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CCRC Should be 'More Willing to Incur the Displeasure of the Court of Appeal'

Jon Robins, JusticeGap: Four out of 10 defence lawyers were no longer prepared to undertake publicly-funded work on applications to the miscarriage of justice watchdog, according to new study which recommends an increase in legal aid rates that have been frozen for more than 20 years. The new research paper published by academics at Sussex University adds to the pressure on the Criminal Cases Review Commission (CCRC) to refer more cases to the Court of Appeal. This follows the recent report from Westminster Commission published earlier in the year (reported here) and the 2015 House of Commons' justice committee which both called on the watchdog to take a 'bolder' stand. The authors noted a 'common position' emerging from interviews with lawyers that the statutory test for referring cases was 'being interpreted and applied too conservatively' by the CCRC following 'previous "handbaggings"' by the Appeal judges which 'they felt had made CCRC staff "obsequious", "scared", "subordinate", "captive" and "supine"'.

The study, which had access to to CCRC data between 1997 and 2017, reported that only one in 10 applicants to the CCRC is now represented by a lawyer. By contrast a third of applicants had legal representation prior to a cut to legal aid rates of 8.75% in 2014. As a result, the authors – Prof Richard Vogler and Drs Lucy Welsh, Amy Clarke, Susann Wiedlitzka and Liz McDonnell – argue that the CCRC is increasingly faced with 'poorly expressed, underprepared and often misguided applications' which was adding to its 'already substantial workload'. As the Westminster Commission report noted the watchdog has suffered the 'biggest cut' of any part of the criminal justice system since 2010. The report's authors noted that it was 'striking' that 18 of 45 lawyers interviewed (42%) were 'no longer willing and/or able to accept potential CCRC cases on legal aid' and some had dropped out altogether after the 2014 cut. 'Whilst older specialist practitioners in the area were retiring from the work, of the seven trainees and paralegals/caseworkers we spoke to, one had already moved into another area of practice and two described plans to move into other areas,' it continued. In a survey, 11 out of 13 lawyers reported that they no longer did pro bono work for potential CCRC applicants. An application made it through to the CCRC's review stage in seven out of 10 of cases where a lawyer was involved (23% were deemed 'ineligible'); compared to just four out of 10 for non-legally represented applicants.

The CCRC welcomed what is called 'an insightful report'. 'There is no doubt that applicants can sometimes be better served with input from a legal specialist,' said CCRC chair Helen Pitcher. 'A legal eye can certainly help an applicant to better understand the key points surrounding their case and any key nuggets of evidence or information as part of that claim. When an applicant understands what helps state their case, or has legal representation, that approach can certainly help with reviews and prevent unnecessary delays.' The study drew on interviews with 45 lawyers and highlighted the legal profession's concern about the CCRC's relationship with the Court of Appeal and its 'notoriously low referral rate'.

Public funding for criminal appeals is restricted to just £456.25 and is only available if a case is deemed to have sufficient benefit. The overly deferential relationship with the Appeal judges 'had consequences for whether legal professionals believed the sufficient benefit could be satisfied, i.e. the lower the likelihood of referral, the less likely sufficient benefit could be found'.

The report states: 'The CCRC should be a bit more willing to take a chance on cases, and a bit more willing to incur the displeasure of the Court of Appeal, and should apply not quite so tough tests as they do.' Lawyers complained about 'a lack of transparency and openness' regarding decision-making at the CCRC, 'unexplained delay and low levels of communication' and an unwillingness to rethink decisions. As one solicitor put it: 'They say, "We'll listen to further representations." Fine. They do, but they take no notice.' 'Suspicion and feelings of distrust about the review processes were also exacerbated where mistakes had been made or cases had not been referred when lawyers felt they should have been,' the report said. One solicitor described taking the decision to withdraw from publicly funded CCRC work back in 2008 because it became 'uneconomic'. Asked about the legal aid rates, the respondent replied: 'They're laughable. They're having a joke. It's just not possible. I don't think criminal practice in general is possible. […] I can't remember how many years. '94, I think, was the last time they went up properly, '94. And I pulled out 14 years after that … 14 years of making it more efficient, creating greater economies and trying to hang on to any semblance of quality.'

Lawyers can apply to the Legal Aid Authority (LAA) for more money to work on a case. Many respondent lawyers complained about the LAA's acting in 'an unfair or inconsistent manner' with it being variously described as 'irrational, perverse, or burdensome'. Interviewees felt that the agency was 'obstructive and distrusting' of lawyers and found this 'frustrating and insulting'. Lawyers interviewed were 'almost unanimous' in believing that CCRC work should be carried out by experienced lawyers and 'many' said that generalist criminal lawyers 'did not understand appeal work or in some cases even know about the CCRC'. One said: 'The majority of lawyers don't know how it works. They don't do Court of Appeal work, they don't do CCRC work. In fact, the number of lawyers I've spoken to who haven't even heard of the CCRC … it wasn't really surprising, but it was shocking.'

