Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

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Create a Right of Appeal for People Convicted Under Law Which is Later Reformed

Sometimes the law is proven to be morally wrong and is reformed. However, when this happens, people cannot appeal against their unjust convictions because they are beyond the time limit currently set within the Criminal Appeal Act 1968. We want to create a right to appeal for change of law cases. A person must apply for permission to appeal within 28 days of conviction. Law reform is a long process, and many will have been convicted and out of time to appeal when reform is achieved. On 18th February 2016, the Supreme Court reformed the law of joint enterprise because it was held to be unjust. This law led to the conviction of thousands of people for very serious offences. Despite this, there have been very few appeals allowed. Specifically, we want Parliament to legislate the Criminal Appeal (Amendment) Bill promoted by JENGbA.

England and Wales Court Backlog Crisis 'To Go On For Several Years'

Haroon Siddique, Guardian: The backlog of cases in criminal courts in England and Wales is likely to be a pervasive issue for several years, severely affecting victims, witnesses and defendants, the National Audit Office has said. In a published report, the NAO says the Ministry of Justice's plan to tackle the backlog is ambitious and hinges on securing funding and resources, neither of which are a given. Parliament's spending backlog says uncertainty around funding, physical and judicial capacity in courts and the capacity of other criminal justice agencies and support services all pose a threat to the recovery. Additionally, the MoJ and Her Majesty's Courts and Tribunals Service (HMCTS) are described as "not yet working towards shared, strategic objectives" with respect to the backlog. The report chimes with grave warnings from lawyers and observers. It says the backlog in the crown courts, which hears the most serious cases, had already increased by 23% in the year leading up to the coronavirus pandemic, partly because the MoJ allocated an insufficient number of court sitting days. Despite a quick response by the MoJ and HMCTS to the pandemic, the NAO says the number of cases received and not yet completed in the crown courts increased by another 48% in the 15 months to the end of June, to 60,692. In the latter period, the number of cases older than a year in the crown court increased from 2,830 to 11,379 (302%), and from 246 to 1,316 (435%) for rape and sexual assault cases.

Gareth Davies, the head of the NAO, said: "Despite efforts to increase capacity in criminal courts, it looks likely that the backlog will remain a problem for many years. The impact on victims, witnesses and defendants is severe and it is vital that the Ministry of Justice works effectively with its partners in the criminal justice system to minimise the delays to justice." The report also expresses concern about how court users who are vulnerable because of their age, mental disorders or physical impairment have been affected, for example by remote access to justice, accusing the MoJ and HMCTS of a "poor understanding" of the issue. "We also found no evidence that the ministry and HMCTS have any data on users' ethnicity to carry out meaningful analysis on whether ethnic minority groups have been disadvantaged by the pandemic or the recovery programme. The ministry is therefore unable to assure itself that it is meeting its objective to 'build back fairer'," the report says. The MoJ's latest models indicate the crown court backlog could be between 17% and 27% higher than pre-pandemic levels by November 2024. But the NAO says both scenarios assume increasing the use of part-time judges to "unprecedented levels", adding: "Considerable uncertainty remains about demand flowing into the courts following the pandemic and the pace of new police recruitment and deployment." An MoJ spokesperson said: "This report recognises the speed at which we responded to Covid-19. This meant that in a matter of months our buildings were made safe, remote technology was rolled out across all courts, and Nightingale courtrooms opened up and down the country to increase the space available for trials. "We are already seeing the results, with outstanding cases in the magistrates courts falling, and in the crown court the backlog stabilising."

Government has no Plans to Legislate to Terminate Existing IPP Sentences.

The focus is on ensuring, via a joint HMPPS/Parole Board action plan, that IPP prisoners have every opportunity to progress towards safe release. This approach is working, with high numbers of unreleased IPP prisoners achieving a release decision each year. Indeed, as of 30 June this year there were 1,722 offenders serving the IPP sentence in prison who have never been released, down from over 6,000 when the sentence was abolished for new offences in December 2012. All IPP prisoners are by law entitled to have their continued detention reviewed by the independent Parole Board at least once every two years.

Disclosure Week' Marred By Two Collapsed Trials

Catherine Baksi, The Times: It was a bad few days for "National Disclosure Week". The CPS is still failing to reveal crucial evidence to defence teams, causing trials to be abandoned. Last week's marketing gambit by senior prosecutors and police was designed to trumpet supposed improvements in a much maligned system. But it coincided with the latest two-pronged saga in a long-running series of high-profile disclosure failures. First, a £34 million money-laundering trial collapsed amid what the judge called "systemic and catastrophic" failings by the Crown Prosecution Service (CPS). Four defendants were accused of involvement in an alleged scam using sham companies, bank accounts and false identities to transfer money overseas through money service bureaux. All four denied any wrongdoing and were formally cleared by the judge. Judge Charles Falk at Snaresbrook crown court criticised the CPS for bringing an "insufficiently prepared case" and failing to pursue "obvious lines of inquiry" in relation to disclosure of relevant evidence to the defence. The judge said that there had been "no proper systems in place" to communicate with other agencies involved in the six-year investigation, and criticised the police for putting a single inexperienced officer in charge of the complex case.

