Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

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Ben Geen: Statisticians Back Former Nurse's in Last Chance to Clear Name

Leading statisticians have come out in support of a former nurse serving 30 years for murder in a final attempt to clear his name. The miscarriage of justice watchdog is expected to decide whether or not to refer the case of Ben Geen, currently in HMP Frankland, back to the Court of Appeal in the next few weeks. The Appeal judges have the power to overturn his conviction on two counts of murder as well as causing grievous bodily harm to 15 other patients. Geen was portrayed in the press as 'the nurse who killed for kicks' and sent to prison in 2003. He was sentenced shortly after the publication of a report into the conduct of the GP Harold Shipman considered to be the UK's most prolific serial killer. The Criminal Cases Review Commission (CCRC) had previously rejected the case but has been forced to reconsider their decision in the wake of a legal challenge. 'We have grave doubts as to the courts' ability to get to grips with what was going on at the hospital,' comments Professor Richard Gill, emeritus professor of mathematical statistics at the University of Leiden in the Netherlands.

At his three-month trial, the Crown's lawyers argued that incidents of respiratory arrest were extremely rare and, unheard of, without cause. They claimed that 'an unusual pattern' had emerged at the A&E at Horton General, a small hospital in Banbury in Oxfordshire when 18 patients apparently suffered unexplained respiratory arrests in a three-month period. A previously rejected application to the miscarriage of justice watchdog – backed by five leading statisticians including Sir David Spiegelhalter, of Cambridge University and Professor Norman Fenton, of Queen Mary's University of London as well as Richard Gill – argued that the likelihood of a cluster of such events was far from unusual. A soon to be published new paper – co-authored by Gill, Fenton as well as Professors David Lagnado from University College London and Martin Neil from Queen Mary's – for the first time draws on data as to admissions at Horton General over a 13 year period with the critical three months when Geen was supposed to have been on a killing spree at its centre.

Prof Gill was involved in the successful campaign to overturn the conviction of the Dutch nurse Lucia de Berk – see below. According to the academic, up to mid-2004 admissions at the hospital were getting busier and busier. 'The number of patients being treated in emergency almost doubled from 400 a month in 1999 to about 800 by the time of Ben's arrest in February 2004,' he explains. 'Then the numbers collapse – no doubt, the fall was initially due to the public's response to Ben's arrest but it seems almost certain that the numbers fell (and stayed low for a long period) as deliberate policy of the local health providers. And nobody has ever said why they changed their policies.' 'The claim that the emergency room was chronically understaffed during the critical months was part of Ben's defence. It was denied by the hospital,' Gill continues. He points out that Geen had complained about the situation times in the three critical months. 'He was severely reprimanded by the chief nurse for doing so. The official line was everything was going fine,' Gill says. 'The reality was it was getting more and more chaotic and things were going wrong, patients were waiting too long. Everybody denied that.'

The new report argues that events might have been relabelled after hospital management suspected Geen. An internal investigation was launched after a 42-year-old diabetic alcoholic arrived on a Thursday afternoon complaining of abdominal pains. Within hours he was fighting for breath, put on a life support machine and later died. It was the second time that day that a patient appeared to suffer an unexpected respiratory arrest. Senior staff at Horton General called in doctors from nearby John Radcliffe Hospital in Oxford and, over the weekend, went through case notes. Ben Geen was the only member of staff under suspicion. By the end of the weekend, the team identified 18 patients as having suffered an unexplained respiratory arrest and on each occasion Geen had been on duty. 'They did not look for events outside his shifts,' says Gill. 'Many of the events they identified had not even been thought of as in any way suspicious before. Some were very mild and did not lead to admission to critical care. Many other of those patients were on their way to critical care anyway.' The following Monday, Ben Geen was arrested. As he arrived for a night shift, he was called into a meeting. He had a syringe in his jacket pocket and discharged its contents into its lining. The prosecution alleged that the man whose death sparked the investigation tested for two of the drugs (vecuronium and midazolam) in the syringe.

According to the new paper, the classification of such collapses is far from precise at the best of times and certainly not in an understaffed environment. A diagnosis of 'cardio-respiratory' arrest, where the heart stops working and consequently the lungs fail, is far more common than pure 'respiratory arrest' where the lungs stop working, and hypoglycaemic episodes, involving a fall in blood glucose level causing fainting. The new report argues that the data over the 13 year period for the total number of arrests over the critical three month period was completely in line with what would be expected. However what was striking about the period leading up to Geen's arrest was the unusual mix and, in particular, the high proportion of cases identified as 'respiratory arrest'. 'Normally, there are five times as many cardio-respiratory arrests as respiratory arrests. Now it was the other way round,' explains Gill. 'Why does the number of cardio-respiratory arrests fall so suddenly in those three months? Do we really believe that there were no cardio-respiratory arrests in December 2004?'

According to Gill, it was 'pretty clear' that there was 'a massive re-classification on those few days after the two cases that were the trigger for Ben's arrest'. He continues: 'When one looks at the medical data on those 18 patients it is clear that labelling of events is very, very arbitrary. Some 'arrests' were so brief that they probably should not have been called an "arrest" at all.' Prof Norman Fenton says that 'from a purely probabilistic viewpoint, there was always a problem with the assumption that such a cluster of "incidents" happening in a short time period with the same nurse on duty each time could not have happened by chance'. He continues: 'Even if we ignore the possibility – as suggested by the new evidence – that at least some of the incidents may have been misclassified, the probability of such a cluster happening is not especially low. When we look at the newly available admission data for the extended period, the idea that the 'cluster' can only have been caused by malicious intervention is even more dubious.'

