Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

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Mark Alexander: PPCS Close Off Hope of Transfer to an Open Prison

The Price of Innocence: For the past few years, the hope of spending the end of his 16-year sentence in an 'open' prison where he could spend more time with his family, travel to university during the week to conduct research for his PhD, and begin making plans for his future beyond prison, has kept Mark going through the hardship and extreme isolation of 23 hour-a-day lockdown during the pandemic. For the vast majority of long-term prisoners, time spent in an open prison is an essential pit stop along the road to release, enabling them to reacclimatise to life outside after lengths of imprisonment many of us would struggle to contemplate, let alone survive.

On 19 July 2022, Mark and his family received the awful and shocking news that – under new rules announced by the government on 6 June 2022 – he was no longer considered eligible for a move to open conditions. Instead, he is expected to remain in a 'closed' prison until his tariff expires in 3 ½ years' time. The Public Protection Casework Section (PPCS), responsible for implementing the new rules, seem to be interpreting them in the narrowest and strictest form possible. In their view, because Mark is maintaining his innocence, moving him to an open prison would "undermine public confidence in the criminal justice system". The decision letter from PPCS rather unhelpfully assures Mark that "denial is not a barrier to your progression" while, in the very next breath, denying him that very progression. The cruel irony is that if Mark was actually guilty, he would have spent less time in prison and already be in open conditions, if not free altogether. Anyone who pleads guilty receives up to a 5-year reduction in their sentence (16%). Mark also turned down a manslaughter plea-bargain before trial which would have seen him serve just 5 years of a 10-year sentence. Whichever way you look at it, Mark has already been 'punished' for maintaining his innocence, making this latest decision all the more appalling. You can download our quick fact sheet here.

The decision comes in the same week that Mark's successful letter writing campaign prompted the Law Commission to launch a review to consider reforming the criminal appeals process – and just a few months after Mark championed media rights to access prisoners maintaining innocence in a Judicial Review challenge against the Ministry of Justice, currently awaiting appeal, leading some to question whether this latest decision by the MOJ is malicious.

Collateral Damage - Stuart Andrew MP, in his letter to the Prison Reform Trust of 16 July 2022 bemoaned: The recent abscond of several high-risk prisoners [which] gave cause for concern. The Deputy Prime Minister's view was that we must make these changes to ensure public protection. These prisoners present an unacceptable risk to public protection and have a detrimental impact on public confidence in the criminal justice system. This is not something we are prepared to allow to continue, hence the change to the test".

The response from PPCS however, overshoots its target by miles. Instead of focusing on high-risk prisoners, prolific offenders, and absconders – the policy seems to be being applied much more liberally and widely to include even model prisoners, like Mark, who fall far outside of these targeted categories. This could not have been the intention of Dominic Raab and his colleagues, and needs to be brought to their attention as quickly as possible so that they can modify the policy's application before widespread havoc occurs.

PPCS' assessment of 'public confidence' in Mark's specific case falls flat. No evidence is given to demonstrate that large numbers of people would even bat an eyelid, let alone have their confidence undermined, by his transfer. As Mark reflects, "How can 'public confidence' ever be reliably measured, and who is measuring it? It doesn't make any sense. They have introduced an entirely political element into what should be a purely legal process. Our laws are supposed to be invulnerable to the caprices of current and future governments, but this policy actively enables governments to appeal to their hardest-line voter base whenever they need a boost in the polls." Unless and until this changes, the collateral damage will cause immeasurable harm to prisoners and their families who – having endured long periods of separation – yearn for the day when they can finally be reunited. As Mark's mother explains:

After requesting a transfer on Mark's behalf, myself and the family successfully managed to have him moved to HMP Coldingley in 2016. However, now, he needs to be moved on again to an open prison and have freedom to progress further and fulfil his ambitions to complete a PhD. He deserves this opportunity. We really hope Mark can be given the support to make it possible." Mark's mother was only reunited with Mark after his arrest, having been a victim of parental alienation. Writing to the Probation Service in 2021, she described how: "I've become a more complete, happier person now that Mark is back in my life, and he's given so much to us all as a family. Please help Mark move to an open prison where we would get to do more normal family activities. Mark's sister would get to spend quality time with him, and I would be making up for lost years. We only wish Mark gets the best out of life."

