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Time Out of Cell - Prison Reform Trust (PRT)

In December last year, the prisons minister said this in an answer to a written parliamentary question about what was happening to prisoners during the pandemic: "Whilst time out of cell has at times been reduced due to these restrictions, prisons are not limiting prisoners to leaving their cells for one hour per day." PRT were surprised to read this, because we knew that many prisoners were telling us that they often had to spend 23 hours or more in their cell every day. Repeatedly, the Chief Inspector of Prisons has reported the same in individual inspection reports, based on direct observation. So we wrote to the minister querying the answer she had given. It wasn't just that we thought it was factually wrong, but that we weren't confident that there was any mechanism that would allow the minister to know whether what she was saying was true or not.

We heard nothing, so in February we wrote again, reminding her about the correspondence, and asking a simple factual question inviting her to say how many prisoners spent 23 hours in their cell on any specific date of her choosing. More time passed, and eventually — more than 4 months after we had first written — we received a response. But it scrupulously avoided answering the question we asked. It just ignored the central concern — that there is no way of knowing how many prisoners are having to spend 23 hours or more a day in their cell.

This still matters. Alarmingly, in response to a recent press query, on 20 April the Ministry of Justice said that "restrictions are now easing with almost half of all adult prisons already back to normal". This is alarming because the national framework for regime restrictions during Covid has always made clear that "stage one" of that framework — which is what this MoJ comment is referring to — is not what would have been considered "normal" before the pandemic. Nor is it a guarantee that locally restrictions can't be re-imposed by the Governor from day to day or week to week.

So we have a department happy to tell the public that prisons are "back to normal", but unable or unwilling to say how many prisoners are spending all day locked behind a cell door. Our concern is that the reality of the situation — driven by staff shortages in particular — is that being stuck in your cell all day is still a very common experience for many prisoners and likely to remain so. Ministers need to find out what's happening, and give a straight answer to a straight question.

Lescene Edwards's Murder Conviction Overturned

The Judicial Committee of the Privy Council, the final Court of Appeal of Jamaica, has found that a substantial miscarriage of justice has occurred and that the conviction of Lescene Edwards cannot stand. Lescene Edwards was convicted of murder in Jamaica in 2013 and sentenced to life imprisonment, with a minimum term of 35 years before he would be eligible for parole. On Monday 4 April, the Judicial Committee of the Privy Council, sitting as the final Court of Appeal of Jamaica, delivered an important judgment overturning the conviction of Lescene Edwards for the murder of his partner Ms Aldonna Harris-Vasquez. Ms Harris-Vasquez died on 5 September 2003, from a single gunshot wound to the head. Despite a suicide note being found near her body, the case had centred around whether Mr Edwards, who was arrested and charged with her murder, fired the fatal shot of if it was self-inflicted.

The prosecution alleged that on the night of 5 September 2003, Mr Edwards had visited Ms Harris-Vasquez, the mother of his two children, and shot her in the bathroom of her home, staging the murder to look like a suicide. Despite serious failings around the gathering and storing of essential evidence, a lack of adequate forensic expert testimony, and a trial delay of ten years, Mr Edwards was convicted of Ms Harris-Vasquez's murder and sentenced to life imprisonment, with possibility of parole only after serving a minimum of 35 years.

In his appeal before the Privy Council, heard between 15-16 February 2022, Mr Edwards's lawyers presented arguments that extensive delays in the trial and appellate process had breached Mr Edwards's constitutional right to trial within a reasonable time. They also argued that there were serious deficiencies in the safety of Mr Edwards's conviction and that a miscarriage of justice had occurred; during the initial police investigation vital evidence such as the clothes worn by Mr Edwards and the gun and holster had not been sent for forensic testing, and that other evidence, such as the clothes worn by the deceased had been destroyed by the police before trial. Mr Edwards's lawyers also applied to have fresh evidence admitted by the Privy Council, including reports from ballistics, gunshot residue and blood spatter forensic experts.

Considering the admission of the fresh forensic evidence, The Privy Council today stated: "there is simply no satisfactory explanation of how the defendant could have managed to murder the deceased in the very confined space of the bathroom, then move the body, open the door and appear a very short time afterwards in the living room without any blood being seen on him or his clothes, and without any bloodstains or bloodied footprints being found anywhere outside the bathroom…There is a world of difference between a lawyer's assertion that the prosecution theory is implausible and expert evidence that shows, in the words of Mrs Leak, that the suicide hypothesis is far more likely than the murder one."

The lack of forensic evidence at the original trial was acknowledged as being a key factor in the conviction being unsafe. The Board noted: "There was no legal aid to enable Mr Edwards to have experts flown in from overseas at public expense…It is only because Mr Mastaglio, Ms Shaw and Mrs Leak (as well as solicitors and counsel for the appellant) are acting pro bono that the appellant has been able to adduce the fresh evidence before the Board."

