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CCRC Refers Joint Enterprise Murder Conviction of Kyrone Daley to Court of Appeal

CCRC has referred the joint enterprise murder conviction of Kyrone Daley to the Court of Appeal. On 16 April 2013, at the Central Criminal Court, Mr Daley and his co-defendant were convicted of the murder of Mr Umar Tufail. Mr Daley was sentenced to custody for life, with a minimum term of 22 years. On Sunday 15 July 2012, Umar Tufail was sitting alone in the driver's seat of his car parked outside his home. A second car drew alongside. It was driven by Mr Daley's co-defendant. Mr Daley was the front seat passenger. A shot was fired through the open front passenger window of the second car, hitting Mr Tufail in the head. The emergency services attended and Mr Tufail was taken to hospital, where he died the following day. The prosecution alleged that the defendants had followed the victim's car and that the shooting was an execution, carried out in furtherance of an ongoing dispute between two rival gangs.

At trial Mr Daley denied any knowledge of the gun, or of his co-defendant's intention. In convicting Mr Daley of murder, the jury must have been sure that Mr Daley knew of the gun and, at least, foresaw that his co-defendant might commit murder by firing the gun. Mr Daley appealed against his conviction, but the appeal was dismissed by the Court of Appeal on 16 July 2015. Mr Daley applied to the CCRC in November 2015. Shortly after Mr Daley applied to the CCRC, the Supreme Court delivered its decision in the cases of R-v-Jogee; Ruddock v The Queen [2016] UKSC 8 (Jogee), which changed the law in relation to joint enterprise convictions involving the liability of secondary parties.

Having considered the case in the light of Jogee, and the subsequent Court of Appeal decision in the case of R-v-Johnson & others [2016] EWCA Crim 1613 (Johnson) the CCRC has decided to refer Mr Daley's murder conviction to the Court of Appeal because it considers there is a real possibility that the Court will quash the conviction. The CCRC's referral is based on the change in the law in relation to the liability of secondary parties brought about by the judgment in Jogee and elaborated in Johnson, and on the basis that the Court of Appeal could conclude that to uphold Mr Daley's conviction for murder would amount to a 'substantial injustice'.

Not Innocent Enough?

MOJO Scotland: What, exactly, is the presumption of innocence? How can we claim it as a fundamental of our justice system when our courts not only don't recognise innocence as a concept, but they are powerless to find it, or to declare it? "Innocent" isn't one of the options offered to the finders of fact in our courts – the jury where there is one, or the magistrates and judges. Instead of an active declaration of innocence, the best you can achieve is a passive assertion that you're not legally guilty. Which isn't the same. It's not even close.There's an interesting insight there into the nature of the beast. The unfortunate reality is that your innocence remains intact only up to the point at which you're accused. At that point the question becomes simply one of whether, or not, your guilt can be proved as a matter of law. If it can't, does your acquittal make you innocent? Apparently not. You're simply someone whose guilt couldn't be proved. This, bizarrely, is held up as an example of the fairness of our justice system. And while it's proudly hailed as the product of the presumption of innocence, your innocence has actually been stripped away from you. Suspicion and stigma follow you forever. You're not innocent enough. And this because, and only because, someone accused you.

In March 1991 the Court of Appeal finally quashed the utterly discredited convictions of the Birmingham Six, jailed for life in 1975. The court learned that the convictions founded on police brutality, forced confessions, falsified evidence, suppressed evidence and entirely fictitious forensics. The Crown denied none of this, and didn't contest the appeal. You'd be forgiven, then, for thinking that the Six were entitled to be considered innocent. Fast forward 26 years to the resumed inquest into the Birmingham bombings, an inquest itself largely the result of Paddy Hill's tireless determination that the truth should be known. The burning question, both for the Six and for the families of the victims, is "Who actually planted the bombs?" In excluding that crucial question from the inquest's consideration, the coroner followed the advice of Counsel for the West Midlands Police, Counsel for the Police Federation, and Counsel to the Inquest. The latter two of these learned and senior lawyers were, however, at pains to insist that the acquittal of the Six did not amount to a declaration of their innocence. The nonsensical result of all this is not simply that the Birmingham Six are still, officially, in the frame. This will be the last judicial word on the subject; the Six are the only ones who will ever be in the frame.

Sam Hallam and Victor Nealon, both of whom we support, are currently waiting for the UK Supreme Court to decide whether they're entitled to compensation for long periods of wrongful imprisonment. That this should even be in doubt is the grotesque consequence of a legislated requirement – s133 of the Criminal Justice Act 1988 – that they prove their innocence. That they were each exonerated by due legal process isn't, apparently, enough. That's about as far removed from a presumption of innocence as to amount, in reality, to a presumption of guilt.

Here in Scotland there's a further factor which complicates matters, and not in a good way. We have our own version of the third way – the "Not Proven" verdict. This is a verdict that unashamedly, and by design, attaches suspicion to an acquittal. It says "we think you did it, but the Crown hasn't been able to fully prove it." The widely held perception – encouraged, it must be said, by an uncritical press – is that this is an advantage enjoyed by the accused in Scotland. It makes it harder, so the story goes, for the Crown to convict the guilty, and easier for the guilty to escape justice. The rationale is that it's an extra way to "get off". If that's how you see it, consider this: in every other developed system the hapless recipient of a Scottish "Not Proven" would receive, by definition, a "Not Guilty". Where a prosecuting authority, with all its resources and despite its best efforts, can't prove guilt beyond a reasonable doubt – in plain words, where the jury can't be sure of guilt – the prosecution has failed in its task. No ifs, no buts. An unqualified acquittal is, or should be, your absolute right. The "Not Proven" verdict is a denial of that right. It is a denial of justice, pure and simple.

Here at MOJO we say your rights should go further. We have, we're told, a presumption of innocence. We're told it's the cornerstone of our justice system. In reality this is, to borrow a phrase from Hamlet, a principle more honoured in the breach than in the observance. To be more than just a nice idea, the presumption of innocence should be at the very heart not just of our theory, but of our practice. Acquittal, whether at trial or at appeal, should be followed by a declaration of innocence. The argument most commonly deployed against this is that, generally, innocence hasn't been proved. Well, no. But it doesn't have to be proved. That's the whole point of the presumption of innocence. It is surely simple logic that, if my innocence hasn't been disproved, I never lost it in the first place.

