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

MOJUK: Newsletter 'Inside Out' No 816 (21/10/2020) - Cost £1

NI: Pat Finucane Case Returns to Court Over UK Government Delay

Irish Legal News: The family of murdered Belfast solicitor Pat Finucane have returned to the High Court in Belfast to challenge the UK government's delay in responding to a landmark UK Supreme Court ruling nearly two years ago. The Supreme Court ruled in February 2019 that the state has failed to deliver an Article 2 compliant investigation into the death of Mr Finucane, who was shot and killed by loyalist paramilitaries in collusion with the UK security forces. Mr Finucane's widow Geraldine Finucane launched new proceedings in the High Court this morning to "challenge the Secretary of State for Northern Ireland's delay – now in excess of 20 months – in reaching a decision on how the British Government will respond to the ruling", solicitor Peter Madden of Madden & Finucane said. He added: "Only a full and transparent judicial public inquiry, with the powers to compel production of documents and the examination of witnesses can reveal the true extent of the 'shocking levels of collusion', as described by former Prime Minister David Cameron, between the British state and loyalist paramilitaries in Pat's murder." The late Mr Finucane's son, John Finucane, himself a solicitor and now a Sinn Féin MP, said: "It is now over 20 months since my family's Supreme Court victory and we are forced to go to court yet again to force a response from the British government. "The Supreme Court judgment rejected all previous investigations into my father's murder and demanded a new approach. "The continued stalling must end and the British government need to fulfil the promise they made many years ago, which is have a full and independent public inquiry into the murder of Pat Finucane."

Court of Appeal Reject Police Attempts to Weaken Accountability For Use of Force

Officer who shot Jermaine Baker will face proceedings for gross misconduct: The Court of Appeal has today given important clarification of the test to be applied when determining whether police officers' use of force will amount to misconduct. It has confirmed that where an officer claims to have made an honest mistake that he faced imminent danger, the force used in response may amount to misconduct if that belief was unreasonable.

The case arose out of the death of Jermaine Baker, who was fatally shot by a Metropolitan police officer on 11 December 2015. Jermaine was unarmed and the Independent Office for Police Conduct (IOPC) concluded that the officer who fired the shot, known as W80, may have a case to answer for gross misconduct and should face proceedings on the basis that a misconduct panel could find that W80's belief that Jermaine was reaching for a firearm was unreasonable. The IOPC directed the MPS to bring those proceedings.

W80 brought a judicial review challenging that direction. He was successful in the High Court, which quashed the IOPC direction on the basis that the IOPC had applied the wrong test and that the test that applies in misconduct proceedings is the same as that in criminal proceedings, i.e. that the belief in the threat need only be honest and not reasonable. The Court of Appeal has now overturned that decision following an appeal by the IOPC. Jermaine's family were an interested party in the appeal and supported the appeal. This decision means that W80 will now face proceedings for gross misconduct. It also gives important clarification of the standard against which all police officers in the country will be judged when they use force which they claim was necessary in self-defence or defence of another.

Ms Margaret Smith, Jermaine's mother said: "I and the rest of my family welcome this decision. What is important now is that W80 is held to account for his actions. The Metropolitan Police Service have fought hard to avoid taking any action against him. We look to the MPS now to respect the direction of the IOPC and the decision of the Court of Appeal and to bring proper and effective proceedings against W80."

Deborah Coles, Director of INQUEST said: "The police have consistently resisted scrutiny after the use of lethal force, and that has meant bereaved families being failed by the processes that should deliver accountability after the death of a loved one. Indeed, the Court of Appeal recognised that W80's 'submissions would prevent public scrutiny of the serious situation that arose in this case.' Allowing the police to act with impunity frustrates the prevention of misconduct and ultimately allows deaths to continue. The judgment of the Court of Appeal is a small but important step against such impunity."

Michael Oswald of Bhatt Murphy Solicitors, who represents the family, said: "The Court of Appeal has firmly rejected attempts by the Metropolitan Police Service and the National Police Chiefs' Council to weaken police accountability for the use of force in this country. However, it is deeply troubling that those organisations seem to remain so resistant to public scrutiny. It is completely at odds with their very public statements purporting to stand in support of calls for police accountability in the wake of the death of George Floyd and the Black Lives Matter movement."

Hooded Men: Permission to Appeal to the UK Supreme Court Granted

This appeal arises from the detention and mistreatment of 12 individuals in August 1971, following a major arrest operation in Northern Ireland, carried out using powers of detention referred to as "internment." The group of individuals has come to be known as the "hooded men." The men were detained in the custody of the Royal Ulster Constabulary, with support provided by military personnel. During their detention, Francis McGuigan and Mary McKenna's father (Sean McKenna) were subjected to treatment which was later found by the European Court of Human Right to have been in breach of article 3 of the European Convention on Human Rights.

The judicial review proceedings leading to this appeal were issued following the discovery, via a 2014 RTE Documentary, of additional documentary materials relevant to the mistreatment in question. Following such discovery, the Chief Constable of the Police Service of Northern Ireland stated that he would arrange a further investigation into the mistreatment. The present proceedings raise a number of issues concerning the compatibility of the proposed investigation with the European Convention on Human Rights and with the common law.

