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# MOJUK: Newsletter 'Inside Out' No 781 (19/02/2020) - Cost £1

**Has Anyone at the CCRC Got the Time, Please?**

Michael Naughton, Justice Gap:I was astonished to learn that the CCRC keeps no records at all on how much time that it spends working on cases. Such record keeping and time management is a basic requirement that normally lies at the heart of law firms, which the CCRC effectively is, which rely on the billable hours system to know what work is done, by whom, and how long it took, so that they are then able to calculate how it should be costed. Knowing how long it takes to review alleged miscarriages of justice that are submitted to the CCRC, which is well documented to be cash-strapped with a diminishing budget, would also be invaluable in calls for further public funding, which is something that its defenders and critics, alike, agree is much needed.

The information was revealed in a series of tweets by Mick Geen, father of Ben Geen, a former nurse who was convicted of murdering two patients and causing grievous bodily harm to 15 others while working at Horton General Hospital in Banbury, Oxfordshire, in 2003 and 2004. See below. Ben Geen, who has so far served going on half of his 30 year prison sentence, has always maintained his innocence, and there is mounting evidence that not only casts doubt on the evidence that led to his conviction but which also questions whether any crimes were committed at all.

The revelation that the CCRC have no idea how much time that they spend investigating alleged miscarriages of justice was obtained in the response from the CCRC to a Freedom of Information (FOI) request from Mick Geen in late 2016 that he disclosed on Twitter on 22 January 2020. Specifically, Ben Geen's application to the CCRC had been rejected and Mick wanted to know: 'After a flawed investigation & supposedly years of work I wanted to know how much time had been spent by the CCRC investigating Ben's complex & detailed application-We were genuinely surprised at the response w (sic) received-I wonder if things are different now?' The foregoing reply by the CCRC provides further insight into the general lack of transparency and accountability of the organisation (here).

'We do not consider it necessary to record activity on each case hour-by-hour, day-by-day, or in a way that allows to say specifically when a case is being, as you say, worked on. We simply say that a case is under review from allocation to case closure. Case Review Managers are trusted to manage their portfolio of cases. Their managers manage their performance and keep track of how many cases they have and how those cases are progressing. Significant events in the life of a review are recorded in our case management system but this is not designed to account for the exact amount of time spent on a case or to show which days there was specific activity on this or that case. The Commission takes the view that there is no need for that sort of calculation in order for us to effectively manage our casework.'

The CCRC's response also means that applicants are unable to evaluate the thoroughness, or otherwise, of reviews into lines of inquiry that they request in their applications. But, despite this, applicants are expected to simply 'trust' that CCRC case review managers are managing their cases 'effectively'. Well, trust is something that must be earned and with 99% of applications currently being rejected by the CCRC (here) it is not something that alleged miscarriage of justice victims and the organisations and groups that support them feel inclined to do.

Moreover, what does it actually mean to say that the CCRC 'takes the view that there is no need for that sort of calculation in order for us to effectively manage our casework.'

Does it mean from a managerial perspective that it has devised methods to quickly find fault with applications so that they can be rejected, and key performance indicators for processing its applications met? Or, alternatively, does it mean from a justice perspective that it uses its special powers to undertake full investigations in the public interest into any and all lines of inquiry into claims of factual innocence to determine whether applicants like Ben Geen, and the growing number of others like him (see here), are, indeed, innocent victim of wrongful convictions and/or imprisonment as they claim?

Answers to these questions by the CCRC are welcomed but one thing is certain, such a blasé attitude to a request from the understandably concerned father of an alleged victim of a wrongful conviction who has been languishing in prison for almost 15 years and whose entire family is torn apart by the CCRC's lack of proactivity is not conducive to fostering trust and confidence. It just may, however, have the effect of further enhancing notions that the CCRC is a law unto itself that obscures rather than illuminates justice, which could, hopefully, strengthen the Empowering the Innocent (see here) campaign for its reform or replacement with a body that is fit for the purpose of assisting innocent victims to overturn their wrongful convictions.

From Mick Geen: 'I sent this freedom of information request to the CCRC in March 2016 following the miscarriage of justice watchdog's decision that: 'There was no basis to justify the Commission referring our Son Ben Geen's case for fresh appeal'. I had genuine concerns that due to being underfunded and under-resourced the CCRC were unable to efficiently and effectively investigate Ben's wrongful conviction. Following the response to my FOI request I was extremely surprised to learn that CCRC appeared to lack a structured and robust internal system to monitor staff resource for performance, efficiency and cost effectiveness in the manner that I had anticipated. Following the CCRCs rejection of Ben's application a judicial review was granted to challenge their decision. I was pleased to later learn that the CCRC had decided to take our son's case back on with immediate effect appointing a new case review manager and commissioner. We are confident of a more positive result at the second time of asking.'

**Finucane: Widow Wins Right to Challenge Alleged Government Failures**

Geraldine Finucane was granted leave to seek a judicial review as part of her ongoing fight to secure a public inquiry into her husband's death. Mr Finucane was shot dead by loyalist paramilitaries in 1989. The high profile Catholic solicitor, 39, lived and worked in Belfast. There have been long-standing allegations that members of the UK security forces colluded in his murder. In February last year, the Supreme Court held that previous inquiries into the assassination did not meet human rights standards.

Mrs Justice Keegan ruled on Friday 31st hanuary 2020, that Mrs Finucane had established an arguable case that the government's delay in taking action since then was unlawful. Proceedings will now advance to a full hearing later this year. The judge said: "This is not a guarantee of success, but it's clear to me and fairly obvious that there's already a passage of time... that will require to be explained in evidence." His family have campaigned ever since for a full examination of alleged security force collusion with the killers.

