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Free David Ferguson Help to Right a Grave Miscarriage of Justice

Dear MOJUK, firstly, thank you for your support over the many years of my wrongful conviction. Having, been let down by numerous solicitors, when it came to the crunch with my appeal against conviction. I put my own application together and sent it off to the 'Court of Appeal' (CoA). On Tuesday, 26th May 2020, the governor of HMP Wakefield, informed me that my submission had been accepted by the CoA; therefore, I am now an official appellant. The CoA investigation team will now call in documents and evidence from the various parties of interest and consider whether to refer my case to a single judge. I am realistic in that this is only the first step of three on a difficult journey. However, I am cautiously confident; my application has been submitted on the following facts:

1. The CPS failed to disclose a significant and crucial volume of forensic documents. There prove that their acclaimed 'One in a billion/solid' DNA match could not have been attained.
2. The withheld documents also show that the crime scene DNA sample was incapable of yielding a full profile. Also, that DNA which was obtained was the product of more than one person
3. Independent re-examination of the crime scene DNA sample, using an advanced testing procedure that only targets male DNA. Proved that the DNA match statistic was in fact 'Weak'. And would match 1 in 3,000 of the male western European population.
4. The CPS forensic expert (Dr Chapman) failed to inform my defence lawyers of the evidence set out in point (1) and issued in point (2). In doing so, he acted unlawfully as ruled in: (1) R v Maguire (1992) 2 all E.R433c.a (Duty of an expert witness in respect of disclosure to the defence). (2) Liverpool Victoria Insurance Co Ltd v Zafar [20009] EWCA Civ 392. (Severe consequences for an expert witness making a false statement).
5. The Police and CPS failed to disclose evidence that supported my alibi.
6. The CPS expert witness withheld knowledge of evidence supporting my alibi, and this caused a failure of his lawful duty as set out in the legal rulings in Point 4 sections (1) and (2).
7. The police and CPS continued refusal to disclose several items of forensic evidence that they withheld at trial, which would have been used by my defence lawyers at trial to dismantle the prosecution's case.

The COS, have informed me that it may take up to five months before a single judge referral decision is made. However, I also realise that with the current Coviid-19 restrictions, this may take longer. For those wishing to learn more about my case, make a comment, or offer support, please visit my appeal Campaign website: http://free-david-ferguson.org.uk/

Yours Sincerely, David E. Ferguson, A8270A, HMP Wakefield , Love Lane, Wakefield, WF2 9AG

'Taking Down Statues Does Not Cause us to Forget History'

Nicholas Reed Langen, Justice Gap: In American jurisprudence, the 'fruit of the poisoned tree' is the principle that evidence which has been acquired unlawfully, regardless of how valuable, cannot be used in court. The original sin taints everything that comes from it. This is a helpful metaphor for how to consider Edward Colston. As many have recently learnt, he was a noted philanthropist, whose money has done, and continues to do, much good. All of this good, however, unequivocally comes from the heinous sin of slavery. It is irrevocably tainted.

Attempts to qualify Colston's legacy, such as through a plaque acknowledging his culpability in the slave trade, came to nought. The democratic means of clarifying history and recognising wrong failed, in no small part due to the intervention of societies like the 'Merchant Venturers', who were inexcusably determined to ensure that the people of Bristol were left ignorant of Colston's history as a slaver. Dragging him from his plinth and dumping him in the river was no more than he- and his modern-day defenders – deserved.

Statues are not mere decorations, pleasant distractions from the monotony of the high street. Nor are they a record of our history – indeed, as Robert Saunders has noted, they curate it. They demonstrate our values and principles as a society. It is no little thing to fund and commission a statue – who we carve in marble is as revealing as who we do not. Cecil Rhodes looms over Oxford High Street, his presence there dictated by the terms of his bequest. Much like Colston, this bequest – and all the other creditable causes that Rhodes funded and founded – was gained inhumanely, through oppression and brutality. That Rhodes Scholarships are now awarded to black students from Africa does not absolve Rhodes of the pain and suffering that he inflicted upon the African peoples.

Colston's dunking in Bristol Harbour has reinvigorated calls for other statues to be de-plinthed, as a way of our modern society atoning for the sins of our forefathers. The 'Rhodes Must Fall' campaign has resurged, with the netting intended to protect Rhodes from desecration from pigeons now serving to protect him from the even greater ignominy of crashing to Oxford's High Street.

For these supporting a modern-day Reformation, such destruction is necessary for us to become a more equal and just society. It is no use proclaiming that black lives matter when slavers gaze down on passersby from every plinth. Such advocates of purity should, however, consider whether such actions truly move us towards a more just society, or are a superficial balm for those who are more interested in showing solidarity than in achieving equality.

Few, if any, historical figures have lived a Christ-like life. Even those unequivocally celebrated today, like Gandhi or Martin Luther King Jr., held unacceptable views. Part of the complexity of humanity is that people can do incredible good while also inflicting incredible harm. Debating their legacy may be a worthwhile academic debate, but this debate must be put in context. Societies all around the world are recognising the need for greater equality, with marginalised groups still facing discrimination. Is debating statues where this energy should go?

Focusing on the legacy of statues sucks oxygen away from the present, and funnels it towards the past. Greater justice cannot be achieved for those who struggled under the yoke of slavery, or who were massacred for their beliefs. What can be achieved is greater liberty and equality for their descendants who are living today. This is best achieved when society acts as a unified force.

Few people in Britain condone treating people differently because of the colour of their skin. We can debate whether we live in a racist society, but we do not live in a society of racists. However, if we pursue this persecution of statues, the support for equality will be fractured, creating new cleavages in the movement. People who justifiably want to see Nelson recognised for his victory at Trafalgar, who praise King for his relentless pursuit of racial equality, who admire the fact that Britain abolished slavery during Victoria's reign will fall on one side, and those who want to see their statues dismantled on the other. By adopting an antagonistic stance, those who are most ardent in their desire for reform push moderates, and those who may be sympathetic to the greater cause, away.

