday Times, Greater Manchester police (GMP) has 'now admitted that they misled the court by presenting two key witnesses, a couple, as honest'. 'In fact, they had 16 convictions for 38 offences between them,' writes Emily Dugan. A High Court judge ruled last week that there had been an 'arguable error in law' over GMP's refusal to disclose more information about the witnesses and granted permission for a judicial review. 'I've waited a long time for the science to catch up and finally it has,' Malkinson told Dugan. He added: 'It's a terrible position to be in when it's your word against someone else's, because you just look guilty by the mere fact you've been accused ... A year in prison is not like a year outside it. Every day drags and it's just psychologically demanding.' Last year the paper revealed that a new analysis found male DNA on samples taken from the victim and her clothing that did not match Malkinson's. To prove his innocence, his lawyers wanted to eliminate the possibility that the DNA might belong to the victim's boyfriend. New samples taken from the boyfriend reveal the boyfriend is not a match.

Malkinson's case is being investigated by APPEAL. 'The DNA results are clear: another man was responsible for the crime for which Andy Malkinson spent over 17 years wrongly imprisoned,' said the group's director Emily Bolton. 'This is not simply a matter of justice, but also of public safety. That money would be better spent trying to bring to justice the real perpetrator of this violent crime, who may still be at large.' The miscarriage of justice watchdog has twice rejected the case and 'never ordered further DNA testing as science progressed, despite the lack of forensic evidence against Malkinson in the case'. The case has echoes of Victor Nealon, who spent 17 years in prison for attempted rape and his conviction was overturned in 2013 after new DNA evidence pointed to another attacker. He was refused compensation by the Ministry of Justice and he is taking the case to the ECtHR along with Sam Hallam.

### **Prosecuting Individual Police Officers Won't Deliver Racial Justice**

*Adam Elliott-Cooper, Guardian:* The Derek Chauvin verdict is cathartic, but tackling racial inequality requires a radical rethink of criminal justice. At last year's Conservative party conference, while the largest anti-racism protests in Britain's history were taking place across the country, the former home secretary, Sajid Javid, declared that Black Lives Matter is "not a force for good". This week, following the outcome of the trial of Derek Chauvin, the former police officer who was found guilty of the murder of George Floyd, Javid tweeted triumphantly: "Black lives matter".

Although this about-turn may seem counterintuitive, it's perfectly consistent with the government's position on racism. Rather than reflecting on the demands for systemic change made by Black Lives Matter protesters, Britain's political class has championed the role of the courts in punishing individual perpetrators of racial violence. Similar celebrations took place when the killers of Stephen Lawrence were eventually found guilty of murder, even though the Police Federation remained in denial about the institutional racism that characterised its response to his death. Viewed from the perspective that racism is an issue of a few bad apples rather than a structural or institutional problem, the single guilty verdict of an individual police officer in the US is something to celebrate. But can criminal prosecutions and prisons ever really deliver racial justice?

Prosecuting state officials who have committed acts of racial violence can be cathartic – and it's something that we've been denied in the UK. There have been at least 1,784 deaths at the hands of the police in England and Wales since 1990, considerably more if we include deaths in prisons and at our borders. But if we step back and examine how the justice system in Britain operates, it's clear that prosecuting individuals helps to produce racial inequalities rather than solve them.

British politicians have long regarded racism as a distinctly American issue, implicitly playing down comparable problems such as the disproportionate use of force that Black people experience at the hands of UK police, or the reality that while Britain's prison population has soared, Black people in England and Wales have been incarcerated at the same or a higher proportional rate as African Americans in the US. In the midst of the BLM protests last summer, two Black men were tasered in north London. One was a pensioner standing on the stairs at his home (in an official statement, the Met said no indication of misconduct was identified). The other was a young man who was left paralysed from the chest down after being tasered while climbing over a wall. The taser, a weapon police claim should only be used when an officer is in danger, is deployed with alacrity, particularly against Black people.