Early Day Motion 1524: End Indeterminate Sentence For Public Protection Prisoners

That this House expresses concern that too many men and women are trapped in the prison system with no fair prospect of release under the discredited indeterminate sentence for public protection which was abolished six years ago; expresses further concern that over 1,000 people who were released were recalled to prison mostly for administrative reasons; and calls on the Government to speed up the process for safe release, to ensure the resources to support people on release so they can resettle safely, to abolish the life licence and replace it with a fixed-term of supervision that ensures support for people on release and to severely restrict the power to recall to prison for IPPs.

Damages for Wrongful Imprisonment that Violate Article 6 ECHR

Parliamentary Under-Secretary of State for Justice (Edward Argar) I have laid a draft proposal for a remedial order to amend section 9 of the Human Rights Act 1998 (HRA) to allow an award of damages in a new set of circumstances. This is to implement the judgment of the European Court of Human Rights (ECtHR) in Hammerton v. UK (application no. 6287/10). The domestic courts found that the applicant in Hammerton v. UK had spent extra time in prison as a result of procedural errors during his committal which breached his rights under article 6 of the European convention on human rights (ECHR) as set out in the HRA (right to a fair trial). He was subsequently unable to obtain damages to compensate for the breach of Article 6 ECHR in the domestic courts because section 9(3) HRA does not allow damages to be awarded in proceedings in respect of a judicial act done in good faith, except to compensate a person to the extent required by article 5(5) ECHR (deprivation of liberty).

In 2016, the ECtHR found a breach of article 6 ECHR and adopted the finding of the domestic court that the applicant had spent extra time in prison as a result of the breach. The ECtHR found that the applicant's inability to receive damages in the domestic courts in the particular circumstances of this case led to a violation of article 13 ECHR (right to an effective remedy). The ECtHR awarded a sum in damages which has been paid. Under article 46 ECHR, the UK is obliged to abide by the judgment of the ECtHR in any case to which it is a party. In order to address the finding of a violation of article 13 ECHR in Hammerton, legislative change is required as it was the result of a statutory bar on the award of damages under the existing section 9(3) HRA. The Government propose to implement the judgment by making a targeted amendment to section 9 HRA to make damages available in respect of breaches of article 6 ECHR arising under similar circumstances to those in Hammerton. It would have the effect that: in proceedings for contempt of court; where a person does not have legal representation, in breach of article 6 ECHR; and the person is committed to prison and the breach of article 6 results in the person spending more time in prison than they otherwise would have done, or causes them to be committed to prison when they would not otherwise have been committed; then a financial remedy would be available to the person to compensate for the breach of article 6 ECHR that resulted in the person spending extra time in prison, or caused them to be committed to prison.

Following consideration of possible legislative options, the Government consider that there are compelling reasons to amend the HRA by remedial order under the power in section 10 HRA to take remedial action where a provision of legislation is incompatible with an obligation of the United Kingdom arising from the ECHR. This draft proposal for a remedial order is being laid under the non-urgent procedure. It will be laid for a period of 60 days during which time representations may be made. The Joint Committee on Human Rights will scrutinise the remedial order and report on it to the House. Following that, the draft order, with any revisions the Government wish to make, will be laid for a further 60 days before being considered and voted on by both Houses.

Pussy Riot Punk Band Convictions Multiple Violations of ECtHR

The case Mariya Alekhina and Others v. Russia (application no. 38004/12) concerned the conviction and imprisonment of three members of the Pussy Riot punk band for attempting to perform one of their protest songs in a Moscow cathedral in 2012. The courts ruled in particular that their performance had been offensive and banned access to video recordings they had subsequently downloaded onto the Internet because they were "extremist".

The European Court of Human Rights held: by six votes to one, that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights because of the overcrowded conditions of the band members' transportation to and from the courtroom to attend hearings on their cases and because they had had to suffer the humiliation of being permanently exposed in a glass dock during their hearings, surrounded by armed police officers and a guard dog, despite no evident security risk; unanimously, that there had been a violation of Article 5 § 3 (right to liberty and security) of the European Convention because the domestic courts had only given stereotyped reasons for keeping them in detention pending trial for five months; unanimously, that there had been a violation of Article 6 § 1 (c) (right to a fair trial / right to legal assistance of own choosing) because the courtroom security arrangements, namely the glass dock and heavy security, had prevented the band members from communicating with their lawyers without being overheard during their one-month trial; by six votes to one, that there had been a violation of Article 10 (freedom of expression) because of the three band members' conviction and prison sentences. The Court accepted that a reaction to breaching the rules of conduct in a place of religious worship might have been warranted. However, it found that sentencing them to imprisonment for simply having worn brightly coloured clothes, waved their arms and kicked their legs around and used strong language, without analysing the lyrics of their song or the context of their performance, had been exceptionally severe; and, unanimously, that there had been a further violation of Article 10 because of the ban on access to their video recordings on the Internet. The domestic courts had not justified why the ban had been necessary. They had merely endorsed the overall findings of a linguistic expert report without making their own analysis.

Rachel Julie Tunstill Conviction for Murder Quashed – Retrial Ordered

1. On 19 June 2017 in the Crown Court at Preston this appellant was convicted of murder and sentenced to life imprisonment with a minimum term of 20 years, less time spent on remand. She appeals against conviction and sentence with the leave of the single judge.

2. On 14 January 2017 the appellant gave birth to a daughter in the bathroom of her home. Shortly thereafter, she killed the baby, who had been alive at birth. The child was of approximately 37 weeks' gestation, weighing a little over 3kg, or about 6½ lbs. The child had been killed by 14 separate stab wounds, mainly to the neck and chest, inflicted using a pair of scissors. Having killed the baby, the appellant put her body into a plastic carrier bag, which she then put into a kitchen bin.

