

and anyone who is released on temporary licence is carefully risk-assessed, liable to monitoring, and can be immediately returned to a closed prison if they fail to obey strict conditions.” The figures show that Standford Hill prison, in Kent, had the highest number of instances of ROTL in both years, with 55,168 in 2019 and 27,343 in 2020. The steepest decline was seen at Thorn Cross in Cheshire, which had 25,891 ROTL instances in 2019 and 6,427 in 2020, a decline of 75 per cent. ROTL can be granted for work or family reasons. During the first national Covid lockdown, prisoners were only allowed out to work on day release if their job was deemed “essential”.

### **#ReclaimThese Streets Liverpool Vigil Prosecution Discontinued**

The prosecution of Cathryn Bolton, a mother who attended a vigil for Sarah Everard held in Liverpool on 13 March 2021, has been discontinued by Merseyside Police following representations by Bindmans LLP. Ms Bolton, an NHS care coordinator, had attended the vigil last year with her son and a friend from her linked household (support bubble). She attended the vigil to gather with women and male allies to mourn Ms Everard’s death, and to protest against male violence towards women and girls. A key feature of the protest was to ‘reclaim’ public space for women. Ms Bolton took her son with her to witness this important moment and to teach him to grow up into a good man. Intending to light a candle by the Burned Out Church, Ms Bolton was approached by police officers who administered a Fixed Penalty Notice for an allegation of participating in a gathering of more than two people, in contravention of the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. Astonishingly, the police said they would report Ms Bolton to social services for having brought her son with her.

It was not until December 2021, some nine months after the event, that Ms Bolton was charged with an offence in connection with her attendance at the vigil. The prosecution was brought under the Single Justice Procedure and Ms Bolton pleaded not guilty, with a trial listed for June 2022. Ms Bolton’s defence included that her attendance at the vigil constituted a lawful and proportionate exercise of her rights to free expression and assembly, protected by Articles 10 and 11 of the European Convention on Human Rights and the Human Rights Act 1998. The discontinuance of the prosecution follows the judgment in *R (Leigh & Others) v the Commissioner for the Metropolis* [2022] EWHC 527 (Admin), in which the High Court confirmed that the Metropolitan Police breached the human rights of the organisers of the London vigil for Sarah Everard, ignoring that exercise of Article 10 and 11 rights was capable of constituting a ‘reasonable excuse’ for what might otherwise contravene lockdown regulations, and failing to conduct a fact-sensitive proportionality assessment when interfering with their protected Article 10 and 11 rights.

Serving Prisoners Supported by MOJUK: Kieron Hoddinott, 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

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## **MOJUK: Newsletter ‘Inside Out’ No 895 (19/04/2022) - Cost £1**

### **Female Black and Asian Prisoners Detail Racism Endured in Landmark Report**

Nadine White, Independent: Hundreds of female black, Asian, minority ethnic inmates as well as prisoners born overseas were surveyed as part of the study along with equality staff working in prisons, and Independent Monitoring Boards (IMB) chairs and members. In the study, run by the Criminal Justice Alliance (CJA) and the IMB, one-third of women said their treatment by prison staff was poor or very poor, with over 40 per cent of women saying they had experienced discrimination - which they said included getting less access to employment within the prison. It found black women recorded particularly negative experiences and many of those involved had little confidence in the system for reporting discrimination, in procedural fairness, or in staff understanding of cultural needs. A number of respondents described shocking treatment: examples included a black woman being told by a prison officer that they “must be in for drug dealing” and a Muslim person being attacked while reading the Qu’ran. Other examples included minoritised individuals frequently being called racial slurs such as the N-word and P-word by other prisoners, only to be told by staff at the helm to “deal with it”.

Nina Champion, Director of the Criminal Justice Alliance said: “This ground-breaking project centres on the lived experiences of black, Asian and minority ethnic women in prison – their accounts of direct and indirect racism and poor treatment are shocking and distressing. Even more upsetting is their sense of fatalism - they see this treatment as part of their everyday lives. “The women lack trust and confidence in the complaints system, do not trust that they will be treated fairly and are often unaware of how prison monitors can help. There is an urgent need to address these issues nationally and locally and I hope to see our recommendations being implemented with haste.”

A review into race in the criminal justice system in 2017, run by shadow justice secretary David Lammy, did not specifically focus on the experiences of women, so campaigners believe this has become an overlooked area. One mixed-race woman in the study wrote: “I washed my hair and blow dried it and had it out natural a officer said to me ‘ow you look like you have been electricuted’. Another one said ‘I don’t like your hair like that, it needs straightening’.” Another woman of colour told researchers: “We was talking in a yardie accent and was told ‘speak properly, you sound ridiculous’ and ‘you sound like right gangsters dont you, why don’t you educate yourself’ “I grew up in foster care and I lived in Caribbean and African families so its like second nature to me”. “I feel as a black woman I have to work to prove myself 10 times more than a white person. I’m always been told I’m loud and intimidating when I’m not, yes I am loud but I ain’t what they think I am,” another respondent, who identifies as Black British, said.

