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Digital Forensic Evidence Relied Upon in Court is Prone to 'Bias And Error'

Jon Robins, Justice Gap: According to a new study which takes issue with the notion that such evidence is 'objective'., digital forensic evidence relied upon in court is prone to 'bias and error' with 'inherent' uncertainty and can lead to wrongful convictions, The research, published in Forensic Science International, explores the twin issues of reliability and bias in decision-making in 'the new and fast changing' disciple in digital forensics. It draws on reports made by some 53 experts involved in criminal investigations mainly from Norway but also from the UK, Denmark, Finland and Canada and others. The experts were asked to analyse the same 3GB evidence file involving a scenario related a leakage of confidential information with four to five hours to analyse and make their report.

The experts were given different types of contextual information either strongly indicating guilt, containing ambiguous and weak indications of guilt, or else indicating innocence. Other experts only received the scenario and no contextual information. The purpose was to better understand how such information impacted the judgment of experts.The group provided with the context suggesting innocence made the smallest number of observations 'indicating that they were biased to find less evidence'; and, by contrast, the group presented with information suggesting guilt found the highest number of observations 'indicating they were biased to find more evidence' – with the 'weak guilt' group finding 'significantly more' observations of guilt.

The report's authors – senior cognitive neuroscience researcher from University College London, Itiel E Dror and Nine Sunde, from the Norwegian police University College – highlight the lack of quality control in the digital forensics sector. It has been reported that digital evidence now features in around 90% of criminal cases. The report argues that the 'ever-changing landscape of technology', both in terms of evidence itself as well as the forensic tools required to examine it, require 'constant adaptation'. 'This constant flux may have contributed to what may be described as a "quality challenge" in digital forensics,' they say; referring to concerns about a 'wild west… where key components for quality management rarely seemed to be in place'.

They say that the growing use of digital evidence is often perceived as 'objective and credible'; however there is 'a range of possible errors and uncertainties inherent in the evidence' as well as 'errors that can derive from the human factors involved in the processes in which the evidence is produced'. The authors also flagged low 'reliability' (including a lack of consistency) between experts in their observations indicating 'a serious and urgent need for quality assurance in digital forensic examinations' to prevent 'erroneous results from cascading into the investigation process'. 'Digital forensics work involves many judgements and decisions that require interpretation and subjectivity. This means that the quality of the outcome of the process – digital evidence – is dependent on cognitive and human factors, which can lead to bias and error.'

Earlier this year the Justice Gap reported the forensic science regulator, Gillian Tully, in her final report, describing her six years' tenure as 'fraught with financial, reputational and capacity problems'. She noted that digital media investigators had not yet made 'any significant steps towards implementing the required quality standards'. In some police forces they were kept separate from their digital forensics colleagues 'presumably… in an attempt to avoid the adoption of quality standards'. Dr Tully said there was 'an urgent need' for 'more fundamental change' and that it was 'inexcusable' that the impact of 'the shortfalls in capacity for toxicology and digital forensics which have been clear for many years' fell on the frontline forensic science practitioners. She continued: 'They bear the brunt of the stresses in the system, with consequent risks to their well-being and, potentially, to quality. The impact on justice is even more inexcusable.'

A report by the Police Foundation published in January on digital forensics highlighted the problems faced by the sector in the UK where 'a fragmented police service is widely deemed ineffective' and each force had 'different governance, systems, priorities and capabilities'. The report noted that the 'sheer volume of data trails' was 'growing at an alarming rate and in parallel with ever-improving criminal innovation'. 'Silo working undoubtedly has a negative impact on quality and this is exacerbated by a lack of common standards,' it said. 'While ISO accreditation ensures that evidence submitted to courts is reliable, forces have generally struggled to attain it. Furthermore, it is normal practice to contract private forensic providers to cope with demand, but a lack of collaboration and the use of different tools can affect extraction results. This is of particular concern when presenting evidence in court.'

In a 2019 editorial for Science magazine, Dror wrote that forensic experts are 'too often exposed to irrelevant contextual information' manly because they work with the police and prosecution. 'Extraneous information – from a suspect's ethnicity or criminal record to eyewitness identifications, confes sions, and other lines of evidence – can potentially cause bias,' he wrote. 'This can give rise to conclusions that are incorrect or overstated, rather than what forensic decisions should be: impartial decisions, appropriately circumscribed by what the evidence actually supports.' As a result of cognitive biases, science is 'misused, and sometimes even abused, in court'. 'Not only can irrelevant information bias a particular aspect of an investigation, it often causes "bias cascade" from one component of an investigation to another and "bias snowball," whereby the bias increases in strength and momentum as different components of an investigation influence one another,' he wrote.