It is no use saying that such wants reflect the inadequacies of our education system, and that people would not want to celebrate such figures if they knew their true histories. There may be a need to ensure that our teaching, for instance, of the British Empire is

more nuanced, but this will not extinguish the pride that people have in Great Britain. Such pride is normal. At times, this pride is excessive or unwarranted- the Brexiters' constant analogising with World War II and the suggestions of creating Empire 2.0 are ahistorical and frustrating- but it does not mean that the British people should be reduced to viewing their past with unalloyed shame.

Rather than commentators discussing whether or not Winston Churchill deserves a statue on Whitehall, the focus could have been on the real harms being done today. The government could have been encouraged to remedy the injustice that is the UK continuing indefinite immigration detention- the only country in Europe to still do so. The time could have been spent discussing how we can redress systemic racism in the police force. The pressure could have been put upon Johnson to implement the 'Windrush Lessons Learned Review'. All of these proposals could have launched meaningful and real change for those communities that suffer discrimination today.

Obviously, even these proposals will be met with resistance from some quarters. But there is less room for debate and division over issues like the fact that the proportion of BAME children offending for the first time has risen significantly, or that BAME adults make up 25% of the prison population, despite comprising only 14% of society. Reports like the 2017 Lammy Review make clear that there is very real injustice in society, and that steps must be taken to remedy it. Within these projects there is more to unify sensible, moderate people than there is to divide them. For the Black Lives Matter movement, the focus should be on winning the argument on substance, rather than picking fights over symbolism.

The destruction of statues has, for some, a visceral thrill. It gives the satisfaction of seeing something tangible done, a physical strike against injustice. We should be wary, however, of this rush of endorphins distracting – or even detracting – from real change that is needed. The Bristol police were right not to intervene in the desecration of Colston's statue, and prosecutions- even as the Home Secretary interferes in the legal process to call for them- would be a mistake. But the symbolism of one act should not become the focus of society.

Taking down statues does not cause us to forget history. But in focusing on how the iniquities in our past affect minorities today, we distract ourselves from considering how the iniquities in our present continue the harm. And while we can do little to remedy the past, we can do much about the present.

Capacity, Sexual Relations and Consent- Latest From Court Of Appeal

"As social beings, we all accept restrictions on our autonomy that are necessary for the protection of others. No man is an island"

Sophy Miles, Doughty Street Chambers Lord Justice Baker has handed down judgment in the appeal against judgment of Mrs Justice Roberts in A Local Authority v JB. The issue was "whether a person, in order to have capacity to decide to have sexual relations with another person, needs to understand that the other person must at all times be consenting to sexual relations." As Baker LJ explained at the start of the judgment this requires a balance between three imperatives: -The principle of autonomy, at the heart of the Mental Capacity Act 2005 ("MCA") and underpinning the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"); -The need to protect the vulnerable; -The obligation on the Court of Protection to adhere to general principles of law and to meet its obligations under section 6 Human Rights Act 1998 ("HRA").

JB had epilepsy and Asperger's syndrome and was believed to lack capacity to make a range of decisions. He had a comprehensive care package with a number of restrictions intended to prevent disinhibited sexual behaviour towards women and he had been considered to pose a moderate risk of sexual offending. The local authority applied to the Court of Protection for declarations as to his capacity in various matters including sexual relations.

Roberts J held that "For the purposes of determining the fundamental capacity of an individual in relation to sexual relations, the information relevant to the decision for the purposes of section 3(1) of the MCA 2005 does not include information that, absent consent of a sexual partner, attempting sexual relations with another person is liable to breach the criminal law". On this basis she concluded that JB had capacity to consent to sexual relations. The local authority appealed.

Baker LJ reviewed comprehensively the caselaw in this field (see paragraphs 24- 75), noting at paragraph 26 that in the earliest case cited (X City Council v MB) Munby J had identified two questions: "How then is one to assess whether someone has the capacity to consent to sexual relations, the ability to choose whether or not to engage in sexual activity?" Many of the subsequent cases- including the Court of Appeal in IM v LM- framed the decision in terms of capacity to consent to sexual relations; however Baker LJ observed at paragraph 53 that "I would not regard the requirement that, in order to have capacity to engage in sexual relations, P must have the ability to understand that such relations must be mutually consensual to be inconsistent with the analysis in that case."

Baker LJ noted at paragraph 92: "The analysis of capacity with regard to sexual relations in the case law has hitherto been framed almost exclusively in terms of the capacity to consent to sexual relations. But as this case illustrates, giving consent to sexual relations is only part of the decision-making process. The fundamental decision is whether to engage in sexual relations." He continued (paragraph 93) "The word "consent" implies agreeing to sexual relations proposed by someone else. But in the present case, it is JB who wishes to initiate sexual relations with women. The capacity in issue in the present case is therefore JB's capacity to decide to engage in sexual relations. In my judgment, this is how the question of capacity with regard to sexual relations should normally be assessed in most cases."

Having formulated the question in those terms he held that It becomes clear that the "information relevant to the decision" inevitably includes the fact that any person with whom P engages in sexual activity must be able to consent to such activity and does in fact consent to it. Sexual relations between human beings are mutually consensual. It is one of the many features that makes us unique. A person who does not understand that sexual relations must only take place when, and only for as long as, the other person is consenting is unable to understand a fundamental part of the information relevant to the decision whether or not to engage in such relations." Baker LJ rejected the argument that the effect of including an understanding of the other person's consent would result in a "person-specific" test.