Lawyers for Secretary of State Julian Smith insisted he is committed to making a decision on their demands for a public inquiry as soon as possible. Although Mr Smith was due to meet Mrs Finucane to discuss the case last week, that arrangement has been postponed until 21

February. During the judicial review hearing, a barrister for the murdered solicitor's family claimed they are being treated with contempt. It was contended that the level of delay since the Supreme Court reached its decision "beggars belief". Counsel for the secretary of state stressed the decision-making process involved a number of stages, including meeting the family and consultations across departments and with the prime minister. In her ruling, Mrs Justice Keegan acknowledged Mr Smith's "bona fides" in dealing with the issue. "I do not accept the argument that there's been any abdication of responsibility by the secretary of state," she said. "But there is, in my view, an arguable case in relation to the delay that has been occasioned in reaching a decision." She added that efforts should continue on the ground "to deal with this difficult case in a collaborative way".

**White Men Still Dominate Judiciary, Says Justice Report**

Simon Murphy, Guardian: Progress to improve diversity in the judiciary is too slow and there has been stagnation in the appointment of BAME judges, according to a damning report by an influential law reform group whose head warns that senior roles are still “dominated by white men”. The report by Justice said that only a third of judges in courts are female and just 7% are BAME (black and minority ethnic) compared with 13% of the population in England and Wales, although it did note there had been modest improvements in the past three years. The report finds there have been more efforts to bolster outreach to BAME communities but this has not resulted in appointments in judges. There is not a single BAME judge in the supreme court. Meanwhile, data gathered by the group also found that higher socio-economic groups dominate, with three in four existing senior judges having attended Oxbridge and 60% having been privately educated despite only 7% of the country attending fee-paying schools.

The report, Increasing Judicial Diversity: An Update, was compiled by a working group following the organisation’s 2017 review exploring the structural barriers faced by underrepresented groups trying to make it in the legal world. The report notes: “The working party is particularly troubled by the stagnation in the appointment of BAME judges since our last report.” It acknowledges that some minor recommendations have been adopted by the Judicial Appointments Commission since its 2017 review, but adds “despite these changes, the senior judiciary remains predominantly made up of white, male, able-bodied and privately educated barristers”.

The report comes after Lady Hale, who was succeeded as president of the 12-seat supreme court earlier this month, last year called for greater diversity so that the public feel those on the bench are genuinely “our judges” rather than “beings from another planet”. The report makes a series of recommendations including a continued call for the introduction of targets for minority appointments, rather than specific quotas, as well as the creation of a permanent “senior selection committee” for top judiciary posts. It also urges the establishment of more structured judicial career paths to diversify judge appointees at top levels so that more come from tribunals, in-house and private practice solicitors, as opposed to the bar. Meanwhile, the group recommends tackling “affinity bias” so that there is a move away from appointing senior judges from similar backgrounds to themselves.

Andrea Coomber, director of Justice, said: “Nearly three years since our last report there has been only modest progress towards a more diverse senior judiciary. Our senior judiciary continues to be dominated by white men from the independent bar … The judiciary play a critical role in our democracy and hold immense power in society. They can take away people’s liberty, their children, their rights and more. That such power is held by such an unrepresentative group of people – however meritorious – should be of concern to us all.” Since Justice’s 2017 report



there have been some notable strides to improve diversity in the judiciary, including the appointment of two more female justices to the supreme court, as well as Sir Rabinder Singh to the court of appeal. A Ministry of Justice spokesman said: “We are working across government to ensure we have a judiciary that represents the communities it serves. A programme which supports candidates from underrepresented groups to become judges is ongoing and we are looking at other ways to increase representation across the criminal justice system.”

**Conditions of Detention of Disabled Prisoner Wheelchair Bound Were Degrading**

In its committee judgment in the case of Bayram v. Turkey (application no. 7087/12) the European Court of Human Rights unanimously held that there had been: a violation of Article 3 (prohibition of degrading treatment) of the European Convention on Human Rights as regards the applicant’s conditions of detention in Batman Prison from 11 April 2001 to 25 September 2012, and The case concerned the conditions of detention of the applicant, who is paraplegic and cannot move around by his own means. The applicant, whose degree of physical incapacity is 92%, received no assistance between 11 April 2011 and 27 April 2011 in Batman Prison. On 27 April 2011 the prison authorities appointed two of his fellow inmates to assist him. The period during which the applicant, being unable to move by his own means, had to be carried between different floors, continued until 25 September 2012, and therefore lasted some seventeen months.

While in prison, Mr Bayram, whose degree of physical incapacity was 92%, had received no assistance whatever between 11 April 2011, the date of the release of his brother, who had also been in prison and had been looking after him, and 27 April 2011, when the Batman Prison authorities had decided that two of his fellow inmates should assist him as paid carers. On 25 September 2012 Mr Bayram was transferred to the Diyarbakır D-type Prison and placed in a one-storey dormitory, with two wheelchairs at his disposal.

The Court observed that, broadly speaking, the authorities had shown a degree of diligence in providing for the applicant and improving his conditions of detention. There was nothing to suggest that there had been any intention to humiliate or debase him during his period of detention. Two sets of proceedings had been commenced seeking a presidential pardon for the applicant. He was released on 14 June 2013 for health reasons, with an obligation to undergo a medical examination every three months.