Numbers Game - Getting the Wrong End of the Stick: The Prosecutor's Fallacy

Joshua Mitchell: On the 24th October 2003, Kathleen Folbigg was sentenced to 40 years in prison for murder and manslaughter of her 4 young children. Branded as 'Australia's worst female serial killer', she has spent 18 years incarcerated. The prosecution's theory was that Folbigg had smothered all 4 children, despite the lack of any medical evidence to assert this. The case was made that the likelihood of all 4 children dying of natural causes was so statistically improbable as to render it impossible. Unfortunately, this used a line of logic known as 'Meadow's Law', which has cost the freedoms of several innocent women, and is also part of a wider story about the misuse of statistics and the misuse of science generally in the courtroom. Meadow's Law, coined by paediatrician Sir Roy Meadow, states that 'one sudden infant death is a tragedy, two is suspicious and three is murder, until proved otherwise'. This now discredited "law" was extremely influential and used by child protection agencies in the U.K to assess child abuse. However, its statistical reasoning is fundamentally flawed and has been rebuked by the Royal Statistical Society, but not before ruining several lives.

Meadow's Law was used most infamously in the trial of Sally Clark, an English woman who was convicted of murdering both her infant sons in 1999. The defence argued both children died of cot death, a fact which wasn't confirmed until years later. Sir Roy Meadow was called as an expert witness on the case and asserted that the probability of both children dying of cot death in the same family was 1 in 73 million, hence a conviction beyond a reasonable doubt

for double murder could be obtained. This figure was obtained by assuming that both deaths were statistically independent (i.e. one death isn't connected or influenced by another), neglecting the glaring problem that cot deaths within the same family aren't independent events, and genetic and environmental factors both contribute. There are several other problems with this figure as well which we will come back to. This statistical evidence was challenged at her second appeal and Clark was eventually released from prison, having served more than 3 years behind bars. She never recovered from her wrongful conviction and loss of her two sons. She died of acute alcohol poisoning in 2007.

Sadly, the story doesn't end there for Roy Meadow. In 2002 he was again used as an expert witness at the trial of Angela Cannings. Cannings tragically lost 3 of her 4 children to cot death a few years prior, and was tried and convicted of smothering 2 of them, with Meadow's Law once again the main driver of conviction. She spent a year in prison before being released following an appeal in 2003. Many more women still fell victim to false murder convictions after cot deaths as a result of Meadow's testimony, namely Donna Anthony, who spent more than 6 years in prison before her release after the death of her 2 children, as well as Trupti Patel, who was thankfully acquitted at her murder trial.

Though it isn't just mothers who are victims of misuses of statistics in the courtroom. More generally, Meadow's Law is an example of the 'Prosecutor's fallacy'. This assumes that the probability a defendant is innocent given the evidence that we observe, is equal to the probability of seeing that same evidence given the defendant is guilty. Perhaps this sounds minor, but it can have profound effects, and is best illustrated with an example: Say a man is accused of a robbery he didn't commit. There was blood found at the scene which matches the defendant, and this particular blood type is only present in 1% of the population. The prosecution argues that the chance that this blood matches the defendant, given that the man innocent, is just 1% and therefore he's very likely to be guilty. While this seems to make sense, this analysis is incorrect. What is relevant here is the probability that the man is innocent, given that his blood matches the blood at the scene. This order switching seems subtle, but it can have drastic effects on the outcomes. If there's 1000 people in the city that all could've committed the robbery, 10 people's blood types match with the crime scene, meaning that the probability this specific man is innocent is not 1%, but 90%! This is obviously an idealised example, but very real-world cases have been litigated with this logic.

In 2010, a man named Troy Brown was convicted in the U.S for the rape of a young girl. The compelling factor for the jury was the claim that only 1 in 3 million random people would have the same DNA profile as the rapist, so there was only a 0.00003% he was innocent. This was a classic prosecutor's fallacy, which was thankfully overruled on appeal, as it once again assumes that the probability of a DNA match given Brown was innocent equalled the probability of innocence given a DNA match. Given that the other evidence was circumstantial and not particularly strong, and depending on how many other possible suspects there were, the chance of his innocence could be as high as 25%, which is of course certainly not grounds for a criminal conviction.