In what is likely to be a far-reaching conclusion he said at paragraph 98: "As I said at the start of this judgment, striking a balance between the principle that vulnerable people in society must be protected and the principle of autonomy is often the most important aspect of decision-making in the Court of Protection. But I do not accept the argument that including an understanding of the consensuality of sexual relations as part of the information relevant to the decision about the capacity regarding sexual relations amounts to an unwarranted infringement of JB's personal autonomy or of his rights. Insofar as it is a restriction of his autonomy and his rights, it cannot be described as discriminatory because it is a restriction which applies to everybody, regardless of capacity. As social beings, we all accept restrictions on our

autonomy that are necessary for the protection of others. No man is an island. This principle is well recognised in the European Convention on Human Rights. For example, the rights in Article 8 are not absolute and must be balanced against other interests, including the rights of others. Although the Court of Protection's principal responsibility is towards P, it is part of the wider system of justice which exists to protect society as a whole. "

He concluded at paragraph 100 (emphasis added) “In summary, when considering whether, as a result of an impairment of, or disturbance in the functioning of, the mind or brain, a person is unable to understand, retain, or use or weigh information relevant to a decision whether to engage in sexual relations, the information relevant to the decision may include the following: (1) the sexual nature and character of the act of sexual intercourse, including the mechanics of the act; (2) the fact that the other person must have the capacity to consent to the sexual activity and must in fact consent before and throughout the sexual activity; (3) the fact that P can say yes or no to having sexual relations and is able to decide whether to give or withhold consent; (4) that a reasonably foreseeable consequence of sexual intercourse between a man and woman is that the woman will become pregnant; (5) that there are health risks involved, particularly the acquisition of sexually transmitted and transmissible infections, and that the risk of sexually transmitted infection can be reduced by the taking of precautions such as the use of a condom.” He declined to comment on the vexed question of whether the relevant information must always include all of the above matters because it did not arise in this case.The judge therefore allowed the appeal and set aside the declaration that JB has capacity to consent to sexual relations. He made an interim declaration JB lacked capacity, and remitted the matter to Roberts J, anticipating she would wish to secure further expert evidence.

DCL Comment: This is a clear, powerfully worded judgment which will have far-reaching consequences. The judge’s comments about the Court of Protection’s obligations to the wider justice system are of general application and will have resonance in cases where P is considered to pose a risk to others, whether the risk is sexual or otherwise, and whether the court is considering capacity or best interests. Baker LJ accepted the parallel with the judgment of Cobb J in Re B that the potential for illegality was relevant when assessing capacity to use the internet and social media. He described the current judgment as “moving on from previous caselaw”, but not inconsistent with it. The judgment is likely to result in an increase of applications to the Court of Protection which concern those with a forensic history, possibly those who are leaving secure mental health services.

It may raise important questions about the cohort of restricted patients who at present are considered to have capacity to consent to their care arrangements. Such patients cannot lawfully be deprived of their liberty by virtue of a conditional discharge under the MHA following the judgment in MM. If a patient in this category was found, following the JB judgment, not to have capacity to engage in sexual relations, would this be consistent with having capacity to consent to restrictions directed at sexual risk?

The practical impact of the judgment on those who may now be assessed as lacking capacity to engage in sexual relations will emerge with time. Are they more likely to be given all possible support to attain capacity, or will it simply be easier to make a best interests decision to impose restrictions?

Given Baker LJ’s decision not to comment obiter on the question of “tailoring” information to P’s circumstances, this will remain a live issue for now until it is the subject of an appeal to the higher courts. He did observe however that his own judgment in Re TZ had adopted that approach. In that case, he observed that an understanding of the risk of pregnancy would only be relevant in a heterosexual relationship. The approach therefore has some authority behind it.It remains to be seen

whether this judgment is the final word, or whether there is an appeal to the Supreme Court.

Gatwick Drone Wrongful Arrest Couple Receive £200k Payout From Sussex Police

BBC News: A couple arrested over the Gatwick Airport drone chaos that halted flights have received £200,000 in compensation. Armed police stormed the home of Paul and Elaine Gait in December 2018, and held them for 36 hours after drones caused the airport to close repeatedly. The couple were released without charge, and sued Sussex Police for wrongful arrest and false imprisonment. On Sunday 14th June 2020, their legal team announced the force had agreed to an out-of-court settlement. No-one has ever been charged, and police have said that some reported drone sightings may have been Sussex Police's own craft.

Twelve armed officers swooped on Mr and Mrs Gait's home, even though they did not possess any drones and had been at work during the reported sightings. In a statement released by their legal team on Sunday, the couple said: "We are delighted to have finally received vindication, it has been a very long fight for justice. It has taken lengthy legal proceedings to obtain resolution from the police and to finally have closure on this distressing time."

In a letter to the couple Sussex Police Assistant Chief Constable David Miller said he was "deeply sorry" for the "unpleasantness" the couple experienced, and acknowledged it would have been "traumatic". He added: "Unfortunately, when the police carry out their functions on behalf of the public, sometimes innocent people are arrested as part of necessary police investigations in the public interest. However, we recognise that things could have been done differently and, as a result, Sussex Police have agreed to pay you compensation and legal costs." The force commissioned a "thorough independent review" of the drone incident.

Pepper Spray Deployed in Prisons Despite Concerns for BAME Inmates

Danny Shaw, BBC: A synthetic pepper spray is being deployed in 81 men's prisons despite warnings it will be used more against ethnic minority inmates. Documents seen by BBC News show prison officials authorised its rollout a month after saying it would be stopped. Campaigners want the government to halt the programme, claiming the spray may aid the spread of the coronavirus because it causes people to cough. The Prison Service said it would be used only as a "last resort". The Prison Officers' Association has been calling for the PAVA spray to be made available to help defuse outbreaks of violence and protect staff, amid record numbers of assaults in jails.

In 2017 and 2018, the chemical incapacitant was trialled in four prisons - Hull, Preston, Risley in Warrington and Wealstun, North Yorkshire. But its wider introduction was delayed by concerns - which led to a legal challenge - that the spray would be used inappropriately. An "equality analysis", conducted by the Prison and Probation Service (HMPPS), which is part of the Ministry of Justice, examined 182 cases in the pilot where the canisters had been drawn from an officer's belt or the spray squirted.

The study found that although PAVA was used more against white prisoners, who make up about three quarters of the jail population, black, Asian and minority ethnic (BAME) inmates were disproportionately affected. "PAVA has been drawn or used more against BAME prisoners," the report said. "The evidence from wider use of force would suggest that this trend will continue as rollout progresses," it added.