The Court reiterated that detaining disabled persons in an institution where they were unable to move about by their own means amounted to “degrading treatment” within the meaning of Article 3 of the Convention. As regards the period from 11 to 27 April 2011, in Batman Prison, Mr Bayram had been unable to move around autonomously: the living areas were on two different floors, and his bed had been on the upper floor while the toilets and the door to the exercise yard had been on the ground floor. The applicant had had to ask his fellow inmates for help in going to the toilets. On 27 April 2011 two inmates had been instructed to act as his carers, in return for payment. The period of time during which the applicant had had to be carried up and down the stairs had ended on 25 September 2012, and had therefore lasted some seventeen months. The Court noted that the Government had not explained why Mr Bayram had not been transferred to the Metris R-type Prison, which was tailored to persons with reduced mobility, or else to a prison where the living area was on one floor only and could therefore be more readily adapted to his situation.

Finally, on 25 September 2012 Mr Bayram had been transferred to Diyarbakır Prison, where the living area occupied one floor only and an additional wheelchair had been made available to him. The toilet door had been widened specially for wheelchairs. In the light of these

facts, the Court therefore found a violation of Article 3 of the Convention on account of the conditions of detention in Batman Prison from 11 April 2001 to 25 September 2012, and no violation of Article 3 of the Convention as regards the conditions of detention in Diyarbakır Prison from 25 September 2012 to 14 June 2013.

Just satisfaction (Article 41): Having regard to the fact that as from 25 September 2012 the authorities had taken action to improve the applicant's conditions of detention and that they had granted him a stay of execution of his sentence on 14 June 2013, the Court held that, under those circumstances, the non-pecuniary damage sustained by the applicant had been sufficiently compensated for by its finding of a violation.

**High Court Upholds Refusal To Extradite To Slovakia**

J's extradition was sought pursuant to a European arrest warrant (EAW) to serve a three year sentence for an offence of grievous bodily harm dating from June 2005. At first instance, it was argued that the evidence from Slovakia failed properly to include information about whether J had deliberately absented himself from trial and whether he would receive a retrial following his extradition. District Judge Radway found that the Slovakian authorities had failed to prove that (a) J was convicted in his presence, (b) J was deliberately absent from his trial, and (c) J would receive a retrial following extradition. The Judge therefore discharged J from the extradition request as he could not be satisfied that he would receive a retrial once returned to Slovakia. In coming to this conclusion, the Judge refused an application made by the Crown Prosecution Service to adjourn to seek further evidence from Slovakia. Further, on the day that judgment was due to be handed down, the Judge refused to admit into evidence further information from Slovakia purporting to deal with the evidential problems in its case. The High Court has refused Slovakia permission to appeal the Judge's decision. Mr Justice Johnson found that there was no obligation on the Judge to adjourn the proceedings to seek further information thereby upholding the Judge's rigorous case management decisions. Further, Mr Justice Johnson found that the evidence which was excluded by the Judge was not directly relevant to the issues which needed to be decided. Following the High court's decision, J has been released from custody.

**Jessica Breeze Cleared of Father's Murder After 'years of Violence'**

BBC News: A woman who stabbed her "controlling" father after suffering years of abuse has been found not guilty of his murder and manslaughter. Jessica Breeze, 20, denied murdering Colin Brady, 49, at the family home in Keith Road, Middlesbrough, in June. Miss Breeze told Teesside Crown Court her father had frequently injured her in regular bouts of violence. He had punched and threatened to kill Miss Breeze and her mother before he was stabbed in the back, jurors heard. The prosecution alleged Miss Breeze had stabbed her father as he was leaving the house.

In evidence, the nursery worker recalled how her father would "kick off" and "smash the place up" if she returned home late. Asked by her barrister, Simon Russell Flint QC, if she ever reported her father's violent outbursts, she replied: "No. I was scared. I thought it was pointless." Mr Brady had previous convictions for violence, including causing grievous bodily harm with intent. He had attacked Miss Breeze's mother, Kelly Breeze, in an assault a police constable said was the worst he had seen.

The trial had heard that an argument broke out after Miss Breeze's parents discovered she had been secretly seeing her boyfriend when she said she had been at work. During the row, Mr Brady



slapped or punched his then 19-year-old daughter several times, before her mother intervened, the court heard. "He was punching me in the face with his fists," Miss Breeze told the jury. "He said he was going to kill us." She was one digit away from dialling 999 when he demanded she hand over her phone, the court heard. The court was told she had "no memory of picking up the knife". He was taken to hospital with an 18cm-deep wound to his left lung, but could not be saved.

Outside court, Miss Breeze's solicitor, Sean Grainger, said in a statement: "The jury accepted she was acting in lawful self-defence of herself and her mother when under a sustained and violent attack by her father. "Further, whilst Jessica was brought up in a highly toxic home environment where she and her mother were regularly subject to extreme physical and emotional abuse by her father, Jessica wishes to make it clear she loved her father, she still does and wishes he was still here. "She now wishes to rebuild her life, get back to work and move on from the seven-month ordeal she has endured since her arrest." Following the acquittal, a CPS spokesperson said: "While there was evidence of a sometimes violent relationship between the victim, Colin Brady, and the defendant, Jessica Breeze, the circumstances of his death made a charge of murder wholly appropriate in this case. "Regardless of the alleged provocation for the attack, the victim was attacked in the back as he walked away from the defendant. "He was stabbed with such force that it passed from his back through his entire left lung and into his chest. Despite claims of self-defence by the defendant, the evidence was such that there was a case to answer."

**Man Who Fought London Bridge Attacker Decries Longer Jail Terms**

Owen Bowcott, Guardian: Longer prison sentences do not deter would-be terrorists and only delay rehabilitation, a former prisoner who tackled the London Bridge knifeman has said. John Crilly, who seized a lectern, chair and fire extinguisher to subdue Usman Khan, has criticised Boris Johnson's pledge to increase jail terms. He said excessively punitive policies made it harder to release inmates and "add to the burden on society". His comments were made before the latest jihadist attack, in Streatham, south London, on Sunday. Khan killed two prison reformers, Jack Merritt and Saskia Jones, at a Learning Together conference on rehabilitation in Fishmonger's Hall in the City of London on 29 November last year.