Another tragic miscarriage of justice occurred in the Netherlands in 2003, this time, to a nurse named Lucia De Berk who worked at a children's hospital. After a series of unexplained deaths at the hospital that occurred while she was on shift, De Berk was charged and sentenced to life in prison. Once again, a problematic but shocking statistic was front and centre in the case. An expert witness, a law psychologist, found that the chance of De Berk being present at so many unexplained deaths was 1 in 342 million, hence De Berk must have played some sinister role in these fatalities. This, like all the other previously mentioned probabilities, was erroneously calculated, and made sweeping, unrealistic assumptions, leading to such

an inflated probability. For context, subsequent analysis by prominent statisticians, factoring in all the possible biases, concluded that the probability of this sequence of events happening to a nurse at any hospital was approximately 1 in 9. After subsequent appeals, she was eventually found not guilty in 2010 after review of the statistical evidence, as well as other flawed medical evidence used to convict her. She spent 4 years in prison in total.

This exact scenario is scarily common. And several medical professionals have been charged when a string of unexplained deaths occur in a hospital setting. Tragically some, like English nurse Ben Geen, are still in prison. Geen was arrested in 2004 over the deaths of several patients over the course of a year. At trial, the prosecution argued there had been an "unusual pattern" that had emerged, and was branded as the "the nurse who killed for kicks". After it seemed like this "unusual pattern" of deaths under Geen's care was occurring, many more incidents started to be attributed to him, and with little exploration of natural causes being explored. This is known as diagnostic suspicion bias. He was charged with 2 murders and intentional grievous bodily harm against 15 patients. However, the prosecution had failed to consider the likelihood of a string of these incidents occurring compared with the background rate. They let their biases of seeing a potentially suspicious cluster of cases overcome the actual data and disregarded any natural explanations for some of the incidents and disregard just how uncommon this type of cluster was. After the trial, taking this all into account, a number of prominent statisticians analysed the data, and found that this "unusual pattern" simply isn't there, and that Geen was prosecuted on completely foundationless grounds. In 2020 a further wave of statisticians came out in support of Geen, but he unfortunately remains in prison to this day.

All the examples presented here are tragic, with most incidents occurring in the late 90s/early 2000s, but there haven't been many good remedies put in place in the legal system to address this fundamental issue of abuse of statistical and scientific evidence. Generally, expert witnesses, who are allowed to give scientific evidence and their own "expert" opinion in court, are admitted at the discretion of the judge. However, a huge problem with this approach is how is a judge expected to know whether the credentials of an academic or medical professional are credible? And how is a judge supposed to know whether a particular witness is actually an expert in the field of which they're being used? For example, in the De Berk case involving the Dutch nurse, the erroneous figure of 1 in 342 million was admitted to the court via Henk Elffers, who was a law psychologist, and not an expert in the field of statistics. Also, Roy Meadows who gave evidence in the Sally Clark case as well as many others, while an esteemed paediatrician, was not an expert in the field of statistics nor was his 'Meadow's Law' an established truth in the medical community. So perhaps the best solution is that for an expert scientific witness to be permitted to give their expertise in court, they should have to be sponsored by several of their peers in the scientific community, or at least have several academics educate the judge in which members are credible witnesses in a particular field. Otherwise, the judge is essentially guessing at who's actually qualified.

Another reason why so many miscarriages of justice have occurred thanks to the misuse of statistics and medical evidence is that science isn't really meant to be practised in a courtroom. In a trial, quick, definitive evidence is desirable, and the ability for a single witness to be able to sum up all the data and make a conclusion. Unfortunately, science doesn't work that way. To publish a scientific paper, other academics have to check that work in a process called peer review before it enters the scientific literature. This can take months, not to mention the fact that the body of knowledge is always evolving as new evidence emerges. Furthermore, what if there are two scientists giving opposing opinions on either side, who does the jury believe? The jury simply won't know who has the better facts and is giving a more honest

assessment of the situation, so they're essentially going to favour whichever expert who laid out their argument in the most convincing manner, regardless of whether their argument is factual or not. A resolution here would be for a report compiled by leading experts in whichever particular field should be prepared ahead of the trial. For example, if a group of respected statisticians produced a report summarising the statistical evidence, which was prepared ahead of any of the previously mentioned cases, and checked by the wider statistical community, I think it's fair to say none of the false imprisonments would've occurred.

So is 'Australia's worst female serial killer' Kathleen Folbigg really guilty of filicide? An inquiry of her case commenced in 2018, with the judge finding no doubt of her guilt. An assertion that was based on Meadow's Law, and by interpretation of Folbigg's diary entries, in the absence of any evidence of smothering. However, in March 2021, a letter signed by 90 eminent scientists to the governor of New South Wales demands her immediate release based on new evidence. It was found that 2 of the children had a specific gene mutation, known to cause cot death in infants, and likely caused cardiac arrythmia in the 2 girls. Furthermore, world-leading experts in pathology have collectively given medical explanations for the deaths of all 4 children. If released, it will be the biggest miscarriage of justice in Australia's history.

