

### **CCRC Refer James Alexander Smith's Murder Conviction to CoA**

*BBC News Northern Ireland:* A man jailed for life for murder has had his conviction referred to the Northern Ireland Court of Appeal as a possible miscarriage of justice. James Alexander Smith and his co-accused Peter Greer were convicted under the joint enterprise law in 2013 of the murder of Duncan Morrison and attempted murder of Stephen Ritchie. The victims were shot in a flat in Bangor, County Down, on 13 May 2011. Smith was sentenced to life in prison with a minimum tariff of 21 years.

His case has now been referred by the Criminal Cases Review Commission (CCRC) following a review of directions given to the jury during the trial. This is the first time the CCRC has referred a joint enterprise case in Northern Ireland. Joint enterprise law allows several people to be charged with the same offence, even though they may have played very different roles in the crime. In 2016, the Supreme Court said the law had been misinterpreted for 30 years. It said a person should only be found guilty of a joint enterprise offence if they intended to assist or encourage the person who committed it.

CCRC chairman Helen Pitcher said the commission had received dozens of applications to review historic joint enterprise convictions after the 2016 Supreme Court ruling. She added that joint enterprise appeals had a high hurdle to clear and in Smith's case, there had to be a strong case that the directions to the jury made a difference to the outcome of the trial. "We have referred this case to the NICA because we believe there is a real possibility that they will overturn Mr Smith's convictions. Having carefully analysed the case, the CCRC has decided that there is a real possibility that had the jury been directed in line with the law as it is now understood, this would have made a difference to the outcome of the trial. The CCRC has therefore concluded that there is a real possibility that NICA will decide that it would be a substantial injustice for Mr Smith's convictions to stand.

### **A Recipe For Confused Policing? New Drug Strategy Laced With Problems**

*Transform Justice:* What is the Conservative view on recreational drugs? It seems pretty punitive and, in some ways, unconservative at the moment. Rishi Sunak has recently said "Drugs are horrific. There is nothing recreational about them. I have never taken them & I will be incredibly tough on anyone who does.". Liz Truss appears concerned by the government of Bermuda's attempt to legalise cannabis. Boris Johnson's government has gone in the opposite direction from Bermuda. The Home Office slipped out a white paper entitled "Swift, Certain, Tough" in July. The proposed policies are targeted at those who use recreational drugs without actually defining what those drugs are – presumably cannabis, cocaine and party drugs such as ecstasy.

The premise of the white paper is that use of recreational drugs does harm. The drugs trade certainly does do harm, through fuelling organised crime, violence and the criminal exploitation of children. But it's not clear that clamping down hard on the possession of recreational drugs will reduce this harm much, if at all. Other countries are reducing this harm through what many would see as a free market policy – decriminalising or legalising the use of certain drugs such as cannabis. Senior Tories have doubled down instead. The Home Office proposes every single person found with recreational drugs should get a criminal sanction, that every additional

offence of drug possession should lead to an escalation of criminal penalties and that those caught with recreational drugs for a third time should face having their passport confiscated, a driving ban or similar. There are many problems with the new strategy both practical and ethical

There is no evidence that the strategy will reduce use of recreational drugs by anyone, not least by the middle class party drug takers the government is targeting. In most liberal countries, a sizeable minority of people use illegal drugs, regardless of the enforcement regime. The main new interventions being proposed – a shorts drugs awareness programme, escalation of penalties and punitive sanctions – are not proven to stop people taking drugs. No piloting is suggested. The new strategy cuts across another new government strategy on out of court disposals, which has only just been passed in parliament. The new recreational drugs strategy proposes a new fixed penalty fine when the fixed penalty has just been abolished. The three tier recreational drugs strategy has completely different stages to the two tier plus community resolution out of court disposal strategy just approved by parliament. This is a recipe for confused police enforcement.

Police discretion is essential to effectively resolving crime without going to court. But this strategy sidelines police judgement and pretends that one size fits all. This is inequitable and misguided. There are many different kinds of drug takers and different motivations for taking recreational drugs. Why should a police officer be given considerable freedom to choose how to deal with an incident of criminal damage but none when it comes to drugs possession? The policies are supposed to target middle class recreational drug users, but they are more likely to sweep black and poor people into the criminal justice system. Poorer communities are more likely to be subject to stop and search and thus be accused of possession. Middle class users are less visible to the police since they tend to buy and use their drugs behind closed doors.

The new strategy is likely to lead to thousands of young people being criminalised and gaining lifelong criminal records. Currently nearly half of all those arrested for possession of cannabis are given a community resolution (the lowest category of out of court disposal), and no further action is taken in 17% of cases. So the majority of those arrested for possession of recreational drugs currently do not get a criminal record. The new sanctions "ladder" will lead to many more people getting formal criminal sanctions.