A Muslim prisoner, who is of Black African heritage, said: “I feel as if black prisoners or those that are Muslim are seen as intimidating. Officers seem very reluctant to give BAME prisoners trustworthy roles and if they are given those roles it is done to appear like they are not racist.” Further testimonies from incarcerated women demonstrate the need for recruitment processes to better identify - and root out - racist attitudes and bias among staff and inmates alike. “A staff member questioning me over how I’m mixed race just because of pale colour. Staff say I smell; prisoners say I’m white,” a mixed-race woman, of multiple ethnic backgrounds including Romany Gypsy, white and Black Caribbean, said. “Us BAME prisoners feel as if there is no one here to represent us. I.e. make the

officers understand that not all of us are aggressive just because we speak different, or that were not gang members,” one black respondent of African descent wrote. Concerns were also raised around inadequate approaches to basic cultural needs within prisons, from foods to haircare products and language barriers. The report makes a dozen recommendations for the Prison Service and the Ministry of Justice, including suggestions to provide or improve leadership on equality, ramp up staff training on anti-racism and introduce specialist external scrutiny of prisoners’ discrimination claims. Other recommendations highlight the importance of collecting and interrogating data and ensuring there are dedicated resources to promote equality. In relation to IMB, the project recommends additional training and support for board members on equality issues as well as improving its diversity. Dame Anne Owers, chair of the IMB, welcomed the reports, saying: “These reports show that addressing racial and ethnic disadvantage needs to be a priority and I hope these recommendations will stimulate action at every level. “IMBs can play a key role in monitoring and reporting on outcomes for women from diverse backgrounds and we are keen to learn from this research.” The Ministry of Justice has been approached for comment.

### **CPS Challenged Over ‘Racist Stereotypes’ Behind Joint Enterprise Prosecutions**

*Jon Robins, Justice Gap:* The Crown Prosecution Service is facing a legal challenge over its use of ‘discredited’ joint enterprise law. The human rights group Liberty, acting on behalf of the campaign group JENGBA (Joint Enterprise Not Guilty by Association), is arguing that ‘the use of racist stereotypes and gang narratives’ could be leading to young Black men being disproportionately prosecuted under the common law doctrine which allow people on the fringes of an incident to be convicted of murder or manslaughter. According to Liberty, joint enterprise is ‘frequently used to prosecute young Black men in “gang” related cases, in which whole groups are convicted of a crime committed by one person on the back of prejudicial evidence that they are in a gang’. The group argues say that such ‘evidence’ could be ‘inaccurate and likely to be premised on racist stereotypes’. As reported on the Justice Gap, the Supreme Court in 2016 finding that the courts had ‘taken a wrong turn’ and that the law has been misinterpreted for years. However, the Court of Appeal subsequently close down the avenue for convictions and only one conviction has so far been overturned.

Liberty highlight research illustrating how joint enterprise is used disproportionately against young black men. They say that, of young male prisoners serving 15 years or more for joint enterprise convictions, 57% were from Black, Asian or Ethnic Minority backgrounds (BAME) – despite less than 6% of the population being from BAME groups. In spite of these concerns, in a letter to Liberty the CPS admitted that neither they nor, to the best of their knowledge, the MoJ record or monitors data regarding joint enterprise prosecutions. There have been repeated calls, including two reports from the House of Commons’ justice committee, calling on the Ministry of Justice to record such data. ‘Campaigners have been raising concerns for years about racism and joint enterprise prosecutions, and the Justice Committee recommended as early as 2012 that the CPS and MoJ should start collating data about joint enterprise prosecutions,’ comments Lana Adamou, a lawyer at Liberty. ‘It’s completely unacceptable that there is still no official data being recorded about how the doctrine is used, and who it is used against. By failing to do so, the justice system has been recklessly sweeping thousands of young black men into the prison system.’ Gloria Morrison, co-founder of JENGBA, said that JENGBA have been campaigning for years highlighting the ‘racist application of joint enterprise’ to over-criminalise people from marginalised communities. ‘It is common law, used against common people, that makes no common sense.’

kinds of work prisoners do, such as cleaning or serving food on their wings, or full-time education. Pay data released to Inside Time show that at HMP Risley in 2020, prisoners were paid £1 per session in the bicycle repair, textiles or woodwork workshops. At HMP The Verne, pay was 95p per session in the spray shop, wood mill or textiles workshop. A session typically lasts between two and three hours, consisting of one morning or afternoon of work. Asked whether it was the policy of the POA that prisoners should be paid the NMW, Fairhurst said: “No, that’s just my personal opinion as a prison officer with 30 years’ experience.”