Read more: Death Penalty Project, https://rb.gy/zsta4y

Increasing Over-Representation of Black and Minority Ethnic Children in Custody

Sally Weale, Guardian: The number of children in custody in England and Wales is expected to double by 2024, according to a report by Whitehall's public spending watchdog, which also highlights that black and minority ethnic children are increasingly over-represented in the youth justice system. The National Audit Office (NAO) report said in 2021 more than half (53%) of children in custody were from minority ethnic groups, up from less than a third (32%) 10 years earlier, while the proportion of black children increased from 18% to 29% over the same period. The report said that after long-term decline, the number of children in custody is expected to rise rapidly as a direct result of increased police recruitment, moves to tackle the court backlog caused by Covid and tougher sentencing after the passing of the police, crime, sentencing and courts reform bill.

According to the NAO, the average number of children in custody fell by 73% in the decade up to 2021, reflecting the decline in the number of youth offences. Latest forecasts, however, indicate the number of children aged 15-17 in young offender institutions (YOIs) will double from 343 in 2021 to 700 just four years later, raising concerns about capacity in the system. Almost three-quarters of all children in custody are held in a YOI, while those who are deemed too vulnerable are housed in secure training centres (STCs) or secure children's homes. Inspectors have raised persistent con-

cerns over the welfare, safety and outcomes for children in England's three STCs, and closures have led to children being moved to less suitable types of youth custody. The government has promised to deliver two new secure schools to try to improve the life chances of children in custody, but according to the NAO, the opening of the first has been delayed by approximately three years, while costs have gone up from £4.9m to £36.5m, after significant design revisions following due diligence. "Due to wider financial constraints, Her Majesty's Prison and Probation Service has not started work on the second secure school," the report notes.

Dame Meg Hillier, the chair of the public accounts committee, said it was a crisis in the making. "Years of mismanagement and poor performance has meant the youth justice system risks failing many of the children who end up in custody. Persistent concerns over the STCs have not been heeded, and now their closures have led to vulnerable children being sent to other facilities which aren't as suitable for their complex needs." She added: "Children in custody are expected to double by 2024, yet new facilities are delayed and existing ones are failing to meet standards. Without proper support, the chances of these children to turn their lives around is distressingly slim."

Andrew Neilson, the director of campaigns at the Howard League for Penal Reform, said: "When a child is in trouble, we should do all that we can to keep them safe and guide them away from crime. This is why it is so concerning that, after a decade in which the number of children in custody has been reduced by 80%, recent policy decisions risk sweeping more boys and girls into our failing criminal justice system." He said the growing racial disparities in youth justice have been of increasing concern to the Howard League. "Ministers need to get serious on how the government will reverse this unacceptable state of affairs." A Ministry of Justice spokesperson said: "We are committed to ensuring public safety and the best possible outcome for every child in our care. Our new secure school will put education, healthcare and rehabilitation at the heart of our efforts to cut crime and keep the public safe."

Call for Evidence on Media Access to Prisoners

I am currently challenging the lawfulness of the Minister of Justice's policy on media access to prisoners In the Civil Appeals Court and am looking for any prisoners, journalists, or lawyers who have ever applied for permission to broadcast interviews under PSI 37 /2010. If you are happy to share your experiences with me, please get in touch (online via my team: wwwjreeMorkA!exonder.org/conwct or directly in the post: Mark Alexander, A8819AL, HMP Coldlngley, Bisley, Woking, GU24 9EX). I am representing myself in this case and plan to submit evidence from as many different sources as possible so I can demonstrate to the Court that the Ministry of Justice's policy amounts to a blanket ban on all interviews intended for broadcast taking place.

My family and I sought the assistance of an Investigative journalist some years ago to follow new lines of enquiry and seek out fresh evidence on our behalf. In order to fund his work, he wants to create a podcast series to shed light on the circumstances of my conviction and needs to interview me as part of that. Having achieved all I can realistically achieve from a prison cell over the past 12 years, I now need the help of an investigative Journalist to take things further. As a family, we have confidence that a podcast will encourage members of the public to come forward with new information. My Mother wrote to the Ministry of Justice to explain that "As a family, we need this to happen, to speak out... We all feel that the documentary can bring about fair justice to prove Mark's innocence and dear his name". They not only ignored her pleas but refused to grant the journalist involved permission to record interviews with me over the prison phone.

I decided to take the Ministry of Justice to Court in March this year to defend free speech and our free press. The Judge, Mrs Justice Thornton DBE, essentially gave the Ministry of Justice carte Blanche to disregard the professional judgement of the media In determining what is in the public interest and what the most suitable form of expression is in any given situation. This is a licence for State censorship. She came to this view on the basis that, since the government's policy technically allows for exceptions to the rule that letter writing will normally be sufficient for communications between prisoners and journalists, PSI 37 /2010 must therefore be lawful.