3. After the killing, the appellant went to the living-room and sat with her partner who, as was his wont, was engrossed in playing video games. She had been in the bathroom for two or three hours but he noticed nothing amiss. They watched television for a short time and then went to bed. He had thought that she was having some form of miscarriage. On the following day, she appeared pale and weak, although not unusually so. On the day after that, a Monday, the appellant attended hospital, stating that she thought she had suffered a miscarriage. On examination, it became clear that she had recently given birth and the police were contacted.

4. When interviewed, the appellant claimed that she had been suffering a miscarriage on the previous Saturday evening. The baby had been born with no signs of life and she had put the baby in a plastic bag and put the body in the bin. She had believed herself to be about four weeks pregnant. It became apparent that this account was untrue. Moreover, interrogation of the appellant's iPad showed search items including "late-term miscarriages at home" and "inducing miscarriage" in the days and weeks before the birth. On the evening of the birth, searches included "how to cut umbilical cord" and the location of an early pregnancy unit at a local hospital.

5. The appellant's case raised the partial defence of diminished responsibility. The Crown's case was that this was not established and that the appellant had murdered her child by stabbing her. In addition to the fact that the baby had been born alive before being stabbed repeatedly, and her birth and body concealed, the Crown relied on lies told by the appellant. These included whether she had told others of her pregnancy, her account at hospital of having suffered a miscarriage, and lies as to whether she was attending or intending to take a course at university. Reliance was also placed on the appellant's internet searches in the period preceding the birth.

6. The appellant said that she had no recollection of killing the victim and claimed that by reason of a history of mental illness and her state of mind at the time of the killing, she lacked the requisite intention for murder. In addition, the partial defence of diminished responsibility was put forward.

7. The appellant had suffered a miscarriage in March 2016 and had been upset by that, although her partner said that that had not lasted very long. He had believed she was studying towards a doctorate and there were texts in which she had referred to being at "Uni". She had made similar comments to her employers. In early December 2016 the appellant told her partner that she was pregnant. There was evidence that in November 2016 she had told her employer that she was around two months pregnant, and later told a colleague that she did not want anyone to know that she was pregnant. Shortly before 14 January she had told her employer that she had an appointment at the early pregnancy unit.

8. When the appellant attended hospital on the Monday she had appeared calm and coherent and gave a full account of a still-birth. When arrested three days later she presented as unusually calm and told the forensic medical examiner that she was not suffering from any mental illness.

9. Three experts, all consultant forensic psychiatrists, gave evidence to the court. Doctors Bashir and Khisty gave evidence for the defence and Dr Barlow gave evidence for the Crown. All agreed that the appellant was fit to plead and that although the appellant had been diagnosed with Asperger's Syndrome, she had adapted well as an adult and had demonstrated adequate social functioning, enabling her to achieve academically, sustain employment and maintain a long-term relationship. That diagnosis did not contribute to any psychiatric defence.

10. Dr Bashir considered that the appellant was suffering from paranoid schizophrenia. Dr Khisty considered that the appellant was suffering from severe depression with psychotic symptoms at the material time. He considered that there was evidence of social withdrawal in the months prior to the alleged offence and that this provided some objective evidence to support the presence of depressive psychosis. Dr Barlow considered that there was no evidence of psychotic symptoms prior to the offence other than the appellant's subsequent self-report. All experts agreed that there were no third party accounts of the appellant reporting auditory hallucinations or persecutory ideas prior to the alleged offence.

11. All experts agreed that there were reports of mood problems in the appellant in the period prior to the alleged offence. Dr Khisty considered that the appellant was suffering from a severe depressive episode whilst Dr Bashir considered that there was evidence of depression but that

this was secondary to paranoid psychosis. Dr Barlow did not think there was sufficient evidence to make a diagnosis of a depressive episode. They all agreed that the circumstances prior to the alleged offence would have been extremely stressful for the appellant and Dr Bashir considered that she had been suffering from an acute stress reaction at the material time.

12. On the question of diminished responsibility Doctors Khisty and Bashir supported the partial defence of diminished responsibility, whereas Dr Barlow said there was insufficient evidence of it. As to infanticide, Doctors Khisty and Bashir supported a defence on this basis, whereas Dr Barlow rejected it.

13. The judge ruled that there was evidence capable of supporting a defence of diminished responsibility. That issue was left to the jury and its verdict shows that it concluded that that the partial defence to murder was not made out. The burden of proving that defence lay with the appellant. In the case of infanticide, the burden lay with the Crown to negative infanticide as an alternative verdict to murder. It is to be noted that the conditions for demonstrating diminished responsibility and infanticide laid down by statute are in very different terms and include very different approaches to a defendant's mental state at the relevant time.

14. The defence submitted that the judge should leave infanticide as an alternative verdict for the jury. The judge rejected that submission and referred to the limited ambit of the offence as discussed in R v Kai-Whitewind [2005] 2 Cr App R 457. He held that observations of Judge LJ (as he then was) represented strong persuasive authority and reflected the wording of s.1(1) of the Infanticide Act 1938.

31. The phrase "by reason of" in s.1(1) does not in our judgment necessarily need to be read as if it said "solely by reason of". It seems to us that as long as a failure to recover from the effects of birth is an operative or substantial cause of the disturbance of balance of mind that should be sufficient, even if there are other underlying mental problems (perhaps falling short of diminished responsibility) which are part of the overall picture.

32. The words "by reason of" import a consideration of causation. As the wording of s.1(1) shows, the relevant causation is that the balance of a mother's mind is disturbed as a result of not having fully recovered from the effect of giving birth to her child: there is no required causal link between the disturbance of balance of mind and the act or omission causing death. Our law is familiar with the notion that in considering causation a person's conduct need not be the sole or main cause of the prohibited harm. It is sufficient if a person's conduct is a contributory cause. In R v Smith [1959] 2 QB 35 in a case of murder Lord Parker CJ said at page 42: "It seems to the court that if at the time of death the original wound is still an operating cause and a substantial cause then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound."