Retrospective Effects - The timing of these changes has been extremely unfortunate for Mark, whose application had already been in the system for 6 months before the rules changed. He had been given every indication up until that point that he would be successful. In October 2021 the Probation Service conducted a Sentence Planning and Review Meeting which concluded that Mark's objectives needed to be continued "within the Open Estate, as part of a structured resettlement programme to begin the process of rehabilitation back into the community, and attending university during the week". Specifically: "Mr Alexander has not been able to complete interventions as he has not been assessed as suitable for them. He has however, undertaken intensive counselling to address his unconventional upbringing. I do not consider closed conditions to offer any further development opportunities and, as such, I recommend that Mr Alexander undergoes a pre-tariff Parole review so that he can be considered for open conditions". PPCS initially supported Mark's application, granting him an advancement on 18 January 2022 that brought his case forward by 6 months. However, once the new regulations came into effect, they seem to have changed tack, completely ignoring the recommendations of the Probation Service and arguing that "the level of risk you pose has not been thoroughly assessed".

Assessing 'Risk' for Prisoners Maintaining Innocence - One of the many absurdities of this situation arises from the fact that Mark has never been to prison before, placing him at a disadvantage compared to prolific and repeat offenders. Anyone who has previous convictions is able to participate in Offender Behaviour Programmes (OBPs) even if they maintain their innocence in relation to their current sentence. Working on previous offending history enables these prisoners to reduce their 'risk' scores, but this simply isn't possible for someone like Mark who has no previous convictions. This means he is now being penalised by PPCS because his 'risk' levels have not been "explored in any great detail". None of this reflects the reality that Mark has repeatedly been frustrated in his efforts to apply for these types of courses over the years. Mark has always sought to demonstrate that he has nothing to hide and is happy to discuss any concerns the authorities might have. Signing up for a 'Thinking Skills Programme', however, Mark was told

that his risk levels were simply 'too low' for him to participate: "You do not meet the need criteria at this stage, and therefore we will not be offering you a place on the programme". Similarly, a Therapeutic Community informed him that "we do not accept applicants that are in the appeal process, as responsibility for the offence is a core part of the work". No other courses are available for people in Mark's position. After much negotiation, the Probation Service eventually agreed to commission a mental-health counselling report to explore potential 'triggers' from Mark's "unconventional childhood". Twelve months later, and after 45 hours of in-depth therapy, the conclusion was reached that Mark – whilst "open to the disclosure of his difficult upbringing and exploration of the psychological and emotional effects" – has "no historic or current issues" of concern.

The Probation Service's own risk scoring system, which takes a broad array of historic and current lifestyle factors and behaviour into account, unsurprisingly categorises Mark as very low risk of reoffending. With "no evidence of negative or pro-criminal attitudes" their assessors concluded that "the set of circumstances that led to this offence are highly unlikely to be replicated". Yet none of this careful analysis seems to have been taken into account in the decision PPCS have now reached. The Lord Chief Justice, in Owen John Oyston [2000] EWCA Crim 3552, was of the view that prisoners maintaining innocence are less likely to reoffend than other prisoners because they want to clear their names. This "ambition would be fatally undermined if he were to be convicted again" (para. 44) The Supreme Court ruled that (paras. 26 and 43): it is quite wrong to treat a prisoner's denial as necessarily conclusive [of risk] … It is unlawful for the Parole Board to deny a recommendation for parole on the ground that the prisoner continues to deny his guilt".

According to the Ministry of Justice's Security Categorisation Policy Framework (para 7.15), 'risk' should be calculated based on "all available information, and positive aspects of behaviour must be taken into account as part of the assessment, including the extent to which the individual engages successfully with the prison regime, work and training opportunities". Moreover, "staff must look to other sources of information regarding suitability for the lower category [prison]" when a prisoner has been unable to participate in Offender Behaviour Programmes (para. 7.16). This basic principle is reiterated in Casework Policy and Practice Guidelines to Probation staff regarding prisoners maintaining innocence (Chapter 9 – issued November 2012). PPCS seem to have completely ignored these criteria when applying the new policy for applications to move to an open prison.

Defining 'Essential' - The second aspect of the reforms that Mark has fallen early casualty to is the requirement that: A period in open conditions is considered essential to inform future decisions about release, and to prepare for possible release on licence into the community". Dominic Raab's 'Root and Branch Review of the Parole System', published in March 2022, and which sparked the current reforms to the transfer process, appears to have been much more focused in its approach (para. 43): A new threshold will be applied, such that the prisoner must not only be assessed as low risk of abscond, but that a specified and clear purpose for a time in open conditions must be articulated, including an explanation of why that purpose cannot be met in a closed prison".

