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### Why Do We Keep Investing In Failure?

Robin Murray, 'Justice Gap': A few days ago at a police station my colleague overheard three police officers discuss a case. One asked why the other officers bothered to do any formal interviews. 'Just encourage the suspect to sign off on a 'contemp note' and you do don't have to bother with all that,' he swaggered. My sharp-eared colleague ripped into them all. It reminded me about a similar conversation I had with another officer some years ago. 'Why is it so quiet?' I asked. He laughed and said 'because we have found a loophole that avoids having solicitors. We don't need to call you if we interview 'off station'. Nothing you can do about it' . He was right about the loophole but within six weeks of furious correspondence with the Home Office and ACPO (with the CLSA and Law Society backing and with support of such as Professor Ed Cape) we had closed that loophole and a revised code was issued making it mandatory to offer legal advice wherever the PACE interview took place. See here.

These incidents taught me two things. Firstly, there is a culture abroad within the police force that is more interested in 'the win' than any duty to justice. That is why the recent non-disclosure of evidence cases, with near miscarriages of justice, do not surprise me in the least. The second thing the incident taught me is that despite the odds it is possible to confront major problems and affect change. I sometimes think back to that police office boasting about how he and his colleagues circumvented the right of a suspect to legal advice and wonder what he would say if he knew that indirectly this led to change in the legal code of practice.

How real is the police culture I describe? Some of the most impressive research available is that of Dr. Hannah Quirk, senior lecturer at the University of Manchester and author of The Significance of Culture in Criminal Procedure Reform: Why the Revised Disclosure Scheme Cannot Work. This was published a few years ago in 'The International Journal of Evidence & Proof' (here). Summarising her findings, she observed: - The police having conflicting roles namely inquisitorial, investigative and adversarial.- The police adopt 'tactics, or ploys' to achieve the 'right result' i.e. to 'construct' cases against those whom officers believe to be guilty. This results in an already selective approach to evidence filtered further by the CPIA provisions with unused material, not considered relevant to the pre-determined police case theory.- Officers admitted their reluctance to give the defence potentially exculpatory evidence on a basis that 'if the defence can't find them why should the police help'.- This selectivity in 'sifting' (my word) extends to deliberate manipulation of evidence in the manner the case file is put to CPS by the police. An example being given by a detective Sergeant, describing a witness having informed the police that they would 'never recognise a perpetrator again' as information not to be disclosed. The idea was to slip the undermining comment past the CPS in the hope it would remain not disclosed.

The scope of a defendant to have fair treatment on disclosure and to fight for this is diminishing with the ever growing obstacles legal aided clients find in their path to a fair trial. Some of this is due to excessive managerialism which often seems to impact more upon the defence. Delays and adjournments due to non-disclosure are not an aid to economic efficiency in legal aid work. Often the obstacle is more fundamental which is that legally aided clients increasingly are represented by lawyers who are starved of the resources they need.

My own view about the restrictions imposed upon the defence to limit 'fishing expeditions' is that these are in the main fictitious hobgoblins of judicial and MoJ imagination and designed to cover the inability or unwillingness of the prosecution to do their job and to avoid paying defence lawyers for doing theirs. In any event so far as they are needed there are strong protections against any possible abuse by either side including the defence set out in the Attorney General guidelines. As Aleksandra Jordanoska writes in her article Case management in complex fraud trials: actors and strategies in achieving procedural efficiency which can be found at the International Journal of Law in Context 2017: '[Protection] for the defendant's position at the trial, and are currently threatened by the neoliberal UK governmental movements to reducing costs in the criminal justice system by cutting state-funded legal representation (Legal Aid). This is a poignant example of "stripping justice back to its bare bones' due to concerns with performance and cost-effective targets. Though the Legal Aid cuts would principally affect marginalised defendants, the present research shows that well-off defendants prosecuted and tried in serious fraud cases are equally affected.'

The current attempt to restrict payment for page count is so inimical to the interest of Justice with the risk that criminal law firms will collapse or be prevented from taking on large and complex cases that involve more than 6,000 pages as they will not be paid for the additional work. Lawyers should be paid for this and for perusal of relevant unused material. In the meantime there is the disclosure scandal resulting from the culturally driven poor police practices continue and often with tacit permission of the courts- see last year's damning Chief Inspector of Constabulary report identifying widespread failures across the board by both police and prosecutors. 'We found in this inspection that the police recording of both sensitive and non-sensitive material was lacking, which creates uncertainty and confusion for prosecutors. In turn, this poor practice was not being challenged by the CPS. This has resulted in a lack of confidence in the disclosure process on the part of the judiciary.'