Meanwhile, Britain's prison population has nearly doubled over the past two decades. According to the 2017 Lammy report, 25% of Britain's prisoners are categorised as BAME (this figure jumps to 40% for those in youth prisons). The sustained harm that prisoners experience can have long-term physical and mental effects. Deaths by suicide are more than eight times more common inside prisons, and on release former inmates endure relatively high rates of joblessness, homelessness, mental health problems and a greater likelihood of rearrest and imprisonment.

Crucially, these forms of "justice" do little to either improve public safety or transform the lives of those who have been imprisoned for committing harm. Many have pointed out that since 1971 Britain has not convicted a single officer for any of the deaths that have occurred at police hands. But such convictions would vindicate the very system that leads to these deaths in the first place. If incarcerating ordinary working-class Black people doesn't improve public safety, then why would convicting individual police officers make a difference? Prison is not the answer to meting out justice, which is precisely why the Black Lives Matter movement did not demand that Derek Chauvin be put on trial.

Instead, the most decisive demands that Black Lives Matter have made are to defund the

police and prison system and spend these resources on communities where public services and opportunities have been destroyed. Community-led youth, mental health and domestic violence services are often best positioned to improve public safety. Investment in these services can make people less likely to come into contact with the police and prison system in the first place, while also reducing the likelihood of vulnerable people being harmed or harming others. But rather than engage with these demands, which are gaining popular support in Britain, the government has instead gone on the offensive. It has published a recent report denying institutional racism exists, and even proposed legislation that will criminalise protesters while expanding police powers.

The protests of summer 2020, as well as the people who gathered this year to protest over the death of Sarah Everard and the police, crime, sentencing and courts bill, brought together people from a wide range of backgrounds. Police and prison violence has shown itself to be a problem that can't be solved through self-regulation; the criminal justice system cannot put itself on trial. Despite what the government may think, the harm caused by police, prison and border systems is both a racist and a British problem. The outcome of the Chauvin trial, despite its political cheerleaders, reaffirms the necessity of finding alternatives to the criminal justice system as we know it.

### **Ex-police Reveal Bribes and Threats Used to Cover up Corruption in 70s London**

*Duncan Campbell, Guardian:* One of London's most senior police officers, described by a colleague as "the greatest villain unhung", was believed to be involved in major corruption in the 1970s but never prosecuted, according to a new documentary on police malpractice. Former officers who exposed corruption at the time describe how they were threatened that they would end up in a "cement raincoat" if they informed on fellow officers and were shunned by colleagues when they did. The fresh revelations come from half a dozen former officers from both the Metropolitan and City of London police forces, including one who has admitted receiving payments. The claims are made in a three-part documentary series about the widespread acceptance of bribes that led to the setting up of the anti-corruption unit A10, on which Line of Duty's fictional AC-12 is based.

The former City of London detective Lew Tassell describes how his commanding officer, DCI Phil Cuthbert, handed him £50 with the words: "I've got a drink for you' ... It was expected of me to accept it. It was part of the culture and I should be grateful for it." More "drinks" followed at a time when the force was meant to be investigating three major armed crimes: the £175,000 robbery of the Daily Express payroll in 1976; the £520,000 Williams & Glyn's bank robbery the following year; and the 1978 Daily Mirror payroll robbery in which a security guard, Tony Castro, was shot dead and £200,000 was stolen. No one was ever convicted of the robberies. "The higher you went, the bigger the drink you got," said Tassell. "There was no one I could go to ... Nothing would have happened except I would have been out of the CID ... I thought: this is not why I joined the police."

When he finally decided to cooperate with the investigation into corruption, "I was concerned about my own personal safety ... One of the officers said: 'Is it true, Lew, what we hear about you?' ... [Another officer said:] 'I don't think he's a grass because if what you say is true you'll be wearing a ... cement raincoat.' It terrified me." He added: "I would sometimes go home and sob." Tassell, who remained in the police until 1999, gave evidence against Cuthbert, who was jailed for three years in 1982. The former DCS John Simmonds, then the head of the CID in the City, recalls that Cuthbert asked him if they could have a chat "on the square", indicating that he, like Simmonds, was a Freemason. "I kept Freemasonry and the police separate and when he started admitting to criminality I withdrew my Freemasons' hat and put my police helmet back on because I realised that this was extremely serious."

