

### Radical Prison Reforms???

Source: Inside Time: The Government has set out wide-ranging plans to reform prisons in their latest White Paper on prisons policy. Ministers aim to bolster security, improve rehabilitation, and recruit and retain more prison officers, as they spend £4 billion building an extra 20,000 prison places to cope with an expected surge in the number of people in custody. The proposals were set out in a Prisons Strategy White Paper launched last month by Prime Minister Boris Johnson and Justice Secretary Dominic Raab with a visit to HMP Isis. The pair met the prison's pink-haired governor Emily Thomas, who Raab called "trailblazing".

Raab said: "Prisons keep people safe by taking dangerous criminals off our streets, but they can only bring down crime and keep the public safer in the longer-term if they properly reform and rehabilitate offenders. In this White Paper we've set out our new strategy to support prisons to do both more effectively." Among the proposals to make prisons in England and Wales safer and more secure are: Replacing vape pens, blamed for starting more than 1,000 fires a year in cells, with "safer smoking cessation products"; Trials at some prisons of alternatives to disposable razors, which can be used as weapons or for self-harm. If successful, the change will be extended nationwide; Possibly asking staff to take X-ray body scans and drug tests to combat corruption – although trade unions will be consulted before the plan goes ahead; Smoke detectors to be installed in 35,000 cells which lack them; Tests of digital systems for monitoring vital signs of prisoners at risk of taking their own lives.

Measures to improve rehabilitation include the nationwide introduction of a scheme, already running in parts of the country, which offers 12 weeks' accommodation to prison leavers at risk of homelessness. However, no start date has been set. After years of campaigning by charities, the paper commits the Prison Service to "explore" ending Friday releases by allowing people to leave jail a day or two early, but only at the Governor's discretion and in cases where a Friday release would set back that individual's resettlement. Ex-offenders will be employed in peer support roles at some prisons over the next two years. The use of in-cell laptop or tablet computers will be extended – but only to 11 more prisons in the next two years, which will still leave most of the estate without the technology. Secure video calling to family or friends, introduced as a response to Covid, will be kept for the long term. Consideration will be given to "fast-track adjudications" for people who admit breaking prison rules, with new punishments including being required to repair damage caused.

Raab's Prisons of the Future: In the women's estate, where the Government has pledged to build 500 extra places, open units will be added to closed prisons. The paper says the move will "enable more women to be held at the correct security level and enhance access to resettlement opportunities and Release on Temporary Licence". In addition, every women's prison will get a self-contained family unit where women can have extended visits or overnight stays with their children, "subject to robust risk assessments". The White Paper gives an update on the Future Regime Design programme, which is reviewing how prisoners spent their time amid claims that the Covid lockdowns made jails safer by reducing violence and self-harm. It concludes that one lesson learned from Covid "is that in parts of the estate, mass unstructured social time can make some prisoners feel unsafe and can inhibit the ability of staff to manage risks of violence and bullying". In response, governors will be given powers "to focus more closely on the different needs and goals of the prisoners in their establishments so that the

regime day is shaped so that each prisoner's time can be spent more meaningfully".

The Government claims its White Paper provides a seven-point blueprint for the prisons of the future, with its focus on: Stronger security, including more use of X-ray body scanners; Tackling drug addiction, including more abstinence-based rehabilitation; Clearer assessment of prisoners' education needs, overseen by a national Prisoner Education Service; A push to get prison leavers into work, with league tables showing each prison's success rate; 'Resettlement Passports' to ensure prison leavers are work-ready with ID, CV and bank account; More in-cell tech for prisoners to manage their daily lives and support family ties; Up to 5,000 extra staff, better training and greater autonomy for governors. The 76-page document concludes with 19 questions, with responses invited by February from "those with an interest and expertise in our prisons". Announcing the Government's plans, Prisons Minister Victoria Atkins said: "We are recruiting more police officers, we are putting serious offenders behind bars for longer, and now we are building state-of-the-art prisons, bolstered with a regime that will drive down re-offending by making sure that every day that an offender spends behind bars involves purposeful reform and rehabilitation to help them to go straight, turn their life around and make a positive contribution to society."

Responding for Labour, shadow prisons minister Ellie Reeves said: "Many of the measures announced today treat the symptoms of our broken prison system but do not tackle the root causes of the problem. "This is a Government who have failed to get even the basics right in our prisons. After a decade of cuts in the justice system, prisons are currently understaffed, dilapidated, dangerous and overcrowded, with prisoners spending up to 23 hours a day in their cells with no purposeful activity." Peter Dawson, director of the Prison Reform Trust, said: "You can't build prison reform on a foundation of overcrowded, dilapidated prisons where prisoners spend most of their day in their cells."

To contribute your views to the Government's consultation on prisons, write to: Prisons Strategy White Paper Team, Ministry of Justice, Future Prison Policy, Floor 7, 102 Petty France, London, SW1H 9AJ. Responses must be received by 4th February, 2022.