According to a survey of Criminal Law Solicitors Association (CLSA) members, 91% of respondents described disclosure failure as occurring very often and 86% of respondents experienced reluctance from courts to deal supportively with defence advocates following such failures. This failure leads to cases such as Liam Allan, the criminology student charged with 12 counts of rape and sexual assault whose trial collapsed after police were ordered to hand over phone records (here). All credit to prosecution barrister Jerry Hayes who revealed this disclosure failure to defence counsel after he discovered a computer disk containing 40,000 messages which revealed the alleged victim pestered Allan for 'casual sex'.

This is what one very frank police officer said about the Allan case: 'My argument here is that we cannot solely ascribe blame in this case, nor others like it, to "sheer incompetence". There are more factors at play here than competence, and consequently, there are some problems which will not be solved by simply allowing more money to flow into the relevant budgets… Incidentally, as a further nail in the coffin of the "sheer incompetence" hypothesis, it is worth pondering very briefly if this explanation is at all consistent with the demonstrable fact that these failures in disclosure only ever go one way. Crime managers employ terms such as "positive outcomes" which connotatively presuppose that a charge following an investigation is the right outcome. Official crime reports and investigation logs refer to suspects as "offenders" before conviction, charge or even interview.'

The present evidential division of labour between the police and CPS is revealed by the research and from the evidence of our daily experience. It creates confusion and a vacuum of

accountability between the police and the CPS. They 'bounce' the blame back and forth between them and the court is often at a loss to know where the true fault lies. The disclosure scheme is dependent upon the accurate scheduling and classification of material by an 'often relatively inexperienced investigative officer perfunctorily trained for the purpose' and poor schedules are not challenged by the Crown Prosecution Service. 'The disclosure provisions of the CPIA, as with so much recent criminal justice policy, attacked a crime control chimera of criminals exploiting due process protections to escape justice,' wrote Dr Hannah Quirk. For all the scepticism about the CPS being over adversarial, I believe that it would be easier to inculcate that service rather than the police with the equivalent ethos of the Bar Code of Conduct which has provided a reasonably effective safeguard to underpin the CPIA disclosure regime.

My recommendations: 1.Why do we permit the police to sift and deal with the disclosure of evidence? The police should play to their strengths and use their skills to investigate and prevent crime. Purely evidential matters should be passed to the CPS. 2.The resources involved currently in the disclosure process should be reallocated from the police (who hate this work) to the CPS. 3.The focus of the CPS should mainly be upon those matters where it is clear the case will be contested, or which are indictable-only and lastly where a remand in custody is sought. 4.Most cases before the Magistrates Courts are guilty pleas. The role of the CPS lawyer in the majority of guilty plea cases is to read out 'parrot fashion' a police streamline file plus criminal records which the legal advisor and the now the bench itself have available on their computer. Why are we paying expensive lawyers to read pieces of paper or electronic files? The police used to prosecute without the CPS. In fact, now with technology there needs to be no prosecution physical presence in court for most guilty pleas (subject to point three). If an equivocal plea or the case is otherwise complex, it can be transferred to a CPS case management court. This will save millions and free up the CPS lawyers to prepare for trial and deal with disclosure. 5.As a safeguard in the absence of CPS input on most guilty pleas, the duty solicitor must be made available to all defendants before entering a plea on all matters carrying imprisonment and must be provided with the streamlined file to ensure the evidence both fits and supports the charge. Legal advisors must encourage such consultation but as a fail-safe should be trained to ensure the plea is appropriate and not equivocal. This may need more than one duty solicitor on busy court days. 6. The CPS will deal with all not guilty matters at the magistrates court (including the use of qualified agents). They will also deal with all not guilty IDPC and subsequent disclosure issues. This will involve a transfer of resources that used to fund the police carrying out that role. The police will be instructed by the CPS (like a US District Attorney) should further evidence need to be sought or inquires made. This I do not believe will require primary legislation as under S 23 (2) Criminal Procedure and Investigations Act 1996 the Code of practice provides the code 'may' provide that a police officer (a) must carry out a prescribed activity which the code requires etc. It is possible for an amended or fresh code to provide for a prosecution lawyer to undertake the same disclosure role. If it is considered that amending legislation is needed I cannot imagine that proving complex or controversial. 7. It has been reported in a number of research sources that the disclosure performance of the CPS is not quite as independent as it should be. There can be a too adversarial approach to disclosure when compared say to the independent bar when the latter are prosecuting. Until the CPS is independently verified as complying with an equivalent code of conduct as the independent bar in the handling of disclosure, I would suggest that all Crown Court cases for prosecution are in the short term the subject of instructions to



independent counsel. In this way those fears raised be soon demonstrably allayed as the CPS develop the same ethos as the independent Bar so admirably demonstrated by Prosecution barrister Jerry Hayes in the Allen case referred to above.