In a recent interview with the CCRC chair for the Justice Gap, Helen Pitcher was asked whether she supported the idea of a specialist panel of criminal appeal lawyers in tandem with an increase in legal aid rates. 'No, I have that with my commissioners,' she said. 'I do not need another panel of experts. But I would like to see there being more legal aid to support our applicants.' She was asked whether there was a danger that, in an environment where so many defence firms struggle to be viable and with so many people claiming to be victims of miscarriages of justice and struggling to find legal aid lawyers, the CCRC might end up being flooded with not very good applications written by lawyers? 'It could be,' she said. 'I know a lot of criminal barristers who have been coming out of the profession because they say they cannot make a living and they are good barristers. There needs to be a serious look at what's going on.'

ECtHR: Big Brother Watch and Others V. United Kingdom

Scottish Legal News: The UK's bulk surveillance regime prior to 2016 was unlawful, but bulk surveillance in itself is not inherently unlawful, the European Court of Human Rights (ECtHR) has ruled. The Grand Chamber today Tuesday 25th May, handed down its judgment in Big Brother Watch and Others v the United Kingdom, a landmark case brought by civil liberties campaigners in 2013 following Edward Snowden's revelations about the extent of bulk surveillance in the UK and USA. The ruling concerns the UK's regime for bulk interception and obtaining communications data from communication service providers under the Regulation of Investigatory Powers Act 2000, which has since been replaced by the Investigatory Powers Act 2016. The court held unanimously that there had been violations of Article 8, on the right to respect for private and family life/communications, and Article 10, on freedom of expression, in respect of both the bulk intercept regime and the regime for obtaining communications data from communication service providers.

However, it held by a 12-5 majority that there had been no violation of either Article 8 or Article 10 in respect of the UK's regime for requesting intercepted material from foreign governments and intelligence agencies. The court also rejected arguments that bulk interception is inherently unlawful because of "the proliferation of threats that states currently face from networks of international actors, using the Internet both for communication and as a tool, and the existence of sophisticated technology which would enable these actors to avoid detection".Any bulk interception regime had to be subject to "end-to-end safeguards", including that an assessment should be made at each stage of the process of the necessity and proportionality of the measures being taken; that bulk interception should be subject to independent authorisation at the outset, when the object and scope of the operation were being defined; and that the operation should be subject to supervision and independent ex post facto review.

Under the 2000 Act, bulk interception was authorised by the Secretary of State rather than a body independent of the executive, categories of search terms defining the kinds of communications that would become liable for examination had not been included in the application for a warrant, and search terms linked to an individual (that is to say specific identifiers such as an email address) had not been subject to prior internal authorisation.

Paul Blackburn Former MOJ Comments on the Death of Winston Augustine

The death of Winston Augustine in Wormwood Scrubs punishment block wasn't a tragedy, it wasn't an accident & it wasn't simply a case of neglect it was as much a racist a murder as if the prison officers had kneeled on his neck for 9 minutes! It was deliberate & it was calculated & this is proven by the claim that Winston was unable to be attended to because of "his" non compliance, half a dozen burly prison officers experienced in control & restraint measures could not open his steel clad door & slide in a plate of food or a tablet in because he was being naughty & not doing as he was told. It also reminds me of the old excuse they used to use to blame the victim for their own death, then it was that black people have a propensity to "prone asphyxiation", more recently brutality at Wormwood Scrubs has been excused by "preventative assaults" claiming they had to assault a prisoner because they believed they were about to be assaulted, now it seems being deemed "non compliant" is also a death sentence!

I was in Wormwood Scrubs punishment block for about 18 months in the late 90's when some 27 members of staff were charged with numerous assaults on prisoners. In those 18 months i witnessed numerous acts of brutality, abuse, racism & neglect, if you are black, asian, oriental, gypsy, mixed race or Irish you were getting a beating & would be abused for every second that you are in the punishment block. Several of the officers charged were imprisoned & the then Home Secretary Jack Straw read out a statement in parliament stating that Sir David Ramsbothams inspection report on the prison had found "a destructive, unco-operative, & self seeking attitude amongst a minority of officers that managers found difficult to combat".