In April, Andy Rogers, deputy director of the safety and rehabilitation directorate at HMPPS, said work on rolling out PAVA would be paused "initially for three months" due to the impact of the coronavirus, which meant prisons had to implement emergency lockdown measures. But in May, Mr Rogers reversed the decision, setting out his reasons in a letter to stakeholders - which the MoJ didn't make public. "Due to the unprecedented challenges we are facing at this time I have taken the operational decision to extend the provision of PAVA to all adult male

closed prisons," Mr Rogers wrote.The Prison Service confirmed trained staff were carrying the spray in 81 of the 90 adult male "closed" prisons in England and Wales.

The Prison Reform Trust said the move broke commitments the MoJ had made to put safeguards in place before the rollout. Peter Dawson, PRT director, said the spray caused people to cough and could be dangerous for people with breathing problems. "It is not clear that the particular risks associated with PAVA use in prison during the pandemic have been considered or subject to expert medical advice," he said in a letter to Lucy Frazer, prisons and probation minister. Mr Dawson wrote he was "alarmed" by reports from New York that a prisoner with asthma had died after being sprayed. Dame Anne Owers, National Chair of the Independent Monitoring Boards, which carry out checks in prisons, said the roll out of PAVA was "highly regrettable". "We understand that this was based on a fear that there would be widespread indiscipline," she said. "Clearly this has not happened and violence has in fact decreased."

The Prison Service said the roll out of PAVA was an "exceptional operational decision". It said officials would monitor whether it was being used disproportionately on BAME prisoners, adding that it should not be used on inmates in "respiratory distress", including those suspected of having Covid-19. A Prison Service spokesperson said: "PAVA is only used as a last resort by specially trained prison officers. We monitor its use carefully, including for any disparities in the way it's deployed."

White Privilege' is a Distraction, Leaving Racism and Power Untouched

Kenan Malik, Guardian: The transformation has been bewilderingly swift. Six years ago, most Americans thought that police killings of black suspects were “isolated events”. Now, three out of four accept that there exists a systemic problem. Support for Black Lives Matter has risen more in the past two weeks than over the past two years. And far from feeding Donald Trump’s base, the flames consuming US cities have diminished the stature of the president while, so far, not exacerbating the polarisation of the nation. The attitudes not just of the public but of major institutions, too, have metamorphosed. The NFL, which for the past four years has condemned players “taking the knee” to the national anthem in protest at racist killings, now acknowledges it was wrong. Nascar, that most Trumpian of US sports, has banned Confederate flags. Corporation after corporation has publicly affirmed support for Black Lives Matter. In Britain, too, the ground has shifted. From nationwide mass protests to a new national conversation about statues and history, from footballers and politicians taking the knee, to Yorkshire Tea telling a critic of Black Lives Matter “Please don’t buy our tea again”, public life seems irrevocably changed. When demonstrators toppled the statue of slaver Edward Colston in Bristol, only a minority of Britons supported their actions. A majority, however, thought the statue should be taken down legally, something unimaginable even a few months ago.

From one perspective, the shift in public attitudes expresses something positive: the rejection of racism, the understanding that Black Lives Matter means not “only black lives matter” but “black lives matter, too”. Yet attitudes rarely change as if at the flick of a switch. The speed of the recent transformation reflects also the febrile character of contemporary politics. Volatility and polarisation are expressions of the same phenomenon: the detachment of politics from its traditional social moorings. It’s an issue much discussed in recent years in the context of the rise of populism and of the shifting allegiances of working-class voters. Over the past few weeks, we’ve witnessed one of the unpredictable expressions of the current unpredictability of politics.

As the old moorings have become detached, so politics has become driven as much by

cultural or psychological anxieties as by material concerns – witness the influence of identity politics or the reframing of working-class grievances in terms of cultural loss. Politics has always relied on symbols, rituals and performance. Today, though, it can feel as if politics has been consumed by performance. Consider the way that we now talk more about “white privilege” than about “racism”. The problem of racism is primarily social and structural – the laws, practices and institutions that maintain discrimination. The stress on “white privilege” turns a social issue into a matter of personal and group psychology.

“White people, you are the problem,” writes the Chicago Tribune columnist Dahleen Glanton. “For white people,” the US-based British writer Laurie Penny insists, “acknowledging the reality of racism means acknowledging our own guilt and complicity.” White people wash the feet of black faith leaders as atonement for their sins and religiously acknowledge their guilt. Such demonstrations of public obsequiousness are performances that make individuals feel better about themselves but also keep the structures of power and discrimination untouched. Viewing white people – all white people – as “guilty and complicit” distorts political issues and deflects from real causes. In America, black people are, as the Sentencing Project observes, “more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences”. And more likely to be killed by the police, too. Yet studies also show that the problems faced by African Americans are not due simply to white people, or even to white police officers, but to a system of justice that is structurally deeply unjust.

Nor is it just African Americans whose lives are devastated by the injustices of the justice system. More than half of those killed by US police are white and while, proportionately, police killings of African Americans have fallen in recent years, that of white people has sharply risen. Some analyses suggest that the best predictor of police killings is not race but income levels – the poorer you are, the more likely you are to be killed. Other studies have shown that the startlingly high prison numbers in America are better explained by class than by race and that “mass incarceration is primarily about the systematic management of the lower classes, regardless of race”. African Americans, disproportionately working class and poor, are also likely to be disproportionately imprisoned and killed.

In Britain, there are far fewer police killings (292 deaths in custody and 40 fatal shootings over the past 15 years), but here, too, black people are disproportionately the victims – forming 3% of the population but 8% of deaths in custody. The majority of killings are, however, of white people – 249 of the 292 deaths in custody and 26 of the 40 shootings – and probably mainly poor and working class (though these figures are harder to obtain). Or take Covid-19 deaths. The disproportionate impact of the virus on BAME communities is well documented. But class inequalities are important, too – people living in the most deprived areas in England and Wales have died from coronavirus at twice the rate as those in the least deprived areas.