33. In R v Hughes [2014] 1 Cr App R 6 Lords Hughes and Toulson, giving the judgment of the Supreme Court, said at [22]: "There are many examples of two or more concurrent causes of an event, all effective causes in law. A road traffic accident is one of the commoner cases, for such events are only too often the result of a combination of acts or omissions on the part of two or more persons. Where there are multiple legally effective causes, whether of a road accident or of any other event, it suffices if the act or omission under consideration is a significant (or substantial) cause, in the sense that it is not de minimis, or minimal. It

need not be the only or the principal cause. It must, however, be a cause which is more than de minimis, more than minimal: see R v Hennigan [1971] 55 Cr App R 262."

34. In this context, we also note that in R v Deitschmann [2003] 2 Cr App R 4 the House of Lords held that s.2(1) of the Homicide Act did not require the abnormality of mind to be the sole cause of a defendant's acts in doing the killing. Even if a defendant would not have killed if he had not taken drink, the causative effect of the drink did not necessarily prevent an abnormality of mind suffered by the defendant from substantially impairing his mental responsibility for his fatal acts. It was still open to a jury to find the defence of diminished responsibility established. Of course, their Lordships were concerned with differently worded legislation so that the analogy is far from perfect, but subject to that important caveat, it provides a sort of parallel to our reasoning.

35. This was a case where the child was killed soon after birth so that this case can be distinguished from the situation where mental ill health, usually post-partum psychosis, develops over a period of time. Nonetheless, there was evidence from Dr Bashir and Dr Khisty which showed that notwithstanding the existence of the appellant's pre-birth mental disorder, the effects of giving birth had led to a further condition, characterised by Dr Bashir as an acute stress reaction which was a causative factor in disturbing the balance of the appellant's mind. The issue of causation is a matter of fact for a jury after appropriate direction from a judge as to what can constitute a legally effective cause. For the reasons given, we consider that the effects of birth are not required by s.1(1) to be the sole cause of a disturbance of balance of the mind.

36. In the circumstances, we are persuaded that the judge should not have withdrawn infanticide from the jury. There was evidence fit for the jury's consideration. It is not for this court to assess the likelihood of its success. Dr Barlow's evidence was to the contrary, but the issue for us is whether a jury should have had this alternative option to consider. We think it should have had that opportunity. In the circumstances, therefore, the conviction for murder is unsafe and the verdict is quashed. In our judgment, the interests of justice require a re-trial and we so order.

Arrest for Lawful Acts

Elliot Gold, UK Police Law Blog: The recent decision of Holmes v CC Merseyside Police [2018] EWHC 1026 (QB) confirms the power of the police to arrest individuals who are not acting unlawfully. It relies on the earlier case of CPS v McCann [2015] EWHC 2461; [2016] 1 Cr. App. R. 6, which held that an arresting officer was acting in the execution of their duty when making an arrest notwithstanding that their suspicion that that offences were being committed being mistaken.

McCann was relied upon in the case of Ahmed v CPS [2017] EWHC 1272 (Admin), which held that an officer had acted lawfully in arresting a person whom they believed to be in breach of an behaviour injunction, where the order had not been validly made and so was of no effect. The judgment in Ahmed was rather brief being only eleven paragraphs long and given ex tempore. The case of Holmes is more detailed, being an appeal from an order striking out the claim. In brief, Mr Holmes, described as an inveterate campaigner against nuclear power, held a one-man protest on a footbridge on private land. Police officers physically escorted Mr Holmes on to public land after which he pushed past them and ran back. He was arrested for obstructing an officer in the execution of his duty and, five minutes later, further arrested for a breach of the peace and for aggravated trespass.

The Claimant submitted that although the landowner had informed the police that protest was not permitted on his land, the police had no right enforce a landowner's wish to keep people off their property. There was merely a right to assist a landowner in removing those who were trespassing or where an offence under the Public Order Act 1994 might be committed. The officers had no right to remove the Claimant from the private land or to prevent his return to it. The Defendant's case was that the arrest was lawful. The Claimant had been given a warning and escorted off the private land. His response was to use violence in pushing past the police officer and then returning to his original position. The Defendant submitted, relying to McCann, it did not matter whether the officer' grounds for believing that he had a right to prevent the Claimant from returning to the original place was correct.

The court agreed with the Defendant, stating that the case was closely analogous to McCann. The Claimant had no reasonable prospect of establishing that the arresting officer did not genuinely and reasonably believe that he had the justification to arrest him. The officer clearly considered that he had a duty to remove the Claimant from the place of protest and to prevent his returning there. Even if the officer had been misinformed by his senior officers that the Claimant had no right to be on the private land, it was clearly established that his belief to the contrary was genuinely and reasonably believed. The Claimant was therefore obstructing him in the execution of his duty.

This confirms that police officers have very wide powers. The judgment made reference to the statement in Rice v Connolly [1966] 2 QB 414 that "it is part of the obligations and duties of a police constable to take all steps which [reasonably] appear to him necessary for keeping the peace, for preventing crime or from protecting property from criminal injury." McCann reasserted that a police officer does not have to tell the person the offence for which they are being arrested – rather than telling them the act for which they are being arrested. At paragraph [28], the judgment stated that it was not an essential condition of lawful arrest that a constable should formulate any charge at all, much less a charge which may ultimately be found in an indictment. Further to this, it also stated at [31] that it was not necessary for an officer to have the correct offence in mind at the time they give a direction to move-on or make a decision to arrest.

In relying upon this in Holmes, the High Court has confirmed that an officer may be acting in the execution of their duty if they exercise police powers either to prevent a breach of the peace or, alternatively, to prevent crime even where no unlawful act is being committed or where they have no specific and correct criminal offence in mind. Whether the Court of Appeal considers this confers too much power upon police officers remains to be seen. For now, however, to the benefit of defendant Chief Constables and the chagrin of claimants, this line of authority is solidifying.