What I found was much, much darker than that! What I found was no more than the culture of the people who ran the death camps, people with the absolute power of life & death over you & they knew it & revelled in it. They weren't involved with a "culture" of violence or trapped in a regime that "lost" control, although there must have been examples of this, they were/are willing & able participants! The Prison Service, as with the Police Service, attracts those with evil in their hearts & minds & gives them the chance to do what they will to their fellow man like when two ordinary nondescript people meet & become Brady & Hindley together!

Winston Augustine died from hate, when so little could have saved him what else could it have been? I heard them mob handed rushing & beating a black guy (who was severely injured) in

his cell & then the screws slamming the door & running away down the landing laughing & joking like kids who have been naughty, "did you see his head slam on the wall ha ha ha!" one said! Often I heard them talking of how they were still off their heads from the drink or drugs from they had taken the previous night/early morning & trying not to be caught out by the new boss, a female superior officer (a straight goer) placed there to "clean up" the block & planning how to beat people in the strip cells where she couldn't go as men were naked, calculated & premeditated!

When the screws got nicked for assault the rest of the screws refused to work in the punishment block, supposedly but damningly in "solidarity" & they had to bring Governor grade staff in from where ever they could, except for one officer who I remember who was a jewish guy, had a black girlfriend & had several degrees to his name & so was pretty much ostracised by the rest of the staff & he decided that if they said no then he was going to say yes! Some years later I stepped in when a prisoner tried to attack him with a pair of scissors, after more than 20 years unjustly & brutally incarcerated in jail I hadn't lost my humanity or respect for a good man! In Jack Straws statement in the late 90's it was stated that a senior representative of the POA, Prison Officers Association, made the response to allegations of brutality by saying that prisoners at Wormwood Scrubs were "scum of the earth." I can't say every screw is evil but how many would ever speak out & prove the lie of "a few bad apples" or a "broken system", the system is broken & always has been & always will be. it's a construct imposed on us, we need change not just in prison but in society as a whole, it's not just the system we need to fix but ourselves!

Only when we are prepared to take on the responsibility of our history & our future will we ever be able to do anything about these injustices & we still have a long way to go when people are prepared to vote a racist in as Prime Minister & the whole of the media are like Basil Fawlty desperately trying to not talk about the war! *Paul Blackburn June 2021*

Merseyside Police Officers Jailed for Covering up Colleague's Assault

Damien Gayle, Guardian: Two police officers have been sent to prison and a third handed a suspended sentence by a judge who said they took part in "what can only be described as a cover-up" over a colleague's assault of an innocent man. The Merseyside constables Garrie Burke, Laura Grant and Lauren Buchanan-Lloyd were sentenced at Liverpool crown court on Thursday after a jury found them guilty of perverting the course of justice. The three officers had all attended a welfare check at a home in Ainsdale, Sefton, in June 2019, where their colleague, PC Darren McIntyre, punched a man four times in the face and once in the ribs before arresting him. Burke, 44, of Maghull, and Grant, 36, of Waterloo, were both given 15-month prison sentences by judge David Aubrey QC. Buchanan-Lloyd, 26, of Higher Bebington, who had been a police constable for just five weeks at the time of the offence, was given a nine-month sentence, suspended for 18 months. McIntyre, 47, of Southport, was also due to be sentenced for assault occasioning actual bodily harm and perverting the course of justice, but the court was told he had been admitted to hospital and his sentencing was adjourned to July.

The victim, Mark Bamber, had initially refused to let the four officers in when they had arrived to carry out a welfare check on his partner, who had called 999 to report feeling suicidal. The court was told that Bamber had previous convictions for domestic violence against her, and that the couple were known to be drinkers with mental health issues. It was after Bamber let the four constables in that McIntyre assaulted him. Aubrey said a "red mist" had descended on McIntyre and he had repeatedly punched Bamber "in temper and in anger". Midway through the assault, Burke, Grant and Buchanan-Lloyd turned off their body-worn cameras. After the attack, the officers

described Bamber as being drunk and said he moved his head towards McIntyre as if to head-butt him. But an analysis of bodycam footage revealed Bamber had not done anything wrong.

Aubrey said: "What can only be described as a cover-up took place. It was a cover-up of an unlawful assault, perpetrated by Constable McIntyre upon Mr Bamber." All three officers have been suspended and will face gross misconduct proceedings, Merseyside police said. Ian Critchley, deputy chief constable, said: "The public quite rightly have high expectations of police officers and Merseyside police is committed to meeting those expectations by demanding high standards of professionalism, honesty and integrity."