Race and class are not competitive causal categories to be set against each other. Minorities are an integral part of the working class and they often have similar experiences of state authority. Race and class shape people’s lives in complex ways. Given the volatility of politics, what feels now as a fundamental transformation of public consciousness may seem less so in a month or in a year. What is certain, though, is that inequalities, whether of race or of class, cannot be reduced to the question of white privilege or challenged by eliciting guilt. Symbolism and rituals are important. But the heart of the problem lies in warped social relations and deformed institutional structures. As we search for new political moorings, we

need to think not just of identity and psychology but of the material and the social, too.

Racism Campaigners Call For Police Watchdog to be Abolished

Diane Taylor, Guardian: Black families in the UK whose loved ones have died in incidents involving the police have called for the abolition of the Independent Office for Police Conduct, which investigates the police, and the immediate suspension of officers involved in deaths as part of a new plan to address systemic racism and unlawful killings. The United Families & Friends Campaign (UFFC), which supports family members of those who have died following police incidents, has drawn up an eight-point plan calling for fundamental changes to the way deaths involving the police are dealt with. A disproportionately high number of these deaths involving the police are black and the UFFC said that failing to successfully prosecute police sends the message that the state can act with impunity. The call for sweeping changes came as Black Lives Matter protests take place all over the world after George Floyd's death at the hands of police in the US.

The key demands of the UFFC are: The abolition of the Independent Office for Police Conduct, which itself replaced the previous police investigatory body, the Independent Police Complaints Commission, and replacing it with a "truly" independent body that can conduct robust and transparent investigations into police involved with deaths: Immediate suspension of officers involved in deaths until investigations are completed: Full disclosure of information about deaths to families: Automatic prosecution of police if an inquest returns a verdict of "unlawful killing" at the hands of the police, even if the officer involved has since retired, and implementation of police body cameras and cameras in all police vehicles:

Lee Lawrence, the son of Cherry Groce, who was shot by police in 1985 during a bungled raid and left paralysed from the waist down, told the Guardian: "Watching the death of George Floyd brought back everything to me in terms of what I witnessed when the police shot my mum. What stood out for me was when he said he couldn't breathe. Immediately after my mum was shot she said she couldn't breathe, she couldn't feel her legs, she thought she was going to die." The incident triggered rioting in Brixton, south London, where Groce lived. Lawrence is establishing a memorial for his mother, who died in 2011, close to her home. "The way I saw George Floyd on the film was the same way I saw my mum, on the floor, helpless and with an officer kneeling over her. It brought up a lot of feelings and emotions for me, and a sadness that we are still witnessing and dealing with these things today." He said that although campaigners had secured some changes in policing they were "not enough to eradicate racism, injustice, police brutality and abuse of power".

Pam Duggan, the mother of Mark Duggan, whose fatal shooting by police in August 2011, triggered riots across the country, told the Guardian: "I believe the police are always racist. They keep on killing people and getting away with it. I cried when I saw what happened to George Floyd. It brought back everything about what happened to my son. It made me think how Mark must have felt just before he was shot dead with all those police pursuing him. Every time the police kill someone it's mothers and fathers and sisters and brothers who have lost their loved one who sit and cry. The police must stop doing this to people."

Deborah Coles, the director of the charity Inquest, said: "There is a long list of black people who have died in police custody. These deaths are synonymous with state violence, structural racism, injustice and impunity. Families face systemic delay, denial and obfuscation as they live with the pain and trauma of their loved ones' lives being disposable and no one being held to account.'

An IOPC spokesperson said: "Every death in police custody or death following police contact can have a tragic and lifelong impact on the family and friends of those who have died.

It can also have a lasting impact on those involved in their detention. All such deaths require a mandatory referral to the IOPC so an independent review of the circumstances can be undertaken. It is critical that we thoroughly examine the circumstances of each case to ensure that those involved are held accountable, and importantly to identify if there are lessons to be learned to help prevent future deaths. The IOPC is independent of the police, government and interest groups and we make our decisions impartially, based on evidence. By law, our director general can never have worked for the police. Also none of our executive team, regional directors or our director for Wales have worked for the police.

Over 1,000 Prison Leavers Left Homeless Amid Pandemic

Jamie Grierson, Guardian: than 1,000 prisoners were released into homelessness at the height of the coronavirus pandemic in England and Wales, figures show, prompting the government to increase funding for accommodation for prison leavers. Figures released to the Labour MP Lyn Brown show 840 men, 89 women and 85 young adults aged 18 to 24 were released into rough sleeping or other forms of homelessness between 23 March, when the lockdown was imposed, and 30 April. A further 1,209 men, women and young adults were released with unknown circumstances for accommodation in the same period. Brown, the shadow minister for prisons and probation, said: "Homelessness for prison leavers prevents rehabilitation, drives re-offending, and is an obvious public health danger during the pandemic. "If prison leavers don't have a decent place to stay, they don't get a second chance and the public aren't protected. The Government must guarantee all prison leavers are provided with the right support to break the cycle of re-offence, not just during this crisis, but permanently."

In late March, the government asked local authorities in England to house all rough sleepers and those in hostels and night shelters but by mid-April there were still multiple warnings over the risk to rough sleepers from Covid-19. In response to the parliamentary question, the justice minister Lucy Frazer revealed that "due to public health concerns and public protection considerations, there is a need to provide accommodation for a larger cohort of prison leavers", and funding had been increased. The Ministry of Justice has secured appropriate funding for a time-limited period to support the provision of accommodation for all individuals released from prison at risk of homelessness," Frazer said. We are working closely across government to ensure that all individuals released at risk of homelessness receive necessary support to help them secure somewhere to live." The additional funding will run until 26 June, at which point it will be reviewed. The MoJ has been approached for comment.