Lucia De Berk: Statistics Drove the Case From Start to Finish

Jon Robins, Justice Gap: Lucia de Berk, a paediatric nurse, was found guilty of seven murders and three attempted murders of children in her care at Juliana Children's Hospital in The Hague in 2003. She was reckoned to be the Netherlands' most prolific serial killer. At least she was until she was exonerated in 2010. Now her case is recognised as one of the country's gravest miscarriages of justice. The court heard that more children died on her shifts than could possibly be explained away by coincidence. The odds of her having been present by chance was reckoned to be one in 342 million. The alleged murders and attempted murders were claimed to have taken place at three hospitals between 1997 and 2001. They came to light after police began inves-

tigating the death of a baby girl named Amber. Her conviction was based on two deaths, including that of Amber, which toxicology reports suggested could have been a result of poisoning. Statistics drove the case from start to end, according to British-born statistician Richard Gill, emeritus professor of mathematical statistics at the University of Leiden in the Netherlands. Gill campaigned for de Berk's conviction to be overturned. 'Why do we know beyond reasonable doubt that Lucia is innocent? Because an independent multidisciplinary scientific team of medical specialists, toxicologists were finally allowed complete access to complete medical dossiers of key cases,' Gill told me. 'They discovered that the alleged incident in each of those cases was entirely natural – though in each case there was a heap of medical errors and all kinds of important information had earlier been withheld from the courts.'

Just like the de Berk case, Geen's began with the hospital handing over the murderer to the police. Typically, murder investigations begin with 'an evidently murdered person' (Dr Gill's words) and the police are called in to find the perpetrator. However, in these cases that principle has been inverted; the police go with the story as told by the medics. 'As we know, "medical collegiality" means that that story will be very consistent,' he said. 'No one will break ranks and tell a different story.' Prof Gill argued that the fact of Geen's presence came to be what defined an incident as an 'incident'. Again, that is what happened in the de Berk case. The two cases highlight the difference between the British adversarial legal system and the Continental inquisitorial system. In the Netherlands, the court can appoint a scientist to lead an investigation, which means that the judge and jury do not have to depend on the expert witnesses called by the prosecution and defence. In Prof Gill's view, Ben Geen was convicted simply because the prosecution had the more persuasive experts. 'Unfortunately, Ben will never get a fair trial until medical experts start speaking out on his behalf. I am afraid that their ranks are closed,' he said. 'Lucia got a fair retrial because there was a medical whistleblower, well placed in society and with inside knowledge who fought for seven years.'

Guildford Bombings: Cover up Extended for Another 100 Years!

Colum Eastwood: To ask the Secretary of State for the Home Department, for what reason her Department has reclassified more than 600 files relating to the 1974 Provisional IRA Guildford pub bombings resulting in some files remaining closed for an additional 84 to 100 years.

James Brokenshire:These files have not been reclassified. The files were held as a single collection with a closed status at The National Archives and a review date of 2019. Following the review of the files, it was decided that it was necessary to apply to extend the closure periods. The Freedom of Information Act exemptions engaged can be found by searching individual records at: http://discovery.nationalarchives.gov.uk/details/r/C3043

Greece: Reforming Prison System and Ending Police Ill Treatment Urgent Priorities

Strasbourg, 09.04. 2020 – After a visit to prisons in Greece last year, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommends that the Greek authorities remedy structural problems that have led to enduring ill-treatment of detainees, prison overcrowding and staff shortages, among other issues. The report, published today together with a response from the Greek authorities, acknowledges some positive measures since the last CPT visit to Greece in 2015. For example, the delegation observed more relaxed and informal exchanges between prisoners and their families and children at Korydallos Men's Prison. But too many fundamental problems persist.

Examining the situation of persons detained by the Hellenic Police, the report concludes that police ill treatment remains a "frequent practice throughout Greece". Moreover, the current system of investigations into allegations of ill treatment is ineffective. The CPT calls on the Greek authorities to ensure that all police officers in the country understand clearly that any form of ill treatment of detained persons constitutes a criminal offence and will be prosecuted accordingly. As regards prisons, far too many prisoners continue to be held in conditions that represent an "affront to their human dignity". Urgent steps to reduce overcrowding at Korydallos Men's and Thessaloniki Prisons, both operating at over 140% of their official capacity, are required.

Poor material conditions matched the overcrowding in most wings at Korydallos Men's Prison: the CPT found up to seven persons in a 9.5m2 cell containing filthy mattresses and blankets, infested with bed bugs and with mould on the walls and ceiling. Conditions in certain sections at Korydallos Men's Prison and in the unsupervised disciplinary unit at Nigrita Prison were so bad that they can "easily be considered to amount to inhuman and degrading treatment" according to the CPT. The CPT calls on the Greek authorities to decrease occupancy levels so as to ensure that every prisoner has at least 4m² of living space, excluding the sanitary annexe, and is provided with their own bed. No prisoner should have to sleep on a mattress on the floor. Prisoners must also be given appropriate hygiene products and regular access to hot water. The report also documents that prisoners, not staff, control the prison wings and that there were increasingly high levels of inter-prisoner violence and intimidation in the prisons visited. At Korydallos Men's Prison, a "sense of lawlessness" was pervasive: The four large wings, each holding between 230 and 431 prisoners, were often staffed by a single prison officer, who clearly was not in a position to exert any authority or control. Indeed, the CPT delegation met prisoners who possessed improvised knives for self-protection, knowing that staff would not be able to help them. Many violent incidents remained unreported or even unnoticed.

In all prisons visited, the delegation heard accounts that outside gangs linked to inmates in the establishment had threatened certain staff members, and it appeared that these groups were consequently afforded more privileges. It was also apparent that there were a lot of drugs and mobile phones inside the establishments visited, which were reportedly brought in by some staff. To tackle this problem, the CPT calls for an effective national strategy that should include a risk and needs assessment of every prisoner entering the prison system. In addition, an action plan for prison staff to regain control of the wings and for stronger groups of prisoners to be separated from other prisoners must be put in place. Staffing levels must be radically increased and all instances of inter-prisoner violence must be rigorously investigated and the perpetrators prosecuted.

The report further raises concern over "widespread deficiencies regarding health care services" in prisons. Problematic issues such as access to health care, medical screening upon arrival or medical confidentiality are all compounded by the severe shortage of health care staff and a continued lack of integrated management of health care services. The CPT is highly critical of the poor care provided to patients in the Korydallos Prison Health Centre and recommends that "urgent steps" be taken to increase significantly the number of qualified health care personnel, to reduce the occupancy levels and to repair the toilet and washing facilities. On a general level, the CPT recommends "more decisive action", including that the Greek government draft a second and more detailed Strategic Plan for the Penitentiary System for the years 2021 to 2025. "The recovery of the prison system must be a priority of the Greek government, together with the Hellenic Parliament and the judiciary as a whole", the report states.