Re-Victimised Rape Complainant Suffered Violation of ECHR Rights

A rape complainant in Italy suffered a violation of her ECHR rights after she was re-victimised in court. In its judgment in the case of J.L. v. Italy, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 8 (right to respect for private life and personal integrity) of the European Convention on Human Rights. The case concerned criminal proceedings against seven men who had been charged with the gang rape of the applicant and had been acquitted by the Italian courts.

The court held that the applicant's rights and interests under Article 8 had not been adequately protected, given the wording of the Florence Court of Appeal's judgment. In particular, the national authorities had not protected the applicant from secondary victimisation throughout the entire proceedings, in which the wording of the judgment played a very important role, especially in view of its public character. Among other points, the court considered the comments regarding the applicant's bisexuality, her relationships and casual sexual relations prior to the events in question to have been unjustified.

It found that the language and arguments used by the court of appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework. The court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system. Source: Scottish Legal News

Government Plans to Introduce More Lie Detector Testing For Ex-Prisoners

Noah Robinson, Justice Gap: A former senior civil servant at Ministry of Justice has condemned Government plans to introduce more lie detector testing for ex-prisoners. Speaking to the prisoners' newspaper Inside Time, Professor Graham Towl, who used to be the MoJ's chief psychologist, highlighted his concern about their use saying that the technique 'doesn't work' as 'you can teach people to lie effectively on a polygraph'. Polygraph tests, also known as lie detector tests, measure the subject's breathing, heart rate and sweat responses while they answer questions. Elevated readings are viewed as a possible indication of stress due to lying. Since 2007, the technique has been used on serious sex offenders on parole and from 2014, mandatory tests have been added to some offenders' release conditions. The polygraph is not admissible as evidence in court and there is no legal framework to prevent police forces using it during interrogations or as part of evidence gathering.

Towl also spoke out about the ethical implications of the technique. Some supporters of

polygraph testing argue there is higher possibility of the disclosure of information as the subject may believe that the machine will detect their lies. The Government previously has highlighted the 'significant evidence to demonstrate the efficacy of polygraph testing'. Of 5,000 polygraph tests conducted, two-thirds resulted in significant disclosure. However, Towl believes there is an 'ethical issue…about deception'. He added that there is significant evidence to suggest other techniques of extracting more information were more beneficial.

The Ministry of Justice claims the tests are reliable saying 'when used correctly, polygraph tests are 81 to 91 per cent accurate'. Since 2014, the Government has used mandatory polygraph examinations on domestic abuse perpetrators released on licence identified as being at high risk of causing serious harm. The Government justified the use as providing an 'additional source of information' in order to help make future decisions about the ex-offenders. The Counter-Terrorism and Sentencing Bill will also extend their use to people convicted of terrorist offences. This plan also received criticisms. Professor Ormeord, at the University of Sussex, described how the technique is 'deeply flawed and potentially dangerous'. In 2015, research conducted by the university found that well-designed interviews were '20 times more effective' than other methods.

Lawyers Must do Better': Lord Hodge Criticises Use of Expert Witnesses

Law Gazette: Instructing solicitors must not jeopardise the impartiality of expert evidence, the deputy president of the Supreme Court said today, citing a study which suggests expert witnesses are being used as 'hired guns' by lawyers. Lord Hodge told the Expert Witness Institute's annual conference that experts 'must not allow their instructing solicitors, by whom they are paid, to call the tune'. 'While the requirements of independence and impartiality may appear so obvious as to go without saying, it is concerning that in a 2019 survey of expert witnesses 41% of the respondents indicated that during the preceding 12 months they had come across an expert witness who they considered to be a hired gun,' Lord Hodge said. '25% of respondents further reported that they had been asked or felt pressurised to change their report by an instructing party in a way which damaged their impartiality.' Lord Hodge stressed that legal teams must ensure that experts are aware of their duties. 'It was disappointing that the survey… points to evidence of instructing parties putting pressure on experts to change their evidence in a way which they feel damages their impartiality. Lawyers must do better.' The justice, who is currently president of the Expert Witness Institute, also said that lawyers and judges must improve their scientific and technical literacy in order to do their job effectively and to ask the right questions. He stressed the usefulness of judicial primers, which set out agreed views on certain issues. 'Judges, lawyers and experts have to face the future together,' he said.

MOJUK Comment: Expert witnesses have not witnessed anything. Expert witnesses give evidence not of fact but of opinion, based on their knowledge and experience!