### **Women: Tackling Double Disadvantage in the Criminal System**

Too-often ignored, women face the ‘double disadvantage’ of gender inequality and racism when they encounter the criminal justice system. This stops them from getting the support they need both within the system and when they try to rebuild their lives outside, leaving them at risk of reoffending.

In partnership with Hibiscus Initiatives, Muslim Women In Prison, Zahid Mubarek Trust, Criminal Justice Alliance and Agenda: the Alliance for women and girls at risk, we’ve developed a 10-point action plan for change to improve outcomes and reduce inequalities and discrimination against Black, Asian, minoritised and migrant women in contact with the criminal justice system. Our action plan, developed through consultation with women with lived experience as well as government officials and specialist organisations, provides clear steps that are needed to make a real difference in the lives of the most marginalised women in our community.

Women’s experiences of violence and abuse can drive them into the criminal justice system, with many serving short sentences for non-violent offences. Many face further abuse and vulnerability as they experience the ‘ripple effects’ of criminal justice involvement like worsening mental health, isolation, and poverty. For Black, Asian, minoritised and migrant women these experiences can be compounded by racism and discrimination. In many cases women can face additional disadvantage in the form of faith inequalities when they encounter the criminal justice system. The government must urgently follow through with their commitment to addressing gender and racial inequalities for Black, Asian, minoritised and migrant women. By working together across political parties, specialist organisations and alongside women with lived experience in the criminal justice system, we can create real change and ensure some of the most marginalised women are no longer overlooked.

### **Day Release Halved In First Year Of Covid**

*Inside Time:* The number of men leaving open prisons on ROTL (Release on Temporary Licence) halved during the first year of the Covid pandemic, according to figures from the Ministry of Justice. In 2019 there were 364,856 instances of ROTL from the 13 men’s open prisons in England and Wales. In 2020, this fell to 162,097, a decline of 57 per cent. The first national Covid lockdown began in late March 2020, so the annual total includes two months which were unaffected by the virus. The figures were disclosed in Parliament by Justice Minister Kit Malthouse in response to an MP’s question. They count the number of times prisoners went out on day release, so if the same individual went out multiple times, he would add to the total each time. Explaining the benefits of ROTL, Malthouse said: “By providing opportunities to work, learn and build family ties, temporary release from prison helps prevent offenders from returning to crime when they leave prison. The evidence shows that increased access to ROTL by suitable offenders helps to reduce re-offending, and the ROTL compliance rate is well over 99 per cent. “Prisoners can apply for release on temporary licence, but it does not mean it will be granted. The safety of the public is the overriding concern

### **Sex Work is Work Dangerous Attempt to Criminalise Sex Workers' Online Advertising**

English Collective of Prostitutes (ECP) is a network of sex workers working both on the streets and indoors campaigning for decriminalisation and safety. The Online Safety Bill was published on 12 May 2021 with the stated aim of cracking down on “harmful” content online. A clause has now been added to the bill to include the offence of “inciting or controlling prostitution for gain” as one of the priority offences that tech companies have to look out for – firms would then be obliged to remove any content from their platforms that could be construed as committing this offence. This would be disastrous for sex workers as it would undoubtedly lead to advertising platforms clamping down on sex workers’ advertisements in order to avoid any chance of being prosecuted – essentially criminalising the online advertising of sex work. Controlling prostitution for gain is interpreted very widely in the criminal courts. Some women in the ECP have been prosecuted under this offence just for helping a friend build a website or place an advert. Our experience shows that in any crackdown like this, migrant and women of colour are particularly targeted. Research shows that online advertising has enabled sex workers to work more safely and independently from exploitative bosses, to screen clients and have more control over our working conditions. Preventing sex workers from advertising will increase violence and the risk of attack. Similar legislation (SESTA/FOSTA) was passed into law by Trump in the US in 2018 resulting in an increase in poverty, insecure housing, suicide, murder, isolation, and the deterioration of physical and mental health for sex workers.

### **Pay Prisoners National Minimum Wage, Says Union Leader**

*Inside Time:* Mark Fairhurst, national chair of the POA, said the move would encourage a “work ethos” among prisoners while allowing them to build up thousands of pounds in savings by the time of their release, enabling them to put down a deposit on a flat and make a fresh start in life. It would mean a major change to the economics of prisons. Workshop pay is typically around 50p per hour, according to figures released to Inside Time under the Freedom of Information Act, whereas from next month the NMW will be £9.50 per hour for anyone aged over 23.