Do the Conservatives think being tough on recreational drugs is a vote-winner? If so, they may be misinformed. Recent research suggests most voters do not support possession of cannabis being a criminal offence. In a recent You Gov poll 38% of people thought such drugs should be legalised and 21% that they should be decriminalised. I've spoken to many police officers who are uneasy about these proposals, both because of the challenge of introducing a new system and because many are sceptical that criminal punishment works to reduce drug use or drug crime. Let's hope wise counsel will prevail.

### **Jail for Feeding Pigeons: the Broken System of Antisocial Behaviour Laws**

*Bureau of Investigative Journalism:* Mentally ill people are being sent to prison in England and Wales for breaking antisocial behaviour rules that experts say they are unable to follow. They often face their court hearings with no legal representation and can be sent to prison even if their actions are deemed to have caused no real harm. People sentenced to prison under these rules in the last three years included a homeless man who was given six months in jail for breaching an injunction that ordered him to stop begging and another man sentenced to 15 weeks for failing to stop feeding pigeons from his balcony. In one instance a woman was moved directly from a mental health hospital to a six-month prison stretch.

“Antisocial behaviour” is a broad legal term that covers actions ranging from harassment or threats to playing loud music, drinking in the street or even sleeping rough. In England and Wales, this used to be dealt with via the antisocial behaviour order (ASBO) but a 2014 legislation introduced a new way to tackle the issue: a civil injunction, which sets out a list of things the recipient cannot do or actions they must take. If the person breaks these rules, they are considered in contempt of court – which can be punished with prison.

The Bureau has found this system to be riddled with severe problems. Injunctions have been handed out against people begging on the streets, elderly men playing dominoes in public and numerous people with debilitating mental health issues. Police even applied for an injunction to stop a suicidal woman from standing on a bridge, meaning an attempt to kill herself would have been contempt of court and could have ended in her imprisonment.

The Ministry of Justice does not collect any data on when and how antisocial behaviour injunctions are used or what happens when they are breached, so the Bureau analysed hundreds of court judgments, published between 2019 and mid-2022, to create a first-of-its-kind database. We found: At least every eight days someone is in court facing prison for breaching an antisocial behaviour injunction. Women make up 27% of people jailed for antisocial behaviour – a proportion seven times higher than women in the wider prison population. At some hearings, judges openly expressed concern that the person’s actions had caused no real harm but, given the limited sentencing options for contempt of court, sent them to jail anyway.

Several lawyers told the Bureau that the majority of the people they had seen given injunctions did not have the mental capacity to face court, let alone adhere to the rules of the injunction. The Bureau spoke to people with serious mental health issues who had been given injunctions, one saying “I don’t think I’ll ever get over it” and another describing the process as “a nightmare” that had “ruined our lives”.

*A passage to Prison* Few cases exemplify the pipeline from mental health problems to prison as starkly as Charlotte’s. Charlotte spent her childhood in care and was repeatedly sexually assaulted in children’s homes. As an adult, she has a history of serious mental health issues, including overdosing and self-harm. In 2020, her social housing provider brought an injunction against her, which she subsequently breached by shouting at neighbours and housing officers, refusing officers entry into her house and by failing to attend mental health treatment. She was brought before a court, where a judge requested a mental health assessment as a result of her “shouting and interrupting the proceedings” – and she was remanded to prison. In prison awaiting her hearing for breaching the injunction, Charlotte’s mental health worsened and she was sectioned in a mental health hospital. When her hearing did take place, the judge noted her history of serious mental health issues – but nonetheless gave her an immediate prison sentence of six months. To compound Charlotte’s trauma, her housing provider was pursuing a possession order. She would almost certainly be homeless when she was released. Charlotte is one of a markedly high number of women who have found themselves in prison for breaching these injunctions. We found that women made up 27% of those sent to jail in such cases; in the prison system overall, this number is just 4%. Prison sentences could mean women losing their homes and even custody of their children. Nicola Drinkwater, head of campaigns and public affairs at the charity Women in Prison said: “Prison is a dead end, one that tears families and communities apart. And the government’s own strategy acknowledges that most women in prison should not be there,” she said. “It doesn’t have to be like this.

