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CCRC in and of 'Itself' Should Have the Power to Overturn Wrongful Convictions.

Originally, of course at the top, the representations were made to the Royal Commission back in 1995 that the CCRC should itself, should be a completely independent body, which itself had the power to overturn convictions. There was quite strong feeling about that. But that was rejected. That's why we are where we are today.

CCRC is in the experience of a number of people is that it's too deskbound. There isn't enough investigation. It's very unusual for them to go and see the applicants. And it is, really, quite important to go to see the people who are complaining. I know that it's a strain on resources as such, but it's very easy to get into an embattled frame of mind, and very easy to become very cynical when you're essentially working within a pure office environment, and you're not out there. I've long thought that the Commission should use not just the police to investigate cases, but they should use experienced defence solicitors to help with the investigation of cases.

Court of Appeal is not a fact-finding body, it's a court of review and therefore, the way to approach conviction appeals is to determine whether or not a jury might have acquitted, had they had the new evidence. At the moment the CCRC gets very cowed by criticism from the Court of Appeal, and very afraid of that criticism. The CCRC has to be more critical of the decisions of judges and of barristers, whether defence or prosecution.

If you apply the jury impact test properly, and say look, a jury acting reasonably might have come to a different conclusion. Refer the case back to the jury and a new jury can then decide. Both the Supreme Court and Court of Appeal have made quite clear that as a matter of policy, they haven't quite said that, but the effect is now of the policy, that they're not going to open old convictions. There has, over the years been some controversy about whether or not the CCRC has become an obstacle to the investigations of miscarriage of justice, the CCRC is now a good deal less effective than it was a number of years ago. It's not particularly seen as a functioning body, and it's not seen as accessible. You can't blame the CCRC for not referring more cases on the basis, on the back of Jogee, because, both the Supreme Court and Court of Appeal have made quite clear that as a matter of policy, they haven't quite said that, but the effect is now of the policy, that they're not going to open old convictions.

By becoming more and more distant from what was happening on a day-to-day basis in the court, you became more detached, and also, one of the things that the Commission on a relatively regular basis has to do – and I'm sure it's the same with the CCRC – is to be critical, to some extent, in its decisions, of members of the judiciary, or to be critical of members of the bar, whether of the defence or at the prosecutorial level. And I think that one of the worries that we would have is for persons of whom we may have been making certain criticisms, the response would be 'what does he or she know about this: when was the last time they were ever in a court under the pressure that we have to work under in a day to day basis'.

CCRC say we are quite adept at spotting cases where it something looks like it has gone wrong. What's more difficult is formulating that into a ground of review, which becomes a successful ground of appeal. It's not for the want of trying, but you know occasionally we just find that there's nothing we can do about it The major development, following on from Jogee is there are many more convictions for manslaughter, which of course, makes a very significant difference, and the complaints are perhaps that's how Jogee has had a detrimental effect. It does make a major difference. But there's nothing, nothing the CCRC can do about that. I mean in fact the CCRC, I think, have done their best to try to find a way through the conundrum of Jogee, and they've just come up against a brick wall.

Scotland's Criminal Justice System Has Been Gravely Undermined"

MOJO Scotland: Defence solicitor Gordon Ritchie charts the decline of Scotland's justice system and respect for the rights of the accused. As I approach the 30th anniversary of my admission as a solicitor, and contemplate a retirement into the great unknown of pipe and slippers, I considered the changes in law and practice over my career in the criminal courts. I well remember my first trial at Renfrew District Court – an acquittal – which was quickly followed by two further findings of "not guilty". The next Petrocelli had arrived in Paisley. The following six months saw a series of convictions and errors on my part, as I learned the hard way that I knew very little about criminal law. At that time, however, we had a criminal justice system that was genuinely the envy of the world. We had real corroboration, not the pathetic excuse that is paraded today. We had a real desire to ensure that justice was done and seen to be done. Neither seem to be very important today. We had an appeal court that had a desire to do the right thing, regardless of the consequences. We had a legal aid system that, although underfunded, was able to give the profession the opportunity to honour its commitment to the client and be paid for doing so.

Constant Interference: Today, none of these seem important in our system. Too often have I sat in the Appeal Court and watched the law be reinterpreted to ensure that an appellant stays in prison. The recent round of appeals under s 65 of the 1995 Act (Uruk v HM Advocate 2014 SCCR 369 et al) showed no regard to law or convention, but rather showed a court more concerned with budgets than justice. Budgets have become king. What makes things worse, however, is that the budgets seem to be controlled by people who have no comprehension of how the criminal justice system works. A few years ago we had a prosecution service that was supported by "precognition officers", whose job it was to prepare solemn prosecutions. Wisdom directed that we reduce or abolish this post. Doubtless this will have saved the COPFS a sizeable sum. Unfortunately, it cannot be said to have saved money from the justice budget. In addition to preparing cases, precognition officers were also able to identify the problems at an early stage. Cases where "I was really drunk and can't remember what happened", and "I don't remember ever making a statement to the police, and if I did, I don't know if it was true or not", were weeded out at this stage. Now, we wait for the trial diet to deal with this. Yes, the Crown has cut salaries, but at the expense of court and shrieval time, inconvenience and cost to witnesses and jurors, and further wastage on an already pressed legal aid system. Is it too much to expect some joined-up thinking?

Decisions on corroboration have undermined our reputation. Proof beyond reasonable doubt? Don't make me laugh. How can our system take itself seriously when we allow a conviction based on one witness, and a second piece of evidence that says "maybe" something might have happened, and then, with an 8-7 majority, a citizen is guilty beyond reasonable doubt and imprisoned? Our political masters have interfered too often, those who should know better have allowed that interference, and our system is gravely undermined as a result. What has happened to the safeguards for an accused? How can a fair trial be achieved when witnesses are allowed to hide behind screens as they are "too scared" to face the accused? How does that sit with the presumption of innocence? There are a few genuine cases where wit-

nesses need, and should be granted, special measures, but there are too many who seek to take advantage of this when it is not needed. I have conducted trials where special measures have been sought, the Crown forget to have an identification parade, and suddenly the measures are miraculously no longer required and the witness happily gives evidence in the traditional manner in order to facilitate a dock identification.