As the Review recognised (paras. 109 and 107): Open conditions have benefited some life and indeterminate sentence prisoners, particularly after a longer period of incarceration in closed conditions, by helping to refamiliarize them with life in the community. This move is a key part of the progression in a prisoner's journey through their sentence… However, public confidence in open prisons is undermined whenever a lifer or IPP prisoner absconds".

The approach being adopted by PPCS however, is much stricter. Rather than simply requiring a 'specified and clear purpose' as indicated by Dominic Raab, PPCS are asking for something more – namely that the move is absolutely necessary. Decompression and re-acclimatisation to society after decades in prison simply isn't being seen as 'essential' anymore. In this upside-

down, topsy-turvy world, the fact that Mark has been able – through sheer force of will – to obtain both a Bachelors and a Masters degree in closed conditions is now being used against him as evidence that he doesn't 'need' to move to an open prison:

Your educational achievements to date, as just one example, evidence your ability to progress in this area in a closed establishment… You are encouraged to expand on the progress you have made, to include your excellent educational achievements within a closed establishment". This, in spite of the Probation Service's view that Mark has quite obviously exhausted all that can realistically be achieved in a closed prison environment, and can only build on this progress now from an open prison. His aspiration to pursue further postgraduate education in an open prison can only be met by attending university in person during the week, where he can participate in the wider research culture of the Institute.

Putting his time in prison to good use has been a really important part of Mark's journey over the past twelve years or so. After completing his Grade 8 Piano at HMP Gartree, and a Diploma in Music Performance with the Associated Board of the Royal Schools of Music (DipABRSM), he went on to complete a Bachelor's degree in Law (LL.B.), achieving a 2:1 with Honours. Since then he has graduated with Merit from UCL through the University of London, following a 2-year Master of Laws (LL.M.) degree, and was subsequently elected as an Associate of King's College London (AKC) in October 2020.

Mark was chosen for the Patrick Pakenham Award for Law by the Longford Trust in 2016, an annual scholarship prize usually awarded to ex-prisoners, and has had a number of papers published since then, including in the Prison Service Journal, Criminal Law and Justice Weekly, and the international Journal of Prisoners on Prisons. He recently contributed a short chapter to 'Writing Within Walls', a collection of short stories and essays on the theme of 'hope' in prisons; and has also been published in 'Crime and Consequence', a book produced by Clinks and the National Criminal Justice Arts Alliance, which was turned into a podcast series.

From closed conditions Mark has submitted written responses to two Government Consultation Papers on behalf of the 400 men at HMP Coldingley (Prisons Strategy White Paper, 2022; Reconsideration of Parole Board Systems: creating a new and open system, 2018), as well as submitting written evidence to the Westminster Commission on Miscarriages of Justice drawing on his own lived experience (2019). Over the past 12 years Mark has been invited to represent the views of prisoners in numerous meetings, including with the then Under Secretary of State for Justice, Andrew Selous MP in 2015; Michael Gove MP in 2022; the Chief Inspector of Prisons in 2014; the Prisons and Probation Ombudsman in 2015; the Director of the Butler Trust in 2019; and the Director of the National Careers Service in 2014. He has even directly participated in consultation meetings with various departments and Policy Leads at the Ministry of Justice (2022, 2018, 2013).

Calling the Government Out - Mark and his family have of course been devastated and shocked by this unexpected decision, and are currently seeking legal advice on how best to challenge it. The misguided, short-sighted way in which this policy has been interpreted and implemented is disastrous. We call on all organisations, practitioners, and affected parties, including prisoners' families, to work together – forming a coalition that can raise awareness of these problems amongst the general public, and petition the government to modify and amend its approach. Whilst our primary concern is the impact on prisoners maintaining innocence, we recognise the appalling effects this policy will have on the lifer population as a whole. The irony is that in seeking to boost public confidence about the parole system, this government has introduced policies that will catastrophically undermine any confidence that remains if nothing is done now to change the way they are being applied. We would encourage anyone affected or concerned by this decision against Mark to write to their local MP and / or Dominic Raab directly to ask them to intervene.

Why Will the CCRC Not Investigate Walid Habib's Alleged Wrongful Conviction

CCRC Watch: In this article, Phoenix Gay Xue Ke considers Walid Habib's application to the CCRC and its refusal to investigate his alleged wrongful conviction and imprisonment. She argues that if the CCRC was serious about alleged wrongful convictions, then, surely, it must call experts to review key evidence. Moreover, that the way that the CCRC is currently structured and operates demonstrates a keen deference to the judge's indictment, rather than a commitment to justice for alleged innocent victims of wrongful convictions. Her conclusion is stark and damming: 'How then, can we trust this body to uphold principles of justice, if it fails to even take the first step of ascertaining the veracity of evidence?'