Woman's Attraction to Chandelier's Not a Sexual Orientation

Jim Waterson, Guardian: A woman in a long-term relationship with a 92-year-old German chandelier has been told that her attraction to historic light fittings is not considered to be a protected sexual orientation. Press regulator Ipso made the ruling after Amanda Liberty, a woman from Leeds in her mid thirties, complained about an article in the Sun mocking her public declaration of love for Lumiere, her name for an intricate lamp she bought on eBay. She argued that the newspaper's article breached the regulator's code of conduct which requires publishers to avoid prejudicial or pejorative references to an individual's sexuality.

Liberty identifies as an 'objectum sexual' – an individual who is attracted to objects. She objected to being included in an end-of-year article by Sun columnist Jane Moore, which nominated her for a "Dagenham Award (Two Stops Past Barking)" prize, simply because of her sexual attraction to Lumiere. She also raised concerns about the accuracy of the newspaper's reporting after the article referred to her being married to the chandelier. She pointed out she was in a relationship with the chandelier but not yet married to it.

The newspaper said that it did not doubt that her attraction to chandeliers was genuine, however it said that sexual orientation in the context of the press regulation code covered people who were attracted to people of the same sex, the opposite sex, or both. Since Liberty was not legally able to marry the chandelier, it would not be legally discriminatory to prevent such a marriage. The Sun also pointed out that Liberty had extensively talked to the media about her attraction towards chandeliers and other objects in the past, having previously changed her surname during a previous self-declared public relationship with New York's Statue of Liberty. The newspaper said that since Liberty had previously exercised her freedom of expression in speaking about her relationship, Moore was entitled to comment on it. The complaints panel at the press regulator sided with the newspaper, saying that they acknowledged that the article was considered to be "offensive and upsetting" by Liberty but that Ipso do not cover issues of taste and decency. They dismissed her complaint on the basis that their code "provides protection to individuals in relation to their sexual orientation towards other persons and not to objects". As a result her attraction to an object "did not fall within the definition of sexual orientation" and was not covered by the regulations.

High Court Overturns Decision Not to Prosecute Rape Allegation

Alice Kuzmenko, UK Human Rights Blog: The Divisional Court has recently handed down a novel decision in R (FNM) v DPP, considering the right of complainants to a fair opportunity to make representations to the Director for Public Prosecutions ("DPP"), and for those representations to be considered, when conducting a review under the Victims' Right to Review Scheme ("the VRR Scheme"). The Court held that in circumstances where the DPP had not waited to give the complaint an opportunity to make representations as to whether there should be a criminal prosecution, the decision not to prosecute was materially flawed.

Background: The judicial review concerns the decision of 9 August 2019 by the CPS Appeals and Review Unit ("ARU") to uphold a decision not to prosecute the potential defendant, T. This concerned allegations of rape and sexual assault arising out of a party at which the Claimant alleged that T knew her to be underage, and that he cannot have reasonably believed her to be consenting by virtue of being heavily intoxicated from Ecstasy, cannabis, and Xanax. T accepted that there was sexual intercourse but denied rape.

Following several CPS decisions not to prosecute, the Claimant made a VRR Scheme review request on 12 June 2019. On 1 July 2019, she requested that it be paused whilst she seeks legal advice, and that she "would be grateful if you would confirm a new decision in accordance with that". A manager from the CPS Appeals and Review Unit (ARU) responded on 5 July 2019, stating that: […] Whilst you, or your legal representative are at liberty to make representations, and whilst the reviewing lawyer will have regard to them as soon as possible, it is essential that the independence of the CPS decision is maintained […] Therefore, please note 27 September 2019 for the ARU to provide you with an update pending your representations […] However, before the Claimant submitted any representations, the ARU reached a decision on 9 August 2019 to uphold the decision not to prosecute T. It is this decision that the Claimant judicially reviewed.

Issues in the Case: The first issue concerned whether there is, broadly speaking, a right for complainants to make representations before a decision is reached during the independent review stage of the VRR Scheme. The second concerned the status of the email of 5 July 2019 and whether the decision which followed involved a failure of due process in circumstances where the Claimant requested time to seek legal advice prior to making representations and had understood the email to indicate that a decision would not be taken until 27 September 2019.

The VRR Scheme and Guidance. In 2011, the Court of Appeal in Killick noted that victims have a right to seek a review of CPS decisions not to prosecute, but that it must be for the Director to consider whether the way in which the right of a victim to seek a review cannot be made the subject of a clearer procedure and guidance with time limits [57]. The CPS, headed at that time by new Labour leader Sir Keir Starmer (DPP between 2008 and 2013), launched the VRR Scheme to provide such clearer procedure and guidance on requesting reviews of qualifying decisions, one of which being not to bring proceedings. The Guidance issued in 2016 expresses at [42] that: Where a victim has given reasons for requesting a review, the issues raised will be addressed in the decision letter to the victim, where appropriate.

Parties' Submissions: The Claimant submitted that the communication of the Decision before 27 September 2019 was a clear breach of her right to make representations. She had such a right (encompassing both the fair opportunity to make submissions to the decision maker before a decision is reached, as well as an obligation for the decision maker to consider those submissions). These contentions were based on the propositions that (i) the VRR Scheme gave rise to an implicit right to an opportunity to make representations which would be potentially relevant to the decision; (ii) common law procedural fairness required such a right to exist as a decision not to prosecute would be adverse to the Claimant and that she had something of relevance to say; and (iii) a legitimate expectation was created by the email of 5 July 2019 that her representations would be considered and that a decision would not be reached until 27 September 2019.