Destruction of Rights: We cannot have a justice system where the interests of the witness are equal to those of the accused. This cannot be forced on us, as it is the accused who loses their liberty if they lose their trial. Those who are peddling the interests of the "victim" (can we have a victim before we establish that a crime has even been committed?) should consider that true equality would mean a suitable punishment for the complainer if an accused is acquitted. That would be a ridiculous position to adopt; almost as ridiculous as the suggestion that "victim's" rights have to be balanced with those of the accused.

And yet those more learned than me seem determined to strip every remaining right from an accused person. I dread the delivery of my Scottish Criminal Case Reports, as each edition seems to include further destruction of the legal safeguards for an individual who is facing the might of the state-funded prosecution. There seems to be an agenda to anglify our legal system, but without enacting the additional safeguards found south of the border such as unanimous verdicts or 10-2 majorities. Where will it end? I suggest that it will end with yet another series of major miscarriages of justice.

I well remember the boast of the Scottish justice system that the plethora of miscarriages in England could not happen in Scotland. The realisation that we had our share of such cases has not, as in England, led to a tightening of systems to prevent future errors, but rather we have charged headlong into a period of reducing and eliminating every existing safeguard in our system. I live in hope that, in 50 years' time, lawyers will look back on these dark times and wonder what we were all smoking in the early 21st century!

When I began my career, the fiscal service was manned by experienced, able and sensible deputes. Cases could be fairly resolved by meaningful discussion, and discretion was fettered only by logic. Today, we may still have able and sensible deputes, but they are conditioned to avoid the exercise of discretion, and logic takes a back seat to the current political will of their masters, or perhaps that of tabloid editors. One of the underlying principles of the justice system was that all accused should be treated equally. How can that principle remain when deputes are not allowed to negotiate on certain types of offences, such as domestics, racial or sectarian breaches etc? As a result, those charged with such offences are not being treated equally.

Likewise our judges, once the jewel in the crown of justice, are now prevented from doing their jobs by rules and laws that have effectively neutered them. Too often have I made a legal argument to be met with sympathy from the bench, but a ruling that goes against me. Our judges have also had discretion restricted by political interference. Currently, morale on the bench, in the fiscal service and among defence agents is at an all time low. Hundreds of intelligent and experienced lawyers cannot all be wrong.

Burdens on the Defence: The legal aid cuts have further reduced the confidence in our system. This is not an article designed to secure a pay rise for the profession (I will leave that particular dead horse to be flogged by those more able than me), but rather to highlight the dangers of paying defence lawyers an hourly rate that is closer to the minimum wage than to the remuneration expected by plumbers! The introduction of Crown disclosure was a very helpful development in our law, but was immediately met with a refusal to pay for defence precognitions. I know that SLAB will

say that they will pay for this work if it can be justified, but the judge who determines justification is SLAB, and I don't know of any solicitor who has won that argument with any regularity. As a result, the "independent" defence lawyer must advise his client based solely on information provided by the Crown. Police officers often hide significant information from the Crown, or include it in "non-disclosable" sections of reports. We are entirely dependent on the integrity of a police department that seems to have forgotten that its role is to secure justice and not just tick a box that someone has been charged regardless of guilt. Does anybody else see a problem here?

"Anderson" appeals have led to closer scrutiny of solicitors. The economic need to do a high volume of cases in order to pay ever-rising costs, with fee income effectively capped for a generation, makes it nothing short of miraculous that every conviction does not lead to an automatic appeal on defective representation grounds.

Government cuts in mental health care have imposed a further burden on the system. I am not medically or psychiatrically qualified, and yet I am expected to detect signs of mental incapacity in a client who would previously have been hospitalised, but is now in the "care in the community" myth. To compound matters further, we need SLAB sanction for an expert to determine fitness. Try getting that from SLAB. A recent application submitted was rejected as the accused did not have a history of mental illness. By that logic, an accused with no previous convictions must be innocent, as he has no history of offending. Try floating that idea before a court.

As well as having to identify psychiatric problems in clients, we have to manage them. I was disappointed by the apparent surprise at the recent survey that showed how many of us have been victims of violence or extreme abusive behaviour. Any solicitor with even fleeting experience of the criminal justice system will know that we live with such issues on a regular basis. And if you do succeed in managing such a client through the justice process, you will often find that the courts are unable to deal adequately with such issues.

Short Changed On Sentence: And finally I turn to the question of sentence. With the presumption against short term sentences, I am left wondering what we are doing in the summary courts. How can a court demand respect from a public that is aware that judges are being actively discouraged from sentences of imprisonment? Why not call it what it is – a Government too stingy to build enough prisons but too scared to admit it? I do not profess to have all the answers to the issues in our system, but at least I recognise some of them. The many changes in our system over the last 30 years have not been for the better. Something needs to be done before those who should know better are allowed to turn our country from the envy to the laughing stock of the world. Gordon Ritchie is a consultant with McCusker, McElroy & Gallanagh, Paisley. This article first appeared in The Journal of the Law Society of Scotland.

Over 60% of 'Fast-Track Justice' Defendants Never Enter a Plea

Owen Bowcott, Guardian: People accused of minor offences are increasingly ignoring fast-track court proceedings because they do not recognise they are at risk of being convicted, the Magistrates Association has said. Two-thirds of defendants sent summary offence notices under the single justice procedure (SJP) never enter a plea, according to the latest Ministry of Justice figures. The high level of disengagement from the justice system is exposed as the process – which does not require court attendance – expands rapidly to cover hundreds of thousands of cases a year.

The rulings, made by a single magistrate sitting with a legal adviser, cover lesser offences such as TV licence evasion, speeding, fare evasion and failing to tax a vehicle. More categories are likely to be added in future. But the Magistrates Association, which represents

all magistrates in England and Wales, and the campaign group Transform Justice have questioned whether decisions are sufficiently transparent, whether defendants not summoned to court appreciate the legal significance of a conviction and whether the right to a fair trial is prejudiced by a process that appears administrative rather than judicial.

The SJP, introduced in 2015, now accounts for 57% of the 1.5 million cases passing through magistrates courts in England and Wales each year. The MoJ has confirmed the SJP non-response rate is about 67%. Virtually all are consequently found guilty. The department says a large number of defendants did not turn up for minor offences before the system was streamlined.