### Newsbites From 'Inside Time'

Prisoners who make complaints against their prison are now entitled to free photocopies of the paperwork – making it easier for them to escalate the matter with the Prisons and Probation Ombudsman (PPO). A revised version of the Prisoner Complaints Policy Framework, published by HM Prison and Probation Service on December 2, says staff must provide copies of key documents without charge when requested. It applies to responses to complaints submitted on COMP1 forms and appeals on COMP1a forms. Where a prisoner makes a confidential access complaint on a COMP2 form, they should automatically receive two copies of the response to avoid the need for photocopying. The change has been welcomed by the PPO.

*Staff Should Wake Prisoners, Says Coroner.* A coroner has suggested that prison officers unlocking cells in the morning should wake up any prisoner who appears to be asleep – to ensure they are alive and well. Janine Wolstenholme, Assistant Coroner for West Yorkshire (Eastern), wrote to Prisons Minister Victoria Atkins making the recommendation following an inquest into the death of Connor Hault, 24, who took his own life at Wakefield prison in 2019. The inquest heard how three prison officers looked into his cell – one in a roll check at 6.30am, one whilst unlocking his door at 8am and one when relocking it at 8.45am. All assumed he was watching television. At 9.50am an officer came to the cell to seize unauthorised footwear and found that Connor had been dead for some time, probably throughout the three earlier visits.

*New Body to Investigate Scottish Prison Deaths.* Deaths of prisoners in Scottish jails will be

investigated by a new independent body, after the Scottish Government accept a report recommending the measure. Investigators will produce a written report on each death and make recommendations on lessons learned. The change will bring Scotland into line with England and Wales, where the Prisons and Probation Ombudsman produces a report on every death in prison. The Independent Review into the Response to Deaths in Prison Custody was ordered by the Scottish Government two years ago, after 21-year-old Katie Allan and 16-year-old William Lindsay took their own lives within four months of each other at Polmont young offender institution. Welcoming the findings, Scottish Justice Secretary Keith Brown said: “We accept in principle the review’s recommendations ... This includes the key recommendation of an independent body separately examining every death in custody.”

*Hundreds Spend Years on Remand.* Hundreds of people have spent more than two years on remand during the Covid pandemic, according to research by the pressure group Fair Trials. Data released by the Ministry of Justice following Freedom of Information requests by the campaigners shows that in June, 1,523 people had been on remand for more than a year in English and Welsh prisons, and 475 for more than two years. The law sets a limit of six months for pre-trial detention, but during the pandemic, with many courts shut and the backlog of cases growing, judges have routinely granted extensions. Last year the limit was temporarily extended to eight months, but this made little difference and it has now returned to six months. Griff Ferris, Legal and Policy Officer for Fair Trials, said: “The Government needs to take urgent action to implement structural solutions to this crisis, including releasing people from remand.”

*Revealed Jails With Most Misconduct Probes.* Some prisons in England and Wales have seen an unusually high number of staff face misconduct investigations, according to Ministry of Justice figures. Data released to The Guardian newspaper show that prison staff faced 2,619 misconduct investigations in 2019/20 – a small increase on the previous year’s figure. These involved 1,266 staff, with some individuals facing multiple investigations. It meant that 3.4 per cent of staff faced investigations during the year – but at some prisons the figure was significantly higher. At The Mount, 9 per cent of staff faced at least one investigation, and at Cardiff, Nottingham and Swinfen Hall the figure was 8 per cent. The data also showed that 78 staff were recommended for dismissal during the year. All figures relate to people directly employed by HM Prison Service or the Youth Custody Service.

*Dispensing Lockers Bring an End to Meds Queues.* High-tech lockers which scan prisoners’ fingerprints then dispense medication automatically have been welcomed by residents and staff. Healthcare staff place prescriptions inside separate locked compartments of the secure cabinets, then alert prisoners that they are ready to collect. Those behind the scheme hope it will reduce the problem of bullying in meds queues, speed up distribution so that prisoners can use their time out of cell for other things, and reduce the chances of prisoners being given the wrong medication. The first of the lockers was installed at Dovegate in 2019, and a survey found that prisoners and staff welcomed the change. The prison’s private operator, Serco, has extended the scheme to a second prison, Ashfield, while Dovegate’s healthcare provider, Practice Plus Group, has introduced it at several public sector prisons. Further expansion is expected this year.