Mr Walid Habib, 44, pleaded guilty to possession of a prohibited weapon contrary to S5(1)(b) of the Firearms Act 1968 in the Crown Court of Chelmsford on 28 April 2014. Subsequently on 4 June 2014, Mr Habib was convicted by a jury for, inter alia, possessing controlled drugs of Class A and B contrary to the Misuse of Drugs Act 1971. On 4 July 2014, Mr Habib was sentenced to a total of 15 years' imprisonment. The alleged criminal incidents occurred in two locations, initially at Danes Road, Romford, and, subsequently, at a unit in Stewarts Farm, Ongar. Mr Habib's case was joined by six other co-accused and he received the highest imprisonment sentence amongst all. Mr Habib staunchly maintains his innocence for the crimes that he was convicted of. He also believes that procedural miscarriages of justice have led to him receiving an unfair trial.. However, all attempts to make his case heard in both the appellate courts and the Criminal Cases Review Commission (CCRC) were rejected.

Prosecution's Case - In order to fully understand Mr Habib's appeals, we need to first examine the Prosecution's case against Mr Habib. This can be broken down into three tranches. *Danes Road* - On the first tranche, the Prosecution argued that because the police found Mr Habib and another man working on a stolen car in a unit at Danes Road, Mr Habib was arrested. About four weeks later, the police returned to the unit at Danes Road and found over a dozen stolen and cloned vehicles. Amongst others, these included lock-cutting devices, a glass-breaking device and a radio frequency detector. A month later, on 17 April, one of Mr Habib's co-accused (Mohammed Nadeem) was arrested as 22 wraps of cocaine was found in his vehicle, Citroen Berlingo M666. *Stewarts Farm* - On the second tranche, the Prosecution argued that Mr Habib had rented a unit at Stewarts Farm days after the Danes Road search, alleging that Mr Habib had used various false names to rent units at Danes Road and Stewarts Farm. The Prosecution added that upon a police search made at the Stewarts Farm unit, over a dozen stolen vehicles, 60/70 cannabis plants, 25 grams of cocaine were discovered. Significantly, firearms and ammunition were found in the Citroen Berlingo M666. A month after the search, the Prosecution raised evidence of police officers finding a NATO gas canister in Mr Habib's home.

The evidence that was used by the prosecution to obtain the conviction is as follows: One fingerprint on a DVLA document indicating a car which was legally bought by Mr Habib. Expert evidence of police officers' on-site investigations and searches. Eyewitness Testimonies of Nigel Chambers and police officers. Defence's Case - At trial, Mr Habib claimed that he worked as a vehicle modifier with special expertise in installing sound systems. Notably, Mr Habib argued that he does not deal with paperwork arising from this business since he is dyslexic. *Danes Road* - Mr Habib claimed that he had never rented a unit at Danes Road. The space was made available to Mr Habib by a friend (Tony Terry) who also dealt with cars. Mr Habib denied knowledge of any illegal activities that may have been occurring in the unit at Danes Road. To his knowledge, two of Mr Habib's co-accused (Tony Hames and Kurt Amooty) worked for Tony Terry. Mr Habib

also argued that he had allowed Mr Hames to use his address because Mr Hames had no fixed address. However, the information about Mr Habib's relation to Mr Hames and Mr Terry were not mentioned in his interview, nor was the creation of false documents in the name of Mr Habib addressed. The judge then directed the jury on the significance of weight they could attribute to Mr Habib's lack of mention in his interview.

Citroen Berlingo M666 - Mr Habib claimed that he knew Mr Nadeem from the garages at Danes Road and that Mr Habib had sold the Berlingo M666 to Mr Nadeem in April 2012, although the specific date of sale was not mentioned by Mr Habib. Stewarts Farm - On Stewarts Farm, Mr Habib claimed that he had, indeed, rented a unit there. However, two or three weeks later, Mr Habib stated that he had agreed to sub-let part of the unit to Mr Hames. Thereafter, Mr Habib made visits to the unit once or twice a fortnight. Mr Habib argued that Mr Hames was likely responsible for the stolen cars, false names, establishment of the cannabis factory and bringing cocaine and guns to the Stewarts Farm unit – all of which were cited by the prosecution in support of Mr Habib's alleged offences. Mr Walid had no evidence submitted at trial.