However, the Ministry of Justice could not provide a single example of any exception ever being made. Simply saying you allow for exceptions is not enough if, in practice, you never do so. This is why I am arguing that the policy is, in fact, unlawful, and amounts to a blanket ban. The Court reached the very same conclusion in Hirst v Secretary of State for the Home Department [2002] EWHC 502 /Admin}, where Mr Justice Elias said that "a blanket ban on media interviews" cannot be justified. The policy at that time appeared "to assume that sending the information by letter will always, or at least virtually always, suffice to meet the prisoner's objective ... That seems to me to be an unjustified assumption". The new policy, PSI 37/2010, is no better than the old one.

As the criminal justice charity APPEAL said when it launched its Open Justice Charter in January 2017, we need greater transparency in our justice system: "Accountability in any justice system is always a matter of access to information. Compared to other countries, British justice lacks Accountability, as access to information about how the system functions are restricted.

Our free press has an important role to play in filling the gaps left by a decade of legal aid cuts, but they can only fulfil this corrective role if they have free and unimpeded access to our prisons. As Lord Hughes put it in the Nunn case back in 2014: 'There is no doubt that there have been conspicuous examples of apparently secure convictions which have been demonstrated to be erroneous through the efforts of investigative Journalists". Rather than actively obstructing these efforts, the Ministry of Justice should be bending over backwards to ensure that anyone who has suffered a potential miscarriage of justice receives all the support they can get. Hopefully, the Coun will agree with me that this policy needs to change, and it will become easier for others in my situation to get access to the help they need and deserve. Wish me luck!

If you would like to share your own experiences with the Court, please get in touch directly in the post: Mark Alexander, A8819AL, HMP Coldingley, Bisley, Woking, GU24 9EX).

Joint Enterprise Ruling Has Not Led to Fewer Homicide Charges

Haroon Siddique, Guardian: A landmark UK judgment that was expected to lead to a reduction in joint enterprise prosecutions and convictions for homicide has had no discernible effect, while the number of Black people convicted of murder under the controversial doctrine has risen, research suggests. A 2016 ruling by the supreme court in relation to joint enterprise – where two or more defendants are accused of the same crime in relation to the same incident – found the law had been wrongly applied for more than 30 years and the bar had been set too low with respect to the required intent of any secondary co-accused. There have long been concerns that joint enterprise over-criminalises and punishes people, including those who may not have committed any serious violence themselves, and it was expected the judgment would lead to fewer prosecutions. However, a report by the Centre for Crime and Justice Studies (CCJS) – the first since the ruling to attempt to quantify the impact – suggests this has not happened.

Data on joint enterprise is not published – a criticism the CCJS says should be remedied –

so the charity analysed all indictments and convictions of secondary suspects for murder or manslaughter. It found that in the three years leading up to the supreme court ruling, 522 individuals were charged as secondary suspects, while in the three years after, 547 were charged. There was a similar pattern for homicide convictions of secondary suspects, with 296 from 2013-14 to 2015-16, and 326 from 2016-17 to 2018-19. Additionally, the number of Black people convicted of murder as secondary suspects rose from 45 to 83 (from 27% to 44% of secondary suspect convictions) when comparing the relevant time periods before and after the judgment.

Jan Cunliffe, of the campaign group Joint Enterprise Not Guilty By Association (Jengba), a partner with CCJS in the research, said: "Jengba campaigners did originally take comfort [after the ruling] from the fact that the daily trauma they continued to face would never happen to another family. However, these findings come as no surprise to us. We receive calls from distressed family members on an almost weekly basis. Their confusion and disappointment in the criminal justice system is a harrowing reminder of the urgent need for parliamentarians to step in and put right the draconian measures that are continuing to destroying the lives of so many."

The report, shared exclusively with the Guardian before its publication, also found little change over the time period examined in the proportion of secondary suspects indicted for murder who were convicted – approximately 40% – and that only one conviction had been successfully overturned since the 2016 judgment. It echoes previous findings that people from minority ethnic communities, particularly Black people, are consistently over-represented in joint enterprise convictions. As well as data collection, including on demographics, the report recommends a retrospective review of joint enterprise prosecutions and a parliamentary inquiry into application of the rules.

Richard Garside, the CCJS director, said: "We need our research to be confirmed by future pieces of work, but it suggests that meaningful reform to the controversial joint enterprise rules is desperately needed." In the 2016 case, five supreme court justices said the courts had been in "error" since 1984 in treating the fact that a secondary co-accused had foresight that the principal attacker might carry out a killing as sufficient proof of guilt in assisting or encouraging them.