*‘Prison Gender Gap Shows Men Have it Tough.’* A Conservative MP has pointed to the fact that most prisoners are male as an example of inequality. In a Commons debate to mark International Men’s Day in November, Nicholas Fletcher said 96 per cent of prisoners and 83 per cent of rough sleepers are men, while men also die younger and are more likely to be unemployed or take their own lives. He said: “There has been a creeping narrative that

males have it easy, that their life is a breeze ... it is clear that if we witnessed such disparities between other groups, there would quite rightly be uproar.” Fletcher also complained that women have replaced men in TV and film roles including Doctor Who, the Ghostbusters, Luke Skywalker and The Equalizer, adding: “Men are left with the Krays and Tommy Shelby [from Peaky Blinders]. Is it any wonder that so many young men are committing crimes?”

*Justice System Can be “Barbaric”,* says Robert Buckland. Just months after he was sacked as Justice Secretary, Robert Buckland QC has claimed that some prisoners are victims of “barbaric” treatment in the justice system. The former Cabinet minister, now a backbench Conservative MP, spoke out in a House of Commons debate about funding for research into autism and other neurodiverse conditions. Buckland, who has spoken about his experiences as the father of an autistic daughter, said: “Disproportionate numbers of autistic people and people with brain conditions end up in mental health detention or, even worse, in our criminal and youth justice systems. They are being locked up by a system that represents barbaric practices from a generation ago ... I have certainly found, from my professional and ministerial experience, far too many in our prison system, our young offenders’ institutions and our criminal justice system generally with those conditions.”

*Trans Women with GRCs in Male Prisons.* At least two trans women prisoners who have legally changed gender from male to female, and have Gender Recognition Certificates (GRCs) to prove it, are currently being held in men’s prisons in England and Wales. The decision to hold the individuals in men’s prisons goes against the normal Prison Service policy that trans prisoners with GRCs should be allocated to prisons of their new gender. The policy contains an exemption that they can be placed instead in a prison of their former gender – effectively disregarding their GRCs – if to do otherwise would present too much risk to other prisoners. Justice Minister Lord Wolfson of Tredegar revealed the situation during a debate on trans prisoners, telling the House of Lords: “There are trans women with GRCs who are now housed in the male estate following the risk assessment process.”

*Phone Calls Come With a Recorded Message.* From December 13, anyone receiving a phone call from a prisoner will hear a recorded warning message before they can start the conversation. The announcement states: “This call is from a person currently in prison in England/Wales. All calls are logged and recorded and may be listened to by a member of prison staff. If you do not wish to accept this call, please hang up now.” People receiving calls from Welsh jails will get a double dose – because the message will be played in both English and Welsh. On the plus side, the Prison Service has stated that the prisoner’s phone credit account will not begin to be charged until the message has finished playing and the actual call begins.

*More Delay for Secure Schools.* Plans to open the first “secure school” to provide children in custody with teaching and therapy have been delayed for another year. The facility, which was due to open this year on the site of the former Medway Secure Training Centre (STC) in Kent, has had its launch date pushed back to 2023 because the Government first needs to change the law to allow a charity to run a custodial institution. The idea of secure schools arose from the 2016 Taylor Review of the Youth Justice System, and the Conservatives pledged in their 2019 manifesto to open one. Later that year the Government announced Oasis Charitable Trust as the operator of the first secure school. Shortly after Medway STC closed, the site reopened for a few months to hold men during the Covid pandemic. It has been unused since September 2020.

*Vital Smoke Detectors to be Installed in 7 Years’ Time.* A coroner has demanded that

smoke detectors are installed in prison cells after an inquest found that safety failures contributed to a prisoner's death. Scott Matthewson, Assistant Coroner for Mid Kent & Medway, said fire detection systems in prisons are "inadequate and unsafe" because they do not raise an alarm quickly enough to save the life of a prisoner locked in a burning cell. The Prison Service told the inquest that it plans to fit potentially life-saving in-cell fire detectors at 35 jails in England and Wales – but said the work will not be carried out for up to seven years, due to cost constraints. The revelations came at an inquest into the death of Christian Hinkley at Swaleside in July 2019. The prison lacks an automatic in-cell fire detection system, instead relying on fire detectors in air ducts and corridors – a system which, according to the Crown Premises Fire Safety Inspectorate (CPFSI), is "not designed to save life".

*Confining Rule-Breakers to Their Cells Doesn't Improve Behaviour.* Prisoners who are punished for rule-breaking by being confined to their cells are more likely to break the rules again than those punished in other ways, a study by the Ministry of Justice has found. Researchers looked at 6,000 cases where people who broke prison rules were subject to proven adjudications. Those punished by being confined to their cells were most likely to repeat their offending, while those given a caution or suspended punishment were least likely. Those punished with withdrawal of privileges or added days were in the middle. The authors say their findings reflect American studies which found that segregation, used as a punishment, does not improve behaviour. They said the findings also put a question mark over the use of added days, which they said "remain costly while not appearing to add benefit to custodial conduct outcomes".