The Bureau also found scores of people sent to prison each year on short sentences for relatively minor issues. In some cases they were up in court facing prison just a week after being given the initial injunction. In one instance, a man imprisoned for breaching an injunction order-

ing him to stop begging in public was sent back to prison just days after his first stretch ended for breaching the same injunction. Our analysis also revealed the average sentence was just 86 days. Some were as little as two weeks. In many instances people were sent to prison in the height of the pandemic, when Covid was known to be raging through prisons and people were locked in cells for 22.5 hours a day on average. Some of those facing prison for breaching their injunction caught Covid while being held on remand. Andrea Albutt, the president of the Prison Governors Association, told the Bureau that such sentences are pointless. “Invariably the reason why the person has the antisocial behaviour injunction is because of their mental health,” she said, “and if they come [to prison] for short periods of time, we don’t have them long enough to stabilise them [and] their antisocial behaviour becomes worse. They can become very psychotic when they come into prison and we do not have the facilities to manage them. Putting people in prison for short periods of time for a civil offence is just crazy.”

When Diana was given an antisocial behaviour injunction after falling out with her neighbours, she struggled to find a lawyer who worked on legal aid. Many do: 41% of people in England and Wales are without a housing legal aid provider in their local authority. It meant that when her injunction was first handed down, Diana, who is 75 and has struggled with her mental health for years, had no one to fight her case in court. Diana remembers what it felt like to be in court alone, representing herself: “I couldn’t speak. I lost my voice when they were talking to me because of the nerves.” Her injunction laid out how she could be arrested if she broke any of its stipulations. “I said to people, ‘I could go to prison ... I could get a prison sentence and my home and my dog would be gone, you know, my life would be over,’” she said.

Diana later found a lawyer who asked a psychiatrist to assess her. The psychiatrist noted she had severe depression, paranoid delusions, problems with her short-term memory and major impulse control issues. He said her mental health conditions were the cause of her antisocial behaviour and meant “she will not be able to comply with the conditions of the injunction at all times”. Yet the injunction was upheld. As predicted, she breached the injunction several times, and was taken into police custody on more than one occasion as a result. In one instance, she smeared food over the cells walls and picked paint off the cell door – for which she was then charged with criminal damage and fined. Diana has since been diagnosed with bipolar disorder and is now on medication. And she has moved house, away from the neighbours she fell out with. But the memory of the injunction stays with her. “I don’t think I’ll ever get over it,” she said. “I’ve never experienced such a horrific thing in my life.” In Diana’s case, the injunction did not lead to prison – but for many people like her it does. The Bureau found 11 instances in which a person’s mental health issues were explicitly mentioned by the judge who handed down a custodial sentence. People in court facing prison sentences included those with personality disorders, debilitating OCD and schizophrenia.

*Shifting the Responsibility* When the new civil injunctions were created in 2014, they were designed to tackle disruptive behaviour both in domestic settings and in public. Applications for an injunction could be made by a range of people and official bodies, including police, council officers, housing providers and British Transport Police. Yet the Bureau found that 97% of judgments for injunction breaches since 2019 were brought by social housing providers or councils (where the complainant was known). The charity ASB Help recently ran a training for 400 police officers about antisocial behaviour and were surprised to hear most officers had never considered using injunctions. A government spokesperson told the Bureau: “We are committed to tackling and preventing antisocial behaviour, which has a devastating impact on victims and communities.

“The Antisocial Behaviour, Crime and Policing Act 2014 provides the police, local authorities and other agencies with flexible powers they can use to protect communities and prevent harm. It is for local areas to determine how best to deploy these powers, however, we expect them to be used proportionately.” Yet some lawyers say that the new injunctions have essentially served to shift the responsibility for dealing with low-level criminality on to housing associations. “They are now taking on the mantle of community police force,” said lawyer Ben Taylor. “It doesn’t work.” Nor do landlords necessarily prioritise their tenants’ welfare when considering an injunction application. During the pandemic, when a pause on possession hearings prevented landlords from evicting tenants, lawyers at Doughty Street Chambers said they had noticed an increase in applications for antisocial behaviour injunctions. This was because an injunction meant that the case would be prioritised when the courts reopened – and an injunction breach would mean the judge had no choice but to allow the eviction.

Social landlords could therefore use antisocial behaviour injunctions as a means of fast-tracking an eviction – but with the unintended side-effect of the evicted tenant possibly being sent to prison. Since the first lockdown, social housing providers and councils have brought 93 injunction breaches to court, of which 41 ended in the person being sent straight to prison.

The Bureau also found social housing providers using injunctions against behaviour that would not usually be considered antisocial. This was the case for Sarah, a severely disabled woman who was given an injunction after she refused to let her social landlord into the property she part-owned in order to fix a leaking pipe. In court, the judge said that the use of an injunction in this instance “causes me to raise my eyebrows”. The case was dismissed months later, but not before Sarah had faced two court hearings without legal representation. She told the Bureau that she was facing “unfair and untrue set of accusations made against me by my housing association”. The current system is weighted against the recipient of the injunction on various levels. Social housing providers, councils or police can apply to the courts without the person in question being told or given the opportunity to defend themselves. Rather than requiring a criminal level of proof, the judge needs only to be convinced on a balance of probabilities. And while there is supposedly a duty on the applicant to present both sides of the situation fairly, this does not always happen.