Conviction - In hearing both the Prosecution and Defence's case, the Crown Court judge was satisfied that Mr Habib was the "principal and mastermind". For the judge, the scheme at Danes Road was "highly organised" and conceived of Stewarts Farm to be a continuation of Mr Habib's illegal business when the allegedly illegal activities at Danes Road was discovered by the police. Finally, the judge concluded that cannabis was commercially cultivated at Stewarts Farm and that Stewarts Farm was utilised as storage for weapons, ammunition and class A drugs for street supply. Mr Habib maintains that this conviction was wrong. He appealed against the judge's conviction and sentence. However, the judge refused Mr Walid's application to appeal stating that there was "an overwhelming amount of evidence against you and, in my judgment, your conviction is entirely safe." Further, the judge added that the points raised by Mr Walid are "at best, peripheral, and do not affect the safety of that conviction." The judge continued that Mr Walid's defence relying on the fact there were no fingerprints or DNA "was hardly determinative of your guilt or innocence". Finally, the judge reiterated that other points raised by Mr Walid's defence counsel, including Mr Walid's limited literacy, were not significant enough to overturn his conviction. And yet, Mr Walid's case does not just end here.

Conspiracy to Pervert the Course Of Justice - On 3 July 2015, Mr Habib was convicted of a conspiracy to pervert the course of justice at Woolwich Crown Court. He was joined with four co-defendants, for intimidation against the landlord of Stewarts Farm. It was alleged that a result of the intimidation, the landlord of Stewarts Farm had not given evidence at the Chelmsford trial which was of special significance to the prosecution's case because the landlord was the only witness whose evidence directly undermined Mr Habib's claim that he had infrequently been at Stewarts Farm. This has led to Mr Habib's overall sentence to be 18 years' imprisonment, consecutive to the 15 years that has been imposed at Chelmsford Crown Court.

Application to the CCRC - In 2017, Mr Habib made an application to the CCRC for his case to be referred to the Court of Appeal. He did not receive any assistance in his application. The following outlines Mr Habib's reasons for believing that he was wrongly convicted of the alleged crimes. Mr Habib wrote in a questionnaire submitted to Empowering The Innocent (ETI): "Essex police fabricated evidence. Poor legal team (major breakdown in communication) who did not help me." There were "several witnesses" as alibis and alleged evidence that proves that Mr Habib has not committed the alleged crime.] In terms of fresh evidence not adduced at trial, Mr Habib cited "evidence of key witnesses and evidence of mental health

conditions (cognitive learning difficulties + autism) which the Court and jury did not know about." More specifically, the following provides verbatim requests from Mr Habib to the CCRC in his application and the CCRC responses.

Jury - Submission 1: You say that the jury were all white, and this gave rise to a perception that they were biased against you. CCRC response: There is no rule about the ethnic balance of a jury. If a defendant objects to the participation of any particular juror or jurors, the matter can and should be raised at trial. It does not appear to the CCRC that there is any reason to think that submissions about the make-up of the jury could now succeed as a ground of appeal in your case. Judge Submission 2: You say that the judge did not give an adequate answer to a jury question about handwriting. CCRC response: If counsel thought this issue was significant, it could and should have been raised on appeal. Submission: You say that the summing-up was biased. CCRC response: Again, if counsel thought this issue was significant, it could and should have been raised on appeal. The CCRC has not identified any bias in the summing-up.

Defence - Submission: You suggest that the defence should have called an expert in DVLA procedures to explain aspects of the process and how long the process takes. This would have supported your case that you had sold the Citroen Berlingo M666 (in which the weapons and ammunition were found) to Mohammed Nadeem. CCRC response: Evidence about the ownership and registration of the Berlingo was given at trial. Your representatives did not think it was necessary to adduce expert evidence. We do not consider that a successful ground of appeal could now be founded on this point. Submission: You suggest that the defence should have called a handwriting expert. CCRC response: The prosecution called a handwriting expert. The judge reminded the jury that his evidence was not disputed. The expert did not say that you had written any of the documents. There is no reason to think that any further evidence on handwriting would have any bearing on the safety of your conviction.

Literacy and other Difficulties Giving Evidence - Submission: You say that you should have been given more support at trial, such as an intermediary, because of your literacy problems. This was particularly problematic when documents were put to you in cross-examination. You point out that in your trial at Woolwich Crown Court it was in the agreed facts that you could not read or write. You say, further, that because of an accident when you were 19 your speech is slow and impaired and can be hard to understand. The prosecution argued that you were getting angry, but you were in fact just frustrated because you were struggling to make yourself understood. This was not explained to the jury.