Pregnant Prisoners 'Routinely' Denied Access to Suitable Maternity Care

Jon Robins, Justice Gap: Nowhere was the disparity in women's healthcare greater than in women's prisons, according to a legal charity's response to a government 'call for evidence' to improve women's healthcare. The report by the Howard League for Penal Reform highlights the risks to pregnant prisoners 'routinely' denied access to suitable maternity care with two babies dying in prisons a nine month period. 'Women across the whole criminal justice system often suffer from unmet physical and mental health problems, some of which contribute to their criminalisation,' wrote the group in its submission to the Department of Health's women's health strategy. Women in prison 'tend to have extremely poor health which is often not met in prison', the group said. 'If the Department of Health is able to rise to the challenge of meeting the health needs of women in prison, then it will have demonstrated it can meet the needs of the most marginalised of women.' The study cited a 2017 report by the Independent Advisory Board on Deaths in Custody which found 'stark differences' between the mental health needs of women in prison compared to those in the community and, for example, noted 30% of women had had a previous psychiatric admission prior to imprisonment. According to the Ministry of Justice, almost half of women (49%) were suffering from anxiety and depression, compared with 19% in the general UK population; and 46% of women prisoners reported having attempted suicide at some point in their lives compared to 6% in the general UK population.

During the pandemic, the regime in women's prisons had 'declined significantly', according to the report. A 2021 inspection of Peterborough women's prison noted that many women 'told us about the adverse impact that the restricted regime was having on their mental and emotional well-being, including a few who said that they had considered suicide'. Her Majesty's Inspectorate of Prisons last year found found that women in Bronzefield prison who were symptomatic of Covid 19 had no time in the open air and a shower only every three days; and, in Eastwood Park prison, such women were confined to their cells for seven days and spent no time outside it. The group reported that during 2019 two babies died in prisons in the space of nine months. 'Both of the deaths are currently being investigated by the Prisons and Probation Ombudsman. Following the death of a baby in Bronzefield prison in October 2019, solicitors raised concerns about the risks arising from a lack of access to midwifes when labour commences,' the group said.

According to Women in Prison, mothers were 'regularly being denied access to the vital health and maternity care necessary to give birth safely. 'Unlike women in the community, when women's voices are dismissed in prison, they are often unable to seek out a second opinion or raise concerns with others,' said the Howard League. 'They are reliant on others to communicate their concerns.' The group argued that prison should never be used as 'a holding pen' for women who are unwell. 'The courts have the powers to remand women to prison for their "own protection",' the group said. 'The legal powers to send women in acute mental distress to prison "for their own safety" has no place in either a modern justice or healthcare system and should be repealed. The group highlighted a report by the all-party parliamentary group on Women in the Penal System produced on the use of remand for own protection which found that scrutiny of the power was 'virtually non-existent'. The government does not collect data about how often adults and children are detained for their own protection or welfare. 'Prisons are not suitable environments for people in crisis, particularly for women with complex mental health needs,' it says.

Do Liaison and Diversion Teams Stop the Revolving Door of Police Custody?

Transform Justice: Police custody risks being as much a revolving door as prison. The same vulnerable people are picked up time after time, seldom getting to court, let alone being sentenced. Police cells are disproportionately occupied by people who have mental health problems, alcohol and drug addictions and/or are homeless – some of the most vulnerable in society. 'One of the challenges for people coming into the criminal justice system is [not] knowing where to go and get help in the first place and understanding that.' (L&D practitioner) Police custody staff have long realised that police action will not stop this door revolving. So they've turned to health practitioners to support suspects' legal rights and to help keep them out of the criminal justice system altogether. Custody suites now host liaison and diversion (L&D) teams. They were trialled many years ago, and set up nationwide in the wake of the 2009 Bradley report on people with mental health issues and learning difficulties in the criminal justice system.

They provide a great service to suspects in custody, assessing their needs and vulnerabilities and referring them to services where relevant. A major evaluation of their outcomes has just been published, but it begs more questions than it answers and suggests that L&D can only be effective if health and other services pick up the pieces before and after vulnerable people are arrested. The good news is that those who have been referred to L&D seem to be diverted in greater numbers from prison sentences, but we don't know if vulnerable people were diverted in other ways. Diversion usually refers to diversion from court, diversion from the criminal justice system altogether or diversion from police custody. Rand, the researchers, didn't have the data to assess the effect of L&D on these outcomes (or weren't asked to look at it). Nor does the research analyse the other CJS outcomes L&D suspects receive – both court and out of court disposals, NFA, and whether they are more or less likely to get remanded.