Crilly, 48, from Manchester, has been on his own odyssey through the criminal justice system: expelled from school at 15, he became a drug dealer, burglar, supposed murderer, victim of wrongful conviction and – supported by Merritt – a freed law graduate. Of the few who defied Khan, two – Crilly and Steve Gallant – had been jailed on joint-enterprise charges. That high proportion, Crilly believes, demonstrates how the law is being repeatedly misapplied. Brought up on a Manchester housing estate, Crilly had a tough start in life. He laboured on building sites, his mother was killed in a traffic accident when he was 17 and on the same day his partner left, denying him access to his son. "After that I became a drug addict," he said. "I used to inject whizz [amphetamines] and steal cars. I gave up working. I hated everyone, I hated everything, I hated myself. I felt guilty I couldn't save my Mum."

He was sent to Risley prison where he took heroin. On release he began dealing in the Ancoats district of Manchester and worked with another ex-convict, David Flynn. He joined Flynn and another man on a burglary in early 2005. They knocked, thought no one was in and forced the door. Augustine Maduemezia, 71, was at home but had tinnitus and had not heard them. "I instantly wanted to get out of there," Crilly said. "You could tell [Maduemezia] had nothing. I tried to persuade Flynn to leave. The guy stood up and Flynn punched him. I picked him up and set him on the couch. It just looked like he had a bloody lip." Madezumia, how-

ever, died from the single blow. Crilly and Flynn were arrested, charged with murder and convicted. Crilly appealed unsuccessfully, arguing he had no intention of inflicting violence. In 2016 the supreme court ruled that judges had been misinterpreting the joint enterprise "foresight" rule for 30 years. Crilly appealed again. His murder conviction was eventually quashed. He is the only joint enterprise appellant to have succeeded in a legal challenge since 2016. He was given 18 years for manslaughter instead – an unusually long sentence. "People said I would get out quicker if I pleaded guilty," he said.

In prison, Crilly studied for a Open University degree and was supported by Jengba (Joint Enterprise Not Guilty By Association). When he graduated, Merritt, whom he had got to know, drove up to Manchester for the ceremony. After release, Crilly moved to Cambridge. He was involved in Learning Together's conferences, spoke to probation officers and regularly visited Merritt at the university's Institute of Criminology. He agreed to participate in the Fishmonger's Hall conference, travelling down with Learning Together volunteers. The day started badly: Crilly's bag burst, the ticket machine did not work and his coffee flask leaked. In London, they met another conference participant, Usman Khan, outside a tube station. "'Usman, John; John, Usman'," he was introduced. "So I shook hands with him. He seemed in the same mood I was in, not very talkative. He was cocooned in a jacket, zipped up and looked warm. I just assumed he was a bit introvert." They reached Fishmonger's Hall together. When Usman launched his attack, Crilly was above a staircase talking to a former inmate and a judge on the Parole Board. "We started hearing screaming," Crilly remembers. "At first we weren't sure if it was jovial or in horror. It got louder and it was clear it was arguing." He walked down. "Saskia was lying on the stairs. She was bleeding and in a bad way." The other former prisoner helped her. Khan was below with a knife in each hand. "I could see another girl lying in a pool of blood behind him in the reception hall."

A woman from Learning Together "was walking towards him in a trance. Her best friend was in the pool of blood. I think she thought she could reason with him … She was five metres away by the time I got to her." Crilly pulled her aside. "[Khan's] attention was drawn to me. We started a screaming match. I was saying: 'What are you fucking doing?' I was trying to talk him down." Khan exposed his fake suicide belt. "He was trying to persuade me it was real. I said, 'Blow it up'. I picked up a lectern and went for him. A couple of times he lunged at me and I stepped back. I tried to hit him. In the end I threw it and hit him." But Khan stepped back and stabbed the woman lying behind him. "It was horrible. I picked up a heavy chair and hit him, sending him flying off to the side."

At that point Steve Gallant arrived armed with a narwhal tusk provided by Darryn Frost, a civil servant. "I ran off down the corridor [looking for a weapon]. There was nothing except pictures. The only thing was a fire extinguisher." He realised he could spray Khan and soak the suicide belt. "I blew it into his eyes. He made another lunge for me [and ran out on to London Bridge]." Crilly, Frost and Gallant pursued. "We were right behind him. He turned. We were all in the right place. The spray blinded him, Darryn hit him with a tusk and we dropped him … As soon as he hit the floor we pounced. "I took one of the knives and started whacking him on the temple with the handle. We were trying to keep his hands away from his body. He was struggling and, I think, saying, 'Allahu Akbar'." The police appeared quickly. "They were screaming to get off … and Tasered him. I was shouting, 'Shoot him' and telling [officers] he had a suicide vest. Then they shot him."

Crilly is now "washing pots" in a Cambridge college and living in a cramped hostel room. He has received no official letter of thanks. There is an irony that those convicted of joint enterprise should have worked together so effectively to bring down Khan. "I wake up in the night thinking about it," he said. "I want people to realise the justice system is failing to respond to [the problems of] joint enterprise. I suppose it shows the good people are not so good, and



the bad people are not so bad." Of Khan, he remarked: "He was a lost, brainwashed idiot. I don't know his story but it didn't justify anything." He described the prime minister's promise to extend prison sentences as "nonsensical". "Longer sentences are not a deterrent. It just makes people who get to the end … feel very bitter, angry and worthless. The longer they are in, the harder it is when they get released. It's putting a burden on society … You need to give people a reason to want to change."