Simmonds clandestinely recorded Cuthbert describing how Commander Hugh Moore, then the third most senior officer in the force, was involved. "Hughie's run Bishopsgate and half the City police for years and years," Cuthbert told him. "He's been the greatest villain unhung." Of the Daily Express robbery, he said: "That was a Hughie Moore job and he's a greedy bastard. Always has been." Simmonds said he was "not proud" of having to tape Cuthbert secretly, "but I never lost sight of the fact that a man had got killed on one of the robberies". Those officers who accepted bribes were taking "blood money", he said. Of Moore, he said: "I had a hard time from him daily, hourly ... When he had the opportunity to snipe at me or try to catch me out, he did his level best. I was completely and utterly disillusioned and decided to get out." He left the force. Moore, who died in 1993, two weeks after attempting to arrest a violent suspect, was never charged and always denied any wrongdoing. Cuthbert said later that his remarks about Moore were made when he was drunk. Moore's role is covered in the book, Operation Countryman, by the former Flying Squad officer Dick Kirby. While Kirby is very critical of the way that the Countryman investigation into corruption was conducted, he concludes that Moore "championed the cause of officers thought to be crooked, denigrated those who were straight".

Jackie Malton, a former Flying Squad officer on whom the television series Prime Suspect was based, described her own experiences. "When I was posted to West End Central there was a particular officer who was alleged to be going on drugs raids and planting drugs on people. That was reported to me and the officer was suspended and investigated and went to court ... The whole process was life-defining. "I remember walking into West End Central and everyone stood up and walked out. You were seen as a baddie. You were seen as the one who had done the wrong thing." She felt isolated. "There was just nowhere to go ... You're vilified for doing something that was right. I wanted them to say: 'You did the right thing, Jackie, well done.' They said the opposite to that. They didn't respect me for it. They didn't like me for it. And that's what hurt."

#### **USA: Shackling of Aged and Infirm Inmate, Mumia Abu-Jamal, 'Deplorable'**

A group of UN human rights experts expressed serious concerns on Tuesday over the treatment and wellbeing of an African American prisoner who has been reportedly shackled to his hospital bed, and denied visits from his family, or access to lawyers. Mumia Abu-Jamal, who has been incarcerated for 40 years in the United States, had also been shackled to his bed during a previous four-day hospitalization in late February, while being treated for heart failure. The political activist and journalist, was convicted of killing police officer Daniel Faulkner, in Philadelphia, in 1981. He denies the charges.

Since being admitted for surgery around 10 April, he has been denied family visits and access to both his lawyers and spiritual advisor. "The use of shackles during his hospital stays is deplorable, and causes Mr. Abu-Jamal additional and unnecessary suffering", the experts said in a statement. Citing international standards on the treatment of prisoners, they added that "instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement. In addition to chronic heart condition, Mr. Abu-Jamal suffers cirrhosis of the liver caused by Hepatitis C, hypertension and a severe skin condition. And in late February, he was also diagnosed with COVID-19. "We are concerned that the medical condition of Mr. Abu-Jamal could be linked to years of medical neglect by the Department of Corrections of the state of Pennsylvania", the experts said. Moreover, they noted that this situation may also be "the result of racial discrimination" against people of African descent by prison and State authorities. Clarion call - Against this backdrop, the experts called on the authorities to "take all urgent measures to protect the physical integrity, life and dig-

nity of Mr. Abu-Jamal", in line with international human rights obligations. They said that communication and access for Mr. Abu-Jamal's family and advisors should "immediately be restored". Additionally, the state of Pennsylvania must "immediately cease withholding information and access relevant to monitoring the status of Mr. Abu-Jamal's human rights." They called on authorities to "urgently address allegations of discrimination, including racial discrimination, in the medical treatment of prisoners in Pennsylvania" and to take all necessary measures to "protect the physical integrity and life of all detainees", particularly older prisoners and those with disabilities who seem to have been disproportionately affected by COVID-19. The experts have written to the Government to express their concerns. The independent experts were appointed by the UN Human Rights Council to monitor and report on specific thematic issues. They are not UN staff nor are they paid by the Organization.