‘Fixing the System?’ In July 2020 the Civil Justice Council (CJC), an advisory non-departmental public body, published a report that warned civil injunctions for antisocial behaviour were not working and that the system required “immediate and significant redress”. The report laid out 15 recommendations, including the urgent introduction of data collection. But two years on, virtually nothing has changed. For people with mental health issues, part of the problem is that these injunctions are processed in the civil courts rather than criminal. In criminal courts, defendants are assessed by a programme called NHS Liaison and Diversion, which has access to medical records and can identify people with mental health issues, learning disabilities or other vulnerabilities and provide support. In its 2020 report, the CJC recommended government departments “meet as a matter of urgency” to discuss how the civil courts could access these services too, but Nadine Dorries, then minister for patient safety, suicide prevention and mental health, said restraints on the NHS meant this would not be possible. Last month, however, the CJC told the Bureau that there has been recent engagement with NHS England over piloting the service in civil courts, which it said was “very welcome”.

Rheian Davies, head of legal at the mental health charity Mind, told the Bureau: “A joined-up approach, which understands the intersection between mental health services and the legal system, is absolutely essential to get people the support and help they need at an

early stage to avoid these dreadful situations.” Another limitation of contempt hearings in civil court is the sentencing possibilities. If the judge decides the person has breached an injunction, and is therefore in contempt of court, they have just two options: a fine or a prison sentence (which may be suspended). By comparison, judges addressing criminal cases can sentence people to community service, drug rehabilitation or mental health treatment. The Law Commission is now undertaking a consultation into whether the current contempt of court rules are working. Rona Epstein, an academic who has been researching the use of antisocial behaviour injunctions for years, told the Bureau: “The law regarding punishment for breaching antisocial behaviour injunctions is basically unjust, cruel. It should be repealed. “Our prisons are very costly to run. They are there for those who have committed the most serious crimes which have caused the most serious damage. Antisocial behaviour is a problem. Imprisonment is not the solution.”

### **Met Police pays Out £1.2m Over Discrimination Claims**

*Martin Williams, Open Democracy:* Police force accused of a ‘culture of cover-up’ as officers are gagged from speaking out. - The Metropolitan Police has paid out more than £1.2m in legal battles against staff who accused the force of discrimination, openDemocracy can reveal. The figures – which cover the past five years – include more than £800,000 in settlements to staff who claim they have experienced racism, sexism or homophobia while working for the Met.

By settling the cases rather than taking them to an employment tribunal, the police force managed to avoid the allegations being made public. Some officers were told to stay silent about their allegations as part of a settlement deal. A Freedom of Information (FOI) request by openDemocracy showed that the force also paid out nearly £120,000 to police officers and staff who had their claims of discrimination upheld by an employment tribunal. In total, the force has spent £1,287,686 in legal fees and settlement agreements since 2017.

The figures come as the Met prepares to take one of its former senior officers to court, claiming she has broken a settlement agreement that was designed to gag her from speaking about allegations of racism and sexism. Reports said that Parm Sandhu has been told to pay £60,000 plus interest for breaking a non-disclosure agreement (NDA). The Guardian said the NDA banned Sandhu from talking publicly about the discrimination she alleged she suffered during her time in the Met. It also banned her from making “disparaging” or “derogatory” comments about the force or its commissioner.

Now, openDemocracy has found that dozens of NDAs have been drawn up by the Metropolitan Police in the past five years to stop discrimination claims going public. They relate to 44 separate claims of sexual discrimination, 35 claims of racial discrimination and 11 claims of discrimination based on sexual orientation. The Liberal Democrat peer, Brian Paddick, who served as the Met’s deputy assistant commissioner from 2003-2007, told openDemocracy: “This is consistent with the Met’s culture of cover-up rather than own-up.” The Met has repeatedly denied the use of NDAs – referring only to “settlement agreements”. In an email to The Guardian earlier this year, it said: “No officer, when they leave the Met, whether they are dismissed or not, is asked to sign a non-disclosure agreement.” Earlier this year, the Mayor of London’s office also claimed that NDAs were not used by the Metropolitan Police. But responding to openDemocracy’s FOI request, the force admitted: “Any of the cases will have confidentiality clauses built in as part of the settlement agreement and disclosure of [individual] settlement amounts would breach any [such] clause.”

