

Commenting, Peter Dawson, Director of the Prison Reform Trust, said: "These facts and figures reveal the devastating impact the past 15 months have had on prisoners and their families. But instead of ensuring that such a calamity can never happen again, ministers are determined to put a rocket booster under prison numbers. The government accepts that its punitive approach is unlikely to reduce crime, yet is willing to find £4bn to fund its addiction to prison. With no target either for ending overcrowding or for closing prisons that are plainly unfit for purpose, the people at the sharp end will continue to live and work in a dangerous system, as vulnerable to the unexpected as it was in March of last year."

### **Troubles Trials: Why Did They Collapse - What Happens Next?**

*Rory Carroll, Guardian:* Why have prosecutors dropped Troubles-era murder charges against former soldiers who served in Northern Ireland? A technicality, and a whole lot of history, lie behind Friday's decision to halt the prosecution of two veterans. Soldier F had been charged with two murders and five attempted murders during Bloody Sunday in Derry in January 1972. Soldier B was charged with killing a teenager in the city in July 1972. The cases hinged partly on statements the soldiers gave to royal military police soon after the shootings. Prosecutors said the statements were inadmissible after a court ruling in April that led to the collapse of a trial against two other veterans for a killing in Belfast in 1972. The soldiers were not cautioned before giving statements, an oversight that is deemed to have contaminated those and subsequent statements.

Will This Affect Other Prosecutions? Probably. Prosecutors are reviewing all cases that rely on such statements. In the absence of other evidence – common in cases dating back decades – the prosecutions will halt. Between 150 and 200 former soldiers and police are, or were, under investigation for their alleged actions during the Troubles. Friday's decision puts a question mark over the handful that had been expected to proceed to court. At least two prosecutions are expected to go ahead, that of Denis Hutchings, for a fatal shooting in Tyrone in 1974, and of David Holden, who is charged with manslaughter over a shooting in Tyrone in 1988.

*Why Is the Legal System Still Dealing With Troubles-Era Cases?* More than 3,500 people died during the 1969-98 conflict. Most cases were not solved. The Good Friday agreement provided no mechanism to deal with the backlog, leaving the Police Service of Northern Ireland (PSNI) with a mountain of cold cases. What became known as "legacy" turned into a political football, with nationalists, unionists and the British government accusing each other of seeking selective justice and rewriting history. The trickle of prosecutions that makes it to court tend to fail, leaving victims' families waiting in vain for truth and justice.

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

Miscarriages of JusticeUK (MOJUK)

22 Berners St, Birmingham B19 2DR

Tele: 0121- 507 0844 Email: [mojuk@mojuk.org.uk](mailto:mojuk@mojuk.org.uk) Web: [www.mojuk.org.uk](http://www.mojuk.org.uk)

## **MOJUK: Newsletter 'Inside Out' No 855 (14/07/2021) - Cost £1**

### **Women of Colour Face Tougher Challenges After Prison Than White**

*Jon Robins, Justice Gap:* Women of colour with criminal records face tougher challenges in securing jobs, progressing in their careers, and getting their lives back on track than white women in a similar position, according to a new study. A report from charity Working Chance found that Black women facing the greatest hurdles after release from prison. 'Racially minoritised women are less likely to have access to social support and services, and more likely to be policed, arrested, and receive harsher punishments than white women, which means their criminal records last longer,' commented Olivia Dehnavi, research author and policy officer at Working Chance, a charity that supports women with convictions into employment. 'Long after their sentences are over, racially minoritised women face harsher consequences due to their criminal records. Most employers are hesitant to hire candidates with criminal records so minoritised women are effectively excluded from the job opportunities they need to rebuild their lives and support their families.'

Women are almost three times less likely to be employed upon release from prison compared to men, according to a previous study by Working Chance and the Prison Reform Trust. According to the group discrimination affects women more than men and that women are almost twice as likely as men to have their criminal records disclosed on a Disclosure and Barring Service (DBS) check partly because the professions that women tend to enter, such as education and care work. The research draws on the lived experiences of women with convictions. Of the women Working Chance supports into employment, more than six out of 10 come from a racially minoritised group (Black, 35%; Asian, 13%; and mixed race, 14%). 'I did well at school, then trained as a social worker and physiotherapist, and have a Master's degree. But instead of my achievements, discrimination and my conviction have defined my life for the last ten years,' said 'Ruby', one of the women whose experiences informed the research. 'A job, an income, and a sense of purpose is fundamental for women to move forward with their lives. Yet these opportunities are made much harder to access for racially minoritised women,' Natasha Finlayson OBE, Chief Executive of Working Chance said. 'We urge the government to combat this inequality by accelerating the implementation of recommendations in the Lammy Review and in the Ministry of Justice's Female Offender Strategy,' Natasha said. 'Employers also have a huge role to play to create a fairer playing field, starting with inclusive hiring practices.'