The next day a £3 million diamond fraud trial involving Lewis Bloor of the ITV2 show The Only Way Is Essex collapsed after what a defence barrister described as a "litany" of prosecution failings, including not disclosing evidence. The reality television show star was accused of being part of a team that conned about 200 victims into buying coloured stones at a 600 per cent mark-up. Bloor denied any wrongdoing and was formally cleared by the judge. Four weeks into the trial at Southwark crown court it was revealed that the Metropolitan Police had instructed an expert witness employed by Dreweatts, an auctioneer that had a contract with the force to auction jewellery and watches seized in raids and prosecutions.

When criminal cases are being prepared for trial the prosecution has a duty to provide the defence with any information that weakens its case or strengthens that of the defendant. Failures by the police and prosecutors to undertake this disclosure duty wastes millions of pounds of taxpayers' money on delayed and abandoned trials and can result in miscarriages of justice. As a

consequence innocent people have gone to jail, as Alison Saunders, who was then director of public prosecutions, admitted to a House of Commons justice committee inquiry in 2018. And according to Exeter University's centre for evidence-based justice, "inadequate disclosure" is the second most common factor in all miscarriages of justice in Britain over the past 50 years.

The police's failure to disclose evidence that proved the innocence of Liam Allan, who was charged with rape in 2017 when he was a 22-year-old student, led to intense criticism of the disclosure process. However, as the justice committee's report the next year observed, problems have "persisted for far too long, in clear sight of people working in the system", going back to 1996. The furore over that case prompted updated guidelines from the attorney-general and the CPS's national disclosure improvement plan. Regardless, problems persist and reports from the independent CPS Inspectorate continue to highlight failings, largely attributed to the reduction in staff and loss of experience and training.

Sir Bob Neill, the chairman of the justice committee, tells The Times that it was "not acceptable" that "basic errors" were still being made owing to "extraordinary ineptitude". While the committee is not planning a fresh inquiry on the subject, Neill says that it would look at how its recommendations are being implemented. He adds that the attorney-general, Suella Braverman QC, in her supervisory role of the CPS, "will have questions to answer" in her next appearance before the committee. The shadow attorney-general, Lord Falconer of Thoroton QC, blames the government's budget cuts at the CPS and Ministry of Justice. "Until we see ministers showing leadership and getting a grip on providing the capacity, training and technology the justice system needs, we will continue to see cases collapse and public confidence eroded," he says.

The present disclosure process was established 25 years ago by the Criminal Procedure and Investigations Act 1996. The system, says Neil Swift, a partner at the law firm Peters & Peters, was designed "in a different world", before smartphones were widespread. Disclosure, Swift says, is onerous and "expensive to do properly", but he says that the system can be made to work if it is properly managed and resourced. Jo Sidhu QC, the chairman of the Criminal Bar Association, insists that the solution is "proper and sustained" funding of the CPS and police. Money must be put in place at the beginning of criminal investigations, Sidhu says, to avoid the risk of "tens of thousands of man hours going to waste when a trial collapses over the most basic of disclosure failings". To sift through the "terabyte craters of digital documents" often produced in criminal investigations, Sidhu says that the CPS requires "appropriately experienced prosecutors armed with the best available smart technology".

In civil cases judges award costs sanctions against parties for disclosure failures. The barrister Edward Henry QC suggests that the lack of sanctions in criminal cases has contributed to the lack of improvement. Narita Bahra QC, a defence lawyer who acted in the diamond trial, emphasises that "disclosure is the prosecutor's friend and not its foe" and that it leads to safe convictions. "Until investigators and prosecutors embrace disclosure, they will continue to approach prosecutions from the wrong angle," she says.

A CPS spokesman says that the organisation was "carefully considering what went wrong" in the two cases to "ensure the same mistakes are not repeated". He emphasises that the CPS remains "committed" to working with others to "get disclosure right". Initiatives including the disclosure improvement plan, which was launched in 2018, changes to working practices, "mass training" and appointment of "disclosure champions", he says, have already resulted in improvements. But he adds that "disclosure cannot be remedied in isolation" and requires a "system-wide, concerted plan for continuous improvement".