### **Chelsea Bridge Death: Family Say Met Police Wrong to Taser Oladeji Omishore**

INQUEST: Oladeji Omishore, known as Deji, died on 4 June 2022. The 41 year old fell into the River Thames following use of Taser by two Metropolitan Police Officers on Chelsea Bridge, whilst he was experiencing a mental health crisis. His family have now given their first exclusive media interviews to The Guardian and Channel 4 News. They raise serious concerns about the systems for investigating police conduct and holding them to account. The family are concerned that the officers involved in the incident on Chelsea Bridge are not yet being investigated for professional or criminal misconduct. The officers are being treated only as witnesses in the ongoing investigation by the Independent Office for Police Conduct (IOPC), not subjects of investigation. They remain on active duty. Similar circumstances occurred in the investigation into the death Darren Cumberbatch in 2017, a Black man who died following excessive use of force by Warwickshire Police. Last month the IOPC announced they would be reinvestigating, five years on from the death, due to flaws in the initial investigation. This situation must not be repeated. There is currently no legal duty of candour which would require police officers to proactively cooperate in investigations into deaths. This contributes to a lack of accountability, particularly where officers involved are only treated as witnesses. INQUEST is part of the ongoing campaign for the Public Authorities (Accountability) Bill, known as Hillsborough Law, which would change that.

In a joint statement, the family said: "Like many people, we were shocked and deeply distressed by the video of Deji on Chelsea Bridge. He was clearly in mental health crisis. Yet instead of deescalating and offering compassion, the police officers shouted and used force against him. This seemed to only increase his fear and anguish. Now our beloved son, brother, and friend is gone. It is incomprehensible to us that the officers seen in that video are not yet being investigated for any professional misconduct or criminal charges. This means they are essentially being treated as witnesses to the investigation, not subjects of it. They may not even be interviewed and their evidence might not be forcefully challenged until our lawyers get to cross examine the officers at the inquest. This is dysfunctional. We understand that police are rarely suspended from duty following their involvement in contentious deaths in this country, and often do not even face conduct investigations. It is even rarer that they face criminal investigations. This does not look like a robust system capable of holding the police to account.

Since his death we have learnt about many other deaths like Deji's. Many have been linked to the use of Tasers since their introduction in 2003. Despite the risks associated with multiple or sustained activations, they continue to be rolled out. Taser usage is disproportionately targeted at Black, vulnerable people, like my brother, with mental ill health and people with underlying health issues. This is a real issue that needs to be addressed and raises deeper questions and concerns about the long history of systemic racism within the Metropolitan police. It serves as a painful reminder of how far we still need to go in terms of fostering an inclusive society, where race is not the trigger that leads to another Black person's death or death of another human being, regardless of race.

We feel that the actions of the Metropolitan police officer amounted to excessive use of force, and for this the officer must be held accountable. We cannot bring our beloved Deji back, but we will fight to ensure that this never happens again to another human being, and we'll continue to raise awareness and campaign for police accountability for a life tragically taken from us that can never be replaced. Deji was so beloved. He was creative, funny, and caring. He loved music, singing, art, nature, and his local neighbourhood. He faced struggles with mental health but was working hard to improve his wellbeing. We have learned that our family now faces a long struggle for truth, justice, and accountability. We are committed to fighting for that, not only in Deji's name but alongside all the other bereaved families like ours."

*Deborah Coles, Director of INQUEST*, said: "This is the death of a Black man in obvious distress who was subjected to multiple Taser use. Misinformation and false narratives have already been placed in the public domain by the Metropolitan Police to justify the force used. Bereaved families like Deji's should not be forced to challenge the systems for responding to deaths, at a time when they are dealing with a profound loss in horrendous circumstances. Deji's death is part of a longstanding pattern of disproportionate use of force by police against Black men, particularly those in mental health crisis. It is in both the family and public interest that police officers are subject to robust investigation of the highest standard. They are public servants and must be held to account at an individual or corporate level when things go wrong, to protect the public from harm in the future."

*Kate Maynard of Hickman and Rose solicitors*, who represent the family, said: "The threshold to treat officers as subjects and declare a conduct investigation is low. The IOPC only needed to consider there to be an indication that the officer may have committed a criminal offence or have behaved in a manner that would justify them facing disciplinary proceedings. The failure of these officers to diligently exercise their duties and responsibilities and the excessive use of force are obvious potential disciplinary infringements for investigation. The failure to interview the officers as subjects of investigation, and to properly test their evidence under a misconduct notice, risks becoming a material flaw in the investigation, as happened in the case of Darren Cumberbatch. Another example of where a decision was made at an early stage not to designate an officer as being the subject of a conduct investigation is the IOPC's investigation of the police shooting of Sean Fitzgerald. In that case it was two years before the IOPC then designated the police shooter as being the subject of a conduct investigation. It is not surprising that bereaved families lack confidence in IOPC decision making when it doesn't feel forthright or vigorous."