### **20 Year Old Murder and Attempted Murder Convictions Quashed**

*Doughty Street Chambers:* The Judicial Committee of the Privy Council have upheld The Bahamas Court of Appeal's decision to overturn a 20-year-old conviction for murder, after dismissing an appeal by the Crown. The Privy Council had previously remitted the case to the Court of Appeal after ruling that one of the judges from a previous constitution of the appeal court should have recused himself from hearing the appeal after presiding over the second trial. In 2001, Clinton Evans had been convicted of the murder of a police officer and attempted murder of a second officer and sentenced to death. Having been incarcerated since the offence was committed in 1999, Evans had already undergone three trials, three local appeals and two earlier appeals before the JCPC by the time he was finally released. He had been

convicted on the basis of a dock identification and a forensic report linking bullet casings found at the scene to a gun which Evans had allegedly hidden. But the firearms officer who made the report did not attend the trial for cross-examination. The Court of Appeal was of the view that the admission of the firearms report without giving Evans the chance to challenge this evidence deprived Evans of a fair trial.

The JCPC did not agree with the Court of Appeal that there had been unfairness on the facts of this case by the failure of the Crown to call the firearms officer. However, they found that Evans' conviction was unsafe for other reasons. Chief among these was their 'grave reservations' about the quality of the identification evidence presented. They found the trial judge's decision to allow dock identification to have been a material irregularity. The identification witness's account was riddled with inconsistencies, was contradicted by the officer in charge of the ID parade and was undermined by the witness's acceptance that he had previously identified Evans as one of his co-defendants. In those circumstances, the JCPC agreed that the decision to permit a dock identification was so prejudicial and unfair it rendered the verdict unsafe. The Crown had also appealed against the decision of The Bahamas Court of Appeal not to order a retrial in Evans' case. It was put forward on Evans' behalf that, at aged 47, he had been living in a state of uncertainty over these offences since he was 26. The repeated trials, the repeated appellate hearings and the inordinate delay were no fault of his. The JCPC said that to subject Evans to a fourth trial would be oppressive.

#### **Criminals Being Deported Cannot be Transferred to an Open Prison**

R (Akbar) v Secretary of State for Justice [2021] EWCA Civ 898 was a challenge to the Prison Rules 1999, one of which says that a prisoner who is being deported and has run out of appeals "must not be classified as suitable for open conditions". The challenge was unsuccessful. Jawad Akbar has a terrorism conviction, reportedly for planning to blow up crowded buildings, and is nearing the end of a 17-year minimum prison term. Born in Pakistan, he has Italian citizenship through his father, and it is to Italy that the Home Office intends to deport him.

In 2018, Mr Akbar asked for a transfer to a Category D open prison. It seems that his motivation was to further his rehabilitation and perhaps avoid deportation. The Ministry of Justice refused, relying on Rule 7(1A) of the 1999 Rules. Mr Akbar launched a judicial review, arguing that the rule discriminated against prisoners who are "appeal rights exhausted", and that the making of the rule in the first place was irrational. The Court of Appeal, like the court below, rejected these arguments. Lord Justice wrote: "The essential issue is whether the Secretary of State acted lawfully in allocating these places to the class of prisoners likely to be released back into the community as opposed to the class likely to be deported. A substantial margin of judgment is afforded to decision-makers charged with these responsibilities". He added that the chances of Mr Akbar being able to avoid deportation were in any case "vanishingly small".

#### **Sex Attack Victims Denied Compensation 'Because Of Unpaid TV Licences'**

Josh Layton, Metro News: Nearly 1,000 reported victims of sexual assault have been denied compensation with many said to have had their claims rejected due to minor rule breaking. The applicants had requests turned down for convictions including not owning a TV licence, shoplifting and sex work, according to campaign group Women Against Rape (WAR). The claims were rejected by the Government's Criminal Injuries Compensation Authority (CICA) scheme over the past six years. Figures released by CICA under the Freedom of Information Act show that

tistically greater risk of sexual assault upon non-transgender prisoners than would be the case if a non-transgender woman were introduced. But that statistical conclusion takes no account of the risk assessment which the policies require." The judge said the "fear and anxiety" some female inmates would suffer if a transgender inmate – "particularly one with male genitalia and/or with a history of sexual or violent offending against women" – was accommodated in the same prison would be assessed by the LCBs and CCBs, who "will surely be well aware of the vulnerabilities of the women who are held in the female prison estate". FDJ argued that the justice secretary should have invoked schedule 3 of the Equality Act 2010, which allows exemptions against discrimination – in this case against trans women – in relation to single-sex spaces. But the judges said schedule 3 was discretionary.