Calls for Government to up Prisoners' Daily Food Budget of Just £2.02 a Day

Jon Robins, Justice Gap:A watchdog has called on the government to make more money available for prison food following concerns over a daily budget for prisoners of just over £2 a day per prisoner, a fifth of the money spent on hospital patients. The call was made in the latest report from the Independent Monitoring Board into HMP Wealstun, a category C prison holding more than 800 men near Wetherby, West Yorkshire. The IMB called on the new justice minister Dominic Raab 'to consider increasing the daily food allowance, as £2.02 is an extremely small amount to feed adult men and provide the nutrition they require'. The sum must provide each prisoner with a breakfast pack, a cold meal and a hot meal and has not been increased since 'at least 2016'. In 2019, then justice minister Lord Keen told the House of Lords HM Prison and Probation Service allocated food budgets to prisons 'based on £2.02 per prisoner per day, which covers the daily prisoner food and beverage requirements'.

Accoridng to a 2016 inquiry into prison food by HM Inspectorate of Prisons, spending on food in prisons has been decreasing. In 2014–15, the total expenditure on food in prisons was £54m, down from £60m in 2012. That year the basic budget per prisoner per day was previously £2.02. But the report noted all prisons now have the autonomy to set their own budgets 'and in some prisons as little as £1.87 per prisoner per day was spent'. Prison food can be bolstered by prison-grown produce. This compared to the average daily spend per patient on in-patient food services in hospitals in 2014–15 of £9.88. There is no measurement of the calorific content of prison meals either under prison rules or by the Ministry of Justice.

The Wealstun report noted: 'The kitchen continues to look at innovation to maximise the effectiveness of the £2.02 per prisoner per day budget. Of note has been the baking of home-made bread and pizza, together with a range of dessert products from the in-house bakery. The prison farm and gardens provide a supply of fresh produce for the kitchens, but not as much as in previous years because of Covid restrictions.' 'Poor nutritional provision can, not only have a lasting impact on the wellbeing of an individual in custody, but it is also costly to the custodial estate,' said the 2016 report. 'Various medical complications that arise from poor nutrition, including nutritional deficiencies, cardiovascular disease, diabetes and high cholesterol, add burden to prison health resources. Food can also affect security resourcing and safety in prison, as frustration over food can serve as a catalyst for aggression and dissent.'

Police 'Shut Down' Janner Investigation Without Pursuing All Inquiries

Bilan Cali, Justice Gap: Leicestershire Police officers 'shut down' investigations into Lord Janner without 'pursuing all inquiries', according to the independent inquiry into child sexual abuse (IICSA) found that The late Labour peer Greville Janner had been at the centre of child sexual abuse allegations which date back to 1955. There were three police investigations which took place in the 1990s and 2000s however, no charges were brough forth. He was charged in 2015, after a fourth inquiry, with offences against nine alleged victims however, police say that there were 40 people who accused him of abuse. Lord Janner, who was suffering with dementia at the time, was ruled unfit to plead and died aged 87 before the trial could take place. Chairman of the inquiry, Professor Alexis Jay, said police and prosecutors 'appeared reluctant to fully investigate' claims against Lord Janner despite 'numerous serious allegations'. 'On multiple occasions police put too little emphasis on looking for supporting evidence and shut down investigations without pursuing all outstanding inquiries,' she stated. Lord Janner always protested his innocence and his son Daniel Janner QC campaigns for anonymity for those suspected of sex offences until charged (as reported here). Prof Jay said: 'This inquiry has brought up themes we are now extremely familiar with, such as

deference to powerful individuals, the barriers to reporting faced by children and the need for institutions to have clear policies and procedures setting out how to respond to allegations of child sexual abuse.' The inquiry received accounts form a total of 33 complainants with Janner's allegations of abuse stretching across 30 years. In October 2020, the inquiry received evident form Lord Janner's alleged victims. None of the alleged victims were called in person to hand evidence as the inquiry focused solely on the stat responses to their allegations, not the authenticity of their claims. Although the report did not find any evidence of a conspiracy to protect an MP, the officials believe that its inquiry present something more serious. Adults who had grown up in care homes and children's homes were not taken seriously when they came forward with their allegations because of their background. One accuser's claims were rejected because he was believed to have a history of mental illness however, when later police inquiries looked at his medical records it was concluded that this wasn't the case. The inquiry also heard 'a number' of staff at Leicestershire County Council had multiple concerns over lord Janner's association with a child in care. The report stated that 'undue deference' was shown to the politician, who had 'unrestricted access' to the child, with little if any thought given to any child protection issues'. No investigations were made into the concerns of its staff and the council has accepted it 'failed to take adequate steps in response' to them.