The DPP submitted that the VRR Scheme confers a right to request a review, but the Guidance does not point to a right to influence the outcome of that review, as that would undermine the independence of Prosecutors. Relying on R(S) v The CPS, it was contended that the VRR Scheme is merely a mechanism for reconsidering facts, not for accepting new accounts. Whilst the DPP accepted that complainants can make new representations, and if made, they would be considered, it was argued that there is no entitlement to this under the Guidance or at common law – particularly as the complainant would already have had an opportunity to give their account to the police. Moreover, no legitimate expectation was formed, as the email relied upon was ambiguous and no more than a statement that the Claimant was at liberty to make representations.

Judgment: The Court found that the Guidance does provide for a right of a fair opportunity to make representations and for them to be taken into account by the decision maker – [45].

However, this right falls short of any obligation on the DPP to invite such submissions [46]. The Court however indicated that where urgency is not an issue, a complainant's request for time, a week or two, to submit representations would be "sympathetically considered" – [47]. As to the decision specifically relating to the Claimant, the Court found that the email of 5 July 2019 indicated that she would have until 27 September 2019 to make representations – [50]. As such, they went on to find that there was a failure of due process when the decision was taken without having waited for the Claimant's representations – [51]. Thus, the Court granted the application for judicial review, quashed the decision of 9 August 2019 not to prosecute T, and gave the Claimant 21 days from date of the hand down of the judgment to submit to the CPS her reasons in support of the review sought – [52]. After this, a fresh decision is to be taken by a member of the ARU that was not previously involved with the case.

Comment: This case may come as a comfort to those disappointed by the recent High Court decision that dismissed a challenge by the End Violence Against Women's Coalition in regard to the falling numbers of rape cases being prosecuted. It is clear that where an individual gives reasons with their request for an appeal, those reasons should be considered as part of the review. Yet, it is possible for due process principles to require a fair opportunity to make representations, even outside the scope of the provision by the Guidance. As such, several questions have arisen that remain unanswered. The judgment raises the question of what conduct or actions can give rise to due process applying, and whether and in what circumstances such conduct would form a legitimate expectation. It is also not entirely clear how much time a complainant ought to have in order to have a fair opportunity to make their representations. In this case, the ARU acquiesced to an extension and for representations to come in later. However, what of those complainants who request time but are refused – will their fair opportunity to make submissions have been breached? The last issue is one effectively raised by the DPP. What of the rights of suspects? In the aforementioned R(S), suspects were prevented from being able to make any representations to a reviewing prosecutor, as they had the opportunity to do so earlier, as does a complainant. However, is there now an imbalance between complainants and suspects in their input level into a case before it reaches a reviewing prosecutor? Given the response to Killick in 2013, there can be some optimism over an updated Guidance to resolve some of these issues.

Secretary Of State For Justice Delays Release of Terrorism Prisoner

Doughty Street Chambers: Richard Thomas and Daniel Clarke represented the applicant in X v SSJ [2020] EWHC 800 (Admin) in which the President of the QBD and Holroyde LJ upheld an order restricting X's release made on the grounds there was a heightened terror threat from recently released prisoners and that whilst in custody X had links with the perpetrator of the attack in Streatham and may have been practising an extreme form of Islam.

The SSJ's application was been made not under the recently passed Terrorist Offenders (Restriction of Early Release) Act 2020 but under a little-known provision in section 102(5) of the Powers of Criminal Courts (Sentencing) Act 2000 that published guidance made plain was intended to apply only where the prisoner serving a DTO had made exceptionally bad progress whilst in custody.

The SSJ accepted the application was made outside the circumstances envisaged in the guidance and relied on an 'intelligence gist', refusing to disclose the full extent of the information available. The Court rejected X's arguments on judicial review that in the absence of a closed material procedure reliance on intelligence was not permissible and found that the exceptional circumstances justified a departure from the guidance.

Judge-Only Trials Still Under Active Consideration By Scottish Government

Kapil Summan, Scottish Legal News: Despite a furious backlash from the legal profession, the Scottish government is still actively considering the suspension of jury trials. Last month, the government was forced to remove measures to abolish juries in solemn trials from its emergency coronavirus legislation. Ronnie Renucci QC, president of the Scottish Criminal Bar Association (SCBA) had said the proposals were an attack on principles "built over 600 years" that are at the "cornerstone of Scotland's criminal justice system and democratic tradition".

The government has now tabled nine options in a new discussion document to deal with the problem. The only option it explicitly endorses, however, is the same one it was forced to withdraw: the abolition of juries in solemn trials. Of the remaining eight options it either makes no comment or casts doubt on their practicability or value. One option mooted is to adjust the sentencing powers of sheriff courts in summary cases by increasing the maximum custodial sentence of 12 months to two or three years.

The document distinguishes this from the proposal for judge-only courts, stating: "Unlike the proposal for judge-only courts, this change would limit the maximum sentence that a convicted person could receive from a judge sitting alone and would extend the long-established precedent for the summary courts to deal with both matters of guilt or otherwise of the accused and if convicted, sentencing of the offender for cases at the less serious end of the spectrum."

A senior defence advocate told Scottish Legal News: "How is this different from solemn trials without a jury? The issue is not just one of sentence, it is a right to trial by jury in serious offences. "This is simply saying we will do away with jurors in some sort of unspecified middle ground of cases and sweeten it with a sentence limit that can be adjusted at any time once the introduction of solemn trials without juries is established."

The document also suggests, among other proposals, reducing the jury size, using larger venues to enable social distancing and using video-links." The Edinburgh Bar Association said in a statement: "We are extremely concerned that the Scottish government are again moving to remove the right to trial by jury for the most serious cases by advocating solemn trials with judges only or by significantly increasing sentencing powers in summary cases (which would have the effect of removing trial by jury for many cases)."

Justice Secretary Humza Yousaf said: "Following intensive work by government, the Scottish Courts and Tribunals Service and the Crown Office, our discussion paper details a range of potential temporary options and while changing the trial by jury system is still included it is not our favoured option. Each has clear challenges and I will consider them in detail, while having talks with key justice partners, including representatives of the legal profession, victims organisations, political parties and human rights experts this week. I intend to update Parliament as soon as possible after recess on how these discussions are progressing and any planned next steps."