This shift and change in responsibility and resources will enable the police to concentrate on their core function of catching criminals and providing evidence to Crown lawyers to prove the guilt of those apprehended to that satisfaction of the court. It will enable the CPS lawyers to focus on mainly not guilty trials. It will create a more collegiate, less fraught approach between prosecution and defence lawyers in preliminary stages as confidence is re-built in the disclosure process, leaving them each free to focus the adversarial process at the trial. It will enhance the status of the duty solicitor who should more properly than the police or CPS be the gate-keeper to ensure the evidence fits and matches the charges. It will save a huge amount of money provided it not syphoned away.

### Early Day Motion 806: Liquidation of Carillion and the Prison Estate

That this House is concerned by the recent liquidation of Carillion leaving debts of around £900 million and notes the devastating impact this will have on thousands of workers across the UK; is aware that Carillion currently holds public and private partnership contracts worth over £1.7 billion which include the maintenance of almost half of prisons across the UK; is further concerned that reports dating back two years indicated consistently poor performance by Carillion in regards to prison maintenance with the most recent report by HMIP in 2017 highlighting filthy toilets, litter-strewn cells, broken windows and open electric wires hanging above showers; further notes that Carillion has received almost £100 million in public funding for prison maintenance contracts since June 2015 including £39.8 million in 2017 alone; understands that the Prison Officers Association has long raised its concerns regarding these contracts indicating its dismay at the rapidly deteriorating living conditions for prisoners across the prison estate; notes the growing concerns of staff and inmates following the collapse of Carillion regarding the outsourcing of Governmental responsibility to ensure the effective maintenance of prisons; and therefore calls on the Government urgently to review private contractors working within the prison system and to bring all prison maintenance contracts back in-house as a matter of urgency.

### Learning Lessons: Complaints About Discrimination in Prison

Inadequate investigations of alleged discrimination in jails risk undermining prisoners' confidence in the complaints process, the Prisons and Probation Ombudsman (PPO) has warned. The PPO found that prison staff who investigate discrimination complaints "often lack the training and confidence to address equalities issues effectively, and that prisons often fail to collect the equalities data needed to carry out a meaningful investigation. This risks undermining prisoners' confidence in the effectiveness and legitimacy of the complaints process."

The bulletin 'Complaints Investigation Issue 9' identified four areas where HM Prison and Probation Service (HMPPS) can improve the handling of discrimination complaints: • Resources. In most prisons, responsibility for complaints about discrimination lies with a designated Equalities Officer. However, equalities staff often tell [the PPO] the hours allocated to their roles have been cut as a result of a reallocation of resources within the prison. "This means Equalities Officers frequently have to do the same important job with significantly less time and fewer resources. As a result, the administration of discrimination complaints can suffer." • Inadequate training. The bulletin notes that "we see too many cases where it is clear

that managers do not understand the issues and lack confidence in responding to complaints about discrimination." • Failure to address discrimination issues. "One common theme we find…is the failure to engage with and directly address issues of discrimination. In some cases, managers respond to complaints about discrimination by simply asserting there has been no discrimination, without any attempt to investigate or to address the complaint." • Inadequate "big picture" information. In many cases not enough data is gathered on the personal characteristics of prisoners and key services (such as prisoner employment) to assess whether a complaint is justified or not. For example, the PPO could not investigate a complaint that only white British prisoners got the most desirable jobs in a prison because the prison did not record the characteristics of those who got such jobs.

Elizabeth Moody said: "As a public body, HM Prison and Probation Service has a duty to ensure equality and prevent discrimination. The solutions are straightforward: prisons need to allocate sufficient resources to the investigation of complaints about discrimination; and they need to ensure that the staff responsible for investigating these complaints (whether dedicated Equalities Officers or managers generally) are properly trained, that allegations of discrimination are addressed directly and not ignored or glossed over, and that equalities data is routinely collected. We recognise that this is not always easy to do this when resources are tight. Unless these steps are taken, however, prisons – and the wider public - cannot be sure that they are treating prisoners fairly and equally."