CCRC response: The CCRC does not consider that this issue could not establish or contribute to a real possibility of a successful appeal. The issue of your literacy was raised at trial (the judge reminded the jury that is was your case that "because [you] could not read or write [you] got other people to fill in forms for you[you]". You also agreed, in cross examination, that on a number of occasions when in custody you had told the police that you needed no help with reading and writing. The fact that the issue of your literacy was dealt with differently at Woolwich Crown Court does not amount to a ground of appeal in respect of this conviction. The jury were entitled to assess your evidence and your manner throughout the trial. If counsel had had any significant concerns about your ability to participate in the trial, he could and should have raised it at the time.

Police Conduct - Submission: You say that the prosecution induced your co-defendants to give evidence against you by promising to advise the judge of their assistance. CCRC response: You have not provided any evidence in support of this submission. Submission: You say that the prosecution did not call the arresting officer. CCRC response: It does not appear to the

CCRC that this issue could succeed as a ground of appeal. It is a matter for the prosecution to decide which witnesses to call. The prosecution called evidence from a number of police officers.

Letter from Ms Anna Ibrahim, Mr Habib's partner - In response to the CCRC refusal to investigate Mr Habib's alleged wrongful conviction and imprisonment, a letter from his partner, Ms Anna Ibrahim, contended that: "The fact that evidence in Walid's favour was tampered with - this was proven in court e.g. a tenancy agreement that the police had handwritten Walid's phone number on was presented to the jury as evidence that the document was Walid's.

Conflicting police evidence - on scene the police gave different versions of events, one said there was a helicopter and the other said there wasn't. The evidence they gave was not reliable and demonstrated a tendency to make things up. One police officer said that Walid was working on a car and that his hands were greasy, however that same police officer's note book confirmed that his hands were clean when he was arrested." Plainly, Ms Ibrahim's account suggests that the whole picture was not properly investigated, and even then, important nuances have been overlooked. The glaring inconsistencies indicates that the amount of weight and significance placed on each piece of evidence goes, at best, unexplained, and at worst, wilfully ignored.

The CCRC's failure to employ professional experts to investigate these gaps is further cemented by its repeated statement: "This is a point that could and should have been made at trial, if the defence thought it was of any significance" and "if counsel thought this issue was significant, it could and should have been raised on appeal". The above statement made by the CCRC operates on the premise that all applicants have adequate legal representation and a capable defence team. But, that is only an ideal and rather entitled position to take. For, there is also a real possibility of a lack of good legal representation. Ms Ibrahim noted: "Walid had an ineffective legal team, breach of article 6 – Right to fair trial. Walid had a motorbike accident when he was 19 and was in intensive care for a few months. As a result, he suffers from cognitive difficulties and is also Autistic – Which the court or Jury did not know about. This is very import because the prosecution said he was "mastermind" when really he has severe learning difficulties."

The "Real Possibility" Test - What is the 'real possibility test' that the CCRC keep referring to? Lord Bingham, gave a judicial interpretation of the test in R v Criminal Cases Review Commission (ex parte Pearson) as follows: "The 'real possibility' test […] denotes a contingency which, in the Commission's judgment, is more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty. The Commission must judge that there is at least a reasonable prospect of a conviction, if referred, not being upheld." To date, the 'real possibility test' is laced with controversy (such as, the test being void of independence and extremely deferential to the Court of Appeal). But even if we were to accept the existence and definition of this test, it is hard to see how it has been rightly applied here in Mr Habib's case.

The amount of weight accorded to Mr Habib's inherent inability to read or write seems unequivocally low. Notwithstanding a lack of explanation as to how Mr Habib's involvement, not only correlated, but also caused, the whole organisation of the illegal enterprise, no steps were taken to even ascertain or investigate Mr Habib's capacity to even orchestrate such a sophisticated series of events. To conceive of a man suffering from cognitive difficulties and autism as a main mastermind of such a highly organised crime is confounding to any reasonable person. Such a stark inconsistency must not have escaped the case worker(s) reviewing Mr Habib's application to the CCRC, but no efforts to investigate such matters suggests apathy towards the application.

Conclusion - In concluding, a pertinent issue comes to mind. If the CCRC, as a public

and (so called) independent body, is serious about reviewing alleged wrongful convictions, then, surely, it must call experts to review key evidence, such as whether a person in fact had normal levels of cognitive abilities and authenticity of evidence. Unfortunately, the CCRC as it is currently structured and operates demonstrates a keen deference to the judge's indictment, rather than a commitment to alleged innocent victims of wrongful convictions. Indeed, in response to Mr Habib's application (and many others that I have researched) it merely explained why the trial was lawful at face value. This takes the notion of 'guilty until proven innocent' as the status quo; rather than 'innocent until proven guilty' as an operating principle.