Benjamin Bestgen: Truth in law

Author Irvine Welsh reacted with disbelief when former Scottish First Minister Alex Salmond was acquitted of several sexual offences last month: "For fuck sake. NINE women were lying? Come on." His reaction is a good example of what lawyers often hear when a judgment did not go the way some people thought it would or should go. Heated debates about lying witnesses, wrongly admitted or suppressed evidence, sharp lawyers and judges or juries reaching biased, unsupportable conclusions open up. Concerns that the truth didn't come out and therefore an injustice occurred upsets people.

The concept of truth is fascinating because it proves hard to pin down: is truth something that objectively corresponds best with perceived reality or something we simply all agree on? Should a true belief be part of a coherent system of such beliefs? Does truth exist at all or do we just construct it as we go along? It is also vitally important to humans: universally, truth ranks equal with ideals like beauty, justice and goodness. But where can it be found in law – if at all? Truth relates to knowledge. What we know can be true or false and in law we want justice to reflect truth. We want to know "what really happened", so any punishment, reward, restitution or compensation can be justified as appropriate, just and fair.

Legal epistemology tries to clarify how we obtain knowledge in law and from legal practice. For example only, it analyses approaches to evidence, justifications for admitting or excluding information, standards of proof and probativity, how juries or judges reach decisions, what reasonableness means in law or what mens rea actually entails. It thinks about concepts like safety, truth, coherence, reliability or comprehensibility in a legal context. It researches how witness testimony or specialist expert evidence should be treated in court. By comparing inquisitorial civil law and adversarial common-law approaches, the Secret Barrister engagingly discusses truth in trials. They cast doubt on whether a trial can really discover truth, as our reality is usually complex, full of incomplete information, human error, foggy memories, implicit biases, ill-will and constraints on the resources needed to investigate a case thoroughly.

And maybe that's fair – maybe "beyond reasonable doubt" and "balance of probability" is as close as we get to establishing truth in law. Or maybe law is the wrong forum to look for truth and right answers altogether. In contrast, legal philosopher Ronald Dworkin believed that judges can find, if not truth, then at least right answers. His idealised judge Hercules has wisdom, plenty of time, resources and access to vast legal knowledge in a coherent system of laws. Why abandon an ideal just because our reality is flawed? Should we not strive to do better? Whatever the answer, there are no winners in trials like Alex Salmond's, only cause for thought and reflection.

Benjamin Bestgen: The Ship of Fools

Likening statecraft to captaining a ship goes back to the Greek poet Alcaeus of Mytilene but was made famous in Plato's Republic. For a ship to be sailed properly, maintaining the right course, good health and morale on board are vital. Each person needs to know their role, be able and willing to perform it to their best ability and be equipped for the job. The allegory of the Ship of Fools illustrates what happens if the ship is manned by a dysfunctional crew. Conceived in 1494 by German satirist and academic Sebastian Brandt (himself a Doctor of Laws), it became a cultural motif across the Western world:

The shipowner is stronger and bigger than everyone in the ship, short-sighted, hard of hearing and inexperienced at sea. The sailors quarrel amongst themselves as to who should be captain. Various individuals try to persuade, bribe, cajole, distract or immobilise the shipowner so they can take control. Sometimes other sailors kill the ones who successfully managed to get appointed captain. They also praise individuals who are particularly skilled at persuading or duping the shipowner, claiming that such persons have what it takes to be captain.

Persons who are not successful at this or who try to learn about the proper skills for captaining a vessel are threatened, ridiculed or ostracised. It is even claimed the necessary skills for captaincy cannot be learned and anyone who claims otherwise is shouted down. Throughout, the sailors gorge themselves on the ship's supplies. Therefore, the ship sails in a haphazard and dangerous manner, as can be expected from such a crew.

Socrates and Plato used the shipping metaphor as a point against democracy. It was argued, amongst other things, that democracy favours short-term decision-making, is often disorderly and confused, caters to popular instead of necessary things and is usually run by people who are both ignorant of statecraft and don't have the right character or temperament to wield political power. For all their shortcomings (there are many), the Greek thinkers emphasised the value of education and expertise in matters of political rule and pursuing the common good in a society. They feared that in a democracy, the voices of people both educated and temperamentally fit to govern would be drowned out by the noisy, irrational, ill-motivated and foolish. Interestingly, we tend to impose much more stringent requirements on the education and temperament of our physicians and judges than our politicians or media. We demand that those who wield great power over our health, liberties, property and life must be people of quality, high standards and training. But we also seem often resigned, cynical or complacent when it comes to the qualities of those who make our laws, govern and inform us. This is a point to ponder, in particular in a time of crisis and what should come after. What kind of captain and crew do we want and what kind of shipowner would we like to be?

Virtual Prison Visits Rolled Out in Northern Ireland

Scottish Legal News: Virtual prison visits have been rolled out across Northern Ireland's prisons following the suspension of in-person visits during the coronavirus pandemic. The video-link facilities introduced at Maghaberry Prison, Magilligan Prison and Hydebank Wood allow for 20-minute "visits" between prisoners and their family. Family members can use a PC, tablet or smartphone to take part in the virtual visits, which are strictly supervised by prison staff.

Justice Minister Naomi Long said: "We absolutely recognise the importance of family contact for those within our care, and their families. The use of safe and secure video-links in each of our establishments now facilitates family video calling at a time which can be worrying for all of us." She added: "The last few weeks have clearly been out of the norm for us all. COVID-19 has made us enter a place of uncertainty, which is never comfortable for anyone. However, at a time of forced distancing, I want to assure the families of those in the care of the Northern Ireland Prison Service that we are all in this together."

Care Proceedings Rise Steeply in Family Courts During UK Lockdown

Diane Taylor, Guardian: The number of urgent care proceedings in the family courts has increased sharply since the beginning of the Covid-19 pandemic, the Guardian has learned. Judicial sources say that a combination of the lockdown leading to families being forced to spend the majority of their time together, often in confined spaces, increased drinking by some parents and major money worries are a toxic combination, which is putting vulnerable children at risk. Some family courts have seen a fivefold increase in care proceedings cases in recent weeks. As courts are often operating remotely using phone or Skype hearings during the pandemic there are particular challenges when children are involved.