### **Prisoners at UK's High Security Jails to Eat Vegan**

Prisoners at Britain's highest security jails will have a health conscious, new Year as they tuck into pakora wraps and poached fish fillets. Inmates will start 2022 with predominantly meat-free and ethical meals as changing tastes in the outside world are reflected behind bars. The seasonal menus at three Category A men's jails include a diverse number of dishes that are mainly vegetarian or vegan. At Wakefield, a detailed grid menu offers a vegan sausage roll and peanut butter bap for lunch from the first day of the new year. Alternatives are the cheese, bean and sausage slice and cheese bap or a tuna salad. Dietary information is listed for every dish, denoting whether it contains items including molluscs, lupulin, sulphur dioxide, crustaceans, sesame seeds, tree nuts, soya and gluten. Vegan choices include halal minced lamb and onion pie, vegetable sausages and mushy peas or a textured vegetable protein vegan hot pot. Inmates who fail to make choices have been told that they will be given a vegan meal by default. The new year's meals came at the end of a week that included dishes such as a 'chef's choice', tarka dahl and rice and vegan treacle slices and custard. Quorn fillets in tomato sauce are the vegan option for new year's lunch at HMP Frankland. Salmon and sauce is listed as a healthy alternative, along with the 'ordinary' mains of roast turkey and gammon or chipolata sausage and stuffing. Halal diced pepper beef casserole is the final item on the jail's festive menu, provided to Metro.co.uk by the Ministry of Justice (MoJ) after requests under the Freedom of Information Act At Belmarsh, a pakora wrap or tuna mayonnaise baguette is the choice from January 1, 2022. The evening menu includes vegetable madras, chicken goulash, poached fish fillet, mince beef and onion pie and fish fingers. They will all be served with potatoes or rice and vegetables, the menu states. Wakefield's menu triggered accusations that pampered inmates were being treated better than many in the outside world when it was revealed by Yorkshire Live at the end of November.

**I Had Accepted My Life In Prison – Until It Prevented Me Helping A Friend In Need**

Eric Allison: For 16 years, on and off, I was held at Her Majesty's pleasure. It was the struggles and loss of a friend on the outside that made me realise how powerless I was. I am sure those who know my backstory of criminality imagine – reasonably – that the toughest times of my life were while I was a guest of Her Majesty, who kindly gave me full board and lodgings for 16 years, on and off, during the first six decades of my existence. And they are half right.

My first taste of her hospitality came in 1957 when, at 14, I was ordered to spend three months in a detention centre. Then a relatively new concept, these were designed to give miscreants a "short, sharp shock" that would teach us to stay on the straight and narrow. It didn't work, of course, which I know because I met up with virtually all of the class of '57 from Foston Hall, Derbyshire, in different jails and at different times. As for the teaching element, I was sent there for nicking a chewing gum machine. It was a bit of a lark, really, and a long way from the crimes that led to my last jail term: seven years, in 1996, for relieving Barclays Bank of a million pounds and producing counterfeit giro cheques of such high quality that the benefits system was forced to issue a new design; Post Office staff could not differentiate our cheques from theirs. (One for Michael "Prison works" Howard to think about.)

I had a few difficult periods during those stays. I did frequent stints in isolation – and I was in prison when a diet of solely dry bread and water, for three days at a time, was a lawful punishment for misbehaving cons. No doubt I would have been birched, too, had that punishment not been abolished in 1962, a couple of years before I arrived in the adult system (for stealing a tray of rings from a jewellers). I have also been on the receiving end of bad – in fact, illegal – behaviour from staff, usually out of sight, in segregation units. When I was a witness to mistreatment, rather than a victim, I chose to call out the behaviour of staff. If my attitude landed me in hot water, I was always determined never to let my keepers see they were getting me down. I forced my feelings to follow my resolve. So, all in all, yes, I have served hard time.

Yet somehow it never drove me near despair. You see, I chose to become a criminal; volunteered, if you like. I was steeped in crime, enjoyed my work and willingly signed up to the adage: "If you can't do the time, don't do the crime." Accordingly, when mistakes occurred at work and I ended up in the slammer, I regarded it as an occupational hazard.

The toughest time of my life, although occurring in prison, had nothing to do with the difficulties chronicled above. It took place while I was sailing serenely through a seven-year sentence in a civilised jail, HMP Risley. Around the back end of 1998, I received a letter containing disturbing news about a dear friend, who was struggling to cope with life on the outside. It had happened before – particularly badly in 1989 – but then I had been free and could be by his side. I more or less moved in with him, listened to him and sometimes laughed with him, encouraging him to think of good times we had enjoyed and could enjoy again. He eventually recovered and we did, indeed, spend some good times together.

This time, however, there was no possibility of me going to him, and he had medical issues that prevented him from visiting me. All I could do was make phone calls and write letters until I was free – in about a year's time. It was not enough. Perhaps nothing would have been. Ultimately, there were to be no more times, good or bad, spent together again.