How then, can we trust this body (CCRC) to uphold principles of justice, if it fails to even take the first step of ascertaining the veracity of evidence?

Parole Board: Dominic Raab Making an "Already Difficult Job Close to Impossible"

Prison Reform Trust: Documents released to the Prison Reform Trust following a Freedom of Information request have uncovered fundamental disagreements between the Parole Board and the justice secretary Dominic Raab about the changes he has made — and intends to make — to the parole system. We asked for copies of communications between the Parole Board's Chair and Chief Executive and the Ministry of Justice that related to the "root and branch" review of parole that the government published earlier this year. All of those documents are available at the foot of this article. What they show is a deep divide between the board and Raab, and a cavalier approach by the justice secretary, pressing ahead regardless and at one stage causing the board to complain that the way he was acting was making its members' "already difficult job close to impossible".

Key points from the exchanges reveal - The board categorically disagrees with Raab's analysis of whether a change to release test is required, and worried that it may impede the Board's ability to assess risk properly. The board rejects the idea that there is a problem to solve – highlighting the very low "failure rate" and pointing out that it almost invariably follows recommendations of professionals employed by the Secretary of State in high profile cases *The board asserts that the requirement to have police officers on panels and the change in criteria for open conditions both increase risk to public in different ways *The board makes principled and legal objections to the Secretary of State being "judge in his own cause" by taking on release decisions in high profile cases *The board states that there is inadequate provision in place to support victims observing hearing *The board objects to a total lack of consultation over the "single view" proposals, which was making its members' "already difficult job close to impossible" *The board estimates an increased requirement of 800 prison places annually through proposals in root and branch review leading to reduced release rate. *The former justice secretary Robert Buckland favoured independent tribunal status for the board. *The first thing that becomes clear from the documents is that the changes to parole — designed to make it much harder for people to get to open prisons, and to give the justice secretary a veto over the release of individual prisoners — are the personal obsession of Dominic Raab. We learn from an email dated 30 April 2021 that his predecessor, Robert Buckland, favoured tribunal status for the Parole Board. That would have confirmed the court-like status of the board, and therefore its independence from political interference. But Buckland's departure in the autumn of 2021 led to a re-write of the root and branch review and a complete reversal in the direction of travel.

Faced with that change in political direction, the board sought to reassure Raab that his concerns about release decisions in high profile cases were misplaced. In a letter of 8 February 2022, the board explained that it almost invariably followed the advice of the department's professional specialists in such cases. It urged the secretary of state to appoint counsel more frequently, but pointed out that a panel taking decisions that were "swayed by sentiment" rather than focused on future

risk would leave the board "wide open to a rationality challenge". It suggested that if he was still concerned that a panel might ignore all the professional advice it received, there could be an avenue of appeal for the secretary of state to the Court of Appeal. The board's advice fell on deaf ears, and the root and branch review was published on 31 March 2022 with a description of a "problem" that the board simply didn't recognise, and a set of "solutions" that it felt were both wrong in principle and likely to increase the risk to the public. There is a key letter from the board to Raab dated 10 May, responding to the review's conclusions. It welcomes many aspects of the review. But not all. In particular:

Having sought legal opinion, the board specifically refutes Raab's assertion that the board has become less concerned about public protection in response to caselaw on the release test. The letter states "It is simply not correct to state that the board has treated its task as a balancing exercise considering the competing interests of the prisoner and the protection of the public. With respect our legal reading is that the test has not seen a drift away from its original meaning. It remains in the terms set out in your foreword and requires no refinement". The board expresses concern that setting new statutory criteria for release may "impede the ability of panels to take into account all aspects of risk". While more than open to the prospect of more people with a police background becoming board members, the letter describes how any requirement that a panel should have include from a particular background in a particular case may actually increase risk to the public and could be unlawful.

The board makes clear its view that Article 5 of the European Convention on Human Rights requires decisions on release to lie with a court or court-like body, and it goes on to explain the basic problem in domestic law of anyone being "judge in their own cause". In other words, the secretary of state cannot be both a party to the panel's proceedings and then act as the decision maker as well. The board states in terms that the proposals to change the criteria under which people can be recommended for a move to open conditions will have the result that "some of the most complex individuals will be released directly from closed conditions into the community, with less certainty on how they might behave and that could increase risk to the public". Unlike the ministry, the board makes an estimate of the likely consequence of the changes on the need for prison places. It suggests 800 additional places a year may be required — equivalent to a new medium-sized prison.