There is evidence, however, that the no plea rate has increased significantly. A separate MoJ statistics table shows the overall proportion of defendants entering no plea at magistrates courts has risen from 52% in 2010 to 74% currently. A government factsheet in the run-up to the 2015 Criminal Justice and Courts Act noted that about half of defendants involved in summary motoring proceedings entered no plea, though for other cases the proportion was higher.

Defendants who plead not guilty retain the right to a full hearing in open court. SJP cases only involve non-imprisonable offences, though they can result in fines and loss of a driving licence. An SJP notice is delivered by post and gives defendants 21 days to respond in writing and explains the consequences of not responding.

It is not clear why so few people respond. Some may not have received the letter. One woman interviewed by the Guardian, who wished to remain anonymous, said she was wrongly sent a TV licence notice but had moved house and the notice was never forwarded. She was convicted without knowing about the case. When she discovered it, she had to tell her employer about the conviction. It took several years to have it quashed. “It’s horrible to find you have a conviction and didn’t know about it,” she said. “It was a computer error. I had to prove my innocence in a court.”

In an effort to maintain open justice in a system where defendants no longer turn up in public courts, the MoJ publishes a daily list of SJP cases naming defendants. The results are supposed to be available by ringing a telephone number. It has proved difficult for the media to find details that would normally be readily available at a court hearing.

John Bache, the national chair of the Magistrates Association, said: “One of the fundamental principles of the justice system is that justice is not just done but is also seen to be done, and it is essential that openness and transparency are not compromised. How the single justice procedure can be opened to public scrutiny must be addressed, particularly as we head towards further digitisation of the court process. “There is an additional risk that if the whole process is done without a hearing, individuals may not fully appreciate its implications. This is a serious process regarding a criminal offence, but as the system may appear to be administrative rather than judicial, people may not realise the importance of responding and thus risk ending up with a criminal conviction without entering a plea.”

Penelope Gibbs, a former magistrate and director of Transform Justice, said: “The single justice procedure appears to have been introduced to make it cheaper to deal with people who don’t engage with the criminal justice system. But people need to engage if they are to understand what they’ve been charged with and, if innocent, how to plead not guilty.”

A MoJ spokesperson said: “Prior to the introduction of the single justice procedure many defendants did not turn up to court and hearings simply went ahead in their absence anyway. “This process is a straightforward way to administer justice for those who plead guilty which allows them to resolve their case without having to go to court. Defendants are made aware of the proceedings by letter and the consequences of not responding to the notice is made clear.”

Papua Prison Break: Hunt For 250 Inmates Who Escaped Torched Prison

Indonesian authorities are on the hunt for more than 250 inmates who escaped a prison in the province of West Papua. The prison break happened Monday 19th August 2019, as protesters took to the streets in several cities blocking roads, and torching buildings including the jail. The unrest was triggered by the detention of Papuan students in the city of Surabaya over accusations they had disrespected the Indonesian flag. Police reinforcements have been sent to Papua ahead of more planned protests. Thousands of Papuans took the streets of cities including Sorong, Manokwari and Jayapura on Monday. The prison, in Sorong, was set ablaze and rocks were thrown at prisoners, said justice ministry spokeswoman Marlien Lande. "258 inmates escaped and only five of them had returned by this morning," Ms Lande said, adding that several guards and employees were injured as they tried to stop the escape. Papua, a former Dutch colony, declared itself independent in 1961 but its larger western neighbour later took control. A separatist movement continues to this day and Indonesian authorities have faced allegations of human rights abuses in the region. The latest anger stems from an incident over the weekend involving Papuan students in Surabaya, East Java - Indonesia's second biggest city. Reports said they disrespected the Indonesian flag in front of a dormitory during celebrations of Independence Day on Saturday. On Monday police in riot gear fired tear gas and water cannons to disperse the crowds. The protests then spread to other parts of the region on Tuesday.

Unlawfully Detained Woman Who Miscarried Receives £50k Payout

Diane Taylor, Guardian: A trafficked Vietnamese woman who was placed in detention for three days after arriving at Heathrow airport while experiencing a miscarriage and barely able to stand has received a £50,000 payout from the Home Office, the Guardian has learned. The Home Office has accepted the 33-year-old was detained unlawfully and that the detention constituted inhuman and degrading treatment. The payout is exceptionally high for a three-day period of detention. The woman arrived at Heathrow on 8 July 2016 when she was eight weeks pregnant as a result of rape in Finland. She started to bleed and informed immigration officials at the airport, which is when she was held for eight hours and subjected to repeated questions. She was finally taken from the airport to Hillingdon hospital by ambulance. Doctors there thought she should stay in hospital overnight because it was likely she was having a miscarriage. But a decision was taken by the Home Office to put her in detention instead. She said she was not well enough to stand up unaided and had to be assisted to walk out of the hospital. She was released from detention three days later and it was confirmed that she had suffered a miscarriage. The Home Office finally accepted that she was a victim of trafficking and granted her leave to remain in the UK.

“I felt so bad, I kept being taken to different parts of the airport and asked so many questions by different officials,” the woman told the Guardian. “All I wanted to do was lie on the floor. I kept asking to be taken to hospital because I was in so much pain in my tummy and was bleeding so much.” The former prisons ombudsman Stephen Shaw called for an “absolute exclusion” on the detention of pregnant women in a report in January 2016. Theresa May, the home secretary at the time, refused to implement an outright ban but said the government was shaping a humane system “that will effectively end the routine detention of pregnant women”. The government agreed to a time limit of 72 hours to hold pregnant women, with an option to extend this to one week with ministerial authorisation. Since then, there has been a reduction in the number of pregnant women held, but according to Home Office data 133 pregnant woman have been detained since July 2016.

An internal Home Office investigation into the trafficked woman's treatment identified significant failings in the way she was treated by officials when she arrived at the airport barely able to stand up. A heavily redacted internal investigation report by the Home Office's professional standards unit, seen by the Guardian, states that although officials "genuinely acted in what they felt to be the best interests" of the woman, "the investigation found significant failings in the detention of Ms …, a lack of risk assessment for placing her in detention and a failure to complete detention reviews". A box for officials to tick for known medical risks was left unticked and no medical, safeguarding or special needs were logged.