The bad news is that the report does measure reoffending, and the findings are pretty negative. The researchers used official reconviction data and also asked those who had been referred to L&D whether they had committed crime again. Both sources suggested that these vulnerable people were more likely to commit crime after referral to L&D than before. On the self reporting measure, shoplifting went down, but drug selling, other theft and burglary and violence and assault went up. The official reconviction data suggests that the proportion of people committing offences slightly increased post L&D referral though "we cannot draw firm conclusions on the impact of L&D referral on offending behaviour". Reoffending is not the only measure we should

use for the success of the criminal justice system, but it is important – further offending creates more victims, and more stigma and criminal records for those committing crime.

It is not clear why L&D doesn't have a more positive impact on reoffending, but the rest of the report gives some strong hints. The researchers tracked people's engagement with A&E and with drug and alcohol services both before and after their detention in police custody and referral to L&D. This suggests that L&D clients are already heavily engaged with services, and that arrest comes at a crisis point. "The 6-12-month prior period to L&D referral is often characterised by a steep increase in contact with Accident & Emergency (A&E) services, specialist mental health services, and declining self-reported health in those attending drug treatment services. However, L&D service users with and without previous criminal justice system contact were as likely to go to A&E after involvement with the L&D service. This suggests that for L&D service users it is acute health vulnerabilities that lead to contacts with the CJS, rather than the other way around". L&D referred many people to services but, unfortunately, the people referred often did not attend appointments, particularly at the Improving Access to Psychological Therapies (IAPT) service.

At first glance it may seem that L&D is failing in its purpose – to engage vulnerable people in services which will support them to stop offending. But the findings also suggest that L&D will never make a huge difference while health services are not joined up. We know that those with complex needs are in increasing contact with the health system before they are arrested. Could such contacts trigger a preventative response? Could addiction and mental health services be reconfigured so vulnerable people were more likely to attend? One of the most disappointing findings of this report is that L&D engagement did not seem to influence offending. But if health services engaged more effectively with vulnerable people post arrest and referral by L&D, the offending would surely reduce?

L&D practitioners understand the issues which face their clients and what would help. 'If someone has got benefit issues and they're stealing to eat or to survive then obviously if you can break that cycle by helping them in the community to access benefits, then you may stop that offending cycle. Or if someone is offending because of relapse due to mental health issues and they've not been to mental health services, then [when appropriate services are provided] hopefully you'll stop the cycle of reoffending with that person and…before it gets to an even more serious stage.' But this study reinforces previous research – that the answers to crime lie outside the criminal justice system. Unless and until mainstream services prioritise meeting the needs of this cohort on their terms, they will continue to be frequent visitors to both police custody and prison. NB we have just published a guide on how to more effectively message about diversion from prosecution.

70% Increase in Number of Immigration Detainees Held in Prison Post-Lockdown

Elliot Tyler, Justice Gap: Hundreds of foreign nationals are being held in prison in solitary confinement under immigration powers locked in cells for up to 24 hours a day, according to a new report which reveals a massive spike in the number of detainees being held in jails. The charities Bail for Immigration Detainees (BID) and Medical Justice argue that 'profound and avoidable harm' is being caused to their health of hundreds and that their conditions amount to prolonged solitary confinement in breach of their human rights as well as the UN 'Nelson Mandela Rules' for the treatment of prisoners. Immigration detention is not a criminal process however people can be detained in prisons or detention centres. The most recent statistics from the Home Office ending March 2021 reveal that there were 577 immigration detainees held in prisons – a 70% increase from March 2019. To put this into context, there were 1,637 people detained under Immigration Act powers at the end of December 2019 which included 359 people detained in prisons.

BID claim that detainees, including torture survivors, are locked in their cells for 'over 22 hours a day, most often 23.5', sometimes being held in their cells for days at a time and unable to take a shower. 'Some are self-harming, attempting suicide and unable to sleep or eat,' the group says. 'They report existing in a state of endless despair. Physical symptoms include involuntary shaking, memory loss and physical pain.' BID argues that these conditions cannot be justified as a public health measure and recommend that immigration detainees be released. Other recommendations included the reviewing of detention locations on a weekly basis, applying safeguards whenever an individual is placed in temporary confinement, and communicating with detainees using 'decision letters'. 'It is impossible not to be horrified at what is being done to people in the name of immigration control or to imagine the profound frustration and distress that people experience when trapped in a cage for most if not all of the day, not knowing when it will end,' said Annie Viswanathan, BID's director. 'That it leaves people with enduring mental and physical health problems is hardly surprising and exactly why it has been banned under the UN's Nelson Mandela Rules.'