Aysen Soyer, head of the family law team at Wilson Solicitors, said that she and her team have been working at full capacity since the lockdown began. "It happened overnight," said Soyer. "In family court proceedings last week we had two children removed from their parents by phone – that's unheard of," she said. She added that it was harder to control parents' emotions when their children were about to be removed from them when court proceedings were taking place on the phone. Care proceedings are the most urgent matters in the family courts but the way things

are working it's a disaster." She said it was "inevitable" to reach the conclusion that the pressures of the lockdown were leading to an increase in care proceedings. "Things that might have bubbled away for a bit longer with toxic family relationships have been brought to the fore by the pandemic. Care proceedings are going at a higher rate. Guardians and solicitors are not able to visit children at the moment. My team have been furiously busy since the lockdown started. I think that initially it will get worse and then lawyers and the family courts will find a way to deal with this. At the moment things are just desperate."

According to the NSPCC, self-isolating and quarantine can cause stress and changes in everyone's behaviour. Families are under new pressures and they have warned people to be alert to children who are withdrawn, or aggressive or very young children left alone or outdoors by themselves. Domestic violence is sometimes but not always a factor in care proceedings. On Saturday the home secretary, Priti Patel, launched a public awareness campaign for domestic abuse victims. She said that talks were ongoing to provide charities and the domestic abuse commissioner with an extra £2m to boost domestic abuse helplines and online support.

Unicef has issued new guidance about protection of children during the lockdown. Officials warn that children are at heightened risk of abuse, neglect, exploitation and violence during the lockdown. They say that many children are likely to face an increasing threat to their safety and wellbeing. A HM Courts and Tribunals Service spokesperson said: "Cases involving vulnerable children will always be prioritised and we are using technology to maintain access to justice as far as possible.This is kept under constant review and judges and courts will continue to work with all in the family justice system to respond to any increases in demand."

The Easter Rising - Busting the Myths :…

Patrick Concannon: The Easter Rising has gone down in Irish History as a watershed moment. For Republicans especially it is the seminal moment in recent Irish History commemorated with parades and rallies at Easter every year. Many to this day still believe the Rising was an unexpected event from the British perspective. There is a belief that the British were taken totally by surprise by a well- disciplined force, the Irish Volunteers, as most of the Dublin Garrison had left to enjoy the Bank Holiday Easter Monday and attend the horse racing at Fairyhouse which was hosting the Grand National. In this piece of Busting the Myths I will try to examine the Rising from a different angle. Did British Intelligence allow the Rising to go ahead to further the aims of some of their hierarchy and force a confrontation once and for all with Irish Volunteer Movement and is the standard narrative of a shell shocked British establishment coming to terms with a surprise attack fully accurate?

The Easter Rising took place mainly in Dublin between 24th April and 30th April 1916. The event was masterminded by a seven man IRB (Irish Republican Brotherhood) military council with these plans unknown largely to those on the ground- the Irish Volunteers and the Irish Citizen Army. Even some IRB and Irish Volunteer leaders such as Bulmer Hobson and Eoin MacNeil were in the dark. At the last minute the MacNeil however became aware of the plans and attempted to have the Rising cancelled by issuing countermanding orders. His attempts were ultimately futile as the Rising was cancelled for one day and commenced not on Easter Sunday as planned but on Easter Monday. One of the signatories Seán Mac Diarmada was so enraged that he had Bulmer Hobson, who had agreed with MacNeil's position held under house arrest at gunpoint and circumvented MacNeil's orders by contacting reliable, as he saw it, Volunteer units.

Ireland at this time was ruled by three administrators, the Lord Lieutenant, the Chief Secretary for Ireland and the Under Secretary for Ireland. In 1916 these positions were held by Lord Wimborne, Augustine Birrell and Matthew Nathan respectively. These three men would be at the heart of what was to come. Prior to the Rising these three men had disagreed with each other on the best way to counter an increasingly aggressive and assertive Volunteer movement who openly drilled on the streets of Dublin. Birrell and Nathan felt that any heavy handed approach would be counter- productive and that such moves would antagonise public opinion against Britain. Wimborne disagreed and he was supported in this assessment by British Intelligence who were aghast at the pacifist approach taken by the Chief and Under Secretaries. Indeed there was a great deal of friction between both sides.

A huge problem that the British faced was its inability or even refusal to have dealt with the Unionist armed mobilisation of 1912-1914. When the army had been ordered North most of the officers had offered to resign their commissions rather than enforce Home Rule on Ulster. For Birrell and Nathan it seemed that to now put down the Irish Volunteers would provoke a ferocious backlash which would show the British to be one sided in Irish affairs confirming to many that the Nationalist Revolutionaries were right all along. However British Intelligence had gleaned some top secret information- there was a rebellion planned in Ireland to commence on Easter Sunday. British Naval Intelligence and the top secret 'Room 40' which had broken the German codes had also intercepted communication between Clan na Gael in America and the German Authorities. In fact the British knew a full two months before the Rising occurred that one was planned for Easter Sunday after intercepting a communication from John Devoy of Clan na Gael and the Germans.

Augustine Birrell and Matthew Nathan were informed of these interceptions by Admiral Bayly but as they were not informed from where the information came they dismissed it as too vague and insisted they could not act upon it. General Friend Commander in Chief in Ireland was also informed that a Rising was imminent. However the really key information crucial to the Dublin authorities understanding was not passed on. That information was that British Intelligence had it from an extremely reliable source, namely Room 40, that there would be an uprising on 23rd April 1916. Was it to keep Room 40, a crucial naval intelligence source secret or was there something more sinister. Why this information was not passed on remains an open question. However Roger Casement who was famously arrested on board the Aud with an array of weaponry destined for the rebels declared that during his interrogation he offered to call on the Volunteers to desist from action on Easter Sunday. His Military Intelligence interrogators however told him, "It is a festering sore, much better that it comes to a head". Casement's interrogators had been Reginald Hall and Basil Thomson.