Justice Committee: Non - Disclosure is a Feature of Every Case That Goes Through the Courts

1.Disclosure is the process by which material collected by the police during an investigation is made available, first to prosecutors and subsequently, and subject to certain rules, to defence teams. Prosecution and defence may make use of this material in preparation for and during a trial where it is potentially relevant to an issue, or issues, in a case. When it works properly, the disclosure process enables judges and magistrates to have all the relevant evidence before them when deciding on guilt of an accused person and in the event of conviction it may be used in deciding an appropriate sentence. Disclosure is, as the then Attorney General told us, a "fundamental question of fairness in criminal proceedings." When the disclosure process does not work as it should crucial evidence might not be heard and miscarriages of justice can prevail. On 5 June 2018 we asked the Director of Public Prosecutions if people had been wrongly imprisoned as a result of disclosure failings and she said "some people have been".

2.We launched this inquiry following reports in the press of cases which had collapsed, or guilty verdicts which had been overturned on appeal, due to errors in the disclosure process. The most high-profile case, one of those which Joanna Hardy of Red Lion Chambers

referred to as “firework cases”. ended in December 2017 with the acquittal of Liam Allan. In this case, evidence held by the police had not been disclosed to prosecutors or the defence until the day of trial, and this evidence undermined the prosecution case to such an extent that - once it was disclosed - the Crown Prosecution Service (CPS) case collapsed. The CPS “decided that there was no longer a realistic prospect of conviction and the case was listed at Court on 14 December 2017 so that it could be stopped.”

3.The case of R v Allan acted as a catalyst to raise the profile of a number of other cases, most of which were related to the very serious crimes of rape and sexual assault. These are charges that, if they lead to conviction, almost inevitably result in imprisonment. We heard, however, that disclosure errors happen in all types of cases, both complex cases in the Crown Court, and volume Magistrates’ Court cases covering, not just rape cases, but all crime types. And we heard from defence practitioners and victim representatives that it is not in the interest of anyone, including complainants, to have a case delayed, disrupted or collapse due to disclosure failings.

4.We are conscious that coverage of disclosure has focussed on rape and serious sexual offences when, in reality, disclosure is a feature of every case that goes through the courts, and errors have happened in all types of cases. This report focusses on disclosure and does not focus on any one type of crime specifically. This is in line with the terms of reference and reflects the evidence we received. It is of vital importance that coverage does not detract from the importance of victims of violent or sexual crimes coming forward. Complainants should be treated fairly and sensitively while the right to a fair trial is upheld. We also note that when evidence is disclosed late a case might be discontinued. This usually happens because the totality of the evidence no longer supports a realistic prospect of conviction, so it should not be assumed that discontinuing a case implies any wrongdoing on behalf of complainants or defendants.

Lawyers Could be Forced to Share Notes of Hearings With Litigants in Person

A new rule giving judges the power to order lawyers to share notes of hearings with litigants in person is being proposed by the Ministry of Justice (MoJ). Another new rule would put the parties under an explicit obligation to disclose to the other side communications with the court. The proposals being consulted on by the MoJ following a review of ‘open justice’ by the Civil Procedure Rule Committee (CPRC). The MoJ said the new rule on the recording and transcription of proceedings was needed to help “the increasing number of unrepresented parties” and “encourage the court and the parties to co-operate in providing an informal record of the proceedings while awaiting the approved transcript”. The MoJ said that “in particular, unrepresented parties may find it useful to have an informal note of hearings, for example in order to seek further legal advice, decide whether to appeal or consider the outcome of the case”.

Draft rule 39.9 reads: “At any hearing, whether in public or in private the judge may give appropriate direction to assist a party, in particular one who is or has been or may become unrepresented, for the compilation and sharing of any note or other informal record of the proceedings made by another party or by the judge.” However MoJ asked consultees for comments on whether they thought the draft rule placed “too much of a burden on the represented party”. On communications with the court, the MoJ said: “It is a fundamental rule of the administration of justice that none of the parties may communicate with the court without simultaneously alerting the other parties to that fact. “The concern is particularly acute where a represented party communicates with the court, without notifying the unrepresented opposing party.”

The proposed new rule states that “any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives”. The rule would not apply to communications that were “purely routine, uncontentious and administrative”, as opposed to “substantive”, or where there was a “compelling reason” not to disclose. Under the revised part 39, a new definition of ‘hearing’ would include video or telephone hearings.

The provision in rule 39.2 which states that courts do not need to make “special arrangements” for accommodating members of the public, has been replaced with one that the court shall take “reasonable steps to ensure that all hearings are of an open and public character save when a hearing is held in private”. To help alert media organisations and other potential opponents of anonymity orders and decisions to hear cases in private, the MoJ proposes that courts are required to publish orders on the internet.

Courts minister Lucy Frazer QC said: “Our legal system is founded on the principle of open justice. The government is fully committed to this principle. The public’s right to know, to see the law as made in Parliament and decided in courts, is fundamental. “However, there are times when the public does not or cannot have an unlimited right to know. Individual rights need to be protected as well. Recent court cases indicate that there is confusion on this issue and that the rules need to be amended to address this.” The CPRC set up an open justice subcommittee in June 2017 to review the rules so that they reflected “more properly” the principles of open justice. In a preliminary paper to a meeting of the CPRC last autumn, the subcommittee identified a “disturbing increase in parties communicating with the court (often by email) without copying the other party, and without good reason not to do so”.

‘If Every Crisis is an Opportunity, This is One We Can Seize’

Phil Bowen, ‘The Justice Gap’: Public judicial pronouncements tend to be Delphic— caveated in a legal and political lexicon that aims to prod but seldom seeks to wound. In 2016, Sir James Munby, president of the Family Division of the High Court, violently broke with that tradition when he stated: ‘We are facing a crisis and, truth be told, we have no very clear strategy for meeting the crisis.’ The factors contributing to that sense of crisis in the family justice system are stark. Over the past 25 years, there has been a 52% increase in the number of children the state removes in England and places in state care. In 2017, for every 10,000 children, 62 are in care, the highest level since the passage of the Children Act 1989. Over the past ten years, the number of applications to the family courts for care proceedings has doubled. Moreover, the recent Care Crisis Review has highlighted that a ‘lack of resources, poverty and deprivation are making it harder for families… to cope’, identifying that ‘a culture of blame, shame and fear has permeated the system, affecting those working in it as well as the children and families reliant upon it’.