Family of Vulnerable Man Found Dead in HMP Guys Marsh Demand Reforms

Steven Morris, Guardian: The family of a vulnerable prisoner found hanged in his cell have called for improvements in how inmates with mental health issues are cared for after an inquest jury concluded there was a string of failings in his care. The senior Dorset coroner, Rachael Griffin, said she would write to the prisons minister, Victoria Atkins, highlighting concerns over the case of Anthony Clacher, 36, who died at HMP Guys Marsh near Shaftesbury in March 2018. During his inquest, the jury was told there was a "horrific" drug problem in the prison and heard about a practice called "guinea pigging" where new strains of the drug spice were tested out on vulnerable inmates by dealers.

On the day of his death, Clacher, who was serving a two-year sentence for theft, was found collapsed at the bottom of a flight of metal stairs apparently under the influence of spice. He was returned to his cell and left unobserved for almost two and a half hours before he was discovered hanged when a staff member delivered post. The court was told Clacher suffered with post-traumatic stress disorder following childhood sexual abuse while in care. He heard the voice of his abuser, for which he was prescribed anti-psychotics in the community.

After an act of self-harm in another prison, HMP Bullingdon in Oxfordshire, Clacher was placed on a self-harm and suicide prevention programme, known as ACCT. But shortly before his death, after he had been moved to Guys Marsh, his ACCT programme was closed despite him still not having had a mental health assessment. Prisoners said Clacher was bullied in the days leading up to his death, and that some inmates were telling him to kill himself. One witness said he saw other prisoners place a noose around Clacher's neck the day before he died.

The jury in Bournemouth concluded there was a "gross failure to provide basic medical attention or [to] observe Anthony" after he was returned to his cell on the day he died. In a narrative verdict they said he was not capable of forming an intention to take his own life "due to his mental health state, lack of general observations and use of illicit substance". The jurors flagged up "lack of communication" between private healthcare staff and prison officers. They said he was not seen by mental health workers in a timely fashion, concluded there was a lack of ACCT training for prison officers and judged that his ACCT programme should not have been closed. His sister, Christine Clacher, said after the inquest: "Anthony was a human being who had been through some terrible

experiences and deserved to be treated with care and respect." Gus Silverman, a civil liberties lawyer at the firm Irwin Mitchell, representing the family, added: "The law says that prisoners are entitled to the same standard of healthcare as they would receive in the community."

A spokesperson for the private healthcare provider Practice Plus Group said the prisons and probation ombudsman was satisfied that staff did not have any reason to believe Clacher was at risk of suicide on the day of his death and a clinical review by the NHS said the care he received in prison was equivalent to that which he could have expected in the community. The spokesperson added: "We … note that in this instance the coroner … has chosen not to make further recommendations to us." A Prison Service spokesperson said: "Our sympathies remain with the family and friends of Mr Clacher. We will consider the coroner's comments carefully and respond in due course. "Self-inflicted deaths in prisons were at their lowest since 2012 last year and we have worked closely with health providers to reduce them further by improving support for those at risk."

Psychosis Cases Soar In England As Pandemic Hits Mental Health

Helen Pidd, Guardian: Cases of psychosis have soared over the past two years in England as an increasing number of people experience hallucinations and delusional thinking amid the stresses of the Covid-19 pandemic. There was a 75% increase in the number of people referred to mental health services for their first suspected episode of psychosis between April 2019 and April 2021, NHS data shows The rise continued throughout the summer, with 12,655 referred in July 2021, up 53% from 8,252 in July 2019. Much of the increase has been seen over the last year, after the first national lockdown, according to data analysed by the charity Rethink Mental Illness (RMI). More than 13,000 referrals were made in May 2021, a 70% rise on the May before when there were 7,813 referrals. RMI is urging the government to invest more in early intervention for psychosis to prevent further deterioration in people's mental health from which it could take them years to recover. It says the statistics provide some of the first concrete evidence to indicate the significant levels of distress experienced across the population during the pandemic. A study earlier this month found that anxiety and depression around the world increased dramatically in 2020, with an estimated 76m extra cases of anxiety and 53m extra cases of major depressive disorder than would have been expected had Covid not struck. Women and young people were disproportionately affected, the researchers said.