### Judge Admits up to 18% of Council Tax Imprisonments May be 'Unlawful'

A judgement handed down today by the High Court in Cardiff outlines that individual errors in council tax non-payment cases may mean that between 9.5 and 18% of committals to prison for debt are unlawfully handed down each year. Lord Justice Hickinbottom's analysis of 95 individuals sent to prison between April 2016 and July 2017 found that between 9 and 17 individuals will have been sent there unlawfully because the court ordered repayment over an excessive window of time. The judgement relates to a legal challenge, launched with the help of law charity the Centre for Criminal Appeals, alleging that systematic failings have led to high rates of unlawful imprisonment for council tax debts. The Claimant, Melanie Woolcock, is a single mother from Wales who was unlawfully sentenced to 81 days in prison for falling behind on her council tax payments after becoming unemployed. Ms. Woolcock successfully challenged her sentence in January 2017, and brought judicial review proceedings to prevent people in council tax debt losing their liberty unlawfully. Barrister Cathryn McGahey QC arguing on behalf of the Claimant places the number of unlawful committals to prison a year at a much higher figure of 52%. She alleges that incorrect means assessments, or an erroneous judgement that failure to pay was because of 'culpable neglect' or 'willful refusal' are additional reasons why such imprisonments may be unlawful. The judgement finds that individual errors are to blame for the high number of mistakes and states that oversights made by a proportion of magistrates in council tax cases does not amount to a systematic deficiency. It acknowledges that "Ms McGahey appears to be right to condemn the relevant magistrates (and their legal advisers) as being ignorant of well-established law". The judgement suggests that further training and guidance may be issued to legal advisors and solicitors to address these problems.

Naima Sakande, Women's Justice Advocate at the Centre for Criminal Appeals said: "The price of ignorance in these cases is simply too high. The judgement has exposed some deep failings in the council tax system. The toll of being sent to prison unlawfully cannot be overstated and more must be done to protect society's most vulnerable from needlessly losing their liberty. Poverty is not a crime and our judicial system needs to do more to acknowledge this."



### Scotland's Prisons Watchdog Chief Warns Against Overuse of Remand

Too many accused persons are being put on remand, Scotland's prisons watchdog chief has said. David Strang, HM Chief Inspector of Prisons for Scotland, told Holyrood's Justice Committee that the option is being overused to allay concerns accused persons will not attend court. Mr Strang said that remand actually raises the likelihood of offending and echoed calls made in recent years for greater use of electronic tagging and supported bail. He added that the consequences for people held on remand are the same as for those serving short sentences: it affects their housing, work and relationship prospects. He said: "It does damage people's prospects of living a successful life outside. It is overused when there are alternatives." He also said figures showing that 70 per cent of women on remand are not given custodial sentences is "evidence that we are overusing remand in some ways as an administrative function to make sure that the trial can go ahead". He added: "A short period of custody is more likely to lead to more offending than less. It's not a moment of inspiration – it's disorientating, unsettling and stressful."

### Petition Calls on CCRC to Reopen Case of Brendan Mc Conville and John-Paul Wootton

Peter Kearney, Irish Central News; The wife and family of Brendan Mc Conville have collected almost 3,500 signatures in an online petition launched last November that calls on the Criminal Cases Review Commission (CCRC - independent investigative body for miscarriages of justice in England, Wales and Northern Ireland) to reopen the case of the Craigavon Two - Brendan Mc Conville and John-Paul Wootton. The Mc Conville family started this petition to highlight the case of the Craigavon Two and the "serious concerns" they have about the "safety of these convictions". They want to demonstrate to the CCRC that there is public support for this case and from "people around the world, from all walks of life". The Mc Conville's believe they have the support of the public and they are "hoping the CCRC will not overlook thousands of people who all have concerns about this case."

Both Mc Conville and Wootton have been held in the controversial Maghaberry Prison (15 miles south-west of Belfast) since March 2009 and were convicted in March 2012 of the murder of PSNI (Police Service of Northern Ireland) Constable Stephen Carroll on 9 March 2009. The Mc Conville and Wootton families and supporters of their respective justice campaign teams – as well as the two men themselves – maintain their innocence and maintain that their conviction is a miscarriage of justice. When their case failed in its appeal to the High Court in Belfast in 2014 and the Supreme Court in London later refused them permission to appeal in 2015, the campaign appeared to have gone as far as it could and as if both men would remain behind bars.

However, their case was submitted to the CCRC in late 2016 and communication about their case and potential meetings between Mc Conville's legal team and the CCRC were raised in September 2017. While no such meetings have been raised with Wootton's legal team it does give the campaign teams cause for renewed optimism. In September last year Mc Conville's legal team, KRW Law, described the proposed meetings with the CCRC as "a very significant development". Solicitor Darragh Mackin explained that Mc Conville's case was submitted to the CCRC as KRW Law have "real serious concerns as to the safety of the conviction" and they "believe that there are a number of issues that remain effectively unaddressed". Following failed appeals the law firm felt they "had to pursue the avenue via the CCRC".

At that time also, Justin Hawkins of the CCRC stated that the CCRC meet applicants when they think there is a need to do so yet they do not always think there is a need to do so. They meet if they think it is "worthwhile and necessary to progress the case" yet that is not an indi-

cation of any kind of outcome. Recently, Hawkins mentioned that this case is still currently "under review". The CCRC and the legal representatives of Mc Conville have been in lengthy communication with each other since that time and while the CCRC only refers a very small number of cases each year to appeal, a large number of these have been successful. Mc Conville and Wootton were sentenced to 25 and 14 years respectively with Wootton receiving a sentence increase to 18 years in September 2014. Stephen Carroll was the first PSNI officer to be shot dead since the IRA ceasefire over 20 years ago and it was claimed by the Continuity IRA. - This petition will continue to run with updates as and when they arise.