The woman said she was terrified during her ordeal but was too scared to ask any questions. "I thought if I said anything they might put me on a plane and deport me straight away while I was having the miscarriage, so I kept quiet. I was very frightened of my traffickers but I was even more frightened of the Home Office." She said she was relieved her case had been settled. Ugo Hayter, a solicitor at Deighton Pierce Glynn, said: "The amount paid to our client, whilst exceptionally high for a relatively short period of detention, will never make up for the horrific ordeal she was forced to endure at the hands of UK officialdom during that time. The case demonstrates the consequences of the uncaring culture of disbelief that has taken hold of the Home Office." The Home Office has been approached for comment.

Stronger Safeguards Following Legal Challenge To Pava In Prisons

Following a legal challenge by Deighton Pierce Glynn client, the Justice Secretary has agreed to introduce stronger safeguards and to record equality impacts in the roll out of chemical restraint in prisons. The Equality and Human Rights Commission funded our client, who is a disabled person, to bring an application for judicial review of the Justice Secretary's decision to make PAVA spray (PAVA is significantly more potent than CS gas) available to all prison officers. The Ministry of Justice has now strengthened guidance on the criteria for assessing whether PAVA can be justified in the course of individual incidents. Prisons will be required to demonstrate that they understand the trends in the use of force at their establishment before they will be signed off for PAVA.

In the event that PAVA is misused, improved guidance and systems for recording and monitoring will make it easier for prisoners to seek accountability. The Ministry of Justice has now carried out a more extensive equality impact assessment. This revealed a significant trend of disproportionality in the use of force towards younger prisoners, black prisoners and Muslim prisoners, which the Ministry of Justice was unable to explain. It also uncovered a serious lack of data in relation to the rates of disabled people in prisons and limited understanding of learning disabilities by prison staff.

Following the launch of the legal action, the Ministry of Justice committed to more robust guidance and training for prison officers in the use of PAVA, which contains much more specific guidance about the exceptional circumstances in which it might be used against vulnerable prisoners or prisoners with protected characteristics. It will monitor the use of PAVA nationally and amend use of force forms to record disability, race and other protected characteristics and vulnerabilities following incidents. Prison Race and Equality Liaison officers will also be included in use of force reviews.

The Claimant, VW, instructed Clare Hayes and Louise Whitfield at Deighton Pierce Glynn. They instructed Nick Armstrong and Jessica Jones at Matrix Chambers. As a result of the above commitments by the Ministry of Justice and evidence over the period of the litigation that the rate of PAVA use in the pilot prisons was reducing, the Claimant agreed to discontinue this legal action. Clare Hayes, of Deighton Pierce Glynn, acting on behalf of the Claimant, said: "Systems for protecting people in prison from discrimination and unlawful use of force are woefully inadequate. It remains to

be seen whether prisons can show that they understand trends in their use of force sufficiently to be deemed "PAVA ready" by the Justice Secretary. It is hoped that as a result of our client's challenge, greater scrutiny will be brought to bear on incidents where PAVA is drawn on or discharged against a prisoner. Where the spray is used outside of policy and guidance, officers may face disciplinary proceedings and prisoners may have grounds to take legal action against the prison service."

Rebecca Hilsenrath, Chief Executive of the Equality and Human Rights Commission, said: "Everyone has the right to live without fear of inhumane treatment or punishment. We believed that this wouldn't be the case for many prisoners if PAVA was rolled out to all prisons without proper protections in place and oversight of its use. We are pleased that the Ministry of Justice has recognised the need to take action to prevent the spray being used disproportionately on ethnic minority and disabled prisoners, and strengthened guidance that it must be a tool of last resort. We hope these changes will help to ensure that officers can protect themselves in a way that doesn't jeopardise the fundamental rights of others."

Magdalene Laundries Victim Mary Cavner to Get Compensation

A woman denied an education and left malnourished after being forced to work at the age of 11 when her father died has won a battle for compensation. Mary Cavner, 80, who lives in Hampshire but grew up in County Cork, was sent to work in one of Ireland's notorious Catholic-run Magdalene Laundries She said her six years at the workhouse affected her "throughout her life". She was initially told she was ineligible for compensation but will now receive €76,000 (£69,500).

The Magdalene Laundries, which were initially institutions for what were described as "fallen women", saw 10,000 young females pass through them between 1922 and 1996 The women and girls toiled behind locked doors, were unable to leave after being admitted and received no wages. In 2013, then Irish Prime Minister (Taoiseach), Enda Kenny, formally apologised on behalf of the state for its role in the scandal.

Mrs Cavner, a mother-of-five, was initially denied compensation and the payout comes almost 70 years after she was first placed in the Good Shepherd Convent in Sunday's Well, County Cork. She was separated from her siblings and despite only being 11 when she arrived, she received no teaching from the nuns and experienced long-term hunger while working into the night looking after babies, cleaning, working in the laundries and preparing meals for the nuns. "They held me there and worked me until I was nearly 18," said Mrs Cavner, who now lives in New Milton. We weren't allowed to talk or associate with anybody else."

The Irish government said 770 former residents of the laundries have so far been awarded more than €29.8m (£27.32m) in compensation. However, Mrs Cavner said she was told by the authorities she would not receive compensation because the laundry she worked in was not eligible under the government's redress scheme. A lengthy legal battle ensued and she complained to the Irish ombudsman, which went on to recommend that the redress scheme be extended. "I had never mentioned what happened to me to my husband or my children, so it took all of my courage to admit what I had been through and then they called me a liar," Mrs Cavner said. My experience in the laundry left me unable to communicate properly. have had really low points as they have made me live this again and to be accused of not telling the truth made me feel rejected."

The Irish ombudsman awarded Mrs Cavner a lump sum of €50,000 (£45,800) and a further €26,000 (£23,800) which will be given to her in incremental payments in the future. She said receiving the payment was "bittersweet" and her fight was "never about getting compensation" but to "hold those who made me stay in the laundry to account". A spokesman for the Irish

Department of Justice and Equality said the government "recognises the sensitive nature of these cases" but could not comment on Mrs Cavner's specific circumstances.