A government spokesperson said: "It is right that those who assist or encourage someone to commit a violent crime are also prosecuted and punished. However, prosecutors assess the evidence against each individual and have to prove to a jury beyond reasonable doubt that a defendant is guilty. "Following the supreme court ruling in 2016 which clarified the law on secondary liability, CPS [Crown Prosecution Service] legal guidance was updated and this is publicly available. The MoJ is currently considering the feasibility of collecting data on joint enterprise cases."

Can we Transform the Current Miscarriages of Justice 'Lapdog' into a Genuine 'Watchdog'

The Criminal Cases Review Commission (CCRC) is the last hope for alleged innocent victims of wrongful convictions who fail in their attempts to overturn their convictions within the normal criminal appeals system. It was established as the main recommendation of the Royal Commission on Criminal Justice (RCCJ), which was announced on the day that the Birmingham Six overturned their wrongful convictions in the Royal Courts of Justice. It was the case of the Birmingham six and other now notorious miscarriage of justice cases including those of the Guildford Four, the Maguire Seven, Judith Ward, as well as a host of lesser known cases that were overturned around the period, that were able to cause a widespread lack of confidence in the workings of the entire criminal justice system in the late 1980s and early 1990s. The public awareness that the criminal justice system was convicting innocent victims and then failing to provide the necessary mechanisms for them to overturn their wrongful convictions was something that was deemed to be unacceptable and something that needed to be urgently addressed to restore public confidence.

Widely regarded as the miscarriage of justice watchdog, the creation of the CCRC was supposed to be the final solution to the perennial problem of miscarriages of justice that has plagued the criminal justice system. In response to its establishment, and under the false and mistaken belief that victims of miscarriages of justice could now be assisted by a publicly-funded body set up for that very purpose, television programmes dedicated to investigating and exposing miscarriages of justice, such as Rough Justice and Trial and Error, were cancelled. Human rights and civil liberties organisations such as JUSTICE and Liberty, immediately ceased their casework on alleged miscarriages of justice. And, politicians, too, gave up assisting constituents who alleged to be innocent victim of miscarriages of justice when the CCRC was set up and, instead, referred constituents who contacted them for assistance with an alleged miscarriage of justice to the CCRC. It would be an understatement to say that all of this has combined to render alleged miscarriages of justice less visible, you could say relatively invisible, in the public domain and in public discourses about the errors and failings of the criminal justice system amid a belief that miscarriages of justice are a thing of the past.

Nature of the Continuing Problem - But, the CCRC is not the panacea to the problem of the wrongful conviction of the innocent that was hoped for, and many believe it is, as it can leave innocent victims languishing in prison unable to overturn their wrongful convictions. The crux of the problem is s.13 of the Criminal Appeal Act 1995. It robs the CCRC of any semblance of independence in its requirement that the CCRC can only refer cases back to the appeal courts if it is felt that the conviction has a 'real possibility' of not being upheld. This statutory requirement impacts on how the CCRC review applications, too, as it directs caseworkers (or Case Review Managers (CRMs) as they are officially called) to look at the criteria of the appeal courts to determine whether the case may qualify for referral.

As this relates to the Court of Appeal (Criminal Division), for instance, CRMs must consider such legislation as s. 28 of the Criminal Appeal Act 1968, which requires that evidence admissible in the Court of Appeal must be 'fresh', understood generally as evidence or argument that was not or could not have been available at the time of the original trial. As a result, CCRC reviews are for the most part mere desktop assessments of whether cases might contain 'fresh' evidence that was not or could not be available at the time of the original trial that has a decent chance of overturning the conviction. At the same time, the way that the CCRC is structured by s.13 of the 1995 Criminal Appeal Act means that it will reject the applications of alleged innocent victims of miscarriages of justice who may be innocent if it is not felt that they have the necessary 'fresh' evidence to satisfy the 'real possibility' test.

It is in this sense that I describe the CCRC as a mere 'lapdog' for the criminal appeals system. It is not independent in the way that it claims but, rather, is in a puisne position vis-à-vis the criminal appeals system. Overall, it lacks the authority necessary to make decisions for itself as to whether a miscarriage of justice may or may not have occurred as it is in the inferior position of having to work within the confines of the criminal appeals system and try to second-guess what the appeal courts might decide on any convictions that it might refer. Indeed, if the CCRC truly were the kind of watchdog body that was envisaged by the RCCJ when it recommended its creation, it would not be subordinate to the criminal appeals system in the way that it is, which renders it unable to assist alleged innocent victims of wrongful convictions who may be innocent if they are not thought to satisfy the 'real possibility' test. If the CCRC were a genuine watchdog, it would be separate and independent from the criminal justice system, be able to truly monitor it, and be able to rectify miscarriages of

justice, whether the evidence of the miscarriage of justice was considered 'fresh' or not in the narrow criminal appeals system's legalistic meaning of that term.