#### **Projected 25% Increase in Prison Numbers Will Undermine Prison Recovery**

*Prison Reform Trust:* Prisoner numbers in England and Wales are projected to rise by one quarter (20,000) over the next five years. But there are no plans either to reduce overcrowding or close prisons that are clearly unfit for purpose. Efforts by the prison service to recover from the impact of the global pandemic will be fatally undermined as a result, according to a new report published today (5 July 2021) by the Prison Reform Trust. The report, *Prison: the facts*, highlights Ministry of Justice prison population projections that predict a rise to 98,700 people from the current level of 77,912 (4 June 2021) by 2026. This is due to the impact of inflationary sentencing policies, including proposals in the Police, Crime, Sentencing and Courts (PCSC) Bill currently before Parliament, the recruitment of 20,000 police officers, which is expected to increase charge volumes, and the recovery of the courts as Covid-19 restrictions subside.

The government itself has admitted that its punitive policies are likely to have a negligible effect on levels of offending. The impact assessment of the PCSC Bill acknowledges that there is "limited evidence that the combined set of measures will deter offenders long term or reduce overall crime." This predicted increase in prison numbers over a short period comes after one of the most challenging periods in the history of the prison service. For the past 15 months and counting, as a result of public health restrictions imposed as a consequence of the Covid 19 pandemic, the great majority of prisoners have been locked up for at least 23 hours a day, with almost no training, work or education and very limited family contact.

No-one knows what the toll will be on mental and physical health caused by the prolonged periods many prisoners are spending in de facto solitary confinement. However, such conditions are likely to cause lasting damage to those currently held in prison, undermining their progress made towards a law-abiding future life, weakening family links and increasing the danger and volatility of prisons. In an overcrowded, under-resourced prison system, the risk of having to return to these inhumane measures will continue. At a time when the prison service ought to be focussed on recovery, instead its attention will be diverted by the need to accommodate the projected rise in prison numbers driven largely by the government's own criminal justice policies.

The government expects to build a total of 18,000 new prison places, understood to comprise HMPs Five Wells and Glen Parva and an additional 10,000 places, with the remaining places to be met by the construction of four new prisons; the expansion of a further four prisons; and refurbishment of the existing prison estate. However, these plans need to be seen in the context of the struggles of previous governments to meet much more modest prison building targets. A programme to build 10,000 cells by 2020, announced by the government in 2015, delivered just 206 spaces by its original deadline.

people flagged for gang-related violence in London were black, compared to the 27% who were responsible for serious youth violence. Commenting on the social disadvantages of many who come to court, Stephenson said: 'You have to make sure that you don't adopt the "failing by your client" narrative that the system promotes. What you need to be explaining is how this client has been failed by the system.'

Garry Green, a barrister at Doughty Street Chambers which hosted the launch, spoke of a culture of far-reaching 'alienation in wider society'. 'When black defendants come to court, the alienation begins,' Green said. 'Whether it's the security guards harassing the black defendants who have come to court, and even their lawyers sometimes, or whether it's the lack of representation in the judiciary. All of these experiences contribute to an alienating environment within the court system.'

According to the practical guide, black people are more likely to be remanded to custody in both the Magistrates' and Crown Courts. Recalling a past case, Garry Green said that he had represented a black and a white defendant for a review of bail conditions hearing, and that only the black defendant's bail conditions were tightened 'notwithstanding the fact that he had less convictions than my white client and was charged with a less serious offence'. 'You must be 'pragmatic', he said, 'and think imaginatively about how to combat discrimination in the court when you see it.'

### **Trans Women With Sex Offence Convictions in Female Jails Lawful**

Haroon Siddique, Guardian: A legal challenge to prevent transgender inmates with convictions for sexual or violent offences against women being imprisoned alongside other women has been rejected by the high court. A female former inmate, who claims she was sexually assaulted by a transgender women prisoner with a gender recognition certificate (GRC) while in HMP Bronzefield in 2017, asked judges to declare the justice secretary's policies on the care and management of trans prisoners in England and Wales to be unlawful.

The claimant, known only as FDJ, argued her human rights were violated by having to be in the same prison as transgender women prisoners with convictions for sexual or violent offences against women. In a judgment handed down on Friday, Lord Justice Holroyde, sitting with Mr Justice Swift, dismissed the claim. He acknowledged the "fear and anxiety" some female inmates would suffer if a transgender inmate was in the same jail, but said existing policies should mitigate this. "The difficulty which the claimant faces, in my view, is that it is not possible to argue that the defendant should have excluded from women's prisons all transgender women," he wrote. "To do so would be to ignore, impermissibly, the rights of transgender women to live in their chosen gender; and it is not the course which the claimant herself says the defendant should have taken. The submissions on behalf of the claimant attached weight to the offending history of the transgender woman concerned; but that is a factor which the care and management policy specifically requires the LCB [local transgender case board] and/or CCB [transgender complex case board] to consider."