#### **Bobby Sands Died in Prison on This Day in 1981- Murdered by Margaret Thatcher**

He was the leader of the 1981 Maze Prison, hunger strike in which Irish republican prisoners protested against the removal of Special Category Status. Bobby died on the 5th May 1981. During Sands' hunger strike, he was elected to the British Parliament as an Anti H-Block candidate. His death and those of nine other hunger strikers was followed by a new surge of IRA recruitment and activity. International media coverage brought attention to the hunger strikers, and the republican movement in general, attracting both praise and criticism.

In late 1980, Sands was chosen Officer Commanding of the Provisional IRA prisoners in the Maze Prison, succeeding Brendan Hughes who was participating in the first hunger strike. Republican prisoners organised a series of protests seeking to regain their previous Special Category Status, which would free them from some ordinary prison regulations. This began with the "blanket protest" in 1976, in which the prisoners refused to wear prison uniforms and wore blankets instead. In 1978, after a number of attacks on prisoners leaving their cells to "slop out" (i.e., empty their chamber pots), this escalated into the "dirty protest", wherein prisoners refused to wash and smeared the walls of their cells with excrement.

At the end of April 1978 a fight occurred between a prisoner and a prison officer in H-Block 6. The prisoner was taken away to solitary confinement, and news spread across the wing that the prisoner had been badly beaten. The prisoners responded by smashing the furniture in their cells, and the prison authorities responded by removing the remaining furniture from the cells leaving the prisoners in cells with just blankets and mattresses. The prisoners responded by refusing to leave their cells, and as a result the prison officers were unable to clear them. This resulted in the blanket protest escalating into the dirty protest, as the prisoners were unable to "slop out" (i.e., empty their chamber pots) so resorted to smearing excrement on the walls of their cells.

On 27 October 1980, IRA members Brendan Hughes, Tommy McKearney, Raymond McCartney, Tom McFeeley, Sean McKenna, Leo Green, and INLA member John Nixon,[4] began a hunger strike aimed at restoring political status for paramilitary prisoners by securing what were known as the "Five Demands": The right not to wear a prison uniform; The right not to do prison work; The right of free association with other prisoners, and to organise educational and recreational pursuits; The right to one visit, one letter and one parcel per week; Full restoration of remission lost through the protest. After a 53-day hunger strike with McKenna lapsing in and out of a coma and on the brink of death, the government appeared to concede the essence of the prisoners' five demands with a 30-page document detailing a proposed settlement. With the document in transit to Belfast, Hughes took the decision to save McKenna's life and end the strike after 53 days on 18 December.

However by January 1981 it became clear that the prisoners' demands had not been conceded. On 4 February the prisoners issued a statement saying that the British government had failed to resolve the crisis and declared their intention of "hunger striking once more". The second hunger strike began on 1 March 1981, when Bobby Sands refused food, and by the time the strike ended on 3 October, ten men, including Sands, had starved to death. Two days later, the incoming Northern Ireland Secretary, James Prior, announced a number of changes in prison policy, including that from then on all paramilitary prisoners would be allowed to wear their own clothes at all times.

Around 100,000 mourners came to his funeral, again confounding the expectations of the government, which believed the hunger strike had limited support. To those who marched behind his coffin, Sands was a martyr, Margaret Thatcher a murderer.

### **Discharging a Party in a Case – Without Telling Them Why**

*Julie D, Transparency Project:* This newly published judgment, *Re P (Discharge of Party)* [2021] EWCA Civ 512 is interesting because 'It appears that this is the first case in which a special advocate has been instructed in the Civil Division of the Court of Appeal' [para 5]. A special advocate is a lawyer who appears in a closed hearing to represent a party who is themselves not permitted to hear certain evidence. Special advocates can be used in 'closed material procedure' hearings in cases that involve a judge considering evidence from e.g. the security services that would endanger national security if all the parties and their lawyers had access to it. It's an odd situation where the advocate for an excluded party represents their interests in a hearing where that party is not present or fully informed.