Tackling Racial Injustice: BAME Children and the Youth Justice System

T*he challenge* - At most stages of the youth justice system – from arrest to custody – the proportion of Black and Minority Ethnic (BAME) young people is higher than the proportion of white young people. This disproportionality can be seen at its starkest in the youth custodial estate, where the BAME population is 51%, despite being 18% of the 10-17 year old population. The rise in proportion of BAME young people in the youth secure estate (YSE) has coincided with a drop in the number of young people within the YSE. The under-18 secure population peaked in October 2002, with the number of incarcerated young people at 3,200. Since then the number of young people within the

YSE has gradually declined, with only 835 being held in November 2018. The majority of this decline is a result of a reduction in white young people being held in the secure estate. This pattern – a reduction in the total number of young people at each stage of the youth justice system being driven primarily by a reduction of white young people – is reflected in other stages of the youth justice system. However, the continuing presence of BAME young people in the YJS is causing increasing racial disparities. JUSTICE has convened a Working Party to explore the reasons why disproportionality is occurring in the youth justice system, with a view to making positive recommendations for change and reducing racial disparities in the youth justice system.

The Report - Having sat since October 2019, the Working Party has made 45 recommendations which seek to increase decision-makers' understanding of the child appearing before them. In doing so, the aim is to eradicate, and if not, minimise, the bias, suspicion and misperception that pervades discriminatory exercise of power so as to meet BAME communities' expectations of fair and impartial treatment at each stage of, and interaction with, the criminal justice system. Key recommendations include: 1) Suspending blanket use of 'section 60' stop and search powers for serious violence in a locality, until the Home Office has evaluated its impact and effectiveness; 2) Abolishing the 'Gangs Violence Matrix', which indiscriminately includes thousands of BAME children and young adults, threatening their access to education and jobs; 3) Preventing the unfair use of Drill music as bad character evidence in court, to tackle the corrosive effect of portraying a genre of music as innately illegal, dangerous and problematic; 4) Creating a national framework for diversion, to ensure children everywhere can receive specialist support not prosecution; 5) Expanding initiatives that give children a voice, through access to translators where there is a language barrier, as well as other innovative methods. 6) Enforcing mandatory specialist child-focused training for lawyers, as well as high-standard cultural competency training for all criminal justice agencies, so that all those who work with children are able to do so effectively; 7) Urgently improving information available to magistrates at bail hearings, so that remand in custody is significantly reduced; 8) Requiring all complaints concerning children to be investigated by the Independent Office for Police Conduct; and 9) Mandating the police turn on their body worn video cameras before every stop and search, so that improper conduct is prevented or caught. These changes will help to build a child-first approach into the justice system, with sources of bias and discrimination addressed through changes to policy, institutional culture, and practices. While no one report can undo years of structural racism, we hope to support the continued efforts of communities seeking equal justice.

Study Reveals Worrying Biases of Forensics Experts

Scottish Legal New: Digital forensics experts tend to find more or less evidence to implicate or exonerate suspects depending on the contextual information about investigations, according to a new study. Researchers at the University of Oslo gave 53 digital forensics examiners from eight countries, including the UK, the same hard drive to analyse, The Guardian reports. Some were given basic contextual information, while others were told the suspect had confessed or had a strong motive or that the police thought she had been framed.

The examiners led to believe the suspect might be innocent found the least amount of incriminating evidence while those primed to believe they had a motive found the most. "I cannot overemphasise the importance of forensic scientists understanding the potential for unintentional bias, and of ensuring they take measures to minimise the risks," said Dr Gillian Tully, of King's College London and former UK forensic science regulator.

Dr David Gresty, a senior lecturer in computer forensics at the University of Greenwich, said: "We have every reason to believe that an expert acting in good faith, but through a mistake of interpretation, could easily mislead a courtroom. Without the defence instructing another expert to review the evidence it is entirely possible this could go unnoticed, and realistically it is likely there are undetected miscarriages of justice where cases have relied heavily on digital evidence."

A spokesperson for the National Police Chiefs' Council said: "Digital forensics is a growing and important area of policing which is becoming increasingly more prominent as the world changes. This report is from a very small sample size and is not representative of the operational environment police in this country work in. We are always looking at how technology can add to our digital forensic capabilities and a national programme is already working on this."