### **Police Use Mass Arrests and Dangerous Tactics Against Just Stop Oil protests**

Sophie Squire, Socialist Worker: Climate group Just Stop Oil took a stand against the fossil fuel industry this week, but the police moved to repress their actions. The cops made over 60 arrests on Tuesday and Wednesday, and the group said the police are also using dangerous tactics that endanger the lives of activists. In a series of actions, the group blocked three service stations on the M25, including the Cobham services in Surrey, Clacket Lane services in Kent and Thurrock services in Essex. The group blocked all access to petrol pumps by breaking their display glass, spray painting on them, or "locking on" to the pumps. Just Stop Oil succeeded in shutting down the Cobham and Clacket Lane services. Activists have also constructed four tunnels to cut off oil tanker routes. They built two in Essex and another two in Warwickshire. The tunnels, which make the roads above unsafe for heavy traffic, stopped oil and petrol supplies from leaving the Navigator and Grays depots in Essex and the Kingsbury depot in Warwickshire on Tuesday. Construction worker Sam was on Wednesday occupying a tunnel underneath a road that leads to the Navigator Oil terminal in Thurrock. Sam said, "We will remain in the tunnel because of the government's continued failure to act on the climate emergency. The international energy agency has stated very clearly that any governments that are serious about the climate emergency need to have no new future investments in fossil fuels. This is also the demand of Just Stop Oil." On Tuesday the police decided to reopen the road over the tunnels, endangering the lives of all those inside. Scientist Dr Larch Maxey, also occupying a tunnel in Essex, said, "The police are following the government's line and prioritising the flow of oil above the lives of every single person on Earth. They should know that we will not give up easily. We will not stop until the government agrees to end new oil and gas projects in Britain."

### **Prison Sentences 58 Per Cent Longer Than a Decade Ago**

Inside Time: The average length of a jail term in England and Wales has leapt by 58 per cent in the past decade, according to new Government figures. In 2011/12, the average custodial sentence length for all offences was 14.3 months. By 2021/22, it had risen to 22.6 months. Sentences for indictable-only offences – the most serious category – lengthened by 42 per cent over the same time period, from an average of 43 months in 2011/12 to 61.1 months in 2021/22. It meant that for the first time, the average jail term for this type of offence was longer than five years. Average sentences handed down by judges and magistrates have gradually lengthened year-on-year across the past decade, except for a dip in 2020/21 which was seen as a response to the Covid-19 pandemic. However, the number of people convicted and jailed has gradually fallen year-on-year over the decade – helping to keep the prison population roughly constant.

The number of people sentenced for indictable-only offences fell from 19,330 in 2011/12 to 12,717 in 2019/20, the last pre-Covid year – a drop of 34 per cent. It fell to 10,617 in the Covid year of 2020/21 before returning to 12,906 in 2021/22. The latest figures were published this month by the Ministry of Justice in its Criminal Justice Statistics quarterly.

An opinion poll commissioned by the Sentencing Academy and published earlier this year in the Prison Reform Trust's Bromley Briefing Factfile showed that most members of the public wrongly believe that sentencing is becoming more lenient. Asked how the average sentence length handed down by courts had changed over the past 25 years, 55 per cent of people incorrectly said it had reduced whilst only 8 per cent accurately stated that it had increased. In fact, over that period average sentence length increased by more than a third. Commenting on the research, Peter Dawson, Director of the Prison Reform Trust, said at the time: "This survey exposes how decades of lengthening sentences have utterly failed to improve public confidence in our justice system. No one has noticed."

### **Pay Rise of 8.4 Per Cent For Prison Leavers**

Inside Time: The sum of money paid to anyone leaving prison after serving a sentence is to go up by 8.4 per cent, thanks to the UK's soaring inflation rate. From August 16, prison-leavers will be handed £82.39 in cash on the day they are released. Last year, following a 26-year freeze on the value of the handout, it was increased from £46 to £76 and renamed from the Discharge Grant to the Subsistence Payment. At the time, it was said that the value of the payment would be up-rated annually for the next three years, tracking the Consumer Price Index.

The value of the Discharge Grant was set at £46 in 1995. Announcing the decision to increase it last year, then-Justice Secretary Robert Buckland QC said the higher sum would "ensure that prison leavers have enough money to help meet their basic needs on release". He added that the increased payment "should give offenders the absolute best chance of staying on the straight and narrow in those crucial early days after release". People leaving prison after spending on time on remand are not eligible for the Subsistence Payment. People who have been recalled to prison on licence are eligible if they spent more than 14 days in custody on recall.