I had wanted to offer him my attention and constant presence, but I could not – and that was due entirely to my incarceration. When my loss of freedom hurt only me, I was happy to take the consequences, but I felt the full force of it when it affected my ability to help him. For the first time in my chosen career, I felt the powerlessness and impotence of captivity. To my mind, I had failed my friend. This was my nadir, my rock bottom.

I coped, because you have to. Life moves on and time heals, but the episode left its mark. That was my last jail term to date. I have asked myself if it had any bearing on me going straight. The truth is, I don't know. I didn't commit any crimes between my release, a few days before the end of last century, and the almost accidental securing of my role as a Guardian journalist in 2003. But I had been away the best part of four years, so I was due a sabbatical, if you like, until I had adjusted fully to life outside the walls. Plus, my work in the latter stages of my career involved long-term planning. But crime has a strong pull; I sometimes miss the buzz of it. So I will never know.

What I do know is that, 23 years on, I am in a much better place, physically and spiritually. It is a good feeling. I am in the 17th year of my journalistic journey and while, sadly, reporting doesn't pay nearly as well as crime (and is considerably more stressful), it has one major perk: I know I will not be going back to that place of lowest point again.

### **I Felt So Alone And Rejected – Until My Prison Cellmate Taught Me About Belonging**

Alex Wheatle: Abandoned and neglected, I was close to a breakdown when I entered Wormwood Scrubs. Then Simeon introduced me to the black literature that inspired me to write. It was June 1981 and I was 18. I stood in the dock at Camberwell Green magistrates court in south London. I was just about to receive my sentence for my role in the Brixton uprising of that April, after being arrested for assaulting a police officer. Ignoring the summary of my case, I stared into the public gallery. Relatives of the other six accused sat there in quiet, hopeful silence. I imagined they were mums, dads, aunts, uncles, siblings and grandparents. But not one belonged to me.

I studied their faces, trying to comprehend what it might be like to have someone of your own blood supporting you. I tried to picture what my own parents looked like and what they might feel as I was handed down my sentence. If my mother were present, would she be weeping? I barely heard the 12-month custodial term being given to me. As I glanced at my fellow accused, I suddenly became very resentful. I guessed they would be visited by relatives wherever they were sent. For me, there was no one. Not even a second cousin.

There were numerous times I had felt isolated, especially growing up in the notorious Shirley Oaks children's home in Croydon, after being abandoned by my father when I was two. But I had never felt so alone as in the moment I peered into that public gallery at the court. No one gives a fuck about you, Alex. They took me away in one of those security vans with the blackened windows. As I sat in my cubicle, I wondered if there were any quick and easy ways that I could end my pathetic existence. After being taken to a large holding cell near Lambeth Walk, I was driven to Wormwood Scrubs in west London. For some reason, the jangling of bunched keys and clanging of metal doors seemed much louder in the prison environment than anywhere else.

I was given my stiff prison uniform and escorted to my cell. They opened the door and pushed me inside. I closed my eyes, trying to ready myself for the suicide to which I had committed inside the prison van. The closing door resounded behind me. Opening my eyes, I saw that I would be sharing my cell with a Rastafarian who looked at least 20 years older than me. He introduced himself as Simeon and offered me a cup of tea. I declined and refused to speak to him. I wanted to be left to writhe in my own self-pity so I could devise a plan to end my miserable days. But Simeon persisted in wanting to become acquainted. Besides, it is impossible to find your own space within a tiny shared cell. The tension between us became unbearable, especially as he had a diarrhoea issue.

Eventually, we came to blows. Or rather, he came to blows and I received them. At the conclusion of our fist-to-fist, I sat in a corner, bawling my lungs out. It was not so much because of

the pain Simeon had inflicted, but because of the hard ache of childhood abuse and trauma. Up to that point, no doctor had ever described to me what a breakdown feels like, but I think I was very close to one. Luckily, Simeon took pity on me and insisted that I tell him my story. During that long night, the stench of excrement climbing into my nostrils, I did. He didn't say much, but every now and again he nodded. He understood too well that I was disconnected from my roots, culture and people from the moment I was taken into care at two and a half. He took it upon himself to reconnect me. He pushed CLR James's *The Black Jacobins* into my eager hands. "This will tell you ah little something about where you come from and where you stand in the struggle," he said.