But Sir James’s pronouncements were not intended as a lament but as a provocation to do better. One area of creativity is the sterling work within the 10 Family Drug and Alcohol Court (FDAC) projects in England. FDAC provides a problem-solving, therapeutic approach to care cases where parents, addicted to drugs, are at risk of having their children taken into care. FDAC, a unique partnership between the family courts and a team of substance misuse specialists and social workers, helps parents change their lifestyles to safely reunite families, or ensure swift placements with alternative carers where reunion is not possible.

The problem-solving approach of FDACs is but one example of a wider movement across the UK to see every case, whether criminal, youth or family, as a window of opportunity to address the underlying problems that bring people into the justice system. FDAC is close to my heart not just

because of the heart-warming stories told by those parents who have succeeded in it, nor because FDAC looks and feels so different from ordinary care proceedings but also because the evidence is so clear that it works. It delivers better outcomes for families and children. FDAC mothers are 50% more likely to stop using drugs and are much more likely to have stayed off drugs five years after going through FDAC than mothers who go through ordinary care proceedings. They are 48% more likely to have been reunified with their children than mothers who go through ordinary care proceedings. Moreover, even for those FDAC families whose children are removed, the procedural fairness of the proceedings means they are less likely to appeal the decision.

Lest I am accused of backing an intervention that works but is too expensive for austerity Britain, the other great advantage is that FDAC pays for itself. In a study conducted by my colleagues at the Centre for Justice Innovation, we found that while FDAC cases do cost more initially (primarily in additional upfront treatment costs), they also avoid legal and expert witness costs that otherwise would be incurred while the case is ongoing. And following the end of the FDAC case, the better outcomes attributed to FDAC avoid even more costs, in avoided care placements, avoided returns to court, and avoided future treatment costs. Overall, we found that FDAC's initial investment is recouped within two years, and over five years, for each £1 spent, £2.30 is saved to the public purse. Yet FDAC is currently at a point where it is having to prove itself again. The FDAC National Unit, a team that has been instrumental in helping set up the ten FDACs and ensuring the evidence base is robust, is currently due to close due to lack of funds. FDACs themselves are not immune to the wider sense of crisis in the family justice system and there is growing concern that the innovative work in the ten sites is threatened by the wider, systemic lack of funds.

We could of course argue with conviction that care for our children are the foundations upon which the good society is built and should have a first call on public funding. But, for reasons too numerous to itemise, this line of thought does not necessarily resonate with today's decision makers. More than just money, what Sir James highlighted is that there is a clear policy lacuna. The existing family system sits like a great leviathan, shrouded in a barely conscious establishment inertia, defying new approaches like FDAC to be better and cheaper while demonstrating in a daily diet of misery that it does not work itself. What is needed is the Ministry of Justice and Department of Education in Whitehall to rethink what we are doing to our most vulnerable children— and to change it. Initiatives like FDAC show them a better way, a more humane way and a more cost effective way to deliver justice. If every crisis is an opportunity, it seems this is one we can seize, confident that we know what the future should look like.

Joint Committee on Human Rights (JCHR) Call for Better Access to Justice for Bereaved Families

JCHR have echoed the concerns of INQUEST and bereaved families in the report on their inquiry Enforcing human rights, published 19th July. The report concludes that for human rights to be enforceable, they must be accessible. It explores gaps in access to justice, including those faced by families bereaved by state related deaths. JCHR recommends that; "families must be given non-means tested funding for legal representation at inquests where the state has separate representation for one or more interested persons." This follows written evidence by INQUEST and oral evidence from bereaved families and INQUEST. This recommendation supports those in a range of recent reports, including the annual reports of two Chief Coroners, the Angiolini review on deaths in police custody, and the Bishop's review on the experiences of Hillsborough families. The disparity between bereaved families, who often struggle to access legal aid, compared with state agencies involved in deaths, who are automatically represented at public expense, is a longstanding concern of INQUEST. This report is a welcome addition to the widespread calls for change.

Deborah Coles, Director of INQUEST said: "We welcome this report and the committee's acknowledgement of the inherent unfairness in the coronial system. This is yet another significant report recommending non-means-tested funding for legal representation of families bereaved by state related deaths. Bereaved families have a vested interest in uncovering systemic failings, in the hope that future deaths can be prevented. There is significant public interest in ensuring they can access justice. As momentum builds around this issue, we look forward to urgent action from the government."

Dr Sara Ryan, who gave evidence to the committee on her family's experience following the death of her son Connor Sparrowhawk said: "We're pleased the Committee clearly listened to the evidence presented and recognise the current inequalities riven throughout the system. It's now the turn of the government to act on the recommendations and release families from the misery of fighting for legal representation at inquests."

Louise and Simon Rowland, who gave evidence on their family's experience following the death of Louise's brother Joseph Phuong said: "It is encouraging to see the committee recognise the issues that a bereaved family faces during an inquest, and we cannot agree more with their conclusion that the process is adversarial rather than inquisitorial in nature.

Families are often left in the dark, trying to sort out numerous matters associated with a loved one dying whilst under the protection of the state, while trying to make sense of what has happened both emotionally and legally. Having access to funded legal representation is paramount for justice, and we welcome the committee bringing this to the attention of parliament"

Prisons: Mental Health

Lord O'Shaughnessy: We recognise that there are high numbers of people in prison with mental ill health, and it is essential that they are treated in the most appropriate environment for their needs. Whilst some prisoners may be mentally unwell, and despite sometimes complex emotional and behavioural needs, it may not be clinically appropriate for them to be transferred to a mental health inpatient bed. There may be other services more appropriate to their needs that can be delivered outside inpatient mental health facilities.