Some prison workshops are run in partnership with private employers. Fairhurst pointed out that this arrangement benefits the companies involved because they do not face recruitment costs, so they could still save money by using prison labour even if required to pay the NMW. He singled out DHL, the company which employs 500 prisoners through its Prison Retail Service contract, picking and packaging goods which prisoners have purchased through their weekly “canteen” orders. In an interview published in Prison Service Journal in March, Fairhurst said: “In workshops, why are we not paying prisoners the minimum wage? For example, DHL have warehouses in several prisons. Why are they not paying prisoners the minimum wage? “If you’re paying prisoners the minimum wage, a third can go to the Victims’ Charter fund, a third to their savings for when they are released, and a third they can spend while they’re in prison. Instead of that small discharge grant, with the savings they could go out with a couple of thousand pounds. They’re also leaving with a work skill so not only can they get a job, but they can get away from all the negative peer pressure, maybe put a deposit down on a flat in another area and start afresh. We’re giving people hope, we’re giving people an opportunity to change.”

Private companies employ prisoners in roles including assembling and packing products, and call centre work. The companies do not directly employ the prisoners. Instead, they pay a fee to the Prison Service, which selects the workers, determines their pay rate, and pays them. Prison governors try to set a balanced pay scale so that workshop pay is in line with the pay for other

### **UK Still Imprison More of our Fellow Citizens Than Other European Countries**

Commenting on the publication of the Council of Europe’s Annual Penal Statistics on Prison Populations for 2021, Peter Dawson, director of the Prison Reform Trust said: “Some politicians may be tempted to celebrate the fact that we imprison more of our fellow citizens than other European countries. But to be high up a league table where Russia sits at the top should perhaps give ministers pause for thought. Once again, these depressing figures show how other countries find better and less wasteful ways to exact retribution when people have done wrong. The size of our prison population reflects only our dismal politics — beating crime has nothing to do with it.”

Strasbourg, 05.04.2022 – The Covid-19 pandemic contributed to reducing the prison population in Europe between January 2020 and January 2021, consolidating a ten-year-long trend in most European states, according to the Council of Europe’s Annual Penal Statistics on Prison Populations for 2021, released today (see also the Key findings). Key factors contributing to the decrease of the prison population were the reduction in certain types of crimes in the context of the restrictions of movement during the pandemic, the slowing down of the judicial systems, and the release schemes used in some countries to prevent or reduce the spread of Covid-19.

On 31 January 2021, there were 1,414,172 inmates detained in the 49 prison administrations of Council of Europe member states that provided this information (out of 52), which corresponds to a European prison population rate of 102 inmates per 100,000 inhabitants. In the 48 prison administrations for which information is available for both 2020 and 2021, this rate fell from 104.3 to 101.9 inmates per 100,000 inhabitants (-2.3%). The proportion of inmates serving sentences for theft fell by 8.7%, whilst the percentage of prisoners sentenced for less than one year dropped by 25.5%. “The decrease in these indicators could be an indirect consequence of the lockdowns, which decreased street crime. The drop in the rate of admissions into prisons was also particularly steep in 2020, corroborating the influence of the restrictions of movement related to Covid-19. Fewer interactions between people imply less contact crime in public spaces, fewer arrests and persons in detention”, according to Professor Marcelo Aebi, Head of the SPACE research team from the University of Lausanne.

The restrictions in movement of inmates related to Covid-19 (fewer temporary prison leave permits and less work outside of the penal institutions) could also explain the significant reduction in escapes (2.2 escapes per 10,000 inmates in 2020, compared to 8.2 per 10,000 inmates in 2019). Out of the 48 prison administrations that provided data for both 2020 and 2021, the incarceration rate – the number of prisoners per 100,000 inhabitants - fell in 30 penal administrations, remained stable in 14, and only grew in three, considering only countries with more than 300,000 inhabitants. If one compares the situation with that observed ten years ago, the only country (with more than 300,000 inhabitants) that has a higher prison population in 2021 than in 2011 is Turkey.

### **UK Prisons Have One of Highest Suicide Rates According to Council Of Europe**

*Jon Robins, Justice Gap:* Prisons in England and Wales have one of the highest suicide rates in Europe alongside the likes of Latvia, Albania and Lithuania, according to a Council of Europe report comparing jails across the continent. Our prisons are also in the ‘very high’ category for prison population rate per 100,000 inhabitants in 2021, scoring more than 25% higher than the European median value alongside the Russian Federation, Turkey, Georgia and Azerbaijan. The SPACE I – 2021 report, published this week, ranks 49 different prison administrations across Europe. In England and Wales there were 132 prisoners per 100,000 total population in 2021 and 135 in Scotland. This compares starkly with Northern European countries such as Sweden

(57) and Norway (54) as well as Italy (90) and Germany (71). By contrast, Hungary has 180 prisoners per 100,000, Poland has 179, Azerbaijan 216 and Georgia 232. Russia had the highest prison population: 328 per 100,000 inhabitants. The suicide rate per 100,000 prisoners was nine in England and Wales compared to, for example, five in Germany. England and Wales scored 'low' for both the percentage of female prisoners and foreign prisoners and 'medium' for prisoners aged 50 years or over. Our prisons scored 'high', up to 25% higher than the European median, for prison density per 100 places – this is the indicator for overcrowding (and so there is overcrowding when there are more than 100 inmates per 100 places available).