The court heard that in 2019 there were 163 transgender prisoners in England and Wales, 81 of whom had been convicted of one or more sexual offences. Of the 163, 34 were held in women's prisons. Between 2016 and 2019, a total of 97 sexual assaults were recorded in women's prisons, of which seven appeared to be committed by transgender prisoners without a GRC. It is not known whether any were committed by transgender women with a GRC but the number of transgender prisoners with a GRC across all jails is thought to be in single figures. Holroyde said the statistics were too low and had insufficient detail to provide a safe basis for conclusions, adding: "I can accept, at any rate for present purposes, that the unconditional introduction of a transgender woman into the general population of a women's prison carries a sta-

895 applications were denied and 331 reduced. WAR has supported some of those making claims and highlighted applications that have been refused. They include a woman who was repeatedly raped by two men when she was 13 being refused a payout because she had been prosecuted for driving without insurance and refusing to take a sample test. Another example given by the London-based group is that of a victim who was seriously sexually assaulted by a teacher at the age of eight. She did not qualify for compensation because she had been convicted of threatening her boss when he refused to pay her wages.

WAR has called for an overhaul of the Government-run scheme, saying that it has practised 'terrible discrimination' for decades. The group argues that rules concerning unspent convictions disproportionately affecting victims of sexual offences, who may also have their 'character and conduct' called into question. Spokesperson Lisa Longstaff told Metro.co.uk: 'It is outrageous that nearly 1,000 victims of sexual assault were denied any or some compensation on the grounds of unrelated and often very minor convictions such as for shoplifting, sex work or non-payment of a TV licence. We are all entitled. 'This dividing victims between deserving and undeserving comes on top of the de facto decriminalisation of sexual violence. 'Many are women who helped put dangerous serial attackers in prison, a service to public safety the CICA doesn't value. 'CICA rules make it so hard to get compensation that victims are retraumatised by the process. We are campaigning for all victims to get the justice and compensation we have a right to.'

The data released by CICA pertains to where the applicant selected 'sexual assault' as the incident type. In 2020, 173 applications were denied and another 53 reduced. This compares with 68 refused and 49 cut down in 2015, the earliest date in the timeframe provided by CICA. The authority said it could not provide any details on why the claims were refused, citing an exemption in the Act placing a cost limit on manually retrieving information. Under CICA rules, a claimant's 'character and conduct' can be taken into account, which includes evidence of involvement in crime, minor cautions or reprimands and whether alcohol or drugs contributed to the person becoming a victim. A conviction does not need to have been secured in order for compensation to be paid out. The Government has changed the system to include those who were previously denied payouts under the 'same roof rule', which barred payouts to victims whose attacker was a family member they were living with at the time of incident. This was amended in 1979 but not made retrospective until three years ago, when the clause was abolished completely.

However, WAR says that the Ministry of Justice (MoJ) has failed to carry out a wider overhaul, despite the group having submitted evidence to a review of the CICA system. This was published in January 2021, making recommendations which did not reflect the group's request to scrap rules used to deny payouts due to unspent convictions. The concerns over compensation are part of a wider outcry over the safety of women on Britain's streets, with figures showing that the rate for rape prosecutions has fallen to 1.5% in England and Wales. In response, a Government review published earlier this month laid out plans to increase the volume of rape cases being referred from the police to the Crown Prosecution Service and better support for victims of sexual offences and domestic abuse. CICA maintains that it paid out more than £195 million to victims of violent crime between 2019 and 2020.

Withheld or reduced compensation is not intended to minimise the fact that applicants with unspent criminal convictions may have been victims of serious crimes, according to the authority. The rule is aimed at recognising that the applicant may themselves have caused distress, loss or injury to another person through the offence or offences for which they were convicted. Relevant information provided by the applicant, the police and, where appropriate,

medical authorities is considered and a review can be requested. A CICA spokesperson said: 'We recognise the impact of these sickening crimes and are clear that victims should receive all the support they need. That's why our compensation scheme is one of the most generous of its kind in the world, with over £195 million paid to victims last year, and we are funding more rape support services than ever before to help them rebuild their lives.'