Psychosis can involve seeing or hearing things that other people do not (hallucinations) and developing beliefs that are not based on reality (delusions), which can be highly distressing. It can be a symptom of mental illness such as schizophrenia, bipolar disorder or severe depression, but psychosis can also be a one-off, potentially triggered by a traumatic experience, extreme stress or drug and alcohol misuse. Despite the continued pressure on mental health services, Rethink Mental Illness is highlighting the importance of rapid access to treatment to prevent further episodes of psychosis and reduce people's risk of developing severe mental illness. Nice guidelines for people experiencing a suspected first episode of psychosis state they should receive an assessment within two weeks. However, the charity fears that if the increase in referrals is sustained, more people will have to wait longer for vital treatment.

Brian Dow, the deputy chief executive of Rethink Mental Illness, said: "Psychosis can have a devastating impact on people's lives. Swift access to treatment is vital to prevent further deterioration in people's mental health which could take them years to recover from. "These soaring numbers of suspected first episodes of psychosis are cause for alarm. We are now well beyond the first profound shocks of this crisis, and it's deeply concerning that the number of referrals remains so high. As

first presentations of psychosis typically occur in young adults, this steep rise raises additional concerns about the pressures the younger generation have faced during the pandemic. The pandemic has had a gamechanging effect on our mental health and it requires a revolutionary response. Dedicated additional funding for mental health and social care must go to frontline services to help meet the new demand, otherwise thousands of people could bear a catastrophic cost."

A spokesperson for the Department of Health and Social Care said: "It is vital everyone can get the right support when they need it and we are delivering the fastest expansion in mental health services in NHS history, backed by an additional £2.3bn a year by 2023/24, benefiting hundreds of thousands more people. On top of this, we've invested an additional £500m this year to help people whose mental health has been particularly impacted by the pandemic. All NHS mental health providers have established 24/7 urgent helplines, which have answered around three million calls during the pandemic."

American Prison Boss Sent to Prison

Inside Time: The former director of a private prison in America has been jailed for allowing "inhumane" conditions at his establishment. Prosecutors said Cuyahoga County Jail in Cleveland, Ohio, was unsanitary while its residents were sometimes locked up for 24 hours a day with inedible food and little medical care. Kenneth Mills, 56, who was in charge of the jail for nearly four years, was said to have led a money-making scheme to charge authorities in surrounding areas $99 (£73) per day to house their prisoners, leading to overcrowding and men sleeping on floors. He resigned after six residents died in five months. He was found guilty after a three-week trial, which ended last month, on two counts of dereliction of duty and two counts of falsification. He was acquitted of a separate charge of tampering with records. Ohio's Assistant Attorney General Matthew Meyer asked Visiting Judge Patricia Cosgrove to impose the maximum sentence to "act as a deterrent not to just wardens, sheriffs or jail administrators, but any individual who uses their power to harm human beings". Sentencing Mills to nine months, the judge recounted how he had deprived residents of food, running water, and health screenings, and lied to civic leaders about his role in blocking an effort to hire nurses. She told him: "What you've done is unthinkable and callous. I don't know how you can live with yourself or look at yourself in a mirror … This is the United States of America. This is not a third-world country. There's no excuse to treat other human beings in this manner." Officials at Cuyahoga County Sheriff's Department said Mills would not serve his time at the jail he used to run.

89 Prison Staff Dismissed For Inappropriate Relationships

Inside Time: The figure, for English and Welsh prisons, was disclosed to Parliament by the Ministry of Justice. A year-by-year breakdown shows that the number dismissed each year has ranged between three and 15, with no clear upward or downward trend. Former prisons minister Lucy Frazer QC said in a statement accompanying the figures: "HM Prison and Probation Service has conduct and discipline policies in place which set out the minimum standards of conduct expected of all civil servants. Staff must exercise particular care to ensure that their dealings with prisoners, former prisoners and their friends and relations are not open to abuse, misinterpretation or exploitation. Staff relationships with prisoners must be professional at all times, and the HMPPS Counter Corruption Unit proactively follows up on intelligence to detect and investigate potentially inappropriate relationships." The numbers represent the tip of the iceberg in terms of alleged misconduct by prison staff. Figures previously released by the MoJ show that in 2018/19, more than 2,500 prison staff were investigated over alleged misconduct, with the most common allegations relating to breach of security (496 cases), performance of duties (467) or unprofessional conduct (446). In that year, 38 staff were investigated for having an inappropriate relationship with a prisoner, but only according to the new data only 13 were dismissed. Cases of inappropriate relationships which have ended up in court this year have included: A male prison officer at HMP Low Newton who was jailed for six years and nine months after engaging in sex acts with 12 women prisoners, one of whom was given advance warning of cell searches and had confiscated items returned. A female officer at HMP Dovegate, sentenced to three years after she fell in love with a prisoner, stayed in touch with him after he was moved to an open prison, helped him to abscond and sheltered him while he was on the run. A female officer at HMP Woodhill, jailed for 18 months for having inappropriate relationships with three prisoners and staying in touch with them via illicit mobile phones.