The week before the Rising two informers within the Volunteers codenamed 'Chalk' and 'Granite' had informed their handlers that they had received orders to prepare for mobilisation as they were 'going out' on Easter Sunday and some may not come back. Armed with this information and the intercepts it seems incredible that the British did not intervene before the rebels struck. It is even more amazing that the Prime Minister who was also fully aware of the Intelligence available and from whence it came did not directly intervene. Rather he did nothing and the Rising went ahead as planned. To be fair to Nathan and Birrell they had advanced plans in place to arrest key activists after the capture of the Aud and Roger Casement. However by the time those plans were being put into place Padraig Pearse was reading the proclamation on the steps of the GPO.

It is my contention that British Intelligence had achieved what they had been advocating for months and it had been in their interests to let the Rising occur. Certainly those on the ground were taken by surprise at the outbreak of Rebellion and most British forces in Dublin were enjoying the horse racing at Fairy house when they heard of the takeover in Dublin. There also does seem to be some evidence that the Dublin Administration was drip fed information but without the verification needed were reluctant to take decisive action. However, now there had been open confrontation with the Volunteers who were decimated with their leadership executed and their rank and file interned. Dublin city centre lay in ruins and the population were hostile to what had occurred. Birrell and Nathan had resigned, totally discredited and were out of the picture whilst Wimborne who had declared martial law during Easter Week was fully vindicated. However the British Intelligence apparatus had miscalculated the fallout from the Rising. Not six years later Ireland would see a Free State established and the partition of the island. The fallout from the Rising was considerable and in the end although a terrible defeat for the Volunteers in the short term, in the long term Easter week would and still does illicit a massive emotional response in Nationalist Ireland. It is the great question we can't answer, if the British had intervened before the Rising would events have transpired as they then did? I will leave it to the readers to debate that one.

Parole Hearings - Unproven Allegations Can and Should be Heard

Georgia Beatty, Joe O'Leary, 5SAH, Chambers: A Parole Board is not only entitled to consider unproven criminal allegations made against the prisoner, but is expected to do so. The 2019 'Guidance on Allegations' issued by the Secretary of State for Justice (SSJ) is consistent with decided authority and is not unlawful. 'Mere allegations' with no evidential basis whatsoever should not be considered. However, where there is sufficient evidential material for a Board to make 'at least some findings of fact', an unproven allegation should be taken into account as part of the Board's overall risk assessment. The strength or weakness of the supporting material will go to the weight that a Board is entitled to place on the allegation in that assessment. Consideration of unproven allegations is subject to relevance and the overriding requirement that a Parole Board must act fairly.

R (on the application of Morris) v Parole Board and another [2020] EWHC 711 (Admin)

The upshot of this decision is that allegations made against prisoners, even if unproven, should be considered by Parole Boards as a matter of course, subject to the general requirements of relevance and fairness. This case considered and developed upon several key authorities concerning the question of what material a Parole Board is entitled to consider. Previous decisions had confirmed that Parole Boards may rely on a broad range of information regardless of whether it would be admissible in a court of law, including hearsay evidence. This judgment confirms that unproven allegations are included within the wide ambit of information that a Parole Board can and should take into account. While the court was clear that a 'mere allegation' which 'has no evidential basis whatsoever' should be disregarded, at para [55], it was also clear that unproven allegations should be taken into account where there is a sufficient evidential basis to allow the Board to make 'at least some findings of fact'. This is plainly a low bar, especially considering that in the present case the Board made findings of fact without referring to any witness statements or case summaries. However, where the factual basis is weak, the allegation will likely carry little weight.

The obiter of McGowan J suggests an onus on those representing prisoners at Parole

Board hearings to take a proactive stance in challenging unproven allegations that are denied, for example by ensuring that any directions obliging the SSJ to obtain certain evidence in advance of a hearing are followed and enforced, at para [59], and by producing evidence on behalf of the claimant to disprove such allegations where possible, at para [54]. This judgment also serves as a reminder to practitioners that a Parole Board is not a court, but a specialist decision-making body tasked with evaluating risk. The judgment points out that 'in considering risk, the Board is not determining a criminal charge' at para [35] and therefore principles such as the presumption of innocence and the burden of proof do not apply, at para [52].

What was the background? On 19 December 2017, Mr Morris was sentenced to an indeterminate 'IPP' sentence, with a minimum term of two years, for threatening to kill his ex-partner, her brother, and his eight week-old daughter. On 1 March 2014, while released on licence, Mr Morris allegedly grabbed another ex-partner by the throat. The claimant admitted presence at the complainant's address and that the situation became 'verbally heated', but denied any physical aggression. The complainant's statement was later retracted and no criminal charges were brought. However, by failing to inform his offender manager of this relationship, Mr Morris had breached his licence conditions and was therefore remanded back into custody.

Mr Morris was later transferred to open conditions, but in 2017 he was transferred back to closed conditions for two further breaches of his temporary licence. One of the alleged breaches was that he failed to disclose an intimate relationship with another individual (AW). AW had contacted a domestic abuse intervention service, complaining that Mr Morris had been harassing her following the end of their relationship. Mr Morris denied harassing AW and denied that their relationship was intimate. No action was taken by the police due to insufficient evidence, but a harassment prevention letter was issued.

Following a parole hearing on 10 September 2018, the Parole Board refused to direct Mr Morris' release. The Board considered the allegations from 2014 and 2017 as part of its overall risk assessment. Notably, attempts were made to obtain further information relating to both allegations, such as case summaries and witness statements, but these attempts were unsuccessful. The information considered by the Board included the fact of Mr Morris' arrest following the 2014 incident, the conclusions of a Panel meeting in 2015 at which the 2014 allegation was 'extensively explored', and the fact that a harassment prevention letter was issued in 2017.