What were the Magdalene laundries? • Originally termed Magdalene Asylums, the first in Ireland was opened in Dublin in 1765 • Envisaged as short-term refuges for "fallen women" they became long-term institutions and residents were required to work, mostly in laundries on the premises • They extended to take in unmarried mothers, women with learning difficulties and girls who had been abused • The last Magdalene asylum in Ireland, in Waterford, closed in 1996

Another CCRC Referral That Lies Uneasy in Your Stomach

Again the CCRC has referred a case to the CoA of someone, who has not spent a second in prison. Everyone is entitled to appeal their conviction, but have the CCRC got their priorities right. Most if not all their applicants are still rotting in prison. With the minimal prospect that the CCRC will ever refer their case to the CoA. So far this year the CCRC have made nine Referrals to the CoA, of these, four of the referrals served less than six months in prison, and one served no time at all. Three of these are very simple: Immigration offences, charged failing to produce an immigration document, contrary to section 2(1) of the Asylum and Immigration (Treatment of Claimants) Act 2004. Should have been entitled to rely on the statutory defence under section 2(4)(c) Asylum and Immigration (Treatment of Claimants) Act 2004, and that that defence would probably have succeeded. One of mistaken identity, spent six days in prison. Five of this years referrals did not necessitate the massed guns of the CCRC! MOJUK or anyone else for that matter, should not infer that the CCRC are “Juking the Stats”, making it look like they have achieved something when in reality, they have not.

CCRC Refers Case of Tracey Newell to Court Of Appeal

On 29 November 2012, at Inner London Crown, Ms Newell pleaded guilty to seven counts of benefit fraud. The counts related to claims for Housing and Council Tax Benefit covering the period from 1 August 2005 to 5 December 2012. The prosecution case was that Ms Newell failed to declare seven bank accounts of which she was either sole account holder or joint account holder with her father. In January 2013, Ms Newell was sentenced to 18 weeks’ imprisonment, suspended for 18 months, and 150 hours unpaid work. Confiscation proceedings were instigated. Later that year a Confiscation Order was made for £17,637.93 and Ms Newell was ordered to pay within 28 days or serve 12 months’ imprisonment in default.

Ms Newell appealed against the Confiscation Order but in April 2014, the Full Court dismissed the appeal. In separate proceedings at the First-Tier Tribunal, Ms Newell appealed against the local authority’s calculation of overpaid benefits upon which the Crown Court’s confiscation order was based. The Judge in those proceedings ordered a recalculation of the amount. In June 2014, Southwark Council wrote to Ms Newell to tell her that the calculation of the overpayment of benefits in her case had been reduced to a total of £3,225.28. However, when, at the request of Southwark Council, the enforcement of the Confiscation Order for £17,637.93 was considered at Inner London Crown Court in December 2014, the Judge concluded that, in spite of the decision of the First-Tier Tribunal, the original order remained valid and that he did not have jurisdiction to change it.

Ms Newell applied to the CCRC for a review of her case in January 2016. Having reviewed the case in detail, the CCRC has decided to refer that case for appeal on the basis of fresh evidence that raises a real possibility that the Court of Appeal will now amend the Confiscation Order. Ms Newell was not represented throughout her application to the Commission.

Brazil Extradition: Drug Smuggling Case Collapses

Doughty Street Chambers, has successfully secured the discharge of a Portuguese national, Mr. Gomes from an extradition request issued by the government of Brazil. The case collapsed after a Sao Paulo court ruled that the evidence was unlikely to be capable of convicting the requested person and the Westminster Magistrates Court found a real risk of a breach of Article 3 of the European Convention on Human Rights.

The result comes almost a calendar year after Mr. Gomes was arrested on an accusation basis. His legal team argued throughout that there was no prima facie case as the entirety of the prosecution rested upon the hearsay evidence of a convicted co-defendant. That co-defendant alleged a third-party told him that Mr. Gomes had paid for the drugs he was to smuggle from Brazil to Europe, allegations which Mr. Gomes had always strenuously denied and for which there was no independent evidence.

Mr. Gomes’ legal team attacked the case from all angles, including the question of Brazilian prison conditions. Relying upon the expert evidence of renowned prison expert, Prof. Juan Mendez, who travelled to Brazil and inspected Itai prison, Mr. Gomes was able to demonstrate that the conditions there would clearly breach the UK’s obligations under Article 3 of the Convention. Moreover, Prof. Mendez also found that the client would also be held in squalid and dangerously overcrowded conditions in Sao Paolo pending transfer.

The Brazilian government then attempted to claim the client could be held at yet another prison, this time in Brasilia (Papuda prison); yet the evidence was clear that conditions at that prison are even worse than in Sao Paolo or at Itai. The case then collapsed following a habeas corpus challenge brought on behalf of Mr. Gomes by Teixeira Advocates in Sao Paolo before the Brazilian government was able to propose anywhere else.

Manchester Police Officers Could Face Criminal Charges After Death of Andre Moura

Five police officers are under investigation by the Crown Prosecution Service after Andre Moura was found unresponsive in a police van in Oldham and later pronounced dead in hospital. Moura was restrained with CS gas during the incident, which a neighbour filmed on his mobile phone. He had been arrested after reports of a domestic incident at the home he shared with his partner and children in Oldham during the night of 8 July last year. In the neighbour’s footage, Moura, who was Portuguese, can be heard screaming “help” while officers tell him to stop resisting.

The Greater Manchester police officers are under investigation on suspicion of misconduct in public office after being referred to the CPS by the Independent Office for Police Conduct. One of the GMP officers has also been referred on suspicion of committing assault occasioning actual bodily harm. They could all face criminal charges. Police drove Moura to Ashton-under-Lyne station in the van but found him “unresponsive” upon arrival. An ambulance was called but he was confirmed dead at 1.30am on 9 July at Tameside hospital.