X-Ray Body Scanners Find 10,000 Hidden Items

X-ray body scanners installed since the start of the Covid pandemic have already thwarted more than 10,000 attempts to smuggle contraband into prisons. Items found hidden inside prisoners' bodies have included drugs, tobacco, mobile phones and weapons. The Prison Service said the machines were proving to be "game-changing". Since July last year the scanners have been installed at the entrances to 74 prisons in England and Wales, meaning every closed men's prison is now covered. Prior to the pandemic there were only 18 of the machines in use. Rules say the scanners can only be used when there is intelligence or reasonable grounds to suspect that a prisoner is internally concealing contraband, and it cannot be detected through a normal body search. Since the 74 machines were installed, they have been used to conduct 92,104 searches, of which 10,611 produced positive results, whilst 78,058 scans were negative and 3,435 were inconclusive – meaning eight out of nine searches detected no hidden items.

Justice Secretary Dominic Raab said: "Drugs and weapons wreak havoc behind bars and stop frontline staff from doing their crucial work to rehabilitate offenders and cut crime. Our new scanners help us keep out dangerous and illegal items from prison that means our staff can create a better environment to get offenders off drugs and into work – which is the key to reducing reoffending." A Prison Service spokesperson added: "These illegal items would have been destined for the prison wings, fuelling the illicit economy that drives debt and associated violence." In a statement released by the Ministry of Justice, Joanne Sims, Governor of HMP High Down, said: "This equipment is proving to be a successful deterrent to anyone wanting to smuggle illegal items into our establishment. The X-ray body scanner supports our aim to provide a safe environment for our prison officers and the men in our prisons." The Government has funded the scanners as part of its £100 million Security Investment Programme to tighten security in prisons.

George Orwell - Biased Language Can Reinforce Biased Thinking

Helen Adam, Family Law: Language matters. In his famous 1946 essay Politics and the English Language, George Orwell pointed out that there is a relationship of cause and effect between what we say or write and what we think. 'The slovenliness of our language', he wrote, 'makes it easier for us to have foolish thoughts'. He warned that unless we think carefully about the language we use, then familiar stock words and phrases 'will think your thoughts for you'. More than ever before, perhaps, we are now aware of the power of language to influence thoughts.

As a society we have made huge progress, for example, in removing gender-biased and racist language from everyday speech. We do this because we recognise that using biased language can reinforce biased thinking. But there remain areas in which the power of language to influence

thought and behaviour has not yet been properly appreciated. This article concerns the use of the language of aggression and conflict in the context of family breakdown and argues that it is time for change. A new language around family breakdown is needed to ensure safety and protect children of parents who separate. If that is to happen then we, the family professionals, must lead the way to help politicians, the press, the public and ultimately the parents who separate understand a safer approach when parents live apart.

A Language of the Past: Our historical roots govern the current language and cultural framework for separated parents. When George Orwell was writing his essay, family breakdown was a matter for litigation. Over half a century later, and with radical changes in society to family and relationships, we still carry the unfortunate legacy that family breakdown is litigation, conducted by litigators and requiring litigious vocabulary. We see ugly outcrops remaining like a stain on our national vocabulary.The stain that it has left is exemplified by the oft-heard proprietorial term 'custody', with all the association of ownership and control of a child that comes with it. One step further, and we are in the territory of a 'custody battle', an adversarial term that pits parents against each other as they fight over the control of their child. These terms are deeply engrained in our national understanding of family breakdown. We still hear government ministers referring to 'custody' and, as for the press, we rarely see our world correctly referenced. A 20 second Google search has immediately found a national paper headline this week to a judge making a ruling 'in a child custody case'. How can we expect the public, and the parents who separate, to use appropriate language that ensures safe outcomes for all if our politicians and our press continue to get it so wrong?

Why This Matters: If efforts are to be made to change our language, then a first step is to understand why this matters. One of the critical societal changes over the last century has been in our understanding of child welfare. We have moved from a society where 'children shall be seen and not heard' to the modern-day emphasis on the 'voice of the child'. Furthermore, we now know that children are harmed by continuing parental conflict, which was either unknown or not considered relevant for much of the last century when divorce was conducted as litigation. The work of Professor Gordon Harold and others has clearly established that the quality of the inter-parental relationship, specifically how parents communicate and relate to each other, is a primary influence on children's long-term mental health and future life chances (Harold, G, Acquah, D, Sellers, R and Chowdry, H (2016). What works to enhance inter-parental relationships and improve outcomes for children. Department for Work and Pensions.) It is therefore incumbent upon us not to use terminology or language which undermines the inter-parental relationship.