### **Prisoners: Older People**

Asked by Lord Bradley To ask Her Majesty's Government how many (1) males, and (2) females, who are currently serving prison sentences in England and Wales are over the age of 80. [HL7259] Lord Wolfson of Tredegar: As of 31 December 2021, there were 329 sentenced male prisoners and 2 sentenced female prisoners aged 80 or over in England and Wales. These figures have been drawn from administrative IT systems which, as with any large-scale recording system, are subject to possible errors with data entry and processing.

### **Reform of the Parole System: Public Protection**

House of Lords 5th April: The Parole Board must not give a direction'— for release— 'unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.' It is clear from this that the overriding test focuses on public protection. However, in the absence of further guidance from Parliament, the way in which the release test has been interpreted and applied over time has shifted, moving away from Parliament's original intention. In fact, as early as the Bradley judgment in 1991, the High Court concluded: 'The Parole Board have to carry out a balancing exercise between the legitimate conflicting interests of both prisoner and public.' To summarise, the statutory test has morphed over time from a strict public protection test to a balancing exercise between, on the one hand, the responsibility of the state to protect the public and, on the other hand, the rights of the prisoner. Whatever the rights and wrongs, that was palpably not the original intention of Parliament.

I make it clear that I am not criticising the courts, which have sought to apply a generic statutory test without more prescriptive guidance from Parliament, nor am I criticising members of the Parole Board, as I hope I have made clear. It is worth saying that, contrary to public perception, it is often fiendishly difficult to come to a reliable assessment of an offender's risk many years after their original crimes. Although psychiatric assessments and social science can offer guidance, risk assessments in such cases are inherently uncertain and imprecise. We need to be more honest and open about that in our public debate. In any case, I believe the focus in this critical decision-making has become adrift from its original moorings. This Government will again anchor Parole Board decision-making on the cardinal principle of public protection. When it comes to assessing the risk to victims and public safety, we will introduce a precautionary principle to reinforce public confidence in the system. In cases involving those who have committed the most serious crimes, we will introduce a ministerial check on release decisions, exercised by the Justice Secretary.

The package of reforms published today Tuesday 5th April 2022, will strengthen the focus on public protection at every stage. First, we will revise the statutory test for release and replace the current approach that balances the rights of dangerous offenders against public safety with an overriding focus on public protection, by providing in primary legislation fur-

*Conclusions* - After hearing four weeks of evidence, the jury concluded Kelly died "of a self-applied ligature of unknown intention". Alongside this open conclusion, the jury gave a critical narrative conclusion. They found the following issues contributed to Kelly's death The absence of information relating to multiple episodes of attempted self-harm and suicide, as evidenced in police intelligence logs, which could have been recorded or accessed in Police National Computer warning markers and 'Protecting Vulnerable People' reports The lack of training by Lancashire Constabulary Frontline officers concerning in which circumstances Police National Computer markers should be created, which contributed to a lack of markers on the system and thus her death. The jury also found that the senior attending officer, who was first on the scene, should have requested more information from the control room regarding the suicide marker that was recorded. The incident was initially graded as a 'threat to life', but the jury found no evidence to suggest that the senior officer attending informed other key officers involved about why that was, or of any potential risk of self-harm or suicide by Kelly. This was among other serious failures in communication between officers highlighted by the jury. The jury also found the manner in which Kelly was treated and overall management of her within the Greenbank custody suite increased the risk of suicide or self-harm in custody. This included the failure to build rapport, explain the process, and the use of force against her, which all contributed to her increased agitation.

The coroner will now consider the issues Lancashire needs to address to prevent future deaths. At present, the systems with respect to warning markers remain the same as when Kelly died. June Hartigan, Kelly's mother, responded on behalf of the family: "Today we thank the jury for their careful consideration of the evidence and their extremely serious criticisms of every layer of Lancashire Police. It's now a matter of public record – and enduring shame – how Lancashire police officers treated Kelly that night. For the last 5 years we have been tortured by what we knew must have happened, by all the things the police did wrong, and all the ways in which Kelly might have been saved. While it helps to hear that the jury could see the same level of wrongdoing, the fact it has taken five years to reach this stage means this is something of a hollow victory. The last 5 years have been agonising. We spent years challenging IOPC and CPS decision making. It seems now that the IOPC failed to gather the evidence which would have allowed the jury to consider corporate manslaughter as a conclusion. Kelly was beautiful, clever, and funny and she should still be here with us today. She was a loving daughter, granddaughter niece, sister, aunt."