Discharging a party without notice. In this Court of Protection case, in a very unusual turn of events, the judge, Mr Justice Hayden, had decided to discharge the mother of the person concerned ('P') as a party in the proceedings, without any notice and without telling her why. P is a highly vulnerable 19 year old woman with cerebral palsy and selective mutism and suffering from atypical anorexia and post-traumatic stress disorder. She was subject to an application by the local authority because of her urgent need for treatment and protection and questions about her capacity to make her own decisions about her care, residence and contact. P was living in a mental health residential unit and the NHS Trust was made party to proceedings. Any direct contact with her mother was supervised.

Shortly before a hearing in November 2020, the local authority and NHS Trust received information which indicated that P may have been at risk of further harm, from adults associated with her mother. They disclosed this information to the Official Solicitor and to the court but not to the mother or her solicitors. The hearing was, unusually but for obvious reasons, held in private. During this hearing the judge appeared to go further than agreeing to stop contact by saying that, as the mother's contact was to be stopped in P's best interests, her mother no longer needed to be a party. He added, addressing the mother's lawyer: 'Of course it will be frustrating for your client not to know the reasons behind all of this but we are dealing with an adult and it is P's best interests that fall to be considered and not anybody else's.' [para 16]. Also relevant to the applications regarding non-disclosure were linked police investigations and an application by the local authority for a care order in respect of a child born to P's mother in October 2020. P's mother appealed against the order to discharge her from the proceedings and a subsequent adjournment of her request to the judge to set out his reasons for that order.

Court of Appeal decision: In a lengthy exposition of the law about excluding a party, the Court agreed that the Court of Protection does have powers under its rules to take the sort of action that Mr Justice Hayden had taken, if this was necessary. Lord Justice Baker con-

cluded that there was at the time of the November hearing a very strong argument for withholding information from P's mother and suspending her contact with P for a period, but it was not necessary to discharge her as a party and certainly no basis for discharging her without notice. P's mother was restored as a party by the Court, but with ongoing restrictions on the evidence she is permitted to see. The Court noted that only one family court case was drawn to their attention where a party had been discharged without notice – in *The Local Authority v The Mother, The Father. M and M* [2009] EWHC 3172 (Fam), a father who had parental responsibility had been automatically notified of care proceedings but there were applications to discharge him as a party without notice because he had a record of violence and had threatened to kill the children and their mother. Mr Justice Hedley in that case was certain that the father posed a real and immediate threat to the mother and the children and that, although it might have been possible to ensure he only saw redacted papers, the risk of his finding the family's whereabouts if he was being served with court documents was too high.

Transparency and public access: An interesting transparency point was made by the Court of Appeal in respect of members of the public who wanted to observe the hearing and had asked for sight of the lawyers' skeleton arguments beforehand. In preparation for the hearing of the appeal, counsel for all the parties filed open skeleton arguments and the respondents' counsel and Mr Cragg [the special advocate] filed closed skeleton arguments. In passing I observe that the manner in which Ms Paterson's [P's barrister] documents were drafted was particularly helpful, with the closed skeleton argument highlighting those passages which were excluded from the open skeleton. Regrettably, however, and in breach of the requirements set out in para 33 of PD52C, the parties' open skeletons were not all formulated in a way they considered suitable for disclosure to court reporters. As a result, the court was unable immediately to meet requests by two observers to provide the skeletons, and it was more difficult for those observers to follow the arguments during the hearing. In future, this is a point which should be considered by the parties and the court during preparation of an appeal. [Para 23]

In all the circumstances, it is perhaps easier for the Court of Appeal to reflect at greater length and in hindsight on 'necessity' than the trial judge was able to do. Throughout the proceedings, and under pressure, it is positive to see members of the judiciary involved paying serious attention to transparency and accountability, despite some shortcomings. It looks to us as though the Court of Appeal has also taken on board the issues raised in this blog post by one of the observers for the Open Justice Court of Protection Project.

### **UK Private Prisons Have Shown a Lax Approach to Human Rights**

Calum Rosie, *Each Other: Private prisons* may seem like an American phenomenon, but, statistically, UK prisoners are more likely to be held in one. The US is often criticised for its over-reliance on privately-run prisons that use prisoners and their labour as a commodity to turn a profit. But, in fact, the UK has a considerably higher percentage of private prisons: currently, 15% of prisoners in England and Wales are held in private institutions, a higher percentage than anywhere else in Europe, and higher than the equivalent population in the United States, which stands at 9%. This is a shocking revelation, particularly when considering the negative impact that private prisons have on the rights of prisoners and their families.