Online Petition: The Craigavon 2 Deserve Justice - Now!!

This petition calls upon Britain's Criminal Case Review Commission (CCRC) to thoroughly examine all evidence disclosed and undisclosed in the case. To speak with Witness M, his partner and re-examine his version of events and credibility. http://bit.ly/2FKnzqC

**Home Office Pays Out £15,500 to Asylum Seeker Over Data Breach**

*Diane Taylor, Guardian:* The Home Office has paid out £15,500 in compensation after admitting handing over sensitive information about an asylum seeker to the government of his Middle East home country, a move which could have endangered his life and that of his family. The settlement relates to confidential proof of his persecution in his home country which was wrongly shared with the authorities there. The case has similarities to celebrity phone hacking cases where public figures such as Sadie Frost and Paul Gascoigne received six-figure sums following data breaches. Although the payout is less than in the celebrity phone hacking cases, arguably the risk to the life of the asylum seeker involved is greater. The Home Office shared the sensitive documents with the authorities in the man's home country in a bid to authenticate the information he had given them to prove he had been persecuted at home. The man's solicitor Dan Carey, of Deighton Pierce Glynn, said that when the asylum seeker discovered what the Home Office had done it had "a considerable impact on him".

Carey said: "In this case, the asylum seeker's claims were later found to be genuine and the Home Office granted him asylum in the UK. However, his safety and that of his family was put at risk by the Home Office's actions in sending documents evidencing state persecution to the state authorities in question. The Home Office were slow to concede that they had done anything wrong in this case, which makes me worry that it was not an isolated aberration. Asylum seekers entrust the government with extremely sensitive, sometimes life-threatening, information in the course of their asylum claims and it is vital to the integrity of that system that it is kept confidential. Least of all do they expect that it will be shared with their persecutors in their country of origin. This can place lives at risk and prevent any hope of future return."

The Home Office refused to answer Freedom of Information Act requests submitted by Carey to try to ascertain the numbers of incidents of unauthorised sharing of asylum information on the basis that there was no central monitoring of the issue, and so it would take too long to go through each case individually. In a previous data breach case in 2016 relating to migrants where confidential information relating to family returns was inadvertently published online, the Home Office also paid compensation. The Home Office said: "In accordance with our obligations under the Refugee Convention and European and UK law, we do not disclose information about an individual's asylum claim to that person's home country, or seek information in a way that could expose them, or any family who remain in that country, to serious risk. We take any breach of this principle extremely seriously."



**Canada's Use of Lengthy Solitary Confinement in Jails Unconstitutional**

*Ashifa Kassam, Guardian:* Canada's use of prolonged or indefinite solitary confinement in federal prisons is unconstitutional, a judge has said in a ruling that could end the controversial practice unless Ottawa appeals the decision. Canadian law currently allows an inmate to be placed in "administrative segregation", as solitary is known, for an indefinite period of time for non-disciplinary reasons, such as protecting prisoners from fellow inmates. The result seen some inmates left in solitary for as long as four years. The United Nations considers solitary over 15 days to be torture. On Wednesday 17/01/2018, a British Columbia supreme court judge found that the laws governing administrative segregation in Canada's federal prisons contravene the country's charter of rights and freedoms. Inmates placed in solitary confinement are at significant risk of psychological harm, as well as increased incidence of self-harm and suicide, Justice Peter Leask said in his ruling. Many are left with permanent harm as a result of their confinement, he added.

The decision was hailed by the British Columbia Civil Liberties Association, who were among the organisations that challenged the practice in court. "This is the most significant trial court decision in the prison context that we've ever seen in Canadian history," said lawyer Jay Aubrey. "It's really transformative." The ruling gives the federal government one year to bring its laws in line with the charter. Canada's public safety minister, Ralph Goodale, who oversees the federal prison system, said in a statement the government is reviewing the ruling. Goodale said Ottawa has already introduced legislation aimed at limiting the amount of time someone can be held in solitary confinement.

The ruling is the second judgment in recent months to take aim at Canada's use of solitary confinement. In December, a judge in Ontario ruled that the system lacked proper safeguards and gave Ottawa 12 months to address the issue. Aubrey said British Columbia ruling went much further than the limited violation of the constitution highlighted in Ontario. Wednesday's ruling noted that Ottawa's use of solitary discriminated against indigenous and mentally ill inmates. Both are severely over-represented in the prison population and in solitary confinement, said Aubrey. Between 2005 and 2015, approximately one quarter of non-Aboriginal inmates spent some time in segregation. In the case of Aboriginal inmates, the percentage climbs to a third. The law currently caps solitary for disciplinary reasons at 30 days. The vast majority of people in solitary confinement in Canada are under administrative, not disciplinary, segregation.