As the RCCJ noted, juries make mistakes and defence lawyers can fail their clients, which is why it recommended a new body with the authority to act independently to right the wrongs of the criminal justice system, particularly those cases that did not at the time and do not currently have the 'fresh' evidence required by the criminal appeals system which prevents innocent victims from overturning their miscarriages of justice.

Still Waiting for an Effective Remedy for Miscarriages of Justice

Despite what the general public, television commissioners, human rights and civil liberties organisations and politicians may have been led to believe, then, the failure to overturn the wrongful convictions of innocent victims that was apparent at the time of the Birmingham six, Guildford Four, RCCJ, and so on, still exists and still requires an effective remedy. I have been making these kind of arguments for almost 20 years. I will continue to so until there exists a body for all alleged innocent victims to have a fair and impartial investigation of their claims of innocence to determine their validity. Akin to public enquiries, potentially innocent victims would not have their applications rejected by such a body on the basis that they do not meet some arbitrary legal requirement, which actually works against justice and compounds the harms that victims of miscarriages of justice and their families experience.

It was in recognition of the limitations and failings of the CCRC in dealing with applications from alleged innocent victims of wrongful conviction that I set up the first innocence project in the UK and assisted in setting up over 30 additional innocence projects in other universities around the UK under Innocence Network UK (INUK). I always knew that the way that the CCRC is structured would mean that it was most unlikely that applications from innocence projects would be referred. I said as much when I set up the University of Bristol Innocence Project. It was predictable that innocence projects would find it almost impossible to have cases referred by the CCRC as we were working on either cases that had already been turned down by the Court of Appeal because the evidence that the alleged victims of wrongful convictions were presenting was not deemed to be fresh or cases that had already been rejected by the CCRC for the same reason. Nonetheless, I believed that by highlighting alleged miscarriages of justice that had failed on appeal or by the CCRC where the alleged victim may, actually be innocent, that innocence projects could contribute to applying the pressure necessary for the reforms required to enable such cases to be referred. Our stance was always that evidence that was not put before a jury should be considered as fresh and that the policy to uphold conviction in the Court of Appeal or reject applications by the CCRC was inherently unjust.

In terms of quashed convictions, INUK and the innocence projects might look like they failed, although Cardiff University Innocence Project has had a couple of convictions overturned and the University of Bristol Innocence Project had two cases referred back to appeal by the CCRC and Scottish CCRC. Yet, it was whilst working with INUK that we created a dossier of 44 cases of alleged innocent victims of miscarriages of justice who all failed in their appeal and had been rejected by the CCRC at least once. It comprised, mainly, of prisoners serving life or long-term sentences for serious offences, ranging from gangland murders and armed robbery to rape and other sexual offences.

All of the alleged innocent victims of miscarriages of justice in the dossier claimed that they were not involved in the offences that they were convicted of. All were rejected by the CCRC, not because they were thought to be or shown to be the actual perpetrators of the crimes that they were convicted of but, rather, because they were not deemed to satisfy the requirements for 'fresh' evidence and the 'real possibility' test. In the cases featured in the dossier, there

were claims that the alleged victims of miscarriages of justice were wrongly convicted due to fabricated confessions, eyewitness misidentification, police misconduct, flawed expert evidence, false allegations and false witness testimonies. These are all perennial and well-established causes of the wrongful conviction of the innocent as evidenced by successful appeal cases.

Perhaps most crucially, the cases in the dossier are all plausible claims of innocence that a functioning criminal justice system watchdog body that is fit for purpose should be able to take seriously and investigate to determine their truthfulness or otherwise. A fit for purpose watchdog on miscarriages of justice would not simply reject applications because the criminal appeals system dictates that the CCRC should work in a way that cares not for whether alleged innocent victims of miscarriages of justice are innocent. This reveals the moral indifference of the CCRC towards potentially innocent victims of wrongful convictions who are currently procedurally barred from overturning their convictions.

CCRC Watch - It was in this context that CCRC Watch was launched in February 2022 as an Empowering the Innocent (ETI) targeted project to further highlight the limitations of the CCRC in dealing with applications from alleged innocent victims of wrongful convictions due to restrictive nature of the 'real possibility' test and the need for so called 'fresh' evidence.

Ultimately, Empowering the Innocent (ETI) calls for: The urgent repeal of the 'real possibility test'. This would uncouple the CCRC from the Court of Appeal so that it is free to conduct truly independent and impartial investigations into claims of factual innocence by alleged victims of wrongful convictions in the interests of truth and justice. In these investigations, any evidence not presented to the jury at trial is to be considered as fresh or new, as it should be as it has not been heard by a jury, and if it undermines the reliability of the evidence that led to the conviction or validates a claim of innocence then the conviction must be quashed by the CCRC. This requires the CCRC to also have its own authority to overturn wrongful convictions and not have to send cases that it finds are wrongful convictions backwards to the Court of Appeal which previously refused to overturn the alleged wrongful conviction.