**Government Exploits Tragedy To Impose Tough Prison Agenda**

On 29 November 2019, a meeting to celebrate the fifth anniversary of the Learning Together prison education project ended in tragedy with two participants, Jack Merritt and Saskia Jones, stabbed to death and the perpetrator of those killings, Usman Khan, shot dead by the police on London Bridge. The fall-out from this horrific event, which took place less than two weeks before the general election, will have repercussions for many current, future and ex-prisoners with no involvement at all in the incident itself. *Nicki Jameson FRFI* reports.

Learning Together was founded in 2014 by Cambridge University academics and began with a project in the 'Therapeutic Community' prison at HMP Grendon. Following its success, further projects were set up in other prisons. The main premise of the initiative is that a group of university students and a group of serving prisoners work together on a project, in which they all learn, both about the subject itself and about each other. Unlike other schemes involving law or criminology students going into prisons, it does not objectify the prisoners, as the external students are not there to teach or study the prison students, but to study a topic alongside them. Compared to most of what passes for 'prison education', Learning Together - which puts Paolo Freire's Pedagogy of the Oppressed at the top of its list of 'useful resources' - is a breath of fresh air.

The 29 November event was attended by the usual range of academic and criminal justice professionals who go to such conferences; however, given the nature of the project, strenuous efforts had clearly been made to ensure that as many prisoner participants who had either been released from their sentences, or were in Category C or D prisons from which they could be given temporary licences, could attend. As the course administrator whose job included such tasks as booking external speakers for prison seminars and co-ordinating joint work between the prison and university students, Jack Merritt would have been centrally involved in ensuring that this happened and that the prisoners were properly represented at the event, as opposed to there being one token, grateful 'offender/service user', which is frequently the case at other less sincere projects.

Usman Khan had worked with Learning Together while in Whitemoor prison, where he was serving a 16-year Extended Sentence for planning terrorism offences. He had been arrested in 2010 and originally sentenced in 2012 to an Indeterminate Sentence for Public Protection, which was overturned on appeal. He was released in December 2018 on a licence with strict conditions, including electronic monitoring. In general he was not allowed to travel to London but had a special dispensation for that day. Having sat through the morning's programme, at lunchtime he launched an attack on the attendees, resulting in the deaths of Jack Merritt and Saskia Jones, a former student participant in the programme, and the hospitalisation of three other people. Having been chased out of the building by workers from the venue and conference-goers, including other former or serving prisoners, Khan was eventually shot dead by the police.

Electioneering: There was no pause for mourning or reflection; with an impending election on 12 December, Prime Minister Boris Johnson rushed into print the day after the attack, with a Daily Mail article headlined 'Send me back to Number 10 and I will end automatic early

release of violent offenders and terrorists'. Johnson repeated the promise he had made back in August 2019, and which was then included in the Conservative Manifesto in November, to end automatic release at the halfway point for those convicted of 'serious crimes' (see 'Tories plan a reign of terror – Labour has no answer', FRFI 272, October/November 2019). He also made sure that he put the blame for Khan's release and therefore his subsequent crimes squarely onto the 1997-2010 Labour government, promising that if returned to power he would '...ensure that [the police and security forces] do not come under constant attack from the human rights lobby who would weaken our anti-terror laws.'

Jack Merritt's father David, who at this point should have had nothing to contend with but mourning and burying his young son, felt forced to respond, writing on twitter: 'Don't use my son's death, and his and his colleague's photos - to promote your vile propaganda. Jack stood against everything you stand for - hatred, division, ignorance.' The war of words continued, as Johnson and other leading Tories continued to use the tragic incident as an excuse to complain that Labour - which, in fact, had far harsher and more punitive criminal justice policies than any previous government - was not tough enough, and that his way of remembering Jack Merritt and Saskia Jones would be to instigate an even more draconian regime.

Longer sentences: Two different processes are now in train, both of which will extend the period in prison that those sentenced in future will serve. Firstly, following the government's August announcement, it prepared a draft Statutory Instrument to come into force in April 2020, which will change the automatic release date for Standard Determinate Sentences of seven years or more for violent or sexual offences from the halfway to two-thirds point. Secondly, following Johnson's election victory, the Queen's Speech on 19 December included the promise that: 'New sentencing laws will ensure the most serious violent offenders, including terrorists, serve longer in custody.' On 21 January, Home Secretary Priti Patel followed this up by announcing a new Counter Terrorism (Sentencing and Release) Bill, which will 'force dangerous terrorist offenders who receive extended determinate sentences to serve the whole time behind bars and ensure those convicted of serious offences such as preparing acts of terrorism or directing a terrorist organisation spend a mandatory minimum of 14 years in prison'.

Collective punishment: Even in advance of these harsher sentencing laws for those not yet convicted, current serving and recently released prisoners immediately felt the after-shocks of the incident and its political fall-out. Everyone convicted of terrorism offences who had been released on licence was subject to emergency review, with at least one immediate recall to prison; prisoners due for release suddenly faced a raft of additional licence conditions, some of which had no relationship to their original conviction, and those about to move from closed to open conditions found the moves postponed. Some people already in open prisons, and with no relationship to terrorism, suddenly discovered that that their temporary licences to attend crime-prevention or educational events had been cancelled. James Ford - one of the ex-prisoners who tried to fight off Usman Khan, and whose own murder conviction was subsequently covered in detail in the tabloid press – was moved from Standford Hill open prison to Elmley, one of the two neighbouring closed prisons 'for his own protection'. A planned extension of the early release electronic tagging scheme which was due to come into operation in January 2020 was quietly dropped.