Between 23 March and 30 April, the number of confirmed cases of coronavirus rose from about 11,000 to approximately 126,000. The figures released to Brown show that about 15% of all women and 14% of all men released from prison during the period were released into rough sleeping or other forms of homelessness, compared with 6% of young adults.

Campbell Robb, the chief executive of Nacro, a charity that provides assistance to prison leavers in finding accommodation, help with finances and finding training or employment to resettle into the community, said: "For far too long the scandal of people leaving prison homeless with little chance to turn their lives around has been overlooked. We see through our work on the ground that the need for action during the coronavirus pandemic has been even greater. The additional funding from the Ministry of Justice is a welcome step. But with so many prison leavers being at risk of homelessness we mustn't let this focus suddenly end after June. We need to see a long-term commitment to everyone leaving prison having some-

where to stay. It's time we gave people the best chance at a second chance."

Peter Dawson, director at the Prison Reform Trust, said: "Every single person released from prison is subject to probation supervision. So it is extraordinary that for nearly a third of adult men and women discharged during the pandemic, no-one has known where they are going to be living. Almost all have left with just £46 from the government to manage on. How those people are supposed to "stay at home to protect the NHS" defies understanding. In the same period, the government has spent over £4m building temporary cells inside the prison walls. It's surely time to reassess priorities."

Frances Crook, chief executive of the Howard League for Penal Reform, said: "With the spread of coronavirus confirmed in almost every prison in the country, it is vital that as many people as possible are enabled to return to the community safely. Leaving people to fend for themselves on the streets during a pandemic puts them, and us, at risk. The government must ensure that people leaving prison have somewhere to live and the support they need to move away from crime and build a brighter future."

UK Government Responded To Black Lives Matter – By Protecting Statues

The Secret Barrister, Opinion Guardian: Our justice system is in tatters, yet what may be the first piece of bipartisan legislation to pass is one protecting the feelings of concrete.The government's response to the protests of the past week followed a predictable pattern. Step 1: A flurry of headlines promising: "Violent protesters face jail within 24 hours", optimism unencumbered by any understanding of the law, procedural fairness or how Covid-19-struck criminal courts are operating in practice. Step 2: Announce longer prison sentences for something. That something is apparently low-value criminal damage of war memorials, which, according to 125 Conservative MPs, is not being punished severely enough. So it was that backbench demands for a new offence carrying a maximum sentence of 10 years' custody filled the Sunday press, with MPs vowing not to "stand idly by as our democracy is dismantled in this way".

Seemingly sympathetic to the proposition that spray-painting a statue portends the dismantling of democracy, the government has thrown its weight behind the proposals, with the home secretary, attorney general and justice secretary all said to be supportive. What came as perhaps more of a surprise was the opposition joining the chorus. No doubt wary of falling into a populist-shaped elephant trap, the new shadow home secretary, Nick Thomas-Symonds, hitched Labour's wagon to this nonsense, telling Sky News that he would "support the government in creating a new specific offence of protecting war memorials".

The notion that a "new specific offence" is required to prohibit damaging war memorials betrays fundamental misunderstandings of what the law currently says. The Criminal Damage Act 1971 provides a maximum sentence of 10 years' custody for the offence of criminal damage, and applies to all property, including statues and war memorials. Where a statue is a listed building, a further offence, carrying a maximum sentence of two years, is available under section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

What upsets the campaigners is that where the value of criminal damage is under £5,000, it is treated as a summary-only offence (triable only at the magistrates' courts) and carries a maximum sentence of three months. So where an unlisted memorial is defaced but the remedial cost is low – say removing spray paint – a lengthy spell behind bars is unlikely to follow.

The "solution", we are told, is either to amend the Criminal Damage Act or to pass new legislation – the desecration of war memorials bill – allowing the maximum of 10 years to

apply, irrespective of the value of the damage (and, in the case of the new bill, there need not even be any damage caused). In their fervour, few of the protagonists seem to have realised that the proposed narrow definition of "war memorial" would exclude most of the statues and monuments that have captured recent headlines – neither Colston's nor Churchill's statue, nor the memorial to PC Keith Palmer, would qualify for protection, for instance. Nor has it occurred to them that most acts of damage or disrespect to monuments are caused in the context of wider, more serious offending, for which lengthy custodial sentences are already available.

But even more troubling is what such an escalation in sentencing powers would represent. While in practice the maximum of 10 years would rarely, if ever, be imposed, the new cross-party consensus appears to be that displaying disrespect – not even quantifiable damage – to an inanimate object is worthy of a higher maximum sentence than inflicting grievous bodily harm, violent disorder, affray, theft, carrying knives, acid or offensive weapons, voyeurism, upskirting and causing death by careless driving, to name but a few offences that cause tangible harm to real people. It would inject criminal sentencing, which already suffers from wild incoherence and inconsistency between offence types, with another dose of gratuitous disproportionality.

What disappoints most is that the criminal justice system is in desperate need of unified political attention. The system, already on its knees pre-Covid-19, is in tatters. The backlog of cases in the crown courts has soared above 40,000 due to year after year of cuts to court sitting days. A lack of police and CPS resources means that it typically takes over a year to charge many cases, with victims, witnesses and the accused then subjected to a further wait of at least a year for a crown court trial date.

Publicly funded lawyers, starved of government financial assistance, are going to the wall. We still have Chris Grayling's "innocence tax", whereby the government refuses you legal aid and, when you are acquitted, refuses to fully reimburse your legal fees, leaving you thousands of pounds out of pocket for having been wrongly accused. And, bringing the conversation back to where attention should rightly be focused at this time, the 35 recommendations in the 2017 Lammy review into the treatment of BAME individuals in the criminal justice system are, three years on, yet to be implemented. Yet somehow, our elected representatives have surveyed the wreckage of the criminal justice system, and considered the burning social injustices dragged into the spotlight by the BLM protests, and have concluded that the priority – the first piece of bipartisan criminal legislation they should pass – is one seeking to protect the feelings of concrete. Our country deserves better.