Dealing With False Accusations: From "Charging Perverting The Course Of Justice And Wasting Police Time In Cases Involving Allegedly False Rape And Domestic Violence Allegations" (a Joint report to the Director of Public Prosecutions by Alison Levitt QC, Principal Legal Advisor, and the Crown Prosecution Service Equality and Diversity Unit), which dates back to 2013: It includes: "The Crown Prosecution Service will prosecute these cases [false accusations] wherever there is sufficient evidence and it is in the public interest to do so." The key obstacle here is "wherever there is enough evidence". In allegations of rape, sexual abuse and so on, the only "evidence" required is the allegation itself, the complainant's word alone; and it is always considered to be in the public interest to prosecute. But in cases of false accusations, the falsely accused's word alone is not sufficient to prove their innocence. How is anyone supposed to be able to get any more evidence unless the false accuser admits to what they've done, which is particularly unlikely as they may well have done it in the first place to get compensation from the CICA? The report says: "It is plain that there were a large number of prosecutions for rape and domestic violence but that only a very small number of individuals were prosecuted for having made a false complaint." We've just explained a significant reason why above. It's pretty ironic that a system which laments the idea that "too many rapists are getting away with it", because of the (in their view) small percentage of "successful" convictions, is incomprehensibly blind to the possibility that too many false accusers are getting away with it because of the small number of prosecutions.

*No Apology, No Compensation No Suppor*t: In The House of Lords at 5:47 pm, 18th May 2021, Lord Hastings of Scarisbrick said "A young man by the name of Brandon, 24 years of age, was falsely accused and held on remand for 11 months in 2020, during which he was held in his cell for 23 hours and 45 minutes of every single day. When the charges against him were subsequently proved to be false, there was no apology, no compensation and no support. He was released with no recognition of the injustice done to him simply because police officers decided that he was to be a target."

False Memories are "Memories" of Events That Did Not Happen. They are often generated by people in a position of authority, or perceived authority, over the victim (this includes parents, Police, and Social Workers) who pressurise victims into believing that the alleged incidents occurred. A new study ("Rich false memories of autobiographical events can be reversed") has shown how, as the title suggests, false memories can be reversed. This can be done without damaging true memories. The study, by Aileen Oeberst, Merle Madita

Wachendörfer, Roland Imhoff, and Hartmut Blank from the Universities of Hagen & Mainz (Germany) and Portsmouth (UK), was published in the Proceedings of the National Academy of Sciences Mar 2021. (See https://tinyurl.com/safari-78) This study, and the research behind it, offers hope that former loving relationships left in tatters by the consequences of false memories can eventually be re-built; and also hope that, ultimately, convictions based on false memories could be more easily overturned.

ECtHR Puts Hold on Italy's Extradition to United States of America

The applicant, Beverly Ann McCallum, is an American national. She is currently in detention in Italy. She is wanted in the State of Michigan in United States of America as a suspect, along with others, in the death of her then husband and the burning of his corpse. On 26 June 2020, the Court of Appeal of Rome granted an extradition request on the part of the US Government. That decision was confirmed by the Court of Cassation. Relying on Article 3 (prohibition of inhuman or degrading treatment or punishment) of the European Convention of Human Rights, the applicant complains that if extradited to the United States, she faces a real risk of life imprisonment without parole.

Procedure: The application was lodged with the European Court of Human Rights on 22 April 2021. Following a request by the applicant, on 22 April 2021 the Court decided to indicate to the Italian Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited, ultimately deciding to prolong the measure for the duration of the proceedings before it. At the same time, the Court decided to grant the case priority under Rule 41 of the Rules of the Court. On 28 May 2021 the President of the First Section decided to give notice of the application to the Government of Italy, with questions from the Court. Letters informing the parties were sent on 28 May 2021. The questions to the Government are as follows: If the applicant were to be extradited to the State of Michigan, would she face a real risk of being subjected to inhuman and degrading punishment through the imposition of an "irreducible" life sentence? In particular: a) would her extradition, in circumstances where she risks the imposition of a life sentence without parole, be consistent with the requirements of Article 3 of the Convention (see in particular Vinter and Others v. the United Kingdom [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts), and Trabelsi v. Belgium, no. 140/10, ECHR 2014 (extracts))? b) did the domestic authorities consider, and if so by reference to what evidence, whether in a case such as the present the exercise of the clemency power by the Governor of Michigan, following a recommendation by the Parole Board, is (de facto or de jure) subject to safeguards or guarantees that it "will be exercised in a consistent and broadly predictable way" and that "appearance of arbitrariness is avoided" (see, mutatis mutandis, Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, § 258, ECHR 2014 (extracts); Hutchinson v. the United Kingdom [GC], no. 57592/08, 17 January 2017.

HMP North Sea Camp – Overly Restrictive Regime During Pandemic

The pandemic had resulted in the suspension of all release on temporary licence (ROTL) other than for those needing to go to hospital and for those in jobs in the community designated as essential. This meant, Mr Taylor said, "that for most prisoners, one of the key incentives of being in open conditions had been lost and the impact of this on their progression had been significant. "Many of the peer-led initiatives within the prison had also stopped and much of the support from partner agencies remained suspended. As a result, the prison had been unable to fulfil much of its rehabilitative function throughout the last year."