This clampdown looks set to continue. Parole Boards will be more reluctant to release prisoners, even those who successfully complete programmes such as the 'Healthy Identity Intervention' (a supposed deprogramming course for people with terrorist convictions), and licence conditions will become routinely more stringent.



As with almost all such incidents involving a terrorist attack or violent or sexual crime committed by a released prisoner, or (as in the case of John Worboys) even the potential release of a high-profile, dangerous offender, the government's response is both a series of knee-jerk measures designed to reduce criticism of it for what has happened and the simultaneous exploitation of the incident as a cover for repressive measures which were already in the pipeline.

The only unusual feature on this occasion is that the family of one of the victims has strongly refused to be co-opted into supporting the government agenda, and even in the midst of their shock and grief, has fought back against the attempt. The statement from Jack Merritt's family issued after his death says that 'Jack lived his principles; he believed in redemption and rehabilitation, not revenge, and he always took the side of the underdog', while writing in The Guardian in response to Boris Johnson, David Merritt wrote: 'He would be seething at his death, and his life, being used to perpetuate an agenda of hate that he gave his everything fighting against. We should never forget that.'

**Bourgeois 'justice' as Racist as Ever**

In December 2019 the false, racially motivated convictions of three of the 'Oval Four' - Winston Trew, Stirling Christie and George Griffiths - were overturned after nearly 50 years of struggle to prove their innocence. This is a damning indictment of Britain's racist 'justice' system. The fourth member, Constantine 'Omar' Boucher, has only recently been in contact with the Criminal Cases Review Commission but is due to have his case referred to appeal. *Despine Dohman FRFI* reports.

Trew, Christie, Griffiths and Boucher were all members of the Fasimbas (Young Lions), the youth wing of the South East London Parents' Organisation, a black community group, whose activism included assisting with formal education provision for children in reading, and teaching children of Caribbean immigrants about their rich cultural and historical legacies. On the night of their arrest in March 1972 they were on their way back from a meeting in north London.

The assault was led by Detective Sergeant Derek Ridgewell of the British Transport Police, with a number of other plainclothes police officers. After assaulting the four men without reason, Ridgewell (a former member of the white supremacist South Rhodesian Police) and his officers arrested and charged them with attempted theft, theft and assaulting a police officer. While held overnight at Kennington police station, the men were beaten and forced to sign false confessions.

Ridgewell headed up an informal 'Mugging Unit' on the Northern Line; 'mugging' being a deeply racialised term imported from the US. Ridgewell had a documented habit of setting upon young black men, accusing them of attempted theft and, if they resisted arrest, adding the charge of police assault. He became such a liability that he was later quietly moved to a different area, investigating mailbag fraud. It was in this new job that Ridgewell was arrested and subsequently imprisoned for conspiracy to steal mailbags worth £300,000 (around £1.3m in today's money).

Following their forced false confessions, Trew, Christie and Griffiths were sentenced to two years in prison. After a local defence campaign and appeal, their sentences were reduced to eight months. The appeal court judge said he hoped they would appreciate the 'gravity' of their offences and this reduction was not to be interpreted as an act of weakness. While the more recent 2019 appeal judicial comments at least attempt to rectify the gross injustice done to the Oval Four, stating that it is 'clear that these convictions are unsafe' and that the evidence of Ridgewell and his cronies was fundamentally unreliable, they still do not address the underlying racism behind the case.

The 47-year fight for justice for the Oval Four demonstrates how the bourgeois 'justice' system takes so long to make decisions in order to drain the rightful anger of the working class

and oppressed. There are many other examples of this, including Hillsborough, Bloody Sunday and Grenfell inquiry. Britain's so-called 'justice' system cannot be relied upon to provide real justice and democracy for the working and racially oppressed masses; it protects first the interests of the bourgeoisie, then defends its 'special bodies of armed men', and only then, if it absolutely must, does it give a semblance of justice to the masses.

**Standard of Reasonableness in Canadian and UK Judicial Review**

Stratas JA has said, "Administrative law matters". Every individual's life is affected, in some cases profoundly, by administrative decisions. Judicial oversight of administrative decisions engages questions of importance and sensitivity in democracies where separation of powers is an intrinsic principle. In the view of the Supreme Court of Canada, the act of judicial review by a court is a constitutional function that ensures executive power is exercised according to the rule of law. At the same time, review must be exercised without undermining the democratic legitimacy of the executive or the intention of the legislature. The standards applied by courts to determining the lawfulness of administrative decisions are therefore of central importance to the proper functioning of our country. This and the following post will consider what a 'reasonableness' standard of review means in the contexts of Canadian and UK administrative law. The standard has recently been given new emphasis by the handing down of the judgment of the Supreme Court of Canada in Vavilov [2019] SCC 65 in which the court restated its conception of reasonableness and how a decision should be analysed in light of that standard.

In the UK, a series of cases has revealed that jurisdiction's Supreme Court grappling with reasonableness primarily in its relationship with the other standard of review, proportionality. As this essay will show, both Canadian and UK courts have struggled ever since the advent of judicial oversight of administrative decisions to formulate a standard of reasonableness which ensures unlawful decisions do not stand but does not allow the court to remake the decision that is the proper remit of the administrator.