The IOPC said a postmortem examination of his body was inconclusive and an inquest would need to be held to determine the precise cause of death. It has examined CCTV, video from officers’ body-worn cameras and mobile phone footage of the incident. A further five officers were questioned as part of the investigation but no action was taken regarding them. Amanda Rowe, the IOPC’s regional director, said: “This is a very serious and sensitive case involving a large number of officers and a huge amount of evidence, which has required rigorous investigation.” She said the complexity of the investigation meant the watchdog had to commission two reports from experts. GMP has been contacted for comment.

Brazil Extradition: Drug Smuggling Case Collapses

Malcolm Hawkes has successfully secured the discharge of a Portuguese national, Mr. Gomes from an extradition request issued by the government of Brazil. The case collapsed after a Sao Paulo court ruled that the evidence was unlikely to be capable of convicting the requested person and the Westminster Magistrates Court found a real risk of a breach of Article 3 of the European Convention on Human Rights. The result comes almost a calendar year after Mr. Gomes was arrested on an accusation basis. His legal team argued throughout that there was no prima facie case as the entirety of the prosecution rested upon the hearsay evidence of a convicted co-defendant. That co-defendant alleged a third-party told him that Mr. Gomes had paid for the drugs he was to smuggle from Brazil to Europe, allegations which Mr. Gomes had always strenuously denied and for which there was no independent evidence.

Mr. Gomes' legal team attacked the case from all angles, including the question of Brazilian prison conditions. Relying upon the expert evidence of renowned prison expert, Prof. Juan Mendez, who travelled to Brazil and inspected Itai prison, Mr. Gomes was able to demonstrate that the conditions there would clearly breach the UK's obligations under Article 3 of the Convention. Moreover, Prof. Mendez also found that the client would also be held in squalid and dangerously overcrowded conditions in Sao Paolo pending transfer. The Brazilian government then attempted to claim the client could be held at yet another prison, this time in Brasilia (Papuda prison); yet the evidence was clear that conditions at that prison are even worse than in Sao Paolo or at Itai. The case then collapsed following a habeas corpus challenge brought on behalf of Mr. Gomes by Teixeira Advocates in Sao Paolo before the Brazilian government was able to propose anywhere else. In Brazil v Gomes, a first instance decision, Malcolm was instructed by Ruta Mikalaite and Gitana Megvine of Oracle Solicitors.

Death Row Inmate Who Always Maintained His Innocence Executed By Lethal Injection

Henry Austin, Independent: A death row inmate who always maintained his innocence has been executed for the abduction, rape and murder of a student more than 20 years ago. Larry Swearingen received a lethal injection at the state penitentiary in the Texan city of Huntsville for the 1998 killing of 19-year-old Melissa Trotter. The teenager was last seen her leaving her community college in Conroe, a small city north of Houston that December. Her body was found in a forest around 70 miles away. After he was convicted two years later, Swearingen always maintained his innocence in her death and claimed that his conviction was based on junk science. The 48-year-old had previously received five stays of execution, but having exhausted all routes for appeal, he became the twelfth inmate to be put to death in the US this year and the fourth in Texas, where 11 more executions are scheduled this year. Describing him as a sociopath with a criminal history of violence against women, prosecutors said they stood behind the "mountain of evidence" used to convict him in 2000.

Swearingen had long tried to cast doubt on the evidence used to convict him, particularly claims by prosecution experts that Trotter's body had been in the woods for 25 days. His longtime attorney, James Rytting, said at least five defence experts concluded her body was there for no more than 14 days, and because Swearingen had been arrested by then on outstanding traffic violations, he could not have left her body there. He said his client, who was also represented by the Innocence Project, was guilty of doing "some very stupid things," but prosecutors didn't have proof he killed Trotter. Mr Rytting also maintained a piece of pantyhose used to strangle Trotter was not a match to a piece found in Swearingen's trailer. He also disputed prosecution experts' claims dismissing blood found in Trotter's fingernail shavings that was determined to not be Swearingen's.

The Texas Department of Public Safety had also said in letters that its technicians should not have been as definitive in their testimony about the blood found in the fingernails and the pantyhose match. Swearingen was put to death after the US Supreme Court rejected his final appeal, which focused on allegations prosecutors used "false and misleading testimony" related to blood evidence and a piece of pantyhose used to strangle Trotter.

Kelly Blackburn, the trial bureau chief for the Montgomery County District Attorney's Office, which prosecuted Swearingen, said his efforts to discredit the evidence were unsuccessful because his experts' opinions didn't "hold water." He said he had "absolutely zero doubt" that they had prosecuted the right man. Mr Blackburn added Swearingen killed Trotter because he was angry that she had stood him up for a date. At the time of Trotter's killing, Swearingen had also been charged with kidnapping a former fiancee.

Swearingen also tried to get people to lie to give himself an alibi, Mr Blackburn said, adding that he got another inmate to write a letter in Spanish that professed to be from the real killer and had it sent to his attorney. Anthony Shore, who he concocted the plan with, was executed last year.

'With Great Power Comes Great Responsibility'

Regardless of whether one attributes this famous quote to Voltaire (definitely not) or Spider-Man, the sentiment is the same. Power and responsibility should be in equilibrium. More power than responsibility leads to decision-making with little concern for the consequences and more responsibility than power leads to excessive caution. This article argues that there is now a disequilibrium in the NHS, which is the root cause for defensive medical practice and the growing NHS litigation bill. Montgomery v Lanarkshire affirmed a transition from patients as passive receivers of care to active consumers by making the collaborative patient-doctor relationship a legally enforceable right. However, as yet patients are not expected to share responsibility for a negative outcome. Medical paternalism may now be dead but judicial paternalism appears to be alive and well. However, contributory negligence is a necessary counter-weight in this balance and it must urgently be applied to restore equilibrium. In 2005 the annual cost to the NHS of settling clinical negligence claims was £500 million. Today it is £2.2 billion, with estimated future liabilities of £65 billion. To prevent the further diversion of NHS resources from frontline healthcare to the settlement of negligence claims, patients must accept greater responsibility for their choices, even when they have negligently been subjected to harm.