Bhatt Murphy who represented June Hartigan, Kelly's mother, and Stuart Hartigan, Kelly's brother said: "After considering 17 days of live evidence the jury concluded that a myriad of failings led to Kelly's death. Kelly's family were entitled to place their trust in police officers to keep Kelly safe. In failing to consider glaringly relevant information or perform an adequate risk assessment on the highly vulnerable person they had taken into their custody, Lancashire Constabulary violated that trust. Troublingly, there is little evidence to show that Lancashire Constabulary have learned from the failures which led to Kelly's death or implemented changes to prevent future tragedies."

Deborah Coles, Director of INQUEST, said: "Kelly was a woman in mental health crisis, in need of care and specialist support – not custody. Police officers treated her distress, vulnerability, and suicide risk with reckless indifference. The inaction and abject failure to follow police guidance and derogatory attitudes towards Kelly resulted in her preventable death. This is reflective of a misogynistic culture within policing affecting the treatment that women receive. Lancaster Police at a senior management level were put on notice about the safety risks to detainees. That they failed to act shows institutional resistance to learning and meaningful change for which they should be held to account."

*Background* - Kelly was found unresponsive in a cell at Greenbank Police Station in Blackburn at around 1.30am on 4 December 2016, having self-ligated. She was taken to hospital and put on life support where on 5 December 2016 she was pronounced dead. Originally from Bolton, Kelly lived in Darwen with her civil partner Cal Hartigan-Burns. Cal sadly died in 2019 before learning the full details of what happened to Kelly. Kelly's family describe her as a bright and positive person. Although her mental health was impacted by the sudden and traumatic death of her father when she was a teenager, she went on to get her degree and to work as a substance misuse practitioner. Kelly's history of mental ill health, self-harm and alcohol misuse brought her under the care of community mental health professionals at East Lancashire NHS Trust. By the end of November 2016, her family had become increasingly concerned about her.

It took more than five years for Kelly's death to become the subject of an inquest, following protracted decision making by the then Independent Office for Police Conduct and the Crown Prosecution Service, and following the disciplinary hearing for Jason Marsden. Key Evidence - Late on 3 December 2016, a member of the public called 999 and reported seeing Kelly walking in and out of traffic in her pyjamas saying she wanted to die. Lancashire police officers attended and took her home to her partner, Cal, who was a mental health nurse. Until her death in 2019, Cal maintained that she had told the officers that Kelly was a suicide risk and that she was worried that Kelly would try to tie something around her neck. She recalled discussing previous incidents with officers who agreed that Kelly was at risk of suicide. The incident logs shown during the inquest recorded five separate incidents in the preceding 12 months, including numerous references to mental ill health, attempts to ligature, and detention under section 136 of the Mental Health Act 1983.

Instead of using their mental health powers to take Kelly to a place of safety, police arrested her for common assault arising from an argument she had had with Cal earlier that evening. Officers took her to Greenbank Police Station, still in her pyjamas. None of the information about Kelly's history or risk of self-harm featured in the decision to put her in a cell. While she was being booked in, a custody detention officer sought to forcibly remove Kelly's wedding rings and later attempted a leg swipe on Kelly – a use of force she was not trained in – resulting in the detention officer kicking Kelly. The custody sergeant who booked her in did not even ask Kelly's name. Even once it became known to custody staff that Kelly was on psychiatric medication and had a warning marker for suicide on her record, no steps were taken to keep her safe. No one went to speak to her and she was not placed in a CCTV cell, even though there was a vacant one beside the cell where she died. The custody sergeant then left two hours early without checking on her. His colleagues didn't either, until Kelly was found unresponsive in the cell and was taken to hospital where she later died.

Evidence emerged during the inquest that there had been a near-miss incident earlier in 2016, due to arresting officers' failure to relay to custody that the detained person had suffered a head injury whilst being transported there. That person was then admitted to A&E where a brain bleed was discovered. There had also been an inspection in May-June 2016 by HM Inspectorate of Constabulary into Lancashire Constabulary's custody suites. The resulting report highlighted confusion about safeguarding procedures, failures to treat detained persons with respect and dignity, as well as the overuse and under-recording of physical force against detainees. It appears that lessons from the near-miss and critical inspection were not addressed by Lancashire Constabulary with any effective change, and Kelly died just months later in their custody.