#### **"Kill the Bill" - Not Consistent With the UN's Convention on the Rights of Children**

Jamie Grierson, Guardian: The new head of the body that oversees the youth justice system in England and Wales has hit out at the government's plans to increase the time spent by children behind bars. The controversial legislation will be brought back to parliament next week. Claudia Sturt, the chief executive of the Youth Justice Board (YJB), told MPs and peers that the proposals in the police, crime, sentencing and courts bill were not consistent with the UN's convention on the rights of children. She told parliament's joint committee on human rights that there was no evidence that longer sentences improved rehabilitation and warned that increased time in custody was likely to lead to an increase in reoffending.

Sturt, who took up the post at the arms-length body, warned that the bill created a distinction between younger and older children with new proposals for minimum terms for 16- and 17-year-olds. "It doesn't treat them as individuals and it doesn't take into account their childhood and their developmental state, it treats them as though they're adults," she said. That's at odds with the convention (UNCRC) that very clearly defines a child as anyone under the age of 18; there's no sliding scale below the age of 18 at which it's acceptable to treat someone more or less of a child. It's everybody under the age of 18.

"So we would have significant concerns about any provision that draws distinction between older and younger children. We're not aware of any evidence that longer sentences improve rehabilitation. We're concerned time in custody cements pro-criminal rather than pro-social identities and attitudes in children. That means they're more likely rather than less likely to reoffend after release, the longer they spend in custody. If we behave in a way that reduces a child's sense of worth and their belief in a constructive future and which labels and stigmatises them, it serves to increase the likelihood of offending and causing harm to the public. It's not clear how a blanket increase in the term before automatic release directly supports rehabilitation or resettlement." The police, crime, sentencing and courts bill has been subject to significant criticism since it was announced by the government earlier this year, triggering a wave of protests under the "kill the bill" banner. Critics have warned that measures in the bill would place significant curbs on freedom of speech and assembly, by giving police powers to curb protests.

#### **Protest at the Royal College of Psychiatrists 'Endorsing' Segregation Units**

Jon Robins, *Justice Gap*: On Wednesday 30th June 2021. Former prisoners joined campaigners in a protest outside the psychiatrists' professional body over its support for segregation units. According to the protestors, the Royal College of Psychiatrists 'whose primary duty should be the welfare of patients' had 'endorsed' close supervision centres (CSCs) as 'enabling environments'. The campaign is backed by more than 60 organizations including Legal Action for Women, Payday men's network, Joint Enterprise Not Guilty by Association, Women of Colour Global Women's Strike, Community Action on Prison Expansion, Fight Racism Fight Imperialism, Prisoner Solidarity Network. It also features the support of the former prisons inspector Lord Ramsbotham, miscarriage of justice victim Winston Silcott, Benjamin Zephaniah, American campaigners Angela Davis and Selma James plus a number of practicing psychiatrists.

Deborah Coles, director of INQUEST, said that while the UK government was 'explicit in its denial of systemic racism, this UN report confronts them with the evidence'. 'The disproportionate number of black men who die after the use of lethal force and neglect by the state is at the sharp end of a continuum of violence and racism. There is a pattern of systemic racism in our policing and criminal justice system.' 'State violence and racism are global human rights issues, and action is long overdue. Disappointingly but unsurprisingly, the response of the UK government in this report is disingenuous. From continued issues with accessing funding for legal representation at inquests; delay, denial, dehumanisation and obfuscation from police and public authorities; and ultimately yet more deaths. It is clear to us that much more needs to be done to enable transformative structural change'.

#### **Lawyers Urged to 'Educate Themselves' Over Endemic Racism in the Justice System**

Elliot Tyler, *Justice Gap*: Criminal defence lawyers were urged to educate themselves at the launch of a guide designed to 'support legal representatives to be antiracist' from acting for clients in the police station through to court. Making Black Lives Matter in the Criminal Justice System is produced by the Howard League for Penal Reform with the support of Black Protest Legal Support in recognition of 'two harsh realities': racial discrimination as an enduring feature of criminal justice for black people and legal training in England and Wales that 'does not equip lawyers to be antiracist'. The criminal justice system was 'rooted in anti-blackness' and 'fuelled by the myth of black criminality', said Ife Thompson, a community-based activist and lawyer at last night's launch of the guide. 'This guide gives lawyers the tool to dismantle the normalised anti-blackness within the system. We must start to do things differently.'

The guide draws on critical race theory, which argues that racism is not only a problem caused by individuals but a structural problem present in seemingly neutral laws and institutions, to help lawyers (in its words) 'begin their lifelong journey to becoming antiracist lawyers' and to work in ways which will 'disrupt and challenge' discrimination. 'Antiracist lawyers will not always be able to counter discrimination in the system, but they can work towards this by disrupting the existing power structure,' the guide says. Thompson observed that critical race theory is not taught in law schools and was not a core module on university LLB courses. 'The law is not colourblind,' she added.