Although my education had stalled, with numerous suspensions and three expulsions, I had always had the ability to read well. When I was five, I started to read the comics and magazines that were sometimes discarded on my dormitory floor. Little did I know that it was boosting my aptitude for the written word. Any novel or text that Simeon fed me, I gobbled up. I read Dickens, James Baldwin, Richard Wright, Langston Hughes, John Steinbeck and so many others. Through reading, I discovered that I wasn't alone in having a difficult start in life. In the silence of the night, Simeon and I would discuss African civilisations. He would teach me about the continent's kings and queens. He schooled me on the struggle for black liberation in South Africa, Angola, Mozambique and other countries. He introduced me to the life of Marcus Garvey and how he not only inspired the fight for equality for black people in the Caribbean, but also influenced the birth of the civil rights movement in the US. Together, we would try to decipher Bob Marley songs. We would sing the Wailers' *Get Up, Stand Up* and Dennis Brown's *Three Meals a Day*. He would laugh at my impressions of the reggae artists Barrington Levy and Johnny Osbourne. Simeon became a mentor and a father to me. I didn't feel alone any more. I released the rope that I had clutched and held on to from the moment I gazed into the public gallery in court.

Just before I completed my sentence, Simeon instructed me: "Alex, your life, and all those of the underclass, is just as valuable as anyone else's in this world; never forget that." With that mantra repeating in my head, I started to write. Initially, reggae lyrics and poems about my lived experience. My fables are essentially the tales of the underclass or, as we used to say in Brixton, the sufferah. Whatever I achieve in this old writing game is down to the conversion I experienced under Simeon in Wormwood Scrubs. The stories are already there, sometimes going unnoticed, ignored or rejected. All I do is try to make them important. I will be forever grateful to him. - Alex Wheatle's latest novel, *"Cane Warriors"*, is out now

### **Pardons Extended to All Abolished Same-Sex Crimes**

More people will be eligible for a pardon for historical criminal convictions relating to homosexual activity, the government has said, It means anyone convicted or cautioned for consensual homosexual activity, under now-abolished laws, can apply to have them "disregarded". The convictions would be wiped from record and an automatic pardon given. The home secretary said she hoped the revised scheme "would go some way to righting the wrongs of the past". Since 2012, people in England and Wales have been able to apply to have historical same-sex sexual cautions and convictions disregarded. And in 2017 so-called "Turing's Law" was passed - named after the wartime codebreaker Alan Turing who was convicted of gross indecency for homosexual acts. It granted automatic posthumous pardons to others who were convicted of sexual acts that are no longer deemed criminal. However, campaigners have argued the crimes covered by the scheme are too narrow. The current law only covers nine former offences included on a specified list, largely focused on the repealed offences of buggery and gross indecency between men. BBC news: Campaigner Lord Cashman has previously highlighted how the offence of solicitation by men, which he said

"was used to entrap gay and bisexual men, sometimes for doing nothing more than chatting up another adult man", is not included in the original scheme. Earlier this year, fellow peer Lord Lexden said it was "an affront to gay people" that the scheme had not been extended. The government intends to use an amendment to the Police, Crime, Sentencing and Courts Bill to broaden eligibility for a pardon. In the future, the scheme will encompass any repealed or abolished civilian or military offence which was imposed on someone purely for, or due to, consensual same-sex sexual activity. The amendment will also enable those who have died prior to the amendment coming into force, and within a year after the amendment comes into force, to be posthumously pardoned.

Home Secretary Priti Patel said: "It is only right that where offences have been abolished, convictions for consensual activity between same-sex partners should be disregarded too." I hope that expanding the pardons and disregards scheme will go some way to righting the wrongs of the past and to reassuring members of the LGBT community that Britain is one of the safest places in the world to call home. Lord Cashman, Lord Lexden and Prof Paul Johnson, who also worked on the campaign, welcomed the news. In a statement, they said: "Parliament has a duty to wipe away the terrible stains which they placed, quite wrongly, on the reputations of countless gay people over centuries."

#### **Digital Evidence in Criminal Cases can 'Obscure Rather than Illuminate'**

Sam Tobin, Law Gazette: Digital evidence in criminal cases will often increase the chances of justice being done but the courts must face that it can also 'obscure rather than illuminate', the president of the Queen's Bench Division has warned. Dame Victoria Sharp said the proliferation of technology has 'transformed society and has led to distinct changes in how individuals behave and engage with the world around them', presenting legal systems with 'extraordinary challenges'. This requires 'adapting existing legal frameworks to new types of crime' as well as 'developing the expertise to combat such criminal activity, including internationally in this technologically connected world', Sharp said in a speech to the National Criminal Justice Conference published today. 'There are now very few crime scenes that might not be better described as digital crime scenes,' Sharp said. In many cases, the quality and legal integrity of digital evidence can be essential to 'the fair resolution of the case'.

However, Sharp cautioned that digital evidence must be 'comprehensible and credible to the decision-makers in our system, who are, for the most part, ordinary members of the public sitting as lay magistrates or as jurors'. The 'vast amount' of digital evidence available to investigators and prosecutors is a 'potentially precious resource', Sharp said, which may prove 'more reliable than traditional evidence and thus further the interests of justice'. But Sharp emphasised that 'jurors – and, indeed, judges dare I say it – have to understand the evidence that is put before them'.