Towards these aims, CCRC Watch will build on the INUK dossier of cases by featuring articles which centre on applications that are rejected by the CCRC, not because applicants are not innocent but, rather, because they are not deemed to have the so called 'fresh' evidence required to fulfil the real possibility test and have their case referred back to the Court of Appeal (Criminal Division). CCRC Watch also features research articles on the wider limitations of the CCRC in dealing with applications from alleged innocent victims of wrongful convictions.

Historically, reforms to the criminal justice system have been achieved by informing and educating the public that the system is not working as they think it is or should. The Court of Appeal (Criminal Division), for instance, was introduced to domesticate the public crisis of confidence that was caused by the case of Adolf Beck, who was wrongly convicted without an available means at the time to overturn his wrongful conviction. And, as already discussed, the CCRC was established because the public became aware that the criminal appeals system at the time was failing to overturn the convictions of innocent victims who did not satisfy the legal requirement for 'fresh' evidence. In the same way, CCRC Watch aims to strengthen Empowering the Innocent's (ETI) case for the CCRC to be reformed or replaced by highlighting cases of alleged miscarriages of justice in which the claim of innocence could be truthful as a way of fostering public concern as a precursor for meaningful transformation. As things stand, we still urgently need a body that is truly independent and impartial that functions in the public interest and the interests of justice to get to the truth of claims of innocence by

alleged victims of miscarriages of justice. The legitimacy of the criminal justice system relies on its ability to guarantee that all innocent victims can and will overturn their wrongful convictions.

Finally, when thinking about alleged wrongful convictions, it must always be remembered that when innocent victims are wrongly convicted that the guilty perpetrators of those crimes remain at wrongful liberty with the potential and reality to commit further crimes. This adds an important public protection dimension to the work of Empowering the Innocent (ETI) and CCRC watch, which is another crucial aspect of the miscarriages of justice problematic that the CCRC shows no concern about. If you are an alleged innocent victim of a wrongful conviction or a family member of, or campaigner for, an alleged innocent victim of wrongful conviction who has been rejected by the CCRC because you/they are not deemed to possess the so called 'fresh' evidence to satisfy the 'real possibility' test and want to write about your case, or would like assistance with writing about your case, for CCRC Watch, please see the Information for Authors or get in contact by an email to: empowerinnocent@gmail.com.

Government Fail Women Caught Up in The Criminal Justice System

Published 22nd April, a report by the Public Accounts Committee says it is clear that the government have failed to prioritise women caught up in the criminal justice system. The Public Accounts Committee say that despite overwhelming support for the Government's strategy on women in contact with the criminal justice system, implementation has been a "relatively low priority" for the Ministry of Justice, even before the pandemic.

The strategy committed to reducing the number of women in prison and increasing support in the community. Despite this, the Government has spent just £9.5m on community services for women over four years but have committed to spending £200 million on 500 additional prison places for women. The report also details the Committee's concern that the Strategy was not designed by the Ministry of Justice in a way "which would allow it to be held to account."

Chief executive of Women in Prison, Dr Kate Paradine, says: "This is another vital report showing the Government is failing to be transparent, accountable and uphold its promises. Its own strategy commits to reducing the number of women in custody as it acknowledges that most women in prison should not be there. More money for more prison places won't stop women being swept up into crime. What will is investing in local services. There is time to get this right. The Government must prioritise its Strategy and follow its own evidence about what works. It needs to immediately stop its plans to build 500 prison places and fund community organisations such as Women's Centres that tackle the root causes of crime including domestic abuse, mental ill health and poverty. Only then will we see the aims of the strategy realised, with fewer women drawn into the criminal justice system and a reduction in crime."

Commenting on the findings of the Public Accounts Committee report on improving outcomes for women in the criminal justice system (28 April), Peter Dawson, director of the Prison Reform Trust said: "This is a forensic dismantling of the government's wholly inadequate approach to implementing its strategy to reduce offending by women. Ever since its publication, we and many other organisations have been making the same arguments as the Public Accounts Committee, to a succession of different ministers, and all to no avail. As with so much of the criminal justice system, the government's deeds have not matched its rhetoric — most obviously in its decision to invest over 20 times more in building prisons for women than in implementing its own policy of reducing the need for them in the first place. The committee's precise description of what

should happen now is very welcome. Ministers should be thoroughly embarrassed that it has taken such an intervention to hold them to account for the promises they've made."