**Software 'No More Accurate Than Untrained Humans' at Judging Reoffending Risk**

Hannah Devlin, Guardian: Program used to assess more than a million US defendants may not be accurate enough for potentially life-changing decisions, say experts. The credibility of a computer program used for bail and sentencing decisions has been called into question after it was found to be no more accurate at predicting the risk of reoffending than people with no criminal justice experience provided with only the defendant's age, sex and criminal history. The algorithm, called Compas (Correctional Offender Management Profiling for Alternative Sanctions), is used throughout the US to weigh up whether defendants awaiting trial or sentencing are at too much risk of reoffending to be released on bail. Since being developed in 1998, the tool is reported to have been used to assess more than one million defendants. But a new paper has cast doubt on whether the software's predictions are sufficiently accurate to justify its use in potentially life-changing decisions.

Hany Farid, a co-author of the paper and professor of computer science at Dartmouth College in New Hampshire, said: "The cost of being wrong is very high and at this point there's a serious question over whether it should have any part in these decisions." The analysis comes as courts and police forces internationally are increasingly relying on computerised

approaches to predict the likelihood of people reoffending and to identify potential crime hotspots where police resources should be concentrated. In the UK, East Midlands police force are trialling software called Valcri, aimed at generating plausible ideas about how, when and why a crime was committed as well as who did it, and Kent Police have been using predictive crime mapping software called PredPol since 2013. The trend has raised concerns about whether such tools could introduce new forms of bias into the criminal justice system, as well as questions about the regulation of algorithms to ensure the decisions they reach are fair and transparent. The latest analysis focuses on the more basic question of accuracy.

Farid, with colleague Julia Dressel, compared the ability of the software – which combines 137 measures for each individual – against that of untrained workers, contracted through Amazon's Mechanical Turk online crowd-sourcing marketplace. The academics used a database of more than 7,000 pretrial defendants from Broward County, Florida, which included individual demographic information, age, sex, criminal history and arrest record in the two year period following the Compas scoring. The online workers were given short descriptions that included a defendant's sex, age, and previous criminal history and asked whether they thought they would reoffend. Using far less information than Compas (seven variables versus 137), when the results were pooled the humans were accurate in 67% of cases, compared to the 65% accuracy of Compas.

In a second analysis, the paper found that Compas's accuracy at predicting recidivism could also be matched using a simple calculation involving only an offender's age and the number of prior convictions. "When you boil down what the software is actually doing, it comes down to two things: your age and number of prior convictions," said Farid. "If you are young and have a lot of prior convictions you are high risk.. As we peel the curtain away on these proprietary algorithms, the details of which are closely guarded, it doesn't look that impressive," he added. "It doesn't mean we shouldn't use it, but judges and courts and prosecutors should understand what is behind this." Seena Fazel, a professor of forensic psychiatry at the University of Oxford, agreed that the inner workings of such risk assessment tools ought to be made public so that they can be scrutinised.

However, he said that in practice, such algorithms were not used to provide a "yes or no" answer, but were useful in giving gradations of risk and highlighting areas of vulnerability – for instance, recommending that a person be assigned a drug support worker on release from prison. "I don't think you can say these algorithms have no value," he said. "There's lots of other evidence suggesting they are useful." The paper also highlights the potential for racial asymmetries in the outputs of such software that can be difficult to avoid – even if the software itself is unbiased.

The analysis showed that while the accuracy of the software was the same for black and white defendants, the so-called false positive rate (when someone who does not go on to offend is classified as high risk) was higher for black than for white defendants. This kind of asymmetry is mathematically inevitable in the case where two populations have a different underlying rate of reoffending – in the Florida data set the black defendants were more likely to reoffend – but such disparities nonetheless raise thorny questions about how the fairness of an algorithm should be defined. Farid said the results also highlight the potential for software to magnify existing biases within the criminal justice system. For instance, if black suspects are more likely to be convicted when arrested for a crime, and if criminal history is a predictor of reoffending, then software could act to reinforce existing racial biases. Racial inequalities in the criminal justice system in England and Wales were highlighted in a recent report written by the Labour MP David Lammy at the request of the prime minister. People from ethnic minorities "still face bias, including overt discrimination, in parts of the justice system", Lammy concluded. The findings were published in the journal Science Advances.