Abenaa Owusu-Bempah, an assistant professor of law at the London School of Economics, pointed out the 'well-documented disparities throughout the criminal justice system'. 'Black people have more contact at every stage, from stop and search through to arrest, remand, and sentencing. Sentences are harsher for black people than they are for their white counterparts who have committed the same offences in similar circumstances. How black people are perceived outside of the court system can affect how they are treated within the court system.'

Naima Sakande, a women's justice advocate from the legal charity APPEAL which investigates miscarriages of justice, said: 'One key thing that's emphasised throughout the report is that trust in the system amongst black defendants is low, and that's for good cause. It will often be at its very lowest upon conviction and sentence.' According to the report, the average custodial sentence for black people is 1.4 times that of the average for white people. 'If you don't know about the experiences of black people in the criminal justice system, and you're a criminal lawyer, then you absolutely need to educate yourself,' said Aika Stephenson, a solicitor and youth justice expert.

Black people were five times more likely to have force used against them by police compared to white people, and are around eight times more likely to be threatened with or have a taser discharged against them, Stephenson observed. In 2018, it was found that 72% of

## End Police Impunity for Human Rights Violations

Zaki Sarraf, Justice Gap: UN human rights group has issued an urgent call for countries to take immediate action to uproot systemic racism including ending police impunity in a report that highlights the case of a mentally ill black man who died following restraint in police custody in South London. 'The status quo is untenable,' said UN High Commissioner for Human Rights Michelle Bachelet. 'Systemic racism needs a systemic response... We need a transformative approach that tackles the interconnected areas that drive racism, and lead to repeated, wholly avoidable, tragedies like the death of George Floyd.'

The UN investigation was launched in the wake of the murder by a police officer of the 46 year old in Minneapolis and identifies seven 'emblematic incidents' including the case of Kevin Clarke which were examined to illustrate 'practices, patterns and challenges'. Clarke, who had been diagnosed with paranoid schizophrenia, was living in supported housing at the time of his death on in 2018 after being restrained by the police. In police body-cam footage, Clarke can be heard telling officers: 'I can't breathe ... I'm going to die.' He died in police custody at Lewisham hospital later that day.' You can read about Kevin Clarke on the Justice Gap here. The High Commissioner's analysis finds that law enforcement officers are rarely held accountable for human rights violations and crimes committed against people of African descent—partly due to inadequate investigations but also as a result of lack of robust oversight and a widespread 'presumption of guilt' against people of African descent.

The Office of the High Commissioner received information on over 250 incidents of deaths of Africans and people of African descent, 'at least 190' of which were at the hands of law enforcement officials. Of the 190 incidents, 98% took place in Europe, Latin America and North America. 'While the incidents occurred in countries with varying legal systems, some of the practices, patterns and challenges were the same,' the report said. The analysis of these incidents found that three key settings underlie over 85% of police-related fatalities: first, 'the policing of minor offences, traffic stops and stops-and-searches', as in the cases of George Floyd (US), Adama Traoré (France) and Luana Barbosa dos Reis Santos (Brazil); second, the intervention of law enforcement officials as first responders in mental health crises, as in the case of Kevin Clarke (UK); and third is the conduct of special police operations, as in the cases of Breonna Taylor (US), Janner García Palomino (Colombia) and João Pedro (Brazil). In these three contexts, 'racial bias, stereotypes and profiling' appear to play recurrent roles.

The report argues that 'systemic racism and enduring harmful and degrading associations of blackness with criminality and delinquency' shape interactions of people of African descent with law enforcement officials. An assessment of the impact of this link was 'often hampered' by the lack of data. 'When it is available, the data is worrying,' the report continues. 'For example, in 2019, while African-Americans comprised 13% of the US population, they accounted for 26% of total arrests. Data from Canada shows that, "between 2013 and 2017, a black person in Toronto was nearly 20 times more likely than a white person to be involved in a fatal shooting by the Toronto Police Service". In the UK, between April 2019 and March 2020, "there were six stop and searches for every 1,000 white people, compared with 54 for every 1,000 black people".' The High Commissioner concludes: 'Racial discrimination in law enforcement cannot, as the Human Rights Council recognized, be separated from questions of systemic racism. Only approaches that tackle both the endemic shortcomings in law enforcement, and address systemic racism – and the legacies it is built on – will do justice to the memory of George Floyd and so many others whose lives have been lost or irreparably damaged.'