HMP North Sea Camp, a men's open prison in Lincolnshire holding many sex offenders and other high-risk prisoners, was found by inspectors to have operated a "very limited" daily regime during the COVID-19 pandemic. The prison held 336 prisoners – a reduced population – when HM Inspectorate of Prisons (HMI Prisons) visited in April 2021. Charlie Taylor, HM Chief Inspector of Prisons, said that although quarantining and shielding arrangements were good, the prison had suffered an outbreak of COVID-19 in late 2020. Leaders worked well with health care staff, the NHS and Public Health England to contain the outbreak. "A very limited regime had been in place for most of the last year. In comparison with other open prisons we have visited recently, the arrangements at North Sea Camp had seemed overly restrictive, particularly in the months either side of the outbreak. For example, prisoners had been required to confine themselves to their rooms and their unit which meant that they were only allowed outside in the fresh air for a designated exercise period each day." Opportunities to reinstate support services had been grasped too slowly, Mr Taylor added, and "there was a sense of frustration among prisoners and some staff that the restrictions applied to prisons generally did not take account of the unique environment of an open prison.

Government Plans to Restrict Judicial Review Weaken Rule of Law

Haroon Siddique, Guardian: Proposals to restrict judicial review are an affront to the principles of fairness and government accountability and should be dropped, a cross-party group of MPs and peers has said. In a letter to the justice secretary, Robert Buckland, the signatories, including Liberal Democrat, Labour, Green party and Scottish National party MPs, say changes to the way legal challenges against the government can be brought are unjustified. After a four-week consultation, the government confirmed in the Queen's speech that it would press ahead with a judicial review bill, legislating to "restore the balance of power between the executive, legislature and the courts".

In their letter to Buckland, the Lib Dem leader, Ed Davey, Labour's Clive Lewis, the SNP's Joanna Cherry QC, the Green MP Caroline Lucas and 28 others say the proposals "would weaken both individuals and the courts, and effectively put government actions beyond the reach of the law. "Together, these changes would make it much harder for people to put things right when mistakes are made or governments overstep their bounds. They would undermine the rule of law and the crucial principles of fairness and accountability." A judicial review is a court proceeding where a judge examines the lawfulness of an action or a decision of a public body. The review looks at the way a decision has been reached, rather than the rights and wrongs of that decision. The letter, also signed by Plaid Cymru, Democratic Unionist party and Alliance party MPs, says the changes are based on a "false claim" by the government that a panel led by Lord Faulks QC had found that courts in judicial review cases had become more prone "to edge away from a strictly supervisory jurisdiction".

Faulks has since said the panel did not identify such a "trend" and "was not ultimately convinced that judicial review needed radical reform". The Bar Council, Law Society, Constitutional and Administrative Law Association, Liberty, Justice and the Public Law Project have all pointed out this disconnect with Faulks's review, the letter says. Wera Hobhouse, the Lib Dem justice spokesperson, who initiated the letter, said: "The government's proposals to restrict judicial review are another Conservative assault on the rule of law. On top of their crackdown on the right to peaceful protest, they are now trying to limit people's ability to hold governments to account through the courts." A Ministry of Justice spokesperson said: "We made a manifesto commitment to ensure the judicial review process is not open to abuse or delay, or used to conduct politics by another means. "Our bill – set out in the Queen's speech – delivers on that pledge and will protect the judiciary from being drawn into political controversies. Its measures will be informed by the responses to our consultation

Former Police Officer Jailed For National Action Membership

A former probationary police officer has been sentenced at the Old Bailey to a total of four years and four months in prison after he was exposed as a secret member of a neo-Nazi group. Benjamin Hannam, 22, was found guilty of being a former member of National Action after a trial earlier this month. He was also convicted of possession of documents containing information useful for a terrorist purpose, and fraud. He had lied in a Metropolitan Police Service application form and vetting form about his prior membership of the terror group. Hannam had previously admitted possession of a prohibited image of a child found on his computer. The CPS showed he deliberately selected and downloaded it. Hannam claimed he had never been a member of National Action. However the CPS was able to show that before it was banned by the Government in December 2016, he regularly posted comments on an online message board and sought to recruit others. After the ban his membership of the group continued and he attended a meeting of National Action members in a pub in Swindon in January 2017.