'Whilst digital evidence can enhance the prospect of justice being done, the scope for evidence that deals with the new technologies to obscure, rather than illuminate, must also be faced,' she added. Sharp suggested that 'it would not be surprising' if judges or jurors found it difficult to understand expert evidence or follow cross-examination aimed at 'revealing flaws in scientific methodology, or then to determine how much weight to attach to it'. This gives rise to the 'obvious risk that the resolution of an issue in dispute will simply involve deference to the opinion of a convincing expert', she said. The master of the rolls Sir Geoffrey Vos said last year, albeit in the context of commercial and financial disputes, that developments in technology – in particular, the recording of transactions on the blockchain – may make arguments 'impossible' meaning that 'disputed transactions will become a thing of the past'.

#### **Colston Four and 'The Right Side Of History'**

Nicholas Reed Langen, Justice: Trial by jury plays a 'significant historical place in our legal traditions, and...in securing the fairness of certain trials'. This was the attitude of the government just before Christmas in its much vaunted Human Rights consultation. Britain's history of protecting the jury trial, traced back to Magna Carta and the Bill of Rights 1689, was proudly held up in it as an example of British justice. The government was even hopeful that 'there may be scope to recognise the trial by jury in the Bill of Rights...'.

Given that this was a particularly pointless addendum to the consultation document – no one thinks trial by jury is under any sort of threat – this may be something the government now regrets, as it sends ministers out to condemn the verdict of the jury in the trial of the Colston Four. Robert Jenrick, now removed from Cabinet, but not an MP unwilling to brownnose the government, was quick off the mark, claiming on twitter that 'we undermine the rule of law...if we accept vandalism and criminal damage are acceptable forms of political protest...'. Grant Shapps, the Transport Secretary, echoed him on Thursday morning, telling Times Radio that 'we're not in a country where destroying public property can ever be acceptable'.

Unfortunately for Shapps and Jenrick, they are wrong on both counts. We are a country where destroying public property can be acceptable- or at least not criminal. And it is because of this that we are a country that upholds the rule of law. This may be, as some commentators have claimed, the elevation of 'values' over 'law', but that is to forget what the criminal law really is. Criminal law is nothing more than the identification of behaviours which are incompatible with society's values and principles, elevated to legal status. The prohibition of such behaviours is then enforced through a jury – serving as society's representatives – making a decision on whether those values have been breached in a criminal way.

In the case of the Colston Four, this is exactly what happened. Rhian Graham, Milo Ponsford, Jake Skuse and Sage Willoughby were charged with criminal damage for their role in the toppling of Edward Colston's statue last summer. The Crown gave its case for their conviction to the jury. In response, the defendants' barristers, including Liam Walker, who launched a stirring exhortation for the jury to put themselves on the 'right side of history' in his closing argument, put forward a legitimate defence in law. Having heard both sides, it was the defendants who the jury fell in behind.

Perhaps the government – and those who consider the verdict an assault on the rule of law – would have preferred the trial judge to take the same approach as his 17th century counterpart in Bushel's Case. There, two Quakers were accused of violating the Conventicle Act, which forbade religious gatherings of more than five people without the consent of the Church of England. The jury refused to convict them, concluding that they were guilty of speaking in the street, but that it was not to an unlawful assembly. In response, the recorder, presiding over the case, withheld their dismissal, requiring them to hand down a verdict that the court will accept, depriving them of 'meat, drink, fire and tobacco' detaining them for two days, after which they continued to return a not guilty verdict. Unrepentant, the judge still persecuted the jury, fining them for contempt of court. It took the Court of Common Pleas to correct this, with Sir John Vaughan overturning the fine, ruling that juries could not be punished for the verdicts they returned.

Bushel's Case was foundational in establishing the right of a jury to reach a verdict without fear of punishment. Crucially, it also accentuated the fact that juries are free to reach a decision not only according to law, but according to their conscience. This is something that juries have done again and again, particularly in support of political movements. In 1649, a jury acquitted John Lilburne, a leader of the Leveller political movement during the English Civil War, who was –

not unjustifiably – accused of high treason for trying to foment rebellion against Oliver Cromwell’s protectorship. More recently, as Harood Siddique has written in The Guardian, juries have acquitted Extinction Rebellion protesters for criminal damage to Shell headquarters in London, Greenpeace activists for criminal damage to Kingsnorth power station, and anti-war campaigners for conspiracy to cause criminal damage to US bombers at RAF Fairford.

There is no problem with disagreeing with a jury’s verdict. As I wrote at the time Colston’s statue fell, the setting of a precedent (albeit not a legal one) that permits campaigners and activists to desecrate or topple statues or landmarks that they morally disagree with may set an alarming chain of events in motion. Much of ‘liberal’ society is intolerant of any views that deviate from the approved groupthink, as the Boswell’s School have shown in stripping a school house of JK Rowling’s name, and is ever more prone to judging historical figures by the standards of today. Such an attitude means that there are few figures cast in bronze that rest secure on their pedestals. But to suggest that the verdict is somehow a strike against the rule of law, or is incompatible with British values shows an impressively poor grasp of British history, British values, and British law.