Mr Morris challenged the Parole Board's decision on two grounds: The decision was procedurally unfair due to the Board's reliance on unproven criminal allegations. The Secretary of State for Justice's 2019 'Guidance on Allegations' is flawed. What did the court decide? Mr Morris' claim for judicial review was rejected on both grounds. It was held that the decision not to direct release was not procedurally unfair, and that the 2019 'Guidance on Allegations' was not unlawful. In relation to the first ground, the court noted that the only constraint on the nature of the information that the Parole Board may consider is that the Board must act fairly, citing a number of previous authorities on this issue. It was held that consideration of unproven allegations is not intrinsically unfair, however the question of fairness will depend on the facts of each case. In deciding whether it would be fair for a Parole Board to consider an unproven allegation, the court recommended the following approach:

'Mere allegations' should be disregarded. There must be sufficient evidential material for a board to make 'at least some findings of fact' (citing Baker J in R (Delaney) v Parole Board [2019] EWHC 779 (Admin) at para [10]). where an evidential basis is present, the strength of that evidence will determine the weight that the Board ought to attach to the allegation.

Applying this test to the facts, the court held that there was sufficient evidential material to allow the Board to have made 'at least some findings of fact'. It was conceded that the Board would have been in a better position to assess the truth of the allegations had it obtained further material in advance, however, McGovern J observed that 'so long as there was a sufficient factual basis, however limited, on which to take the allegations into account, the Board was not acting unfairly' at para [57]. She further held that, although the evidential basis was not strong, no undue weight was attached to the allegations.

The court also noted that a Parole Board is not a criminal court, and that rules of evidence, the presumption of innocence and the burden of proof do not have any real role to play in a hearing of this nature. A Parole Board's paramount consideration is the need to protect the public from serious harm, and its primary function is one of risk assessment. If the Board is aware of unproven allegations that are relevant to its global assessment of risk it will be expected to consider them, subject to the overriding requirement of fairness.

On the second ground, the court rejected the submission made on behalf of Mr Morris that the 2019 Guidance 'encourages the Board to rely on adverse "preconceptions" or "speculations"' at para [61]. It was observed that the Guidance 'merely confirms the ability of the Board to consider allegations when it has not been possible to prove that allegation on the balance of probabilities', and that 'it is clear from reading the guidance as a whole that the Board should approach allegations with care' at para [63]. The Guidance was held to be consistent with the previous authorities and is not unlawful.

Justice Committee Relaunches Inquiry Into Older Prisoners

The Justice Committee is to relaunch an inquiry into the ageing prison population to establish any special needs of older prisoners and to make recommendations on how they might be cared for. Given the greater risk older people face from Covid-19, the inquiry will also look at how older prisoners can be protected from the virus. There are currently around 13,700 prisoners over the age of 50 in England and Wales. This is an increase of approximately 180% since 2002. The reasons for the rise include an increase in convictions for sexual offences – an area where convictions are more likely to include older people. Longer sentences for a number of crimes have also meant that more prisoners reach old age in prison. Over 5000 prisoners are currently over 60 years old – an age category that has also increased in recent years.

The inquiry is likely to include: an investigation of the adequacy of prison accommodation for older people; the extent of purposeful activity available to them; and how the provision of health and social care measures up to their needs. The inquiry will also ask whether a national strategy for the treatment of older prisoners is needed. This inquiry was first launched in 2019 but was closed on the dissolution of the last Parliament for the General Election in December. The Committee received almost 40 pieces of written evidence from organisations working in the justice sector, health professionals and former and serving prisoners. The Committee thanks all those who contributed and will include this evidence in the revived inquiry.

Terms of reference - The Committee will focus the inquiry around its original terms of reference: 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? What challenges do older prisoners face, what services do they need and are there barriers to accessing these? Is the design of accommodation for older prisoners appropriate and what could be done to improve this? How do older prisoners interact with the prison regime and what purposeful activity is available to them? Does the provision of both health and social care, including mental health care, meet the needs of older prisoners and how can services be made more effective? Do prisons, healthcare providers, local authorities and other organisations involved in the care of older prisoners collaborate effectively? Are the arrangements for the resettlement of older prisoners effective? Does the treatment of older prisoners comply with equality legislation and human rights standards? Should a national strategy for the treatment of older prisoners should be established; and if so, what it should contain?

Two Wrongs Don't Make A Right

A man who dropped his wallet while robbing a bank has still not been identified because someone snatched the wallet before police arrived. Police in the US state of Colorado are appealing for the wallet to be handed in to help identify the robber, Denver7 News reports. The robbery took place last Monday morning at a branch of US Bank in the city of Castle Pines. A witness told police that the robber dropped a wallet and someone else subsequently picked it up. It has not yet been handed in.Prison Population Today Friday 17th April Only 1,296 Fewer Than Friday 3rd April

Prison Population Friday 17th April Only 1,296 Fewer Than Friday 3rd April

Ministry of Justice announced on April 3rd: 'As many as 4,000 prisoners in England and Wales are to be temporarily released from jail in an effort to try and control the spread of coronavirus'. Three weeks later, there were only 1,296 fewer prisoners behind bars.

Male's 1,135 fewer Female's 135 fewer FN's 26 Fewer Total 1.296

Friday 17th April 2020 Population 81,454 Male 77,989 Female 3,465 FN's107

Friday 10th April, no figures were published by the Ministry of Justice

Friday 3rd April 2020 Population 82,589 Male 78,989 Female 3,600 FN'S 133

MPs Call For Action Over Expected Rise In Child Sexual Abuse During Pandemic

Jamie Grierson, Guardian:Increased funding for children's helplines is among the urgent measures being demanded by a group of cross-party MPs to tackle child sexual abuse during the coronavirus pandemic. The intervention, which is led by the Liberal Democrats and backed by 37 MPs, including Conservative, Labour and Scottish National party representatives, comes after warnings from law enforcement and charities that child sexual abuse is likely to increase during the crisis. ChildLine and the NSPCC have both reported that demand for their helplines has increased, while police chiefs have said some people may be "looking to exploit the coronavirus crisis to cause harm online". In a letter to the home secretary, Priti Patel, the MPs call for funding to ensure helplines for children can continue to operate and for guidance to be issued to teachers and parents about helping children stay safe online. In addition, the MPs have called for collaboration with the EU law enforcement agency.

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.