The coalition argues that CSCs are 'prisons within UK prisons – segregation units where prisoners are locked in their cell 22 or more hours per day for months or years with no independent right of appeal'. This level of confinement and deprivation of contact with other human beings was 'comparable to solitary confinement' and being held in solitary confinement for more than 14 days was a breach of the UN Mandela Rules on the treatment of prisoners. Amnesty International has condemned CSCs (formerly SSUs) as far back as 1997 as 'cruel, inhuman or degrading treatment'. 'We are part of this campaign because CSCs are racist and women end up picking up the pieces when men are abused within them,' commented Sara Callaway from Women of Colour Global Women's Strike ahead of this week's demo. 'We will be making our voices heard until the RCPsych stops covering up for cruel, inhuman and degrading treatment. This campaign was initiated by prisoners and is growing in size – CSCs and solitary must end!'

Kevan Thakrar, imprisoned in a CSC now for over 11 years mostly in solitary, said 'they cause the majority of its residents to develop major mental illness requiring treatment within the secure hospitals'. The UN Special Rapporteur on Torture has written to the British Government about Thakrar's case noting that the UK may be in breach of international law. According to the campaign, prisoners describe being 'fed through a hatch and isolated from family and outside support', attacks from guards that remain unpunished, and complain that there is no transparent process to decide who is placed in the CSC. A 2017 HMP Inspectorate report found that there was "no independent scrutiny of key decisions." Approximately half of prisoners held in CSCs are Muslim which, the coalition argues, indicates that these units are 'institutionally racist'.

## High Court Reduces Sentence of Gang Member Convicted of Attempted Murder

The High Court of Justiciary has reduced the sentence of a man who was convicted of the attempted murder of a rival gang member after his case was referred to the court by the Scottish Criminal Cases Review Commission. Dillin Armstrong, who was 24 at the time of the offence, was given an extended sentence of 13 years, 10 of them custodial, after he attacked another man in Musselburgh on Hogmanay 2018. He appeared alongside five other co-accused at trial, all of whom were part of the same gang. All but one of them were also charged with attempted murder. The appeal was heard by the Lord Justice General, Lord Carloway, sitting with Lord Woolman and Lord Pentland. The appellant was represented by J Keenan, solicitor advocate, and the Crown by J McDonald, solicitor advocate.

*Previous Convictions:* On the night in question, the complainer had gone with three members of his gang to the appellant's house. After breaking in, he was chased by the appellant and his co-accused, who caught up to him and attacked him, including with a knife and a metal pole. Many of his injuries were potentially life-threatening and he required 16 stitches for an injury to his torso. A Criminal Justice Social Work Report prepared on behalf of the appellant recorded that he had a troubled background, had no qualifications, and had offended as a child. He had a total of 18 previous convictions ranging from breach of the peace to assault to injury and permanent disfigurement. He had spent substantial periods of remand and 22 months in custody. It was noted that at the time of the offence he had become convinced that the complainer and his gang were there to steal his cocaine.

Of the appellant's four co-accused also charged with attempted murder, who were aged between 16 and 21 years old, all had their sentences reduced following sentencing appeals. The SCCRC reasoned that, given the significant roles played by the other co-accused in the assault, it did not seem appropriate the appellant's sentence should be longer than the 7-

year headline sentence imposed on Dean Renton, a 21-year-old co-accused who had struck the complainer on the head with a large stone. It was submitted that it had been unnecessary to impose an extended sentence in these circumstances. The appellant was in a stable relationship and had a two-year-old daughter, and his previous convictions were all at a summary level. It was also noted that he suffered from ADHD and has not been taking his medication at the time of the offence. The issue of comparative justice was also discussed.

*Little Room for Distinction:* The opinion of the court was delivered by Lord Carlaway, who began by noting: “The principle of comparative justice is an important one. Co-accused persons who have been convicted of the same, or a similar, offence, ought to attract substantially the same sentences. If it were otherwise, the sentences, or at least one of them, will be perceived to be unfair.” Assessing whether it was fair for the appellant’s sentence to be markedly different to Mr Renton’s, he went on to say: “It is not easy to see why, when compared to those 5 and 6 year terms imposed on the teenaged participants, a headline custodial disposal of only 7 years was selected. Given the additional use of the paving slab, the court is driven to the conclusion that Mr Renton’s sentence on appeal was significantly lenient.” However, he added: “Nevertheless, Mr Renton’s sentence cannot be ignored. It must, as a matter of comparative justice, be taken into account when dealing with the appellant’s appeal. There is little room for any distinction in relation to record, although the appellant does have a larger number of assault convictions.”

Lord Carlaway concluded: “The SCCRC concluded that an extended sentence was merited in the appellant’s case. The court agrees; standing the violent nature of the appellant’s participation in the offence, his record and the terms of the CJSWR in relation to his lack of remorse, empathy or attempts to rehabilitate himself in prison. Having regard to the principle of comparative justice, the sentence imposed by the trial judge must be reduced.” For these reasons, the court reduced the appellant’s sentence, substituting an 11-year extended sentence with a custodial element of 8 years.