ther detailed criteria for the application of the statutory test. Secondly, we will make sure that the Parole Board is better equipped to make credible and realistic assessments of risk. It is striking that, as of last year, only 5% of all Parole Board panel members come from a law enforcement background. Again, I make no criticism of the current panel members, but that is a significant deficit. I believe the deficit is wrong, and our reforms will ensure that the people we charge with making finely balanced assessments of future risk have greater first-hand operational experience of protecting the public from serious offenders. We will change this imbalance by mandating the Parole Board to recruit more members with operational law enforcement experience, and the Ministry of Justice will run a recruitment campaign to bolster its numbers. Critically, in Parole Board cases involving the top-tier cohort of serious violent and sexual offenders, we will require by law that at least one of the three panel members has a law enforcement background. The third key reform is that, for the top-tier cohort of high-risk offenders who have committed the most serious offences, we will introduce ministerial oversight of Parole Board decisions to release such offenders back into the community, based on our assessment of the dangerousness of the offender, the risk of serious further offending and public confidence. These top-tier offenders will comprise those serving sentences for murder, rape, terrorism and causing or allowing the death of a child. In those cases, we will make two specific changes. The Parole Board will be able to refer a case to the Justice Secretary if it cannot confidently conclude whether, on the evidence, the statutory test for release has been met. In addition, we will introduce ministerial oversight over any decision to release any offender in the top-tier cohort of serious offenders. Under our reforms, in that top tier of cases the Justice Secretary will have the power to refuse release, subject to judicial challenge, on very clearly prescribed grounds, in the Upper Tribunal. I believe that is warranted as an extra check and safeguard to protect the public. I have not yet ruled out entirely an alternative model that could establish a three-person panel chaired by the Justice Secretary with the same power to refuse release, subject to judicial review in the normal way. We will consider further detail of the mechanism in order to strike the most effective balance.

We are making these reforms because the concept of risk is notoriously difficult to assess in these kinds of cases. We are doing it because the public expect their safety to be the overriding consideration and because, ultimately, it involves a judgment call about public protection, and the public expect Ministers to take responsibility for their safety. Let me be equally clear that there is no such thing as a risk-free society; we cannot guarantee that no one released from prison will go on to commit a serious crime. Let us be very clear about that as we have a more honest debate about the assessment of risk. Nevertheless, I believe that these measures are necessary to reinforce public safety and public confidence, and we will legislate for them as soon as possible. I should also say that we will do so alongside our proposed Bill of Rights, to ensure that the will of Parliament and that focus on public protection is not undermined by the Human Rights Act. Indeed, our reforms to parole yet again highlight the compelling case for a Bill of Rights.

Our fourth reform will increase victim participation in parole hearings, thereby delivering on this Government's manifesto commitment. I recognise that parole decisions will be immensely and acutely traumatic moments for many victims, as they are forced to remember, go through and revisit the ordeal and suffering that they have already been through. Some will not wish to be involved, whereas others will want their voices to be heard, and I believe they should have that right. So we will give victims the right to attend a parole hearing in full, for the first time, should they wish to do so. In addition, we will require the board to take into account

submissions made by victims and allow victims to ask questions through those submissions. The voice of victims will be at the centre of the process, not just some lingering afterthought. Finally, although separate from parole decision-making, similar considerations of risk and public concern have arisen in the context of decisions to transfer prisoners to prisons in open conditions. That is why in December 2021 I changed the process to introduce a ministerial check on such decisions, guided by similar principles to those that I have already set out. That is what led to my decision this month to reject the Parole Board's recommendation to move Steven Ling, who raped and killed a woman, to an open prison. I declined the move in the interest of public protection and public confidence. In sum, our reforms will ensure that those offenders who present the highest risk to public safety are reviewed more rigorously, with additional ministerial oversight. Protecting the public is the Government's top priority. The proposals in this review will reinforce public safety. I commend this Statement to the House."

### **Record Number of Prison Officers Quit - Fears of Staff Shortages**

*Inside Time:* The number of prison officers quitting the service has hit a new high, raising further fears of staffing shortages. In October, 422 staff resigned from prisons in England and Wales – the largest number ever to depart in a single month, according to Mark Fairhurst, national chair of the Prison Officers' Association. It came on top of record-breaking figures in the two previous months. Prison inspectors and trade unions have been warning of a looming workforce crisis in jails. In an interview with Prison Service Journal, Fairhurst said: "Since 2010 we lost over 7,000 from my staff. We're losing staff at a rate that we've never experienced before. The attrition rate is running at 12.5 per cent. As quick as we recruit, we're losing them. "In the last 3 months we've had more resignations than we've had new recruits. We can't continue in that vein ... At the moment we're about 3,000 frontline prison officers short, and with attrition we'll never get back up to that level. In a recovering economy more and more jobs are becoming available, with higher wages to attract the right candidates. Right now we can't compete." Fears have also been expressed that many of the prison officers in post are new to the job, with no experience of what prisons were like prior to the Covid lockdowns. Charlie Taylor, HM Chief Inspector of Prisons has warned that inability to recruit and keep staff is the "biggest work on the horizon" for the Prison Service, and that the Government's plans to create 20,000 extra prison places – including the opening of six large new men's prisons in England – will fuel staff shortages. According to Ministry of Justice figures published in Parliament, which showed the number of prison officers resigning each month between 2010 and September 2021, August and September 2021 were the worst months on record with more than 200 officers resigning each month – the first time this level of departures had been reached. Between 2010 and 2013, there were never more than 40 resignations of officers in a single month.