Emma Ginn, director of Medical Justice, said that it was 'profoundly disturbing' that immigration detainees were being locked up indefinitely. 'That this imprisonment extends beyond a criminal sentence means severe harm is being inflicted during, and because of, a period of entirely unnecessary and purely administrative detention – we need to question if this is civilised or in fact gratuitous,' Ginn continued. 'It is certainly the biggest scandal most people have never heard of.' The new study draws on witness statements from five BID clients held in solitary or shared confinement and evidence from six medico-legal reports from Medical Justice. The study also considers 30 bail cases where BID argued in the grounds for bail that the conditions of detention were disproportionate and argued in favour of release.

One detainee described his conditions as 'psychological torture' that made him feel 'stripped of his identity'. At the end of his prison sentence, he was detained under immigration powers and continued to be detained despite being granted bail. 'I already suffered from anxiety, depression and PTSD, which stemmed from a past experience of torture,' he continued. 'The days and nights blur together during confinement. I can barely sleep at night but when I do, I experience nightmares. I'm afraid to sleep because I'll go back into the nightmare but being awake is also horrible.' Another detainee continued to be detained even after serving his sentence and being granted bail. He entered prison without any mental health problems, but now 'does not know if the damage done can be repaired'. 'Since October, I have been held in solitary confinement,' he said, 'which means that for seven months, I've been locked alone in my cell for 23-24 hours a day.' Sometimes, he added, he is unable to leave for days and cannot exercise or shower. 'Every day is like torture in solitary confinement, and now I understand why people commit suicide, because there's no way out.'

If Girls Need to be in Custody, They Should be In Local Authority Units, Not Prisons

Frances Crook, HLPR: During a hearing of the Justice Committee in Parliament on 13 July, when the Minister and the head of HM Prisons and Probation Service were asked about how girls were going to be cared for now that Rainsbrook secure training centre (STC) was closing down, they indicated, perhaps inadvertently, that they were thinking of putting the young girls into prisons holding boys. Let's take a step back and put this into context. Rainsbrook has been run by an American company with a history of pretty appalling abuse of prisoners, even by US prison standards, so it is mystifying how it got the contract to run a child jail in the first place. The STC has had a series of dreadful inspection reports culminating in the judgement that it was unsafe for children and for staff. The decision to close it down was very welcome, and as a result the 30 children had to be moved out.

Half were shipped off to the G4S-run STC at Oakhill, itself the subject of highly critical reports indicating that it too is not a safe place for children. Other boys were placed in young offender institutions, apparently to prepare them for the adult prison estate (yes, the minister said that). This is despite the fact that these children were known to be too vulnerable to be held in the prison estate, which was why they were placed in the STC in the first place.

According to Youth Justice Board figures in May of this year, there were only 16 girls under the age of 18 in the whole of the penal estate in the whole of England and Wales and most are held in local authority units. During the Parliamentary hearing it was said there are currently 18 girls, so whichever is the true number, there are hardly any, and this is a problem that can be solved. The privately-run Rainsbrook STC did hold some girls. We understand that some of the girls in Rainsbrook who had reached the age of 18 even if they were imminently due for release back into the community, were shipped off to an adult women's prison. No under-18-year-old girls are held in prisons, so rehousing these younger girls has been the challenge. As I understand it, none of the boys or girls from Rainsbrook have been rehoused into local authority units, despite places being available.

The idea that young girls could be held alongside boys in prisons is bizarre and positively dangerous In 2004, following concern about the treatment of these girls detained in adult women's prisons, and partly in response to work done by the Howard League which revealed the failure to care properly for them, David Blunkett, then Home Secretary, set up separate units for them inside the women's prison estate. At the time there were 86 girls in custody. This was strongly opposed at the time, not least by the Howard League, as we argued that the girls should not be in custody at all. However, £16m was allocated to refurbish the units and training staff. The units never really worked and in 2014 they were closed down (starting to sound familiar?) and since then no girls have been put into prisons.

It is my contention that now that there are now so few girls in custody, they can be placed in the local authority units, which are competent to care for girls and have a record of success. The idea that young girls could be held alongside boys in prisons is bizarre and positively dangerous. I'm not even sure it would be lawful. Mixing young girls with boys has never been safe – as was proved at G4S Oakhill STC, which used to mix boys and girls but the girls were removed because they were not safe. Putting young girls back into prisons would be a retrograde step that would almost certainly put them at considerable risk of abuse, assault and emotional trauma. Prison is no place for children, but it is certainly no place for young girls.