**Private Probation Firms Face Huge Losses Despite £342m 'Bailout'**

Alan Travis, Guardian: Private probation companies responsible for supervising more than 200,000 offenders in England and Wales face total losses of more than £100m, even after a £342m "bailout" by the Ministry of Justice, MPs have been told. Ministry of Justice officials acknowledged on Wednesday that 14 of the 21 community rehabilitation companies were expected to make losses ranging from £2.3m to £43m by 2021-22, partly due to a sharp fall in the number of offenders being sentenced to community punishments. Details of the state of the part-privatisation of the probation service – introduced by Chris Grayling when he was justice secretary in 2015 – were revealed during a Commons public accounts committee session. MoJ officials declined to comment on whether outsourcing was "an appropriate model" for probation services when pressed by Labour MPs, saying that it was a political question.

During the hearing, Richard Heaton, the MoJ's permanent secretary, sought to reassure MPs that maintenance contracts for 50 public sector prisons that have been held by the failed outsourcing company Carillion would continue uninterrupted, with state prison staff ready to fill any gaps. Senior MoJ officials even suggested that repairs and maintenance at some jails could improve as a result of a more direct management relationship. However, they refused to speculate on the position of a second major outsourcing company, Interserve, which is the largest probation provider, with five companies supervising 40,000 offenders in Manchester, Liverpool, Humberside and Hampshire. They said that they had an "open book relationship" with the company, with access to their internal figures, as well as external auditors taking an interest.

Michael Spurr, the chief executive of Her Majesty's Prisons and Probation Service, told MPs that the future of the private probation companies would be clearer after talks at the end of this month when new figures on reoffending rates were published. The income of companies is split between fixed-fee payments for supervising offenders on community punishments, and payments-by-results for rehabilitation work with offenders, including 40,000 short-term prisoners upon release. It is possible the companies could receive extra payments-by-results of between £32m and £128m up until 2021-22 for cutting reoffending rates. Spurr said talks would be held with the companies and then ministers on what further steps might be taken depending on the reoffending data. A National Audit Office report said initial figures showed that the number of further offences committed was actually rising, which could affect the future income of the companies. Spurr confirmed to MPs that talks were also being held about whether the probation companies could be given extra work. He refused to accept that the MoJ had been engaged in a "bailout" of the private probation companies, saying the £342m in additional fees and projected payments up until 2021-22 amounted to "windfall savings that had been put back into the contract".

**Čeferin v. Slovenia**

The applicant, Peter Čeferin, is a Slovenian national who was born in 1938 and lives in Grosuplje (Slovenia). Mr Čeferin is a defence lawyer and the case concerned his complaint about being fined twice for contempt of court for making critical statements about, in particular, expert witnesses during the trial of man he had been defending in a murder trial. Relying in particular on Article 10 (freedom of expression), Mr Čeferin complained about the two fines, saying that his statements had remained within the bounds of fair criticism. Violation of Article 10: Just satisfaction: EUR 800 (pecuniary damage), EUR 2,400 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

## Is Austerity Causing Miscarriages of Justice?

Young Legal Aid Lawyers (YLAL) hosted an event with Penelope Gibbs, director of Transform Justice and Claire Dissington, head of the youth department at Edward Fail Bradshaw and Waterson, to discuss the topic Is Austerity Causing Miscarriages of Justice? The topic of miscarriages of justice has been publicised recently in the high profile cases of Liam Allan and Issac Itiary. The issues surrounding disclosure have been linked to austerity and whether budget cuts – to police, the Crown Prosecution Service and legal aid – have negatively impacted upon the safety of convictions. Gibbs and Dissington tackled the issue of austerity and miscarriages of justice, discussing a wide range of specific issues, in addition to the general impact of austerity upon the criminal justice system. Gibbs explained that, unlike other departments such as health, the Ministry of Justice is an unprotected department. As the government's austerity project was implemented, this therefore resulted in savage cuts – a 40% cut in real terms between 2011 and 2020. She moved on to discuss three key areas in which her concerns regarding austerity leading to miscarriages of justice has arisen: unrepresented defendants, digital court reform, and appeals. Gibbs argued that there tends to be media focus upon individuals who are unrepresented in civil courts, however, the plight of unrepresented defendants in criminal courts is less publicised. At least 30% of defendants in the magistrates' courts appear unrepresented. Gibbs explained the impact throughout the trial process: as the matter proceeds, the disadvantage to unrepresented defendants just increases – they don't know what witnesses to call, how to cross examine witnesses; they don't even know what disclosure is, never mind what their disclosure rights are. Gibbs moved on to discuss the impact of digital court reform – particularly the use of videolinks and online courts. Gibbs' concern is that this will increase miscarriages as there is significantly less contact between the individual and their advocate. Gibbs noted how these changes impact vulnerable people the most – lots of people find it very difficult to communicate properly via videolink. This generally results in two reactions: defendants completely disengage, or they react badly as they are frustrated by the difficulties in communication. A study by the Ministry of Justice in 2010 trialled the use of video-links from police stations to court rooms, for first appearances. Of those who appeared via video-link, 45% were unrepresented. Further, a defendant appearing via video-link was more likely to enter a guilty plea; and is more likely to get a prison sentence. Gibbs concluded that austerity is a complicated matter, but definitely has an effect upon miscarriages of justice. Amongst issues such as the low salaries of legal aid lawyers, there are many other examples of where cuts are occurring, which are creating a system in which miscarriages of justice happen with increasing frequency. Dissington took a broad approach to the ways in which austerity can cause miscarriages of justice. She highlighted that austerity has caused police station closures, CPS budget cuts, the move towards digital court systems, cuts to probation, the dire state of prisons, and defendants being denied legal aid. She moved on to speak passionately about how austerity impacts on society as a whole, thereby increasing peoples' involvement in the criminal justice system. Austerity cuts have impacted upon the whole of society, causing increased rate of poverty. Poverty leads to crime. Therefore, austerity has led to increased involvement in the criminal justice system. Dissington explained how defence lawyers are now expected, on a daily basis, to provide clients with advice on what they should say and how they should plead on their first days in court, without having received proper disclosure. She spoke of how she specialises in representing youth defendants. If children are detained, they are sent to detention and training centres. Dissington queried the efficacy of these centres, citing a recent inspection in which not a single youth establishment inspected was found to be a safe establishment. On disclosure issues, in addition to the concerns above, Dissington stated that the required safeguards are already in place. In order to prevent miscarriages of justice, the rules need to be properly followed, which they currently are not. Dissington raised concerns about the future of the criminal justice system. She asserted that, even if it was properly funded, these issues would not go away, as they have now become inherent aspects of our justice system. Dissington spoke of how when a child is arrested, they face the full force of the state against them. She asserted that a miscarriage of justice occurs every time a child or a vulnerable person is locked up. Austerity destroys people's lives. The pressures of austerity lead to further crime: more people both perpetrating and being the victims of crime.