There are no plans for a review. However there is already work underway to ensure people are diverted to mental health care services outside prison either before or on their release, and to improve mental health services within prisons. Liaison and Diversion services operate at police stations and courts, to identify and assess people with vulnerabilities (substance misuse, mental health problems) and refer them into appropriate services and, where appropriate, away from the justice system altogether. Information from Liaison and Diversion assessments is used by the police and courts to inform sentencing decisions. These services cover 82% of the population with full roll out expected by 2020.

The Department of Health and Social Care and the Ministry of Justice have worked with NHS England and Public Health England to develop a Community Sentence Treatment Requirement 'protocol'. The protocol aims to increase the use of community sentences with drug, alcohol and mental health treatment requirements as an alternative to custody to improve health outcomes and reduce reoffending. It sets out what is expected from all involved agencies to ensure improved access to mental health and substance misuse treatment for offenders who need it.

Work is also underway to improve support for prisoners whilst they are in prison. NHS England is focussing on an offender mental health pathway which will ensure that offenders are directed to the most appropriate intervention to their needs at the right time in the criminal justice system. The

programme of work includes ensuring timely and appropriate transfers to a mental health hospital, timely remission to prison as part of a planned episode of care, and to ensure that those requiring treatment for mental ill health have access to high quality care. New service specifications have been published for both low and medium secure hospitals as well as prison mental health services. The Prison Mental Health Specification embeds the Quality Standards for Prison Mental Health Services developed by the Royal College of Psychiatrists to ensure high quality care for all. Draft guidance for timely and appropriate transfers and remissions of care to and from a mental health hospital is currently in production. Following release from prison, NHS England is working with partners to develop better pathways of care from custody. Drawing on learning from existing services we are investigating how best to ensure continuity of care post custody.

Prisoners: Older People

The Government is aware of the changing demographic of the prisoner population, with the number of prisoners aged over 50 rising both in terms of numbers and as a proportion of the prison population. Within the older prisoner cohort, there were 1,665 prisoners aged 70 or over at 31 March 2018, approximately 2% of the total. In response to these changes, the Government is reviewing the provision for older prisoners and how best to meet their needs.

The Government has developed Models for Operational Delivery (MODs) for each prison type and for specialist cohorts, including older prisoners to support the transformation of the adult male estate. MODs are based on data and evidence to support governors in delivering effective and efficient services according to the function and cohorts their prison will hold. This specialist MOD has been developed in recognition of the sizeable and growing proportion of older prisoners, who are more likely to suffer health problems, have higher rates of disability and can struggle to access activities and services. The MOD addresses how services and interventions may be tailored to enable all older prisoners to maintain their physical and mental wellbeing, and their independence.

Sergey Ryabov v. Russia Violations of Articles 3 & 6

The case concerned an allegation of police brutality. The applicant, Sergey Ryabov, is a Russian national who was born in 1980. He is currently serving a prison sentence in Bezhetsk, Tver Region (Russia), for, among other things, the murder of a driver who worked for the Ruza police. Mr Ryabov was arrested on 11 July 2005, a day after the murder, and placed in a temporary detention facility at Ruza district police station. He confessed to the crime in the early hours of the morning and was brought before a judge the next day. He was placed in pre-trial detention until being found guilty in April 2006 and sentenced to 18 years' imprisonment. In convicting him, the courts relied on his confession and the investigating authorities' refusal to open a criminal case into his allegations of police ill-treatment. His appeals against this decision were dismissed and the proceedings were ultimately terminated in February 2008.

A criminal investigation was never begun into Mr Ryabov's allegations that the police had punched, kicked and hit him during his arrest and police custody and at the courthouse following the hearing with the judge. An internal inquiry was carried out, which resulted in two police officers being reprimanded and a medical report being drawn up, finding multiple bruises and abrasions on his body. The authorities concluded however that those injuries could have occurred because he had resisted arrest.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Ryabov alleged that he had been ill-treated by the Ruza police in order to make him confess to the murder

and that no effective investigation had been carried out into his allegations. Also relying on Article 6 § 1 (right to a fair trial), he complained that his conviction had been unfair because it had been based on statements he had made under duress. Violation of Article 3 (inhuman and degrading treatment), Violation of Article 3 (investigation), Violation of Article 6 § 1, Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

MPs Have Failed to Get to Grips With the Disclosure Crisis

James Burley,'The Justice Gap': The House of Commons' justice select committee's report on disclosure in criminal cases, published today, could have marked a turning point for our criminal justice system. MPs could have recommended bold reforms that would put an end to the routine failures by police and prosecutors to hand over crucial evidence – failures which are resulting in collapsed trials and wrongful convictions.

Instead, once again, the report's recommendations amount to tinkering with a system that has time and time again proved inadequate. Clearer guidelines, improved skills and a culture shift have all been recommended before – and they haven't worked. In refusing to call for fundamental reforms, MPs quoted the views of Lord Justice Gross, who said he was 'strongly opposed' to the defence being given greater access to the results of police investigations. His reasoning was this 'would increase the pressures on limited resources and result in the duplication of effort… The 'keys to the warehouse' in an overstretched system is simply not viable. At most, it transfers the problem without solving it.' Lord Justice Gross is right that if the defence are given greater access to material they will need to be given sufficient resources to properly review it. However, his argument about resources ignores the vast amount of duplication already inherent in our disclosure system.

First, non-legally qualified police officers are tasked with deciding what material undermines the prosecution case or assists the defence, something which in 33% of cases is either not done or carried out in a 'wholly inadequate' way. Then prosecutors do the same, though an inspection last year found 'evidence of poor-decision making' by them as well. Finally, the defence get the chance to assess what material might assist them – except they are forced to rely on lists of material drawn up by police, of which 81% are either wholly or partially inadequate. This process defies common sense. As Dr Hannah Quirk puts it, the current framework 'require[s] the police and CPS to consider material from the perspective of a defence lawyer… a task for which they are culturally unsuited and ill-equipped'.