The Wednesbury unreasonableness standard: A quick refresher for those who need reminding of the roots of English law on judicial review. In the case which established the reasonableness standard in UK law, Associated Provincial Picture Houses v Wednesbury Corporation Ltd [1948] 1 KB 223 the Court of Appeal framed the decision in question in terms of a lawful exercise of discretionary power. The municipal corporation had issued a licence to the plaintiff which contained a condition that children may not be admitted to the cinema on Sundays. The plaintiffs complained that the condition was outside the scope of the municipal corporation's power – "ultra vires". The Court held that the condition in question did not appear unlawful on its face in that the corporation held the power to place conditions on the licence. Lord Greene MR noted that as the court was not acting as a court of appeal and the discretion enjoyed by the defendant could only be reviewed to ensure it was exercised on a principled basis. This principled basis he summarized as: having looked to the statute conferring the discretion and the subject matter of the decision, the decision maker must have taken all relevant matters into account and disregarded all irrelevant matters". Finally, the discretion must be exercised "reasonably":

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in



law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation [1926] Ch 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

In Lord Greene's formulation, "reasonableness" comprises not just principles of rationality or logic but "as a general description of things that must not be done". In the case before him, however, the judge considered that only one aspect of reasonableness, i.e. whether a decision was so unreasonable no reasonable decision maker could have arrived at it, was at play. The decision clearly was not that unreasonable on the facts before the court. The judge went on to consider the role of the court in such an assessment:

It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether. If it is what the court considers unreasonable, the court may very well have different views to that of a local authority on matters of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse, and all over the country I have no doubt on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere." (emphasis added)

The standard, which came to be known as "Wednesbury unreasonableness" was most famously summarized by Lord Diplock in the 1984 case of Council of Civil Service Unions v Minister for the Civil Service [1984] UKHL 9: It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Lord Diplock went on to say: Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system." While this is no doubt true, the corollary is that Wednesbury unreasonableness as formulated by Lord Diplock is an exceedingly high hurdle for a plaintiff to surmount. It would be rare for a decision arrived at by reasonably competent administrators to be "outrageous" or to "defy logic". The conflict with "accepted moral standards" would also largely fall away as a ground with the growing openness of society to a diversity of views on such issues. Conceived as a check on discretionary power, but an exceedingly loose one, Wednesbury unreasonableness seemed destined to be identified in only a very small number of cases. While this might respect the principle of separation of

powers, in that the discretionary power given to administrative decision makers would have almost free rein, it would also mean little opportunity for those affected by these decisions to challenge them, even when they were unreasonable, if they were capable of being given any reasonable interpretation by a judge.

In a prescient comment, Lord Diplock noted the principle of "proportionality" as a potential further head of review as it had already been adopted by the administrative law systems in other member states of the EEC (which was what the EU was then called). As will be set out below, proportionality has come to rival reasonableness as an organizing principle of judicial review in UK law.

The development of reasonableness in the Canadian context: As Canada has drawn its common law tradition from the UK, the growth of judicial review followed a similar track in both countries. The courts took a comparable approach to judicial review in that a decision by an administrative body had to be characterized as "unreasonable" before it could be remedied by the courts. However, the court would start with the "prior question" of whether the decision complained of was outside the jurisdiction of the decision maker, if it was, then the court would find it to be unlawful. "Jurisdiction" came to be interpreted in a very broad sense as any decision which could be said to contain a legal error. Even though many cases involved privative clauses which appeared to oust the jurisdiction of the court entirely, the courts would intervene if the decision impugned could be characterized as so lacking in any rational basis or tainted by bad behaviour on the part of the tribunal that it could be said to be outside the decision maker's jurisdiction in a very broad sense, such that errors of reasonableness and excess of jurisdiction blended. In the 1979 decision of CUPE v NB Liquor Board, [1979] 2 SCR 227, Dickson CJ described the standard of patent unreasonableness in terms reminiscent of Wednesbury, namely as including: acting in bad faith, basing the decision on extraneous matters, failing to take relevant factors into account, breaching the provisions of natural justice or misinterpreting the provisions of the Act so as to embark on an inquiry or answer a question not remitted to it." The judge went on to ask: Put another way, was the Board's interpretation so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the court upon review?"

CUPE marked the start of what became known as the "pragmatic and functional" approach to judicial review in Canadian law. Unlike previous courts, which adopted a more formalistic approach to separating questions of law and policy, Dickson J proposed that some statutes were capable of being read in more than one way and that contextual considerations would inevitably come into play in the choice of interpretations. Deference should no longer be an "all or nothing" approach depending on whether an excess of jurisdiction could be detected.

First, a court should exercise some degree of deference when assessing the decision maker's interpretation of the law, whenever that decision maker can be considered an expert tribunal on that particular, specialized body of law. Second, deference should also be exercised when the decision lies within particular spheres where it can be presumed that Parliament intended the executive to have a greater degree of latitude, such as when claims touch on issues of international relations or "high politics". The flip side of that is that where claims involve questions of fundamental rights of individuals, with significant consequences for the claimants, courts may take a bolder stance in ensuring the executive power is exercised within appropriate limits.

Following many years of complaints by practitioners and academics that the structure of the pragmatic and functional approach lacked clarity, the Supreme Court attempted a fundamental review in the case of Dunsmuir v New Brunswick [2008] SCC 9. The Court considered



that the tripartite formulation for the standard of review of "patent unreasonableness", "unreasonableness simpliciter" and correctness lacked clarity, with the division between the two forms of unreasonableness particularly hard to pin down. The Court decided to collapse the two unreasonableness categories into one and maintain correctness for some claims.

The Court said in regard to 'reasonableness': Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

The Court then went on to recommend that a reviewing court should first consider what standard of review similar cases have attracted in the past; then carry out a contextual analysis to determine the standard of review that should be applied. The analysis could include the following factors: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue; and; (4) the expertise of the tribunal. The Court described this 'standard of review analysis' as striving "to determine what authority was intended to be given to the [administrative] body in relation to the subject matter", so as not to allow it to overreach its lawful powers. The Court noted that the previous contextual approach "provided great flexibility but little on-the-ground guidance", which its revision was intended to provide.