Prison Staff Who Refused to Unlock Prisoners 'Will Not be Disciplined'

Officers who refused orders to unlock prisoners for outdoor exercise have had the threat of disciplinary action withdrawn, The Times has reported. Staff at HMP Shotts declared in January that they had no confidence in the prison's acting governor, following violent incidents which were said to have been triggered by a crackdown on drugs and illicit mobile phones. The Prison Officers Association Scotland accused the prison's management of "dangerous decision-making" and staff declined to co-operate with aspects of the prison regime including taking prisoners for their permitted outdoor exercise during hours of darkness. Prison officers claimed that exercise in the dark was unsafe. Supporters of the policy told The Times that it only takes place in floodlit areas, and is allowed at all Scottish prisons following changes to prison regimes necessitated by the Covid pandemic. Russell Findlay, the Scottish Conservative community safety spokesperson, told the newspaper that the threat of disciplinary action against the officers had been a case of "showing them who's boss" after they submitted their no-confidence letter. He said: "Officers believed their actions were proper, and are relieved that common sense has now prevailed with possible disciplinary action now being dropped. It is hoped this marks a fresh start in relations with management, which is in everyone's best interests". He added that the dispute at Shotts had been "indicative of deep-rooted problems, not helped by significant numbers of Scottish prison Service senior management being in acting posts".

Number of Children in Custody in England and Wales Set to Double by 2024

Sally Weale, Guardian: According to a report by Whitehall's public spending watchdog, which also highlights that black and minority ethnic children are increasingly over-represented in the youth justice system. That number of children in custody in England and Wales is expected to double by 2024. The National Audit Office (NAO) report said in 2021 more than half (53%) of children in custody were from minority ethnic groups, up from less than a third (32%) 10 years earlier, while the proportion of black children increased from 18% to 29% over the same period. The report said that after long-term decline, the number of children in custody is expected to rise rapidly as a direct result of increased police recruitment, moves to tackle the court backlog caused by Covid and tougher sentencing after the passing of the police, crime, sentencing and courts reform bill. According to the NAO, the average number of children in custody fell by 73% in the decade up to 2021, reflecting the decline in the number of youth offences. Latest forecasts, however, indicate the number of children aged 15-17 in young offender institutions (YOIs) will double from 343 in 2021 to 700 just four years later, raising concerns about capacity in the system.

Almost three-quarters of all children in custody are held in a YOI, while those who are deemed too vulnerable are housed in secure training centres (STCs) or secure children's homes. Inspectors have raised persistent concerns over the welfare, safety and outcomes for children in England's three STCs, and closures have led to children being moved to less suitable types of youth custody. The government has promised to deliver two new secure schools to try to improve the life chances of children in custody, but according to the NAO, the opening of the first has been delayed by approximately three years, while costs have gone up from £4.9m to £36.5m, after significant design revisions following due diligence.

"Due to wider financial constraints, Her Majesty's Prison and Probation Service has not started work on the second secure school," the report notes. Dame Meg Hillier, the chair of the public

accounts committee, said it was a crisis in the making. "Years of mismanagement and poor performance has meant the youth justice system risks failing many of the children who end up in custody. "Persistent concerns over the STCs have not been heeded, and now their closures have led to vulnerable children being sent to other facilities which aren't as suitable for their complex needs." New facilities are delayed and existing ones are failing to meet standards. Without proper support, the chances of these children to turn their lives around is distressingly slim."

Andrew Neilson, the director of campaigns at the Howard League for Penal Reform, said: "When a child is in trouble, we should do all that we can to keep them safe and guide them away from crime. This is why it is so concerning that, after a decade in which the number of children in custody has been reduced by 80%, recent policy decisions risk sweeping more boys and girls into our failing criminal justice system." He said the growing racial disparities in youth justice have been of increasing concern to the Howard League. "Ministers need to get serious on how the government will reverse this unacceptable state of affairs." A Ministry of Justice spokesperson said: "We are committed to ensuring public safety and the best possible outcome for every child in our care. Our new secure school will put education, healthcare and rehabilitation at the heart of our efforts to cut crime and keep the public safe."

Appeal Over Gang Injunction Secured by Birmingham City Council

The Supreme Court has agreed to hear an appeal over whether a gang injunction obtained by Birmingham City Council breached human rights law. The Court of Appeal in Jones v Birmingham City Council [2018] EWCA Civ 1189 had rejected a legal challenge from a 21-year-old man affected by the injunction. The case concerned the provisions of Part 4 of the Policing and Crime Act 2009, which introduced a new remedy enabling the county court or the High Court to grant an injunction for the purpose of preventing gang-related violence (including the protection of those involved with it from such further violence). In February 2016 Birmingham City Council obtained interim injunctions against members of the Guns and Money Gang, the Johnson Crew and the Burger Bar gang pursuant to s. 34 of the 2009 Act and s. 1 of the 2014 Act. The 18 individuals affected included the appellant. They were banned, amongst other things, from parts of Birmingham under the injunction.