### **Random Drug Testing in Prisons May be Scrapped**

*Inside Time:* In normal times, more than 50,000 random mandatory drug tests (MDTs) are carried out each year on prisoners in England and Wales. Around one in six test positive, and those who fail or refuse to provide a urine sample can face punishment. However, testing was suspended at the outbreak of the Covid pandemic in March 2020 – raising questions as to whether the programme is necessary. Ed Cornnell, the Gold Commander for Covid response at HM Prison & Probation Service (HMPPS), revealed that there was an internal debate underway, focusing on whether the testing programme should continue or whether there were better ways to detect drug abuse and support addicts within jails. Asked what lessons prisons had learned from Covid, he pointed to random MDTs and said: "There's a great deal of consideration of

whether that's the best way of detecting and identifying drug misuse and providing that support to people within custody. Is it a punitive thing? Is it a supportive thing? "Drug testing is a resource and labour-intensive process that samples a small percentage of the population. And we've resourced that as an area to support substance misuse management and to try to police our prisons. And the question comes, is that right?" Cornnell's remarks were published in the March issue of the Prison Service Journal, an in-house publication of HMPPS. The Ministry of Justice declined to comment, but sources said the remarks reflected Cornnell's personal views.

Random MDTs were introduced in 1996 to English and Welsh prisons. Between 5 per cent and 10 per cent of each prison's population must be tested each month. Names of those to be tested are generated randomly by computer. Each selected person must be escorted from their cell or workplace to a designated area of the prison where they are required to give a urine sample under supervision – which can involve a wait of up to two hours. The samples are sent to a laboratory to be tested for a range of illegal substances and prescription medicines taken illicitly. Governors are judged on how many of their residents fail the tests. In 1996, the overall failure rate was 24 per cent. In 2020, the last full year of testing, 54,047 tests were attempted and the overall failure rate was 14 per cent. Over the years the results have shown a steady reduction in the number of prisoners testing positive for cannabis and opiates, and a corresponding rise in the use of Spice-type substances and cocaine.

In his interview, Cornnell pointed out that a pilot project due to start at 24 prisons will involve testing waste water to determine the level of Covid infection at each jail. The technique could be adapted to determine levels of usage of different illegal drugs, providing an alternative way to rank jails by their success in combatting the drugs problem, without the labour-intensive process of random MDTs – but also without the possibility of identifying which individuals are involved. In addition to random MDTs, prisons also carry out targeted MDTs when a prisoner is suspected of using drugs – and these are expected to continue. Some prisoners also undergo voluntary drug tests, for example when living on a "drug-free wing". The Government's Prisons Strategy White Paper, published in December by Justice Secretary Dominic Raab, stated that "We will improve our drug testing across custodial and community settings, aiming to test for a broader range of substances", without specifying whether random MDTs would continue.

### **Kelly Hartigan-Burns: Inquest Finds Litany Of Failures In Lancashire Police Custody Death**

INQUEST: Kelly Hartigan-Burns, 35, died in 2016 after being arrested and put in a Blackburn police cell whilst in a mental health crisis. An inquest has now confirmed what Kelly's family have been made to agonise over since she died – that the police officers who took responsibility for Kelly that night failed her at every turn. They jury concluded that "if officers had shown more compassion, acted diligently, practiced common sense, followed guidance and procedure from the moment they found Kelly and throughout her detention there may have been a different outcome." The jury gave an open conclusion with a narrative detailing a litany of failures which contributed to Kelly's death, including the failure to record previous incidents on the system, to obtain and relay the relevant information, and in the management of Kelly in the custody suite. Kelly was failed by Lancashire Constabulary at every level, from the control room, to the response on the street, in her home and at the police station. The jury identified significant individual and corporate failings. The family feel the jury's conclusion vindicates their long battle over the past six years for this wrongdoing to be recognised. In October 2021, a finding of gross misconduct at a professional standards hearing was made against Jason Marsden, the custody sergeant involved in Kelly's death, barring him from returning to work for the police.