The board also raises a number of practical implementation questions. They all go unanswered and Dominic Raab implements the changes to criteria for open conditions in June. But he doesn't stop there. He also introduces secondary legislation (which requires no parliamentary debate) to institute the preparation of a "single view" from the secretary of state in some cases. In the same rule change, he forbids report writers and witnesses commissioned by him from making recommendations to the parole panel. None of this was in the root and branch review, and as has become only too obvious, it's a change that has practical implications that no-one has thought through. It prompts this agonised email of 16 June from the Parole Board to the ministry: "It is extremely difficult and disappointing that the Parole Board is the last to hear about important decisions which strike at the very heart of the difficult decisions we are asked to make. It makes our members already difficult job close to impossible…"

Email from Parole Board to Ministry of Justice, 16 June - The final email in this depressing sequence (dated 14 July 2022) shows just how desperate the justice secretary has been to make his announcements, regardless of whether they are ready to be implemented. The board points out that inadequate arrangements are being made to support victims who choose to observe parole hearings as a consequence of one of the root and branch review's recommendations. A desperate haste, driven by political considerations, has trumped even the interests of victims.

HMP Spring Hill Accommodation "Unfit For Purpose"

Inside Time: England's oldest open prison is "unfit for purpose" with prisoners housed in prefabricated 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 condemned. 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".

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, rubbing 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.

Police Corruption: Editors Fear Police Guidance on Links With Journalists

Sanchia Berg, BBC News: Editors have questioned police guidance which they say links journalists with corruption, and "equates them with the wrongdoing they work to uncover". National College of Policing guidelines say officers should declare relationships with journalists, just as they have to with convicted criminals. But the Society of Editors says journalists should not be included on a list of "notifiable associations". The guidelines only came to light earlier this year. Writing to the College of Policing - an independent arm's-length body of the Home Office - the Society of Editors said it was alarming that the guidance had only become public after it was referenced in a report by Her Majesty's Inspectorate of Constabulary (HMICFRS). Footnotes in the report indicate the counter-corruption guidance has existed since at least 2015. The report looked at the findings of the Daniel Morgan Independent Panel, tasked with investigating relationships between corrupt police officers, private investigators and journalists involved in the unsolved murder case of a private investigator.

Following the panel's findings of "institutional corruption" last year, the inspectorate was highly critical of the Metropolitan Police's current counter-corruption policies and contrasted them with the College of Policing's guidance, known as Authorised Professional Practice. It said the Met Police's approach was out of date, especially regarding "notifiable associations". These are connections with - for example - people who have unspent criminal convictions, or police officers who have been dismissed or those who now work as private investigators. The Metropolitan Police is currently deciding whether to implement the College of Policing's guidance.

The Society of Editors, which has about 400 members from UK national and regional media, said including journalists in a list of notifiable associations gave the wrongful impression that reporters seek to corrupt or deceive. Removing journalists from the list would help the police and media work together to benefit the public, it added. While the wider guidance on counter-corruption is available online, the section on so-called notifiable associations is restricted and cannot be viewed by the public.

The College of Policing said journalists have an important role in holding police to account and supporting the service with news stories including appeals for information. It added that the guidance should not impede healthy relationships between the police and the media. Index on Censorship, which campaigns for free speech worldwide, said it was increasingly concerned British police saw journalists as unsavoury or potentially disreputable - a view more usually seen in authoritarian regimes, not advanced democracies.

Crime and Policing - Confidence in the police in England and Wales has been shaken by a series of scandals, recorded crime rising to a 20-year high and the proportion of offences leading to court action hitting a new low. In 2021-22, only 5.6% of offences led to a suspect being summonsed or charged, compared with 16% in 2014-15. Offences at record highs include rape, up to 70,330 in 2021-22, all sexual offences (194,683) and stalking and harassment offences (722,574), despite the government's tackling violence against women and girls strategy and apology to survivors in its rape review. The charge rate for rape was at a record low of 1.3%. Meanwhile, the Met, the UK's biggest police force, has been rocked by a series of shameful episodes that have prompted accusations of institutional misogyny, racism and homophobia. These include the kidnapping, rape and murder of Sarah Everard by a serving police officer, and officers sharing messages about hitting and raping women, the deaths of black babies and the Holocaust. There was also the revelation that officers took photos of murdered Black sisters Nicole Smallman and Bibaa Henry, while relatives of the victims of the serial killer Stephen Port believe police wrote them off as "gay druggies".