• The writer is a junior barrister who writes anonymously about the English and Welsh legal system, and is the author of The Secret Barrister: Stories of the Law and How It's Broken

Equality and Human Rights Commission (EHRC) Reports on Inclusive Justice

Ten years after the Equality Act came into force, the EHRC have published their findings and recommendations in a report entitled "Inclusive Justice: a system designed for all". Although the report recognises where progress has been made, it also identifies very significant problems. The inquiry, which covered England, Wales and Scotland, heard from defendants, legal professionals, charities, intermediaries and organisations who help people with what are often referred to as "hidden disabilities" – cognitive impairments, mental health conditions, and neuro-diverse conditions.

The EHRC's key recommendations focus on the pre-trial phase, when important decisions are made about adjustments and whether the defendant will plead guilty or not guilty. The

report is concerned both with participation and also the opportunities and risks arising from the increase in modernisation (for example, video hearings). The foreword to the report notes the rapid and expansive changes which have taken place during the pandemic. The inquiry was completed before Covid-19 took hold in the UK, however the report notes that the criminal justice system has had to adjust to deal with the challenges of Covid-19. These findings have therefore been published to "inform further decision making at this extraordinary time".

Reform which addresses "hidden disabilities" is much needed. It is estimated that 40% of people detained in police custody have a mental health condition, that between 5-10% of the prison population has a learning disability and almost half of the male prison population has some degree of traumatic brain injury. The effects of these impairments can include having a short attention span, being reluctant to speak up, and having extreme anxiety. It is easy to see, therefore, how accessibility in remote hearings may be impacted by an impairment, particularly when considered alongside other recent reports of stress felt by lay participants in remote hearings, who responded to the Civil Justice Council's recent survey (March 2020). Conversely, the EHRC report notes that when people were helped to engage with the court they saw the process as fairer, and were more likely to obey court orders.

What is Effective Participation and Why is it Important?

The EHRC report states that people must be able to understand and be involved in the criminal proceedings they are a part of. The report looks particularly at defendants; however this research is just as likely to also apply to witnesses and victims with "hidden disabilities" participating in the criminal justice system too. Effective participation includes understanding what you are being charged with, what the evidence is and being able to give your own account along with effective instructions to your legal team. Notably, effective participation includes the ability to understand written communication, and adjustments may need to be made to enable this process to take place.

How Are Court Reforms Affecting Participation?

Reforms in recent years have meant that fewer people need to appear in court for their offences. However, this means that many defendants may not interact with support channels which they may need to help them to navigate the system, or understand the implications of a particular course of action. Almost all of the criminal justice professionals interviewed by the EHRC felt that the use of video hearings did not enable defendants to participate effectively, and even reduced the opportunities to identify impairments. Some lawyers also felt that it was much more difficult to take instructions via video-link, both before and during a hearing.

The findings of the report are severe and highlight repeated instances of a flawed and ill-designed criminal justice system. Language issues and over-use of complicated legal terms was a particular problem for many defendants who responded to the survey. They said that they did not understand everything they were charged with, or everything the judge said during their hearings.

Although there is a duty which requires certain public bodies, including the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS), to actively consider how to take steps to eliminate discrimination across protected characteristics (including disability), the report saw no evidence that relevant public authorities are collecting sufficient information about characteristics of defendants. This includes a lack of data about how impairments can affect the ability of a defendant to participate. To date, the impact of the reforms on those with "hidden disabilities" has not been evaluated, although there may be some movement by the MoJ and HMCTS on this in the future. The report states that it is essential to include such evaluation to ensure that new court processes are truly designed with disabled people in mind – this includes both the impact of future reform and of existing barriers. The report also finds that the number of agencies involved in the criminal justice system can be confusing and that there are often no alternative formats for vast amounts of written information involved in criminal cases. Crucially, unidentified impairments are a further barrier to effective participation. This is a complex issue, particularly if there is a guilty plea, when the court may never become aware of any conditions. The reasons for failures in identifying impairments include lack of awareness, no processes in place to flag identification (a particular issue with the single justice procedure where a defendant only attends court if they plead not guilty or ask for a hearing), and a lack of accountability as a result of professionals sharing responsibility. Notably, nearly all of those who go through the single justice procedure have no legal representation, which increases the risk that courts might not identify a need for adjustments or that defendants will not ask for them.

Screening people in custody for pre-existing conditions is slowly becoming more systematic with the creation of NHS Liaison and Diversion services in England. However, in Wales there is no funding for these services and in Scotland there is a heavy reliance upon the accused person to disclose any impairments, or on a police officer's own judgment in carrying out their own statutory duty. It is clear that NHS-led screening would help to identify impairments early and will ensure that unfairness can be addressed. Further, the report finds that even where an impairment has been identified, information about the impairment may not be passed on and so adjustments are not always made. There are a variety of reasons for these communication failures ranging from lack of awareness, to shortage of time, along with inconsistent procedures. The EHRC recommends that a mechanism is in place for the NHS to share appropriate and case-specific information with HMCTS's case management IT systems on identified needs and recommended adjustments.

Are Existing Systems Adequate?

The inadequacy of existing systems is also covered by the report. There is a continuing duty on organisations involved in the criminal justice system to think in advance and on an ongoing basis about disabled people's requirements. Whilst many in the judiciary were found to be willing to make adjustments, it was unclear from rules and guidance how much weight requests for adjustments should be given compared to other considerations, such as the need to deal with cases efficiently and quickly.

Again, lack of awareness of impairments and relevant adjustments appears to play a part in the way that decisions are made. Further regulation is also necessary as, whilst there is a registered scheme for intermediaries for witnesses in England and Wales, there is no such scheme for defendants, meaning the cost and quality can be highly variable. There is no intermediary scheme at all in Scotland despite the key role that intermediaries can play in effective participation.

Some adjustments featured in the report, such as removing wigs and gowns, may be familiar to practitioners. However, the report makes a number of other recommendations, such as agreed start, break and end times, the defendant being allowed to sit outside of the dock, and visual aids – all of which should be assessed on a case by case basis.