On a parallel but different track, another key area in which society has changed over the last century is in our understanding of the prevalence and incidence of domestic abuse. We must be mindful of the language needed for those who are vulnerable from abuse. In families where either adults or children are at risk of abuse, they may very well need the protection of court. The language needed for these families should be centred around ensuring safety as a priority. Holding these two important principles alongside each other to promote good outcomes for all requires careful language. A national presumption that family breakdown is managed by adversarial litigation is unhelpful; it exacerbates conflict and too many children are harmed by it. Equally, language that unequivocally promotes a continuing parenting relationship will put some families at risk of ongoing abuse. An automatic expectation of cooperative parenting may be actively dangerous for a minority of families.

Clear messaging: If there is to be any chance of parents and children – or indeed politicians, the media or society at large – understanding our law, we must be clear in our messages. We all

need to be working hard at our inner dialogues, reminding ourselves that working with families at this most vulnerable of time is a huge responsibility. As mediators, Cafcass, legal executives, solicitors, barristers or judges, we must be mindful of the language we use in our mediations, reports, letters, opinions, submissions and judgements. Are we compromising safety for this family? In the absence of safety issues, are we jeopardising the ongoing parenting relationship? Are we putting a child's future welfare and life prospects at risk by the language we use with these parents?

When meeting representatives from the Private Law Working Group early last year, members of the Family Justice Young People's Board commented that they do not like their family issues being referred to as 'Smith vs Smith'. When I began as a family solicitor over 30 years ago, it was customary to head our letters 'Smith vs Smith'. I hope this practice is now in the past. We know from the Mapping Paths to Family Justice research (Barlow, A, Hunter, R, Smithson, J and Ewing, J (2017). Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times, Palgrave, Socio-Legal Studies) that many solicitors work hard to try and contain rather than escalate conflict, acutely aware that the language we use can inflame or pour balm on the situation. The authors also cautioned that language which promotes a view of court as always 'harmful' is unhelpful when, for some, court is the necessary option to ensure safety or for needs to be met, or it may be a necessary default option if an ex refuses to engage in a less adversarial process. Too often, the language we use is that of those who work in the system rather than the language of those who use the system. It is confusing for parents, and the young people whose lives are affected, to be thrust into a vocabulary of justice and conflict. When family relationships are in crisis, a different language is needed, one that can be understood and applied.

So what messages do we want parents and children to receive about family law? What will the future for their family be in the aftermath of parental separation? For starters, safety comes first. No child or parent should live in fear of their safety or of being coercively controlled by another. If there is any form of domestic abuse, then there are specialist services to help and the family court is there to protect you. This is the language of safety In the absence of safety concerns, the law expects parents to prioritise child welfare over and above their negative feelings about each other. Parents are given responsibility rather than rights and both parents have a responsibility to promote the child's relationship with the other parent. Yes, time with a child is important, but the way we relate to the other parent is also important. Children need parents who don't live out their hatred for each other. The law expects parents to cooperate. The term co-parenting is confusing for many parents and ends up being interpreted as 50:50 time. The longer phrase 'cooperative parenting' says what it is on the tin; children need their parents to cooperate with each other, where safe to do so.

What about the concept of 50:50 shared care? I'm very happy to share my cake with you 50:50 so we each get to eat half, but I wouldn't do that with a child; it speaks more of asserting my rights as a parent, than meeting a child's needs. The law says parents remain responsible for their child 100% of the time, regardless of where their child might be at any time. The starting point is therefore 100:100 and, within that, to find practical arrangements that work well so the child can enjoy a close and nurturing relationship with both parents. Those arrangements may end up being something broadly equivalent to 50:50, but they must fit the child's needs. This is all about reframing language away from a parental assertion of rights to an understanding of child welfare.

It is also important that parents, and indeed society, understands a clear message that the court is there for those who are vulnerable and need protection. Otherwise, parents should not be turning to court with their disagreements and instead should look to a range of services

to help them arrive at their own family solution. This may be with the help of legal support, mediation, separated parenting programmes, therapeutic support or any one of the DWP Reducing Parental Conflict programmes. Many parents need help to navigate the upset of relationship breakdown, to dial down conflict, and over time to rebuild a cooperative parenting relationship. The law expects parents to be turning to these out-of-court services rather than inviting the court to become involved in the fallout which flows from the end of their relationship.