The suggestion by the Minister and prison authorities appeared to be that girls could be placed alongside the boys in the Keppel Unit in Wetherby prison. The Keppel Unit is a national resource for boys aged 15 to 17 who have complex needs, including high risk to others and to themselves, physical or mental health needs, learning disabilities, communication needs and substance misuse. The girls would have to be mixed with the boys in the living and sleeping areas because the unit is really quite small and has few facilities, thereby putting them at considerable risk from boys who are known to have complex needs and who may have committed serious, violent and sex offences against girls. Although the staffing in the unit is more generous than in the main prison, it in no way replicates the expert and experienced staff found in the local authority units. The other possibility hinted at during the Justice Committee session was the idea of setting up a new unit in some other unspecified male prison. Again this would be totally unsuitable, very expensive, and pointless.

I can't believe I am having to write this blog. The answer is so simple. Caring for the very few girls in the system means making sure that they all really need to be in custody in the first place, and

I happen to know that some at least are coming to the end of short sentences and could be released a bit early. And the remaining few should be placed in local authority units which have space for them. The really important lesson here is not to build ever more prison cells in the wrong places, with the wrong staff and using the money wrongly, but to keep the girls out of the toxic penal system in the first place. The handful of young girls who may need to be in custody must only be housed in the best place for them and that is the local authority-run secure units.

Neurodiversity in Criminal Justice System - More Effective Support Needed

Prison Reform Trust: *Neurodiversity refers to variation in the human brain regarding sociability, learning, attention, mood and other mental functions in a non-pathological sense.* The government has been urged to develop more coordinated and effective support for people with neurodivergent conditions – including autism, traumatic brain injury and learning difficulties and disabilities – in the criminal justice system (CJS). A report by three criminal justice inspectorates says better assessment, treatment and support could "help break the cycle affecting too many: of crime, arrest, court, prison, probation and reoffending." Their report identified patchy data collection and inconsistent assessments and staff training and knowledge. The scale of the problem, and the extent to which neurodivergent people may be over-represented in the system, are difficult to assess but, the report notes, perhaps half of those entering prison could reasonably be expected to have some form of neurodivergent condition which impacts their ability to engage. Commenting on the findings, Peter Dawson, Director of the Prison Reform Trust said: *"This outstanding report shows conclusively that the criminal justice system is failing in its core duty to treat people with neuro-divergent conditions fairly, and that the number of individuals affected is startlingly high. The Lord Chancellor was clearly right to commission this work. But the real test is whether he will now provide the resource and the leadership required to follow through on the six crystal clear recommendations the report makes. "*

Not a Penny Paid Out to Victims of Miscarriage of Justice in Last 12 Months

Jon Robins, Justice Gap: Not a penny has been paid out in the last 12 months in compensation for the wrongly convicted under a scheme that has been accused of 'compounding the trauma' of victims of miscarriages of justice. In a response to a freedom of information request made by the Justice Gap, the Ministry of Justice has revealed that no compensation had been awarded in the last 12 months. This is the third year since the Coalition government restricted payouts with the introduction of its Anti-Social Behaviour, Crime and Policing Act 2014 that no money has been paid out under what is known as the section 133.

Only a total of eight payouts have been made under the new arrangements which are presided over by the former high court judge Dame Linda Dobbs. The government last week re-appointed Dame Linda as Independent Assessor for Miscarriages of Justice for a second five-year term. Her role is to determine the level of compensation to be paid once the Ministry of Justice has decided that the eligibility criteria is met. To put this into context, in a two-year period from 2007 to 2009 the Ministry of Justice paid out a total of £20.8 million in respect of justice 19 applications granted and 78 applications received. In 2006, the New Labour government axed the old ex gratia scheme under which those payouts had been made leaving just the 'section 133' statutory scheme which was then costing over £2 million a year to run and typically benefited about 10 applicants a year. The Coalition government further undermined the less generous section 133 scheme with its 2014 legislation which restricted payouts to those people who could demon-

strate their innocence 'beyond reasonable doubt'. As it went through parliament, the proposals were heavily criticised for effectively reversing the burden of proof and were described by Baroness Helena Kennedy as 'an affront to our system of law'.

The post 2014 scheme is presently being challenged in the European Court of Human Rights by Sam Hallam and Victor Nealon, who spent a total of 25 years wrongly convicted (their cases have featured regularly on the Justice Gap – see here). Nealon's conviction was overturned by the Court of Appeal in 2013 after spending 17 years in prison. He had his conviction for attempted rape overturned after DNA testing pointed to another attacker but was still denied compensation. Sam Hallam became one of Britain's youngest miscarriage of justice victims when, at 17 years of age, he was convicted of murder after a trainee chef was stabbed during a fight in London. Hallam spent seven years in prison.