Finally, the EHRC finds that legal professionals do not consistently have the guidance or training that they need to be able to recognise impairments, their impact, or the relevant adjustments. Even though there are a number of resources available there is no compulsory or free disability training for barristers in England and Wales. In Scotland there is also no guarantee that professionals will undertake training in relation to accused people, despite witness vulnerability training being compulsory for prosecutors.

There is a further marked difference in training provisions in relation to youth and adult courts. The EHRC recommends that this be addressed at student level and that relevant codes of conduct and standards, as well as continuing professional development requirements, be amended to specifically include disability awareness. Clearly, the criminal justice system, and those who work within it, have much

to do to ensure effective participation for all. This report sets out some clear guidance and so, with investment of time and funds, it is within our grasp to make ours a truly world-class justice system.

Sexual Offences: Prisons

Baroness Grey-Thompson to ask Her Majesty'sGovernment how many of the sexual assaults in women's prisons since 2016 recorded in the Safety in Custody statistics published on 30 April were carried out by transgender prisoners.

Lord Keen of Elie: There were 97 sexual assaults in female establishments between 1 January 2016 and 31 December 2019 and 7 of these assaults involved a transgender prisoner. Of those, 6 were assaults where a transgender individual was identified as the assailant or suspected assailant. One incident was recorded as a transgender prisoner having 'active involvement', which means they did not necessarily start the assault.

These figures have been drawn from the HMPPS Incident Reporting System. Care is taken when processing and analysing the returns, but the detail collected is subject to the inaccuracies inherent in any large-scale recording system. Although the figures are shown to the last individual the figures may not be accurate to that level. All sexual assaults in prison are referred to the police and HMPPS have strong safeguards in place to manage risks to all those incustody, regardless of their gender. HMPPS has robust processes in place to care for and manage transgender individuals in custody. The safety of all those in our care is of paramount importance. All known risks, both towards or presented by a transgenderperson in prison, will always be taken into account in their care and management. Individuals will be cared for and managed in the gender with which they identify, regardless of their location in a male or female prison

Vienna Police Fine Man €500 for 'Massive Fart'

Breaking wind in public may be a social taboo, but it's not often that people face financial consequences for it. But that was the case for one man in Austria, who was fined €500 (£448, $564) after doing so at police in Vienna earlier this month. The city's police have defended the fine, saying it was for more than that. "Of course no-one will be reported for accidentally 'letting one go' once," Vienna's police department said on Twitter. Responding after a photo of the charge sheet - issued for "violating public decency" - was shared on social media, the police department said the suspect "had already behaved in a provocative and unco-operative manner" when he was approached by police in the early hours of 5 June. He then rose from a park bench, "looked at the officers and apparently intentionally released a massive intestinal wind in the immediate vicinity of the officers". And, as the suspect found to his own cost, members of the city's police force "prefer not to be farted at".

Prisons: Pepper Spray

Lord BradleyTo ask Her Majesty's Government what assessment they have made of the impact of issuing PAVA spray to prison staff, and, in particular, the impact on prisoners with protected characteristics under the Equality Act 2010.

Lord Keen of Elie: Keeping everyone in our prisons safe is paramount and remains the organisation's biggest priority. PAVA is only used as a last resort and is used safely and appropriately to best protect both staff and prisoners from serious harm.It is important to recognise that this is just one element in a package of tools already in place to improve physical safety in prisons. It sits alongside Body Worn Video Cameras, Five Minute Intervention (FMI) training to enhance interpersonal interactions, a new personal safety training package, and the deployment of rigid bar handcuffs. All of these measures aim to help improve safety in prisons. We know that one of the most effective tools in managing people safely is the interpersonal skills of our staff. Therefore the introduction of PAVA will not happen in any establishment until all the staff there have had their FMI training and the new key worker role for our band 3 officers has been implemented.HMPPS is committed and duty bound to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not and to foster good relations between people who share a protected characteristic and those who do not.In response to the Lammy Review, we are updating national training packages to raise awareness among all staff of the role of a range of biases in decision making, and strategies to combat these.Quality assurance and scrutiny of incidents is vital to ensuringthat force is used legally and appropriately. Governors will be expected to ensure that scrutiny takes place after any drawing and/or use of PAVA. We have developed a toolkit of resources to assist prisons in maintaining effective scrutiny.

HMP Holme House - Outcomes For Prisoners Not Sufficiently Good

HMP Holme House, a large men's prison in Stockton-on-Tees inspected just before the COVID-19 crisis, was assessed by HM Inspectorate of Prisons as delivering outcomes for prisoners that were not sufficiently good across the board. Purposeful activity had declined from reasonably good in 2017 to not sufficiently good. Assessments of safety, respect and rehabilitation and release planning remained not sufficiently good. Overall, it was clear to us that the prison was falling well short of achieving its purpose as a training prison for category C prisoners. The prison was still not safe enough. Arrangements to receive and induct new prisoners were inadequate, and while overall levels of violence were consistent with similar prisons, much more could have been done to improve the safety and well-being of prisoners and reduce violence still further. More attention was also needed to ensure that the use of force by staff was always fully accounted for. There had been three self-inflicted deaths and self-harm had increased since the previous inspection. The prison's response to this priority could best be described as inconsistent. At the heart of many of the prison's problems were poor staff-prisoner relationships which were due partly to staff indifference. Mr Clarke commented: "There was a clear need for a more proactive culture among staff, one that was more supportive of a constructive, rehabilitative ethos. Along with this, the general environment, levels of overcrowding and the quality of accommodation, as well as other factors associated with the quality of daily living, such as the food and arrangements to support legitimate redress among prisoners, required improvement. Time out of cell and the general level of prisoner engagement with education and work did not reflect what is normally expected of a training prison. "We found, for example, a third of prisoners locked up during the working day, while attendance and punctuality with respect to activity was sporadic and inconsistent. The curriculum failed to fully meet the needs of prisoners."

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.