Fight or Flight: We hear the language of 'fighting for my rights' in respect of children, the context of a boxing ring. The legal directories promote this with references to acclaimed professionals being someone you 'want in your corner'. The backdrop of an adversarial system for parents in difficulties (perhaps without knowledge of the other support available) is daunting; for some it may promote a fight or flight response. The world inhabited by legal professionals will often engage with those who take the fight route. I'd like to pause for a moment and think about those who take the flight route. Recent market research from Dad.info found that 38% of single mothers said their child had no contact with the other parent. A number of this group will have ceased contact for important safety reasons; while the numbers of cases involving domestic abuse are worryingly high, nobody has suggested that as many as 38% of families have abuse serious enough to warrant no further contact with a child. There will no doubt be some parents who, for whatever reason, may not want to maintain contact with their child. However, the Dad.info market research also found that the most common reason given by parents for losing contact with a child was to avoid conflict. The prospect of conflict and a fight within an adversarial system steeped in litigation is, for some, a deterrent. Not everyone can stomach it. Far from ensuring children grow up with close relationships with both parents where safe to do so, our system leads a significant percentage of children to lose a relationship with a parent. They choose to melt away and drop out of a child's life. Flight is better than fight. Again, we need to address this by the language we use. In the absence of safety concerns, a child has a right to enjoy a relationship with both parents; unless there are safety reasons, it is harmful to a child to deny them a relationship with their other parent.

A Time For Change: These messages need to be widely understood, and parents and children need to be hearing the same message wherever they turn. We no longer live in a society where family breakdown is a matter for litigation, where relationship turmoil is played out through lawyers and courts. The Family Solutions Group report challenges us all to reflect on the language we use: The task of parenting a child continues from birth until well into adulthood. This task continues for parents who are together, for parents who are separating and for parents who have separated. The end of a couple relationship does not mean an end to parenting responsibilities; they may be exercised differently post-separation but they continue, nonetheless. In short, we need to reframe language in the information and support which precedes the justice system, to that of two parents who, where safe to do so, will continue the task of parenting from birth until adulthood, whether together, separating or separated.4

Good news is that we are in a season of change. The Private Law Advisory Group is working with experts to redesign our system for parents who struggle to agree child arrangements. Pathfinder pilots are being planned for Dorset and North Wales, and no doubt careful thought will be given to the language which surrounds the pathways on offer. We also have new divorce legislation coming into force in April 2022, and this will inevitably generate media attention. This is a perfect opportunity to reframe our national vocabulary for family breakdown. The Family Solutions Group has called upon government for a national public education campaign, to reframe outdated cultural attitudes towards a 21st century understanding of family relationships and child welfare.

We know there are many practitioners who are troubled by the inappropriate language used in our field. Emma Nash at Fletcher Day is launching the Family Law Language Project. The purpose of the project is to improve the use of language in family law to help make the family justice system less acrimonious and more accessible for all but particularly to children. Anyone interested in contributing ideas and/or resources, please contact Emma Nash at Fletcher Day. It is also worth mentioning FrameWorks UK, which specialises in this field: how you frame a message affects how it is received. FrameWorks UK operates on a project-by-project basis, often funded by a coalition of partners for a particular cause. If there were ever a cause which needed reframing, it is the system parents who get into difficulties when they separate. Is there scope for a coalition of partners in our field to commission FrameWorks UK to take on this task? Anyone interested, please contact Helen Adam at helen@wellsfamilymediation.co.uk

To paraphrase Orwell, we must not let the language currently used for the family justice system think society's thoughts for it. A new language is needed and now is the time for change.

Pitfalls of More Rehabilitative Police Cautions

"It's all good sending a person to court for every offence they may have committed, but if they are not learning from that, then what is the point? Because they will just keep reoffending"

Changes are coming to how the police deal with lower level crimes. Come 2023, the current menu of six "out of court disposal" options will move to three – community resolutions (for lower level crimes), and two types of caution. The big change is that the police must attach conditions to the new cautions. These conditions would require the person to engage in some way with the outcome, for example by attending a course to address the underlying causes of behaviour, or paying compensation to the victim. This emphasis on rehabilitation and reparation has great potential. How can we avoid the changes doing more harm than good?

The broad strokes of the government's new framework are set out in the Police, Crime, Sentencing and Courts bill, but there are many nuts and bolts to be thrashed out over the next year. Cautions with conditions could help reverse the decade-long decline in use of diversion and out of court disposals. Many police officers like the idea of being able to offer a rehabilitative response to people who commit a crime; something tailored and constructive to do rather than send them to court where they will most likely receive a fine. And having conditional cautions available does seem to lead to cases being diverted from court. Police officers found the prospect of rehabilitation offered by conditional cautions so appealing that they were using them for lower-level offences too. This was instead of using lighter touch options such as a community resolution.

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