'Swift Review' Needed of Computer Evidence in Wake of Post Office Horizon scandal

Elliot Tyler, Justice Gap: A change in the way computer evidence is treated in court is needed in the wake of the Post Office scandal, according to a leading professional body. The BCS, the Chartered Institute for IT, has called for reform following the Horizon scandal in which more than 700 sub-postmasters were prosecuted based on evidence from a discredited accounting system. The Horizon system, designed by the Japanese company Fujitsu, was seen as a revolution at the time, but proved to be fatally flawed and caused unexplained accounting shortfalls. In April, the Court of Appeal ruled that the convictions of 39 subpostmasters were unsafe because they had been based on evidence from the Horizon computer system, which was used to prosecute a total of 736 people over a period of almost 15 years.

The Post Office was able prosecute the subpostmasters using Horizon evidence, without proving criminal intent, because of a 1999 rule – which replaced a section of the Police and Criminal Evidence Act (PACE) 1984 – that computer systems should be presumed in court to have operated correctly. The assumption that computer evidence is reliable must be revisited to avoid future miscarriages of justice, say the BCS. There have also been calls from union bosses for Paula Vennells, the former Post Office Chief Executive, to be prosecuted and stripped of her CBE, which was awarded in 2019.

Paul Fletcher, BCS's Chief Executive, said: 'This case uncovered a range of issues that are key to the reputation of our industry, including the relationship between technology and organisational culture as well as the vital importance of meeting independent standards of professionalism, trust and ethics. With so many lives so severely affected we are adding our members' voice to support for a public judge led enquiry.' 'Organisations relying on data from computer systems to support prosecutions should be required to prove the integrity of that data. This level of transparency is essential to retaining public trust in IT which is a huge force for good in all our professional and personal lives, as the pandemic has proved.'

Judge Throws Out Expert Evidence During Trial In Excoriating Ruling

The High Court has excluded three expert witness statements during the trial after ruling that their opinions appeared "directly influenced" by the instructing party. In a hard-hitting judgment, Mrs Justice Joanna Smith found there had been multiple breaches of a pre-trial review (PTR) order, as well as the rules on expert evidence (CPR 35), its practice direction and the 2014 guidance on instructing experts in civil claims. She stressed that the "establishment of a level playing field in cases involving experts requires careful oversight and control on the part of the lawyers instructing those experts" – especially where the experts were from other jurisdictions. "For reasons which have not been explained, there has been no such oversight or control over the experts in this case," she said. The use of experts only works when everyone plays by the same rules. If those rules are flouted, the level playing field abandoned and the need for transparency ignored, as has occurred in this case, then the fair administration of justice is put directly at risk." A disclosure of documents made during the trial "demonstrates that a significant amount of information was provided to each of the experts instructed by FST over a long period of time that has never been disclosed to Dana or otherwise identified." FST further breached the PTR order by not disclosing site visits its experts made, which the judge condemned as "entirely unacceptable", while the reports also failed to identify the source and details of the data and other information relied on in support of each proposition/opinion. "To my mind this is a paradigm example of what can go wrong if an expert is left to obtain information direct from his clients without legal involvement and, indeed, if that expert does not even require sight of the detailed information on which he then relies for the purposes of preparing his report – as seems to have been the case here." Smith J said she was "inclined to agree" with the statement of Dana's solicitor, Nicola Phillips.

Prisons: A 19th Century Solution to a 21st Century Problem

More than a quarter of all prisoners in England and Wales are held in prisons built in the Victorian era. Some jails are even older. Brixton Prison in south London opened in 1818. The Covid-19 crisis is prompting a major rethink of how we will live and work in the future. Yet prisons remain stuck in the past: a 19th century solution to a 21st century problem. The resulting policy inertia is palpable. The per capita prison population across England and Wales is far higher than comparable European countries. Our imprisonment rate is almost twice Germany's. "We want to reduce the female prison population", the Female Offender Strategy stated in June 2018. Three years on, the number of female prisoners has fallen; in good part because of the disruption to the courts during the Covid-19 lockdown. Yet the government recently announced plans to build 500 more women's prison places. We need fundamental systems change, Liz Hogarth argued in a pamphlet for us a few years ago, to get us out of the 'justice loop'. Plans to expand women's prisons come on top of those to spend more than £2 billion on a new generation of prisons; institutions that could last well into the 22nd century and beyond. The way we work, relax, socialise and live will likely be transformed in the coming years. Our approach to prisons risks staying locked in the past. There is always better use for a piece of land than as a place for a prison. Coming to terms with our overuse of imprisonment and charting a way to a lower-imprisonment future could form part of a fitting legacy of the Covid-19 crisis. *Source: Centre for Crime and Justice Studies*

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