#### **‘Excited Delirium’: Term Linked to Police Restraint in UK Medical Guide Condemned**

*Nazia Parveen, Guardian:* Public health bodies, charities and the families of men who died after being restrained by police have condemned the inclusion of a controversial medical term in one of the UK’s leading medical handbooks. Acute behavioural disturbance (ABD), more commonly known as “excited delirium”, a contentious expression used in fatal cases of police violence, has recently been added to the Maudsley Prescribing Guidelines (MPG). The term, which divides the medical community, was recently mentioned in the trial of Derek Chauvin, the former US police officer found guilty of the murder of George Floyd, although it was not a key part of the evidence.

It has been argued that the term carries racial biases and is often used to justify lethal use of force by police, disproportionately against black men. It has previously been used in many court cases to describe individuals who become agitated or distressed after using drugs or during a mental health episode. In some instances, those described as experiencing “excited delirium” are perceived to exhibit higher pain thresholds and unusual levels of strength.

It was recently cited in Kevin Clarke’s inquest and the families of Olaseni Lewis and Sean Rigg have said attempts were made to use the term in their inquests but those attempts were quashed by their legal teams. Ajibola Lewis, the mother of Olaseni Lewis and Marcia Rigg, the sister of Sean Rigg, condemned the inclusion of the term in the guidelines saying it would set a dangerous precedent legitimising its use in future cases involving restraint. “We have seen too many deaths resulting from the use of restraint in custody: deaths which could have been avoided if only the necessary lessons had been learned from previous deaths in similar circumstances,” they said in a joint statement.

The two women and their families, who have campaigned against deaths in police custody, said evidence suggested a disproportionate number of those who die in such circumstances were black men suffering from mental ill health. “We also know that healthcare professionals have a critical role to play in this context, and we recognise that the purpose of the guidelines is to assist such professionals in their approach to these cases and their understanding of the underlying circumstances. However, the opportunity to shape that approach and understanding – and thereby the learning necessary to prevent deaths resulting from similar circumstances in the future – has been squandered,” they added.

Both the Royal College of Psychiatrists (RCPsych) and the South London and Maudsley NHS trust, which oversaw Clarke, Rigg and Lewis’s clinical care and operates independently of the MPG have also issued statements saying they do not recognise ABD as a medical diagnosis or syndrome. In a statement RCPsych said it was extremely concerned about the increasing use of the terms and said they could be used in inquests to limit the responsibility of authorities involved in the deaths of those in custody or medical services. The statement was endorsed by the South London and Maudsley NHS Foundation Trust who stated there was no compelling research evidence to demonstrate or support the use of these terms in medicine. The trust said the use of the term had led to significant disadvantage for certain ethnic minority groups and that it would be working with the MPG to ensure the guidelines were updated.

However, Ché Donald, the vice-chair of the Police Federation of England and Wales, refuted and condemned the “hugely damaging” RCPsych statement. In a detailed eight-bullet point rebuttal Donald said the RCPsych statement was incorrect and disputed claims of racial discrimination. Donald, who said he would be referring the matter to the Charity Commission, said the move could impact negatively on every police incident involving individuals with the condition adding that the “highly flawed” statement called into question the impartiality of coroners. “The RCPsych ... should focus its energy and attention on areas it has expertise in, rather than issuing factually incorrect, politicised statements,” he said.

Prof David Taylor, director of Pharmacy and Pathology, senior author and editor of MPG for 27 years, said the fourteenth edition of the guidelines includes a short section on ABD. “In the text, it is made clear that neither named condition is an accepted diagnosis and it acknowledges that both terms are highly controversial. It is also very clear in recommending that physical restraint should be avoided wherever possible,” he said. Taylor added that having now consulted with various authorities, he had asked the publishers to make changes to the guidelines reflecting the “sensitivities that surround these terms and the lack of any diagnostic validity”.

#### **Offender Behaviour Programme**

There are 161 prisoners with Imprisonment for Public Protection (IPP) sentences identified as currently waiting for an accredited offending behaviour or sexual offending programme. We have considered accredited offending behaviour programmes to be defined as both offending behaviour and sexual offending programmes. Substance misuse programmes are the responsibility of NHS commissioners and we do not hold this information. The Government’s primary responsibility is to protect the public. Accredited programmes aim to protect the public and reduce reoffending and are part of a range of rehabilitation and risk reduction opportunities available. In recent years, there has been a reinvestment from shorter, moderate intensity programmes in favour of longer, higher intensity programmes. HM Prison and Probation Service remains committed to supporting the progression of those serving IPP and life sentences in custody, so that the Parole Board may direct their release, or as the case may be, re-release, as soon as it is safe to do so.