The UK's 14 private prisons are run by just three companies: Sodexo, G4S and Serco, which all have histories of neglect and violation of prisoners' rights in their prisons. These include illegal strip searches, preventable deaths, the introduction of incredibly restrictive

regimes condemned by prison inspectors, and even the death of a newborn baby. More recently, almost 300 prisoners tested positive for COVID-19 in a Serco-run prison in Kilmarnock which the virus had swept through. While prisoners are suffering and dying, the companies who are responsible for them are making millions.

To make matters worse, this COVID-19 outbreak came soon after Serco was handed a multi-million-pound contract to run the Test and Trace system on behalf of the NHS, which resulted in severe criticism of their performance. This follows years of questionable business practices from Serco: the company was found guilty of engaging in fraud while under contract with the Ministry of Justice and fined £22 million and it has faced allegations of sexual abuse at Yarl's Wood since 2013. Despite its track record, Serco still managed to be given the most important health contract in our country's recent history and continues to be responsible for, and extract profit from, running five prisons.

The combined value of the private prison system for the contractors is an estimated £4 billion, while Sodexo's share price increased by 18% last year as a result of profits made primarily on the Test and Trace contract. While prisoners are suffering and dying, the companies who are responsible for them are making millions – despite private prisons running at a greater overall cost to the taxpayer, paying officers on average 23% less than publicly-run prisons and recording higher levels of violence within their prisons. The justice system shouldn't exist to lock people up and forget about them, nor should it exist as a means for corporations to make a profit. It should rehabilitate offenders, respecting their rights, and reduce the overall crime rate for the good of the general populace.

Liberty is not a commodity to be bought and sold. Private prisons should never have even been considered, let alone given free rein to mismanage over a dozen prisons to the detriment of the staff and inmates. It is time for the government to take responsibility for the convicted subjects of the country, safeguard their rights and ensure that every single one of them survives the experience of incarceration – which is the absolute bare minimum that should be promised.

### **Government Hits Less Than Half Of 2018 'Commitments' For Women Prisoners**

Jon Robins, Justice Gap: The government has met less than half of its commitments to improve outcomes for women prisoners set out in a 2018 strategy, according to the Person Reform Trust. The recent announcement of 500 new prison places for women's estate 'reverses a key aim' of the Female Offender Strategy, introduced by David Gauke when he was Lord Chancellor and which purported to ensure 'custody is intended a last resort' and to reduce the women's prison population. According to a PRT's analysis of the strategy, the government has fully implemented less than half of its commitments, 31 of 65, and made no progress on 14. 'The majority of the promises made in the strategy remain unachieved or partially achieved nearly three years after the strategy was published,' the group says.

The Female Offender Strategy noted that over three-quarters of women sentenced to custody receive sentences of fewer than 12 months. There was 'persuasive evidence' short sentences of less than 12 months were 'less effective in reducing reoffending than community penalties'. 'Custody results in significant disruptions to family life,' it continued. 'We also know that custody can be particularly damaging for women, whose rates of self-harm are nearly five times higher than those of men. Women are also twice as likely to report suffering from anxiety and depression and more likely to report symptoms indicative of psychosis.' The strategy stressed earlier interventions, community-based solutions and pledged to make custody as effective and decent as possible for those women who do have to be there. 'Its explicit objective to 'reduce female prison places' was widely endorsed by the criminal justice sector at the time,' the PRT said. 'However, concerns were raised by stakeholders over the lack of

resources to deliver change, and the absence of a timetable to drive it.

'There is little point having a good plan if you don't deliver it,' commented the PRT's director Peter Dawson. 'That requires a timetable, resources and measures of success. None of these are in place. Instead, the government seems to have abandoned the idea that its female offender strategy can deliver its explicit and most important outcome – a reduction in the imprisonment of women. It is prepared to find £150m for new prison places to meet the cost of policy failure, but only a pittance to secure its success. The large majority of women are sent to prison for non-violent offences to serve sentences of less than one year. It is time for the government to double down on its aim to send less women to prison by investing in community alternatives and limiting the use of pointless short prison sentences.'