Increase in Violence at HMP Exeter Despite 'Urgent Notification' Issued Four Years Ago

There was a steady month on month increase in the number of violent incidents at a troubled Devon prison placed in the 'urgent notification' process because of soaring levels of violence four years ago. The latest IMBreport on HMP Exeter recorded an increase each month in the Victorian category B prison from an average of 18 per month at the start of the year to about 25 per month in December last year. Following the last full inspection of the prison in 2018, inspectors issued an 'urgent notification' to the Secretary of State for Justice which was the second time such a sanction had been made. According to the latest IMB report, two-thirds of violent incidents involved prisoner-on-prisoner violence and one-third were assaults on staff. There were 128 assaults on staff in the prison in the last 12 months – 'a very disappointing increase' from 75 in 2020. 'The overcrowded conditions and severely restricted regime resulting from the Covid pandemic has meant that living conditions have not always been humane,' reported the IMB. '… some issues with clothing and kit have undermined the decency agenda.' There was evidence that Covid-19 symptomatic prisoners and those sharing a cell mates were unable to leave their cells for at least 10 days. 'In this respect arrangements for such prisoners were not decent,' the report noted. Some prisoners were not able to have a daily shower. The IMB noted a sharp rise in incidents of self-harm to 'a very high monthly rate' of about 70 with a small number of prisoners accounting for the majority of incidents – in December 2021, 37 (52%) of the 71 incidents were caused by just seven prisoners.

M's Convictions for Rape & Indecent Assault - Quashed

On 10 November 2017 the appellant, M, who was then aged 64, was convicted on four counts at Belfast Crown Court by a jury. He was found guilty of the rape on a date unknown between 14 April 1971 and 1 September 1972 of B. He was also convicted on 3 counts of indecent assault on the same female B between 14 April 1971 and 31 December 1973. The conviction on the count of rape was by a majority of 10-2 and by a majority of 11-1 in respect of the indecent assaults. This is a topic to which the appellant wishes us to return. He was acquitted of 28 other counts of sexual offences against two sisters of B, C and D. He was subsequently sentenced to 5 years' imprisonment with one year probation on the count of rape with a sentence of one year imprisonment on each count of indecent assault to run concurrently but consecutive to the rape sentence. He is currently serving that sentence. He appealed within time but a key application to admit fresh evidence was only lodged on 25 April 2018.

The application for leave to appeal was considered by the Single Judge, Horner J. He granted leave on the ground that it was arguable that the conduct of the trial process was unfair to the defendant and may render the convictions unsafe. He refused leave to appeal on the ground that language used by Crown Counsel in closing was inappropriate. This ground was not pursued before us. He also refused leave on the ground that the judge ought to have given a warning in accordance with R v Makanjuola [1995] 2 Cr App R 469 CA on the basis that this was within the judge's discretion. Pursuant to s.45 of the Criminal Appeal (NI) Act 1980, he left to this court the issue as to whether fresh evidence should be admitted i.e. the report of Dr Helen Harbison disclosing, inter alia, that B had significant gambling debts at the relevant times. This information had not been available during the hearing of evidence. At the hearing before us on 11 September 2018 Mr Gavan Duffy Q.C. appeared for the appellant with Mr Stephen Toal. Mr Terence Mooney Q.C. appeared for the prosecution with Mr Sam Magee. The court had the assistance of helpful written and oral submissions from counsel.

Conclusion: In this case the defence were not told of the apparent indebtedness at the time of her complaint to the police of the complainant B. This would have been of value to them in the cross-examination of B as they were alleging a financial motive as part of the reason for her allegations. Furthermore two new and significant inconsistencies in the accounts of B appeared in the doctor's victim impact report after the trial which give rise to a concern on the part of the court that she may not be a precise or reliable historian. Their existence would make a *Makanjuola* warning necessary. They are not peripheral. When one sets those matters against the context of the decision, generous to the Crown, to admit the evidence of Mr O'Brian at a very late stage and the unfortunate timing of the giving of the majority direction with an indication that the jury would be sent home 30 minutes later, this court is left with a significant sense of unease about the safety of this verdict. We think that the conviction is unsafe and pursuant to Section 2 of the 1980 Act we allow the appeal and quash the convictions.

Makanjuola Warning: Guidance was given on the directions to be given to the jury where a co-accused speaks for prosecution as a witness and in sexual assault cases. The full corroboration warning is not now needed. In this case there was no evidential basis for suggesting that the evidence of the complainant was unreliable. (1) it was a matter for the trial judge's discretion whether or not to give a warning to the jury in respect of the unsupported evidence of [a] complainant in a sexual case. The nature of the warning and whether or not to give it would depend upon the circumstances of the case