Justice Committee Launches New Inquiry Into the Ageing Prison Population

[A prison has installed a stairlift for elderly inmates amid an increase in requests for walking frames, thermal underwear and wedge pillows, The Times reports. Cells and showers have also been adapted to accommodate inmates with mobility problems. One third of the 850 adult male prisoners in HMP Frankland in County Durham is over 50 and more than a third have disabilities. "Smaller items such as walking frames, thermal underwear, wedge pillows and chair raisers are also provided on request," the report from the prison's independent monitoring board said. It added: "It is pleasing to note that a stairlift to enable prisoners with mobility issues to access library and education facilities has now been installed and is in use." A "quiet wing" for old inmates has also been established and staff are planning a "grey forum" to assist prisoners over 50 deal with their concerns over health and physical activities.]

The number of people in prison aged over 50 is projected to grow from 13,616 in June 2018, to 14,100 (3.6% increase) in June 2022. The number over 60 is projected to grow from 5,009

to 5,600 (12% increase) over the same period, and those aged over 70 from 1,681 to 2,000 (19% increase). The proportion of people aged over 60 is also expected to rise as a proportion of the total prison population. These projections result from more offenders aged 50 and over being sent to prison than are being released – driven by increases in sexual offence proceedings since 2012. Offenders are also receiving longer sentences, which also raises the numbers turning 50, 60 or 70 while in custody. The Committee's inquiry will examine the challenges older prisoners face and the services they need, including the adequacy of accommodation, purposeful activity, provision of health and social care, resettlement and whether a national strategy for the treatment of older prisoners is needed.

Chair of the Justice Committee, Bob Neill MP, said: "Prisons are often unfit for the needs of older people and the Committee is concerned that more and more older prisoners are living in unsuitable accommodation without access to proper health and social care or the wider prison regime. The Chief Inspector has said that it is disappointing that there is no clear strategy for older prisoners and the Committee wants to get to the bottom of what is being done to support this cohort of prisoners and what plans are being made for the future as the number of older prisoners increases. The Justice Committee last looked at this issue six years ago and we are concerned that little progress has been made since then. Our new inquiry seeks to identify the extent of the problem and to recommend what can be done to improve the situation."

Terms of Reference: The Committee invites written evidence submissions on some or all of the following points via the Committee's website by 1st October 2019. 1. What are the characteristics of older prisoners, what types of offences are they in prison for and how is this demographic likely to change in the future? 2. What challenges do older prisoners face, what services do they need and are there barriers to them accessing these? 3. Is the design of accommodation for older prisoners appropriate and what could be done to improve this? 4. How do older prisoners interact with the prison regime and what purposeful activity is available to them? 5. Does the provision of both health and social care, including mental health, meet the needs of older prisoners and how can services be made more effective? 6. Do prisons, healthcare providers, local authorities and other organisations involved in the care of older prisoners collaborate effectively? 7. Are the arrangements for the resettlement of older prisoners effective? 8. Does the treatment of older prisoners comply with equality legislation and human rights standards? 9. Whether a national strategy for the treatment of older prisoners should be established; and if so what it should contain?

Guidance on submitting evidence can be viewed here - https://is.gd/PNXnV5

Background: The Committee published a report on older prisoners in 2013. The Committee found that there was a lack of provision of social care for older prisoners and that there was confusion as to which authorities were responsible for what. The Committee highlighted that much of the current accommodation was built for young men and was not appropriately configured for older prisons. A lack of mental health provision was also raised as a significant issue.

The Committee returned to the issue as part of its recent inquiry Prison Population 2022. The Committee found that although there is good provision in some prisons, physical constraints in the prison estate mean that older and infirm prisoners are not always well accommodated, with cell showers and walkways largely inaccessible. Places in palliative care units and dedicated units for older prisoners are insufficient for the size of the population and in some cases, they are held in healthcare beds as the only suitable accommodation.

As part of its current inquiry into prison governance, the Committee looked at the oversight and commissioning arrangements for healthcare in prisons. The Committee heard from witnesses that healthcare for older prisoners was a growing issue. Dr Sarah Bromley, National Medical Director at Care UK, told the Committee that "the fabric of the buildings does not lend itself to caring for people who are wheelchair-bound or have poor mobility. Social care is very patchy across the country, and how well social care is working has a big impact on health as well. For the frail elderly, particularly those with dementia, we are struggling to provide what they need to keep them safe and healthy."

Information on how to submit written evidence

The deadline for submitting written evidence via the Committee's website is Tuesday 1 October 2019. Please note that the Committee may not investigate or intervene in individual cases. Submissions may make reference to individual cases for illustrative purposes, provided they are not the subject of legal proceedings currently before UK courts. Written submissions should be made via the web portal Submissions need not address every aspect of the terms of reference and should be no longer than 3,000 words.

The Committee values diversity and seeks to ensure this where possible. We encourage members of under represented groups to submit written evidence.

HMP Elmley – Less Safe, Weaknesses Across all Areas

HMP Elmley, a large men's prison on the Isle of Sheppey in Kent, was found to have become less safe over the last four years and was assessed by inspectors as not sufficiently good across all aspects of prison life. However, Peter Clarke, HM Chief Inspector of Prisons, said Elmley was "not without hope" as Governor and management clearly understood the weaknesses and had credible plans to address them. At the time of the inspection in April and May 2019, Elmley held over 1,100 prisoners, with significant numbers of foreign nationals and sex offenders. The prison was last inspected in 2015. It was pleasing, Mr Clarke said, to see some improvements to the reception and induction of new prisoners. Violence was lower than in similar prisons, though a quarter of prisoners still said they felt unsafe. The prison was urged to conduct more thorough investigations into the factors driving violence. Nearly half of prisoners said it was easy to obtain illicit drugs in the prison and 22% tested positive during random mandatory drug tests, but there was no comprehensive drug supply reduction strategy. However, care for those in crisis or at risk of self-harm was reasonably good.

25 recommendations from the last inspection were not achieved. Inspectors saw too many examples of low level poor behaviour such as open vaping on wings, prisoners being inappropriately dressed, the use of bad language and play-fighting going unchallenged. "Inexperienced staff needed to be given the confidence to do so, and this required them to be supported and mentored by their more experienced colleagues," Mr Clarke said. "However, we saw young, inexperienced staff being left alone on landings while groups of their colleagues congregated in wing offices."