As the Centre for Criminal Appeals and Cardiff Law School Innocence Project suggested in written evidence, it would be simpler to have a new Independent Disclosure Agency strip out all genuinely sensitive material in a case and provide the rest for the defence to review, and relieve the police and CPS of the burden. Some have privacy concerns about this approach, but section 18 of the Criminal Procedure and Investigations Act 1996 makes it an offence to make unauthorised disclosure of such material – and the right to a fair trial must come first. Perhaps the biggest flaw with the Justice Committee's report, though, is that it ignores the situation of those who have already been wrongly convicted due to disclosure failings. Currently, they have no reliable means of learning about the existence of material wrongly withheld from them at trial.

As Dr Dennis Eady puts it in issue 2 of Proof magazine, the current law on post-conviction disclosure places the wrongly convicted in a Catch-22 whereby prisoners can only access exculpatory material by specifically requesting it and showing how it affects the safety of their conviction. This is a near impossible task if you don't know of the material's existence,

let alone what it shows. In theory, the Criminal Cases Review Commission could bring to light undisclosed evidence in cases by using its statutory powers to access and review the complete police and CPS files on cases. However, the CCRC deems this too speculative, despite concrete evidence that disclosure failings are a common occurrence. The Justice Select Committee report missed an opportunity to address these issues and advocate for real change – and in so doing relieve overstretched police forces and prosecutors from their fraught role in the disclosure process. Instead, they have failed to get to grips with the disclosure crisis.

Anti-Social Behaviour Powers are Impossible to Hold To Account

Matt Ford, Centre for Crime & Justice:https://is.gd/dsIi9x Out with the old: In 2014, the system of anti-social behaviour powers in England and Wales was overhauled. Heralded as making anti-social behaviour more responsive to communities and victims, the controversial reforms gave greater flexibility to local agencies, mainly councils and the police, in the use of a new set of powers. But nearly four years on, new research by the Centre suggests the government has created a regime whose consequences are impossible to hold to account. Our research analysed responses to over 800 Freedom of Information requests to all councils and police forces in England and Wales, as well as the Ministry of Justice (MoJ) to try to get the most comprehensive picture possible about how three key anti-social behaviour measures are used and who is subject to them, with a particular focus on young adults (18 to 25 year olds). This included the behaviours for which people are sanctioned, in which area they are prosecuted and the court sentences they receive.

Localising accountability? Although we had a very good response rate, data collection was expectedly patchy as there is no centralised data collection. Only five police forces out of 43 were able to give us data on the ages of people ordered to leave areas under dispersal powers. 39 councils out of 348 were able to give us figures on the ages of people given Community Protection Notices (CPNs), and only 27 of these could also give information about the behaviours the CPNs were issued for. 21 councils were able to provide statistics on the ages of people sanctioned under Public Space Protection Orders (PSPOs), and which conditions they breached. At best, a fragmented picture of how the on-the-spot dimensions of the measures was gleaned.

Disparities in prosecutions: We did, however, manage to get good data about court prosecutions, convictions and sentences for breach of these measures from the Ministry of Justice. They provided us with data for 41 of the 43 criminal justice areas (an administrative unit equivalent to police force areas that the MoJ uses to break their statistics down regionally) in England and Wales. Age, sex and ethnicity information was included. From this data we were able to tell two interesting things. Firstly, there is huge variation between areas in how these powers are used to sanction adults, even after accounting for the different sized young adult populations between areas. Why are only two per 100,000 young adults prosecuted for breach of any of these three measures in North Wales and Surrey, but 47 per 100,000 young adults prosecuted in Norfolk? Secondly, in London, a greater number of young black men were prosecuted for breaching police-only dispersal orders than we might expect given how much of the overall population of 18-25 year olds they make in the capital. 31 per cent of prosecutions for dispersal order breach were against young people, mainly men, who self-identified as being of black African heritage, despite making up only nine per cent of the young adult population in London.

The need to explain: You might say that this probably just reflects particular ASB issues in those areas, and those areas are best placed to understand and respond to those problems. This was the position taken by Councillor Simon Blackburn, chair of the Local Government Association's safer and stronger communities board in response to our findings. But because the detailed information about the on-the-spot level aspects of the measures - the behaviours people are sanctioned for, how many warnings they received before they were fined, and so on) aren't collected in a consistent way or even at all in most areas, we cannot easily explain the disparities we found. And this is the crux of it: if there are issues emerging, such as seemingly disproportional numbers of young black men being affected by measures which carry serious criminal consequences, we need to know why. Unfortunately for the government they seem to have created a system that they cannot explain and in doing so are escaping accountability.

RMT Union Calls For 'Craigavon Two' Review

One of Britain's largest unions has passed a motion calling for the case of two Co Armagh men convicted of killing PSNI Stephen Carroll to be reviewed. The National Union of Rail, Maritime and Transport Workers (RMT) passed the motion earlier this month. Brendan McConville and John Paul Wootton have denied involvement in the Continuity IRA sniper attack that claimed the life of Mr Carroll as he answered an emergency call in Lurgan, Co Armagh in March 2009. McConville is currently serving a 25-year sentence while Wootton was handed an 18-year term. The Court of Appeal in Belfast rejected an appeal in 2014 and the case is currently being considered by the Criminal Case Review Commission. The RMT currently represents 83,000 members across Britain. Its motion, which has now been adopted as national policy, "acknowledge concerns about how the convictions of Brendan McConville and John Paul Wootton were achieved and call on the Criminal Cases Review Commission to fully investigate the case". Senior assistant general secretary Steve Hedley said members are concerned about the "miscarriage of justice which has happened for nearly a decade now". "We have looked at the evidence as a union and we think at the very least there should be a review of what happened," he said. "It's no good waiting for 20 odd years and having a review after that and setting people free when their lives are destroyed."

The Public Law team at Duncan Lewis have issued Judicial Review proceedings on behalf of the Claimant who was held under immigration powers in prison. This case raises a point of wide importance: potentially vulnerable immigration detainees detained in the prison estate are not afforded the same safeguards that would lead to their identification and release as are made available to those detained in Immigration Removal Centres 'IRCs'. There is a lacuna in the scheme governing the detention of vulnerable persons (inter alia victims of torture or those suffering from mental ill-health) detained under immigration legislation within the prison estate, as compared to the scheme that governs the detention of those in IRCs.

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