The Colston Four had a strong case. Not only were they able to argue that they held the moral high ground – supporters of Colston had long blocked legitimate attempts to pull him down to earth – but they had a good legal case too. To be convicted of criminal damage, you have to damage property without a lawful excuse- with the belief that people entitled to consent to the damage would accept such an excuse. Edward Colston’s statue stood upon public land, and since its erection has been decried by Bristolians as a stain upon the city, a celebration of slavery and xenophobia in a city famed for its diversity and tolerance. It does not take much to suggest that the people of Bristol wanted the statue gone- by hook or by crook.

Critics of the decision can bemoan the actions of the protesters. They can call for dialogue and discussion, not direct action. They can criticise the conclusions of the jury. But they cannot say the jury’s decision did anything but show that while Britain’s government may have entirely forgotten what British values are, the British people have not.

### **Use of Secondary Legislation ‘Dangerous for Democracy’**

*Sam Tobin, Law Gazette:* Ministers are showing ‘growing contempt for parliament’ through the increasing use of secondary legislation and skeleton bills to significantly change the law without proper scrutiny – a growing trend which is ‘dangerous for democracy’, peers have warned. The ‘subtle but profound shift in the culture of government over the last 30 years’, which has allowed successive governments to ‘chip away’ at processes of oversight and accountability, is ‘turning parliament into a graveyard of democracy’, the House of Lords was told yesterday.

This has led to ‘a culture that says that anything goes, anything can be tried on and any excuse can be offered ... through which ministers can, without restraint, hide in delegated legislation aspects of policy that need to be open to scrutiny and challenge’, one peer said. Thursday’s debate (6th January 2022) on skeleton bills and delegated powers follows two reports published in November, which cautioned that their growing use – accelerated by the twin challenges of Brexit and the pandemic – amounted to ‘government by diktat’.

Baroness (Camilla) Cavendish, formerly head of Downing Street’s policy unit under David Cameron, said that ‘we are sleepwalking into a world where governments increasingly rule by diktat, without even fully realising the cumulative effect’. Referring to the late addition of 18 pages to the Police, Crime, Sentencing and Courts Bill shortly before Christmas ‘which had not been there when MPs voted on it in July’, Cavendish said that ‘this government’s stance seems to

me to be approaching the Orwellian’. Lord Judge, the former lord chief justice, noted that ‘the House of Commons has not rejected a piece of delegated legislation since 1979’ – since when ‘thousands and thousands of pages, in small print, are sent out to us every year, telling us all how we should live’. He suggested that parliament should be able to object to certain parts of statutory instruments and called on the upper chamber to ‘reject any and every Henry VIII clause until the minister identifies the specific areas it is intended to address’. Lord Rooker similarly argued that ‘there is a strong case for a targeted and limited ability of Parliament to amend some SIs’, adding: ‘It would be targeted and limited – there is no way we would go for wholesale.’ However, Baroness Andrews – a member of the delegated powers and regulatory reform committee which produced one of the two reports – said peers should consider the ‘nuclear option’ of rejecting delegated legislation in order to reassert parliamentary sovereignty.

### **Six Especially Ugly Bits of Revised Borders Bill That Really Should be Changed**

These will have a disproportionate effect on Foreign National prisoners: 1. No-notice deprivation of citizenship 2. Priority Removal Notices 3. Accelerated detained appeals 4. Abolition of certain appeal rights 5. Notice requirements for removals 6. Insufficient legal aid. The controversial Nationality and Borders Bill had its second reading in the House of Lords this week. One thing that peers on all sides of the house seemed to agree on – even if for different reasons – is that the immigration system is not working well. They’re right. Official figures demonstrate an unacceptably high level of unlawful decision-making. Half the appeals against Home Office immigration decisions are successful in the First-tier Tribunal. Around one third of judicial reviews lodged against the Home Office are either settled or decided in the claimant’s favour, according to the government’s evidence to the Independent Review of Administrative Law. Contrary to the Home Secretary’s stated intention of “ensuring access to justice and upholding the rule of law”, the Borders Bill fails to address the urgent issues with the current system. These include the need for access to proper legal advice and a properly funded courts and tribunals system, as well as better first instance decision-making. Instead, the Bill contains a series of provisions which make these problems worse: weakening appeal rights despite high levels of wrong initial decisions; requiring judges and Home Office caseworkers to give “minimal weight” to some evidence provided by genuine refugees; creating fast-track processes based on policies previously found to be unlawful; and increasing the Home Secretary’s arbitrary powers, such as the authority to require certain cases to be heard artificially quickly, aggravating the risk of rushed and unlawful outcomes.

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