The law reform group JUSTICE is intervening in the case and argues that the new regime is not compatible with the presumption of innocence in submissions seen by the Justice Gap. 'By requiring a new or newly discovered fact to demonstrate innocence, the UK government is demanding that the applicant overcome an additional hurdle in order to be compensated for their wrongful conviction,' the group says. 'After many years, finally having their conviction quashed and being released from prison, it is they that must go on to prove their factual innocence. This cannot do anything other than make the applicant feel like they continue to be presumed guilty. To further accuse individuals in this way compounds the trauma that they have suffered through no fault of their own.' JUSTICE points out that the section 133 scheme is at odds with the approach of other countries signed up to the European Convention on Human Rights and 'continues to ignore' its obligations and the 'jurisprudence of the Court' that compensation schemes 'must not call into question the innocence of applicants who have had their convictions quashed or been acquitted of charges brought against them'.

The group quotes its president, the barrister Baroness Helena Kennedy, in a 2014 debate in the House of Lords argued: *'When a case has gone wrong and new material comes to light which changes the whole complexion of the case, and it becomes clear that a jury in possession of all the evidence would have reached a different verdict, those who have suffered should have some compensation.' 'To expect them to prove that they were innocent beyond reasonable doubt is to add to the injustice they have already suffered. Miscarriages of justice lead to ruined lives. Families are destroyed. People often end up without partners when they come out of prison. They lose jobs and homes. The mental despair and anguish is never fully resolved. That is why they need to have such real help afterwards. People's lives never go back to how they were. This is where we find, as a decent society, that we have to make amends.'*

Expert Evidence Criminal Exploitation

A conclusive grounds decision made by the Single Competent Authority appointed under the National Referral Mechanism Reform Programme was admissible as evidence in criminal proceedings in determining whether a defendant was a victim of criminal exploitation under the Modern Slavery Act 2015 Pt 5 s.45(4). The Court held thatExpert evidence was admissible in criminal proceedings when the subject matter was something on which the ordinary person without particular experience in the relevant area could not form a sound judgment without the assistance of a witness with such experience. Factors relevant to trafficking or exploitation were not necessarily within the knowledge of the ordinary person. Assessment of the significance of a given set of factors present in a particular case might properly be the subject of expert evidence. A person with the necessary expertise could give context to the factors by reference to their wider experience, which might involve the expert giving evidence on one of the issues in the case. The fact that the SCA decision-maker would not have prepared their minute of decision with a view to its being used as expert evidence did not of itself prevent its admission in criminal proceedings; nor would they have anticipated giving evidence in relation to their conclusive grounds decision, R. v GS [2018] EWCA Crim 1824, [2018] 4 W.L.R. 167, [2018] 7 WLUK 736 considered (see paras 32, 45-46, 53 of judgment).

Resolving Crimes Without Going to Court – A Messaging Guide

People's reactions to communications about criminal justice are guided by a set of strong beliefs about why people commit crime and how to reduce crime. These beliefs affect everyone, are deep seated, strong, and sometimes contradictory. We are unlikely to fundamentally change people's beliefs, but we can change their appetite for progressive reforms by triggering some beliefs and avoiding engaging with others. Transform Justice (TJ) has published a new messaging guide useful for anyone promoting diversion and out of court disposals. The guide draws on new research into public attitudes towards the different ways to resolve crime without going to court, and how messaging can boost support for these options. TJ found that: the majority of the public support the use of options to resolve crimes without going to court: most people don't know what diversion and out of court disposals means; use plain English, examples and metaphors to make sure you're understood: we can increase support by using tried and tested values in our messaging - pragmatism and human potential In a "*Tough on Crime*" climate, how can we build support for resolving more crimes without going to court? There is a raft of ways to deal with crimes without sending people to court, using what experts broadly refer to as "diversion" and "out of court disposals". These lower gears of the justice system have proved effective in reducing reoffending, and in addressing the needs of victims. But they rarely get a look-in in public conversations about how to deal with crime, which focus heavily on the system's highest gears - prosecution and prison. The good news is that the public are broadly supportive of resolving crimes without going to court. 58% of survey respondents supported policies to resolve more crimes without going to court, compared to only 17% who oppose. A majority think that such options are a sensible response to crime, a good use of police resources, and are likely to help people who commit crime make positive change in their lives. But that support can go up or down depending on the language we use. This guide summarises how to communicate about resolving crimes without going to court in a way that leads to public support and acceptance. It is written for anyone writing or speaking about resolving crime without going to court, including charities, police, and police and crime commissioners.

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