## Man Convicted of Theft in 1976 Cleared After Googling His Arresting Officer

Duncan Campbell, Guardian: A man found guilty of stealing mailbags more than 40 years ago has had his conviction quashed in what the lord chief justice described as an exceptional case. The court of appeal heard that the arresting officer in the original trial had died in prison not long afterwards while also serving a sentence for mailbag theft. Stephen Simmons, now 62, a businessman from Dorking in Surrey, was arrested with two friends in Clapham, south London, in June 1975 by DS Derek Ridgewell of the British Transport Police, who attributed incriminating remarks to the young men. They were allowed to see a duty solicitor who told them that if they called the police liars, the judge would jail them for a long time. Despite the solicitor's warnings, they pleaded not guilty but were all convicted. Simmons was sent to a borstal in Suffolk and served eight months. He said that the conviction had haunted him ever since and until recently he had not even told his grown-up daughters about the case. Steven Powles, for Simmons, told the court: "Mr Simmons has been waiting for 43 years for this day." The crown did not contest the application nor seek a retrial, he said. The court heard that four years ago Simmons was given "friendly advice" by barrister Daniel Barnett on LBC radio's legal advice programme to Google the name of his arresting officer if he wished to overturn his conviction. He did so without expecting to discover anything but what emerged was that Ridgewell himself had been jailed for seven years for mailbag thefts totalling £300,000 in 1980, and had died in prison in 1982. "I was gobsmacked," Simmons told the Guardian. He then took his case to the criminal cases review commission whose "meticulous research", carried out by case worker Adam Bell, led to the appeal. The lord chief justice, Lord Burnett, sitting with Mr Justice Warby and Mr Justice Julian Knowles, paid tribute to Bell's "remarkable" efforts and expressed regret to Simmons that the case had taken so long to come back to court. He said that the evidence before him was "extremely telling … It is an exceptional case". What also emerged, the court heard, was that Ridgewell was responsible for a series of notorious cases in which young black men were falsely accused of "mugging" on the London Undergound. One victim was Winston Trew, who along with three others became known as "the Oval 4", and who was present in court for Simmons' appeal. Trew has written a book, Black for a Cause, which detailed Ridgewell's long history of "fit-ups" and and which became part of the investigation. This is one of the happiest days of my life," said Simmons outside court after his conviction was quashed. "It has hardly sunk in but I am not a criminal any more. I can hold my head up high. One of the hardest things for me was that my parents did not believe me because they were of the generation that believed that the police could not lie." He had suffered ill-health as a result of the prosecution and one of his co-defendants became an alcoholic and is now dead. "Ridgewell ruined three lives for no reason and I am sure many, many more ... if this can help someone else who was also arrested by him then at least something will have been achieved." Trew, who embraced Simmons after the case, said: "Today is a great day. This opens the door for me to present my case. It means that evidence that Ridgewell gave in our trial is as tainted as in Stephen's case."

Hostages: 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, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.