### **HMP Spring Hill Accommodation "Unfit For Purpose"**

Inside Time: England's oldest open prison is "unfit for purpose" with prisoners housed in pre-fabricated huts which were built in the 1960s and designed to last for 20 years, inspectors have found. Spring Hill, in Buckinghamshire, opened in 1953. It now holds 240 men – which is well below its usual capacity, because three large houseblocks have been con-

demned. HM Inspectorate of Prison (HMIP) described the blocks which are still inhabited as "beyond repair – holes in the walls; erratic plumbing; floors that were coming up and windows that did not open". Inspectors commented: "The accommodation in the prison was awful, showing a woeful lack of investment from the prison service." The best quality accommodation at the site was 40 temporary sleeping pods which were installed during the Covid-19 pandemic. A further 80 are on the way. Charlie Taylor, Chief Inspector of Prisons, concluded: "Ultimately, the prison service must find the money to rebuild all the accommodation on site to provide sustainable, decent facilities for these prisoners. In category C prisons across the country, prisoners who have met the criteria are stuck waiting to move to category D prisons because there are not enough spaces." He recommended that the prisoners themselves should build new housing units at Spring Hill, which would solve the problem with crumbling accommodation whilst also training them to work in the construction industry. Inspectors found that Spring Hill was safe and well-run despite the poor state of the buildings. However, they noted that prisoners were "underemployed and unmotivated by the work, education, and activities programmes which were central to the function of the prison".

### **Raab Uses New Power To 'Cancel' Half-Way Release**

Inside Time: A new power for Government ministers to extend prisoners' time in custody has been used for the first time. A woman who was sentenced to 10 years in 2018 for causing or allowing serious physical harm to a child was due for release this month, at the half-way point of her sentence. However, on the day before her automatic release date, she was told that Justice Secretary Dominic Raab had referred her case to the Parole Board. Unless she can persuade the Board that she is safe to release, she may have to serve the full 10 years. Under Section 132 of the Police, Crime, Sentencing and Courts Act 2022, which took effect in July, the Justice Secretary can extend the custody time of people serving fixed-term sentences beyond the half-way or two-thirds point when they would normally be released. It applies to "prisoners who were not judged to be dangerous at the point of sentence but who are subsequently assessed to pose a significant risk of serious harm to members of the public". When Parliament approved the measure, it was said that it would apply to a small number of terrorism cases. However, a policy framework published by HM Prison and Probation Service lists 180 types of crime which can justify longer detention if a prisoner is thought to pose a risk of committing them after release – from robbery or burglary, to domestic violence or brothel-keeping. Peter Dawson, director of the Prison Reform Trust, has called the new law an "unprincipled transfer of sentencing powers from the judiciary to the executive".

### **Staying Cool in Prison**

1) Rub onions on your skin, everyone knows that onions have a long-running association with hot weather. Cut an onion in half and rub the juice on your skin. Onions contain volatile oils (mainly sulphur based) which evaporates when exposed to the air. Rubbing these oils into your skin will help with heat and sweat from your body and, consequently, will lower your temperature. Red onion also acts as an antihistamine, meaning the juice is effective in treating both sunstroke and sunburn.

2) Gargle toothpaste; from menthol drinks to chewing-gum and toothpaste, can make you feel cooler in hot weather. Anything minty works, it doesn't lower your temperature, but the signals sent to the brain are tricked into telling you that you feel cooler. Admittedly, rub-

bing yourself with high-concentration menthol can irritate the skin when exposed to sunshine and it doesn't sound very appealing to be covered in toothpaste, although it might counter the outrageous smell of onions.

3) Avoid eating meat: digestion creates heat, a process commonly known as thermogenesis. It can take up to 100% more energy to break down proteins than carbohydrates. Try carb-rich sweetcorn, swede, potatoes, or cauliflower instead.

4) Spray on green tea: stew a green tea bag in some lukewarm water for a few minutes then transfer it to a spray-bottle and spritz it on your face every two to three hours. Green tea contains vitamin E, which hydrates and stimulates your circulation. Both will stop you feeling hot and sweaty.

5) Gazpacho: this is one of the most hydrating dishes to consume. Made primarily from tomatoes, which are 95% water, also cucumbers contain 96% water, and peppers, which are 92% water, so it is basically a refreshing drink. Tomatoes also contain a source which can protect the skin from sunlight and reduce redness after sunbathing.

6) Soak the curtains: as long as your curtains are made of machine-washable material, soak the ends in cool water. Then throw open the window and draw the curtains closed. In a hot environment, the water will travel up the fabric as it starts to evaporate. Any breeze coming in from outside will cool as it passes through the damp fabric, wafting into the room.

### **Barristers' Strike – A Prisoner's Perspective**

Criminal defence barristers have voted to go on an indefinite strike from 5 September, demanding a 25% increase in their fees for legal aid cases. This action will bring criminal trials to a grinding halt. Kevan Thakrar writes from the Belmarsh prison segregation unit.