According to the PRT, one consequence of the COVID-19 pandemic has been 'a significant decrease in the women's prison population'. 'This is largely a result of a decline in the number of criminal trials owing to public health restrictions. However, as lockdown eases, and if nothing is done to prevent it, this trend is expected to reverse,' the group says. 'The latest prison population projections published by the Ministry of Justice show that the number of women in prison in England and Wales is predicted to rise from just over 3,000 today to 4,500 by September 2026.' The group also points out that ministers have not made available information tracking the implementation of commitments 'most of which are vaguely worded and unclear'.

According to the PRT's analysis: Even where commitments have been met there was 'little or no information on whether it is having the desired impact. The strategy is not backed up by clear and comprehensive measures of success'; 'Little progress' in implementing promises in the strategy to address the particular challenges faced by black and minority ethnic women; More attention should be given to developing a safe, trauma informed environment for women in prison; Continued attention must also be given to the cross-departmental 'Concordat on women in or at risk of contact with the Criminal Justice System'. The document was only published earlier this year 'more than two years after it was originally promised'. 'No funding was attached to the implementation of cross departmental working to establish more Whole System Approaches, and the document commits only to a "one-year on" review,' PRT says.

### **HMP Exeter – Staff-Prisoner Relationships Remain a Serious Concern**

Improvements in conditions for prisoners at HMP Exeter, a Victorian prison holding men from across south west England, were hampered by a high turnover of leadership and frontline staff and problems with staff culture, inspectors found. HM Inspectorate of Prisons visited Exeter in March 2021, when the prison held around 430 men. Charlie Taylor, HM Chief Inspector of Prisons, recalled that at the last full inspection, in May 2018, safety had been so poor the prison was subject to a rarely used Urgent Notification. A follow-up Independent Review of Progress in 2019 found that improvements were "too little too late". Mr Taylor said: "Since then, further progress has been hampered by high turnover of staff at all levels. At this visit [in 2021], some key leadership posts had just been filled and one-third of frontline staff had been in post for less than a year."

In one of the key concerns raised by the visit, the report noted: "Despite a clear vision for a safe, decent and secure establishment, we found many areas where outcomes needed to improve. Many of these deficiencies were linked to the staff culture we observed and the associated lack of confidence among staff, many of whom were inexperienced. Staff-prisoner relationships were lacking. "Some examples of this included unresponsiveness to prisoner requests and enquiries, insufficient care for prisoners at risk of self-harm or suicide and indifference to

the needs of prisoners with physical disabilities, one of whom we found located on the fourth landing of a wing. The governor had a clear vision for the establishment, which was focused on improving staff culture, but significant progress was still needed in order to create a safer, more decent and secure establishment. We found that relationships between prisoners and staff were not good enough and many prisoners were frustrated at the difficulties they faced, for example, when making reasonable requests. Prisoners from a black or minority ethnic background had very poor perceptions of staff." Inspectors were encouraged that during the COVID-19 pandemic violence had reduced and use of force by staff was reasonably well managed.

Action to reduce the supply of illicit substances was beginning to have an impact, though there had been little progress in addressing long-standing deficiencies in the care of prisoners at risk of self-harm or suicide. There had been six self-inflicted deaths since 2018. Health care was reasonable and access to clinics was improving and good partnership arrangements had helped address a recent outbreak of COVID-19. Time out of cell for most prisoners was limited to about 90 minutes on most days and less on Fridays and at weekends. Work opportunities had been confined to essential roles only and education was being delivered through work packs completed in cells. While some prisoners made good progress, others told inspectors of difficulties in getting access to teachers or to the resources needed to complete the work.

The offender management unit was well led and had a very small backlog of work. However, there was very little face-to-face contact with prisoners and prison offender managers relied on telephone calls and contact made through cell doors. The report noted that a mental health review of a prisoner in crisis had taken place through a locked door. The prisoner was 18 years old and deaf. Overall, Mr Taylor said: "Despite some progress since our last inspection and during the pandemic, outcomes for prisoners at Exeter still required improvement. All leaders and managers needed to commit fully to the governor's vision for the establishment with the development of staff capability based on good quality relationships with prisoners remaining a priority."