However, even at the time of the judgment it was doubted whether the majority's judgment represented that practical guidance. The problem was two-fold: (1) while the judgment goes into considerable detail as to how to determine when correctness or reasonableness applied, each category was highly nuanced and contextual; (2), once reasonableness was determined as the applicable standard, there was little discussion as to how a court should determine if a decision was sufficiently unreasonable to require the court to grant a remedy.

Binnie J articulated these issues in his dissent, stating that the "present difficulty" did not lie in the component parts of judicial review, which had been well-established for decades, but the "current methodology for putting those component parts into action". The judge pointed out that the current methodology was so context specific and subjective that a lawyer could not advise a client even as to what standard of review would likely apply if he or she were to bring a claim. Although he agreed with the majority that there should be one category of reasonableness, it did not assist much if that only shifted the debate into the shades of deference within one category rather than between two.

In the view of Binnie J, a presumption of reasonableness should apply unless the plaintiff could demonstrate the claim rested on an error of law which had not been 'confided' to the decision maker or could not be so confided within the bounds of the constitution. When the presumption of reasonableness was not rebutted, the indicia identified in previous cases would apply (i.e. were all relevant matters taken into account, was the decision within the scope of the decision maker's discretion, was the decision rational in light of its context) to assess the reasonableness of the decision. Reasonableness does not equate to rationality as it is possible for a deci-

sion that was rational on its face to nonetheless be unreasonable in light of the wider context, such as the purpose of the grant of statutory power underlying the decision. These considerations demonstrate a concern for the ease of application of the standard in future cases, both for lawyers advising their clients and for judges determining judicial reviews. In the next post on this topic, I explore the restatement of reasonableness in Vavilov.

**Important Update: Can a Person Go Back to The Court Of Appeal, if Initial Appeal Dismissed!**

[Some more do's and don'ts, plus relevant legislation]

The answer is Definitely in the affirmative and the CCRC can be bypassed.

If more than 28 days have passed since the original appeal, you will need a very good explanation as to why you are appealing out of time.

It does not matter if it is 29 days, 29 months, 29 years or longer.

The process is called Criminal Procedure Rule CPR 36.15

No legal aid available at the application stage, but possible if the court accept and deem the application has merit!

Unless an applicant can afford Counsel, it goes onto the list as a non-counsel hearing.

The court registrar has no powers to block CPR 36.15 and it must be referred to the full court.

Though the application is a formal one stating the reasons and answers to the four questions in CPR 36.15, best to get a lawyer to make the application.

Self applications are not advisable, as the court might not take them seriously!

Note: Once an application is made it must go to the full court, so make sure you have counsel.

Get Form NG for Sentence/Conviction/Confiscation

Form NG Conviction should be completed if appealing against conviction;

Form NG Sentence should be completed if appealing against the sentence

Forms can be downloaded here: https://is.gd/n7lYQJ

Hearing New Evidence

New evidence will be that the evidence being brought forward, was not adduced in the original proceedings (section 23(1)(c) Criminal Appeal Act 1968), if:

- it appears capable of belief;
- it may afford any ground for allowing the appeal;
- it would have been admissible;
- it is an issue which is the subject of the appeal;
- there is a reasonable explanation for the failure to adduce it.

The court can call persons who were not called at trial but who may be able to give relevant evidence to the Court of Appeal, such as jurors or lawyers.

The court has the power to compel the production of documents and the attendance of witnesses. These powers extend to hearings of applications for leave to appeal as well as the appeal itself.

If a person has only ever appealed against Sentence or Conviction and wishes to appeal the other, they can do so.

**The Criminal Procedure (Amendment) Rules 2018**

"Reopening the Determination of an Appeal

36.15.—(1) This rule applies where—

(a)a party wants the court to reopen a decision which determines an appeal or reference to which this Part applies (including a decision on an application for permission to appeal or refer);

(b)the Registrar refers such a decision to the court for the court to consider reopening it.

(2) Such a party must—

(a)apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and

(b)serve the application on the Registrar.

(3) The application must—

(a)specify the decision which the applicant wants the court to reopen; and

(b)explain—

(i)why it is necessary for the court to reopen that decision in order to avoid real injustice,

(ii)how the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality,

(iii)why there is no alternative effective remedy among any potentially available, and

(iv)any delay in making the application.

(4) The Registrar—

(a)may invite a party's representations on—

(i)an application to reopen a decision, or

(ii)a decision that the Registrar has referred, or intends to refer, to the court; and

(b)must do so if the court so directs.

(5) A party invited to make representations must serve them on the Registrar within such period as the Registrar directs.

(6) The court must not reopen a decision to which this rule applies unless each other party has had an opportunity to make representations.

[Note. The Court of Appeal has power only in exceptional circumstances to reopen a decision to which this rule applies.]"; and

(d)amend the table of contents correspondingly.

16. In Part 39 (Appeal to the Court of Appeal about conviction or sentence)—

http://www.legislation.gov.uk/uksi/2018/132/body/made.

**Bird Brained Pigeons Thieves - Caged**

Men who stole prized racing pigeons worth more than €700,000 have been caged for three years. The thieves were also ordered to pay €320,000 in damages after wiretap evidence helped secure their convictions. Once Belgian police had searched the properties owned by the Romanian gangsters, one of them asked the other over the phone: "Did you move the pigeons in time?" One of the stolen pigeons, Iron Lady Ellie, was worth €200,000. They were stolen in 2016 and never recovered.It is thought they were taken after their owner Frans Bungeneers refused to sell a bird bred from Iron Lady Ellie.

Serving Prisoners Supported by MOJUK: Walid Habib, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, 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, Peter Hannigan.