Living conditions were variable across the prison, and overall standards of cleanliness were not good enough. No fewer than 180 prisoners were allocated to working on the wings, but many were not fully or meaningfully employed or supervised. The strategic management of rehabilitation and release planning needed more attention. Although there was some good work being carried out, including the management of multi-agency public protection arrangements (MAPPA) cases, significant improvement was needed in many other areas.

Overall, Mr Clarke said: "While it was disappointing to find that the prison had not managed to improve since the last inspection, and that on this occasion all our judgements were 'not

sufficiently good', the picture was not without hope. The prison had a number of credible plans to address the weaknesses, and those weaknesses were clearly acknowledged. There was also a full staff complement, so in terms of both plans and people, the prerequisites to make progress were in place. I was invited to regard Elmley as an establishment that was going through a transitional phase. There could be little doubt that this was a genuinely held aspiration, and I was given the clear impression that the senior team were fully aware of the amount of hard work and focused leadership that would be required to turn the aspiration into reality."

Deaths on the Rise in 10 Toughest Prisons in England And Wales

Aamna Mohdin and Jamie Grierson, Guardian: The number of deaths in 10 of the most challenging prisons in England and Wales has increased, a charity has revealed, undermining a £10m government project to reduce violence in the jails. Prisoner deaths increased by 20% in the first 11 months of the project, when compared with 12 previous months, according to data from the Ministry of Justice and the charity Inquest. The number of prisoner deaths jumped from 34 to 41, and self-inflicted deaths increased from 14 to 15. Homicides decreased from three to zero in the 10 jails.

The then prisons minister Rory Stewart introduced the initiative, named the 10 Prisons Project, in August 2018 in an attempt to reduce violence. He promised to resign by August 2019 if the number of assaults did not fall in the prisons, but was moved to the Department for International Development before becoming a backbencher. The project provided the 10 prisons with extra staff, a new team of experienced officers to support the workforce, x-ray body scanners, metal-detecting equipment, drug trace detection machines and toilet traps to collect flushed contraband. The funding was also used to refurbish cells and communal areas. Inquest has condemned the "fundamentally flawed vanity project" for failing to create a safe environment for prisoners, despite a decline in prisoner numbers in the 10 jails and an increase in staff.

Parliamentary questions from the shadow justice secretary, Richard Burgon, showed that the number of inmates across the 10 prisons fell by 6% between July and December 2018 when compared with the same period in 2017. The number of prison staff increased by 17%. Statistics published on Thursday by the MoJ show an overall 16% reduction in assaults and a 50% reduction in positive drug tests across the 10 prisons. HMP Lindholme and HMP Isis had a 46% reduction in assaults, while drug use fell by 84% at Lindholme and 78% at HMP Wealstun. The number of assaults in Wormwood Scrubs and Nottingham went up and in Hull it was unchanged.

The prisons minister, Lucy Frazer, said: "I am encouraged by the results of this bold project to turn around some of our most difficult prisons, which have seen drops in both violence and drug use. We are already using what has worked to improve the rest of the estate, spending £100m on airport-style security to stop the scourge of mobile phones and drugs that fuel crime and disorder in jails."

The 10-prison project has now ended. Boris Johnson pledged last week to spend a further £100m on improving prison security, but the move was quickly dismissed as bravado. The family of Winston Augustine, who died in Wormwood Scrubs just after the start of the 10 Prisons Project, has called for a more compassionate approach to address the pressing challenges the institutions face. Deaths in Wormwood Scrubs jumped from two in the year before the project to six during its first 11 months . Augustine's cousin, Diane Martin, said: "The statistics show something has clearly not been working. While I'm not surprised by these figures because of what Winston went through, it's beyond disappointing that there has been little improvement. We've got serious questions [about] how Winston was treated whilst in prison and how inmates continue to lose their lives. You don't think a family member would go into prison and not walk out."

Deborah Coles, the director of Inquest, said: "The focus was reducing violence and criminality, with no consideration of the underlying issues which foster these behaviours in prison. This was a fundamentally flawed vanity project which resulted in an increased number of people dying. Ministers have been largely silent on this issue. The relentless focus on the issues of violence and drugs may have brought some short-term relief. However, this focus has abjectly failed to guarantee the health and safety of prisoners. Punitive regimes do not foster safety. They intensify the problems inside, alienate prisoners and reproduce the conditions that generate self-harm and self-inflicted deaths. They are more, not less, dangerous. Harsh regimes are a complacent, simplistic response to a complex problem."

A Prison Service spokesman said: "We take every death in custody very seriously and each one is independently investigated by the Prisons and Probation Ombudsman. We're taking urgent action to improve safety and decency in our prisons – investing £100 million in tough new security measures and spending up to £2.5 billion to create a modern and efficient estate."

Care Home Manager to be Sentenced for Failure to Disclose Evidence at Inquest

A former manager at a care home where a young woman died is due to be sentenced later this month for failing to attend and disclose evidence to an inquest. The charity Inquest said it believed this was the first such case of its kind. It said Duncan Lawrence had been the clinical lead and consultant at Lancaster Lodge, a specialist care home for people with mental health problems in Richmond-Upon-Thames. He made changes that resulted in a new care regime shortly before Sophie Bennett, 19, was found in a critical condition in the home and later died. Inquest, which is working with Ms Bennett's family, said that despite receiving a summons from the coroner, Mr Lawrence failed to attend and disclose crucial evidence at the inquest into her death.

On 1 May HM assistant coroner John Taylor fined Mr Lawrence £600 and referred his absence to the police and Crown Prosecution Service, who then charged him with withholding evidence/documentation in relation to a coroner's inquest, contrary to schedule 6 of the Coroners and Justice Act 2009. He attended a court hearing on 16 August and is due to be sentenced on 27 August, the BBC has reported.

The inquest jury in February 2019 found that neglect contributed to Ms Bennett's self-inflicted death, which occurred in 2016, after the Care Quality Commission (CQC) assessed the home as 'inadequate' Inquest director Deborah Coles said: "Inquests play a vital role in scrutinising the circumstances of preventable deaths like Sophie's. A full and fair hearing enables the coroner to do their job. As such it is essential that those involved in providing care attend and give the necessary evidence.

Serving Prisoners Supported by MOJUK: 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, 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, Jake Mawhinney, Peter Hannigan.