Firstly, I should say it is a disgrace that Legal Aid rates are so meagre, especially for new barristers. Only a corrupt capitalist society would think it acceptable to exploit its citizens to the extent that they cannot afford to survive on what they earn, whilst slandering them through the media with propaganda that portrays them as the disgruntled rich. This said, if criminal barristers had a real belief in defending the innocent from wrongful imprisonment, they would make this strike about a lot more than just their pay-packets and in doing so could draw in the support of wider society. It has not been the ever-decreasing standards of criminal trials - which have seen the introduction of anonymous witnesses, use of hearsay 'evidence', the slander that is bad character evidence, the ability for police and prosecutors to sit as jurors, the permissibility of double jeopardy or the mass use of the Joint Enterprise Doctrine - which has brought them out to protest. The campaigning organisation APPEAL set out 25 vital reforms to the criminal justice system earlier this year. It would not be difficult to adopt these as demands to go along with barristers' quest for better rates of pay.

Even if it is only to be about money, why not expand the scope to say the fixed fees being raised by 25% is not all they want? They could also fight for an expansion of the groups and situations in which people qualify for legal aid, so that the amount of work available increases as well as the numbers who receive legal representation. This narrow focused approach only exemplifies that criminal defence barristers are part of the apparatus of the state, which enables the function of the injustice system to duly oppress and imprison its population focused mainly upon the marginalised, poor, and those who dare to resist. It is no surprise that once the accused becomes the convicted, unless you are a rich private paying client, it is practically impossible to get one of these barristers to represent you. Not enough

money in it for them; not a care in the world that an innocent person may well have lost their life to imprisonment, even if they are the barrister responsible for the shoddy job that enabled this. They never stepped out over the lack of legal aid for criminal appeals - why bother when the system continues to churn out fresh cases for them to get paid?

So, criminal defence barristers are poorly paid, but when they sell their souls to support a system of oppression they should count themselves fortunate that they are not in the shoes of the millions of their clients who have been let down by the system they are propping up, and wasting years of their lives imprisoned.

### **Request for Urgent Measures Concerning Ukrainian Prisoners of War**

On Wednesday 24th August 2022 the European Court decided that a request for interim measures it had received from the Ukrainian Government with regard to Ukrainian prisoners of war – in particular those captured by Russian forces at the Azovstal plant in Mariupol – was already covered by a decision of 30 June 2022 taken in the case *Oliynichenko v. Russia and Ukraine* (application no. 31258/22). In that decision, concerning a member of the Ukrainian military allegedly captured in Mariupol, the Court had held that any requests made on behalf of Ukrainian prisoners of war in Russian custody in which sufficient evidence had been provided to show a serious and imminent risk of irreparable harm would be covered by the measures in that case. The current request was received in the context of the inter-State case *Ukraine v. Russia (X)* (no. 11055/22) which concerns the Ukrainian Government's allegations of mass and gross human-rights violations committed by the Russian Federation in its military operations on the territory of Ukraine since 24 February 2022. The Ukrainian Government asked the Court to indicate to the Russian Government the following measures: "(1) to ensure the respect for rights of Ukrainian prisoners of war under Article 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, including, not to try any Ukrainian prisoners of war by any "court/tribunal" on 24 August 2022 or in the future; (2) to provide information about Ukrainian prisoners of war, the conditions in which they are currently being held, including any medical examinations or treatment they require." The Ukrainian Government argue in particular that, among other prisoners of war, the Azov Special Purpose Unit of the National Guard of Ukraine, the 36 th Separate Marine Brigade, and other military units, as well as the National Police and State Border Guard forces who were captured by the Russian forces at the Azovstal plant in Mariupol in May 2022 face a serious and imminent risk of irreparable harm, given the plans to hold a "show trial" of Ukrainian military captives and taking into account that there is no access to prisoners of war, the constant failure of the Russian Federation to provide information regarding their captivity and plans to sentence them to the death penalty. The Court decided that the issues raised in the request were covered in its decision of 30 June 2022 *Oliynichenko v. Russia and Ukraine* concerning another prisoner of war being held by Russian forces. In that case the Court had indicated that the Russian Government should ensure respect for Mr Oliynichenko's Convention rights and provide him with medical assistance should he need it. Following on from this, the Court had also stated that those interim measures covered any requests made on behalf of Ukrainian prisoners of war in Russian custody in which sufficient evidence had been provided to show that they faced a serious and imminent risk of irreparable harm to their physical integrity and/or right to life. Both parties and the Committee of Ministers have been informed that the Court has reaffirmed its decision of 30 June, without indicating further urgent measures.