### **Free the Craigavon Two! Report of Glasgow Protest 26th April**

*Michael MacGregor, FRFI:* With the easing of strict COVID regulations in Scotland, campaigners for the Craigavon Two were out at the very first opportunity to publicly raise the case of the unjust imprisonment of these two Irishmen. Fight Racism! Fight Imperialism! supporters from Glasgow and Dundee joined with the campaigners as the Justice For the Craigavon Two banner was raised at the top of Glasgow's busy Buchanan Street and leaflets handed out which detailed the shoddy evidence used by a British court in the Occupied North of Ireland to frame these innocent men. Having spent three years on remand after their arrest for the killing of a Police Service of Northern Ireland constable in 2009, Brendan McConville and John Paul Wooton were eventually sentenced to 25 years and 18 years respectively.

A recent TV documentary on these unsafe convictions reviewed the rotten course of prosecution trial evidence with the added sinister involvement of MI5 state agent Dennis McFadden. He had played a major role in the illegal entrapment of the Irish Republican Saoradh Nine and Palestinian activist Issam Hijjawi last year. McFadden had likewise infiltrated the campaign for justice for the Craigavon Two to the point of running its social media pages.

Highly dubious material had already been used to secure Brendan and John Paul's convictions in a British non-jury court. For example, the main witness came forward 11 months into the investigation. His eyewitness testimony was established in court as medically impossible due to severe visual impairment. The use of a paid state spy and informant to infiltrate the men's campaign for justice

- a widespread tactic revealed by the current Spycops investigations - further undermines their convictions. As shown over the last five decades, British rule in Ireland is based on judicial frame-ups, state terror and violence. Raising this vital issue on the streets of Glasgow and London was contrasted with the timidity of Scotland's trade union movement which has voted to retreat online and abandon any street demonstrations on May Day. Who will stand by trade unionists like Ricky Tomlinson of the Shrewsbury Pickets, framed up and jailed in 1972, a few months after Bloody Sunday in Derry, when future trade unionists are likewise framed and jailed again by a corrupt British court? By standing by the Craigavon Two's battle for justice we are extending the hand of solidarity to the Irish people under British rule and organising to defend all of our rights. Free the Craigavon Two! No to the repressive Police Bill! Victory to the Irish People!

### **Successful Submission of No Case to Answer in Cold Case Murder**

Doughty Street Chambers: A murder trial was halted at the close of the prosecution case when the Judge ruled that DNA evidence linking the defendant to the scene was insufficient to found a guilty verdict. The deceased had sustained fatal injuries in the course of a burglary of his home in Northampton in 2015. Extensive investigations failed to find the perpetrator(s) of the murder. In 2020, a DNA sample recovered from the window frame through which the burglars entered the property was randomly compared to the national DNA database by a cold case investigations team. It showed a match with the defendant such that the chances of it being the DNA of an unknown person rather than the defendant were in the order of one in a billion. The defendant lived in East London at the time of the murder and there was therefore no apparent innocent reason for his DNA being found at the scene. Following cross-examination at trial, all three prosecution expert witnesses agreed that scientific analysis was unable to demonstrate whether the DNA was more or less likely to have been left by means of primary rather than secondary transfer. A consequent submission of no case to answer made by Tim Moloney QC was successful and the jury returned not guilty verdicts on the direction of the Trial Judge.

### **High Court Refuses Extradition to Romania due to Degrading Prison Conditions**

On 29 April 2021, Mr Justice Chamberlain gave judgment in an important case concerning extradition to Romania. In so doing, the High Court upheld the decision of District Judge Hamilton to discharge Mr Iancu from a European arrest warrant. District Judge Hamilton had discharged Mr Iancu on the basis that there were substantial grounds to believe that Mr Iancu risked detention in inhuman and degrading prison conditions in Romania contrary to Article 3 of the European Convention on Human Rights ('ECHR').

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinane, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva, Terry Smith, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.