The issues are: (1) Whether there has been a breach of the procedural obligation under article 3 of the European Convention on Human Rights, or of common law principles of independence, or of legitimate expectations, due to the decision of the Police Service of Northern Ireland that there was no evidence to warrant an investigation, compliant with Articles 2 and 3 of the Convention, into the allegation that the UK Government authorised and used torture in Northern Ireland in relation to two of the "hooded men";

(2) In particular, whether the Police Service of Northern Ireland is sufficiently independent to carry out any necessary investigation into the treatment of the "hooded men." In finding that it was not the Court of Appeal relied heavily on its previous judgment in McQuillan, a judgment in respect of which leave to appeal to the Supreme Court on the issue of police independence, inter alia, has now been granted by the Court of Appeal.

Collusion is Not an Illusion - It is State Murder

Socialist Worker: Gary Haggarty, a member of the pro-British paramilitary organisation the Ulster Volunteer Force in Northern Ireland, worked as a paid agent of Special Branch cops. In 2017 he pleaded guilty to 202 crimes, and asked that 301 others be taken into consideration. These included five murders. Under a proposed new law from the Tories, as a paid informant he could have been given immunity in advance for his crimes. MI5 has long had a policy of allowing its officers and informants to participate in criminal activity. But the Tories want to sort out the legal rules to fend off justice campaigners. The problem is that the government is right to insist that it will “underpin the longstanding work of intelligence and law enforcement agencies”. There is the 1989 murder of Pat Finucane, a Belfast lawyer who was shot 14 times by Loyalists involved in British state collusion. British agents provided the information and the weapons for this and numerous other killings. There is Naa’imur Zakariyah Rahman, jailed for life in 2018 for plotting to kill then prime minister Theresa May. Spooks and cops provided Rahman with what he thought was a jacket and rucksack packed with explosives.

There are the spy cops who bugged, burgled and bribed. They spied on murdered teenager Stephen Lawrence’s family. And they formed sexual relationships with activists from various campaigns to get information. They encouraged crime to entrap activists. There are many other crimes committed by cops and spooks in Britain and abroad. The new legislation puts them all on a legal footing. And it even extends the list of people who can authorise crimes to include the Food Standards Agency and the Gambling Commission.

Labour bravely called for abstention on the bill. It supports putting into law the licence to commit a crime. Labour’s cunning plan is, as with the bill to legalise torture last month, to allow the legislation to progress but to press the government for “robust safeguards”. This is as useless as it is dangerous. It is a deliberate attempt to go along with right wing legislation to show that Keir Starmer’s Labour is a safe pair of hands. To be fair, Labour opponents of the bill forced a vote on the second reading on Monday night. The Unite union made a point of calling for opposition. The result was that 19 Labour MPs voted against the bill. The rest rushed to catch last orders at the bar. That the left in parliament has quickly returned to a small number of people with some principles is a shame—but also a lesson. Our ability to defend ourselves against the state will not come from Labour.

Youth Jail Plans Therapy Rather Than Steel Doors

Sean Coughlan, BBC News: "Once you're caught in the grip of the system you are doomed," says the founder of a radically different approach to jailing young offenders. Steve Chalke aims to stop a revolving door of criminality that at present sees 69% of young prisoners reoffending within a year of release. He says the "19th Century, Dickensian" approach is "absolutely broken". Instead he will lead England's first "secure school", opening near Rochester, Kent in 2022.

According to the Ministry of Justice's recent White Paper, this new template for cutting reoffending must be "schools with security, rather than prisons with education". 'A house, not a prison wing' - The proposed legislation will also allow a charity to run these new institutions - and the charity running the first secure school will be the Oasis group, headed by Mr Chalke. "We have to move from a model of justice which is about retaliation to a model that's about resettlement and renewal," he says. "And the only way of doing that is a psychologically-informed approach." There will be a Scandinavian-style emphasis on therapy and education rather than metal doors and warders with bunches of keys - even though this will remain a secure jail with a perimeter wall. "There are going to be bedrooms, not cells; a house, not a wing," says Mr Chalke. He wants to use neuroscience rather than clanging steel doors and bars.

Secure schools want to get away from this kind of image of metal doors and prison wings. Toughened glass, thick wooden doors, electronic fobs rather than locks and keys can be as secure as steel bars, he argues, but with a different and less aggressive atmosphere. There will be about 50 residents, divided into four houses, and he wants to move away from "retribution" and a system that "scares and intimidates". "So we lock people up in cells and behind bars and all the rest of it, leave them there for three, four or five years, let them go and then wonder why they've not got better," he says. "When the public talk about the word 'secure', they think of bolts and bars and locks. Whereas, for a lot of young people, what they need is 'security'. There will be a focus on education and rehabilitation rather than locks and punishment

"I know kids who wish they could go to sleep tonight and feel secure that they won't be woken up by their dad beating up their mum or their mum having another alcoholic row. They want to sleep in security," says Mr Chalke, whose academy trust group runs more than 50 schools. The starting point has been trying to break the pattern of reoffending - to end the cycle in which offenders enter the prison system as children and then are highly likely to return there as adults. There's a cost in terms of the victims of crime - for the 69% who reoffend within a year of release, each young reoffender commits an average of five crimes. Most of those leaving youth custody will go on to be adult offender For shorter times in custody, of six months or less, the reoffending rate is even higher at 77%. And the reoffending rates for those leaving custody are much higher than for young people given cautions or non-custodial sentences.

Assaults:There is also a financial cost. A young offender institution costs £76,000 per inmate per year, a secure training centre place £160,000 and a secure children's home place £210,000 per year. And House of Commons library figures show there were 269 assaults per month on average in young offender institutions. The number of young people in custody has fallen sharply in recent year Mr Chalke wants the secure school to turn the page on how young inmates are treated. Not least because the challenge is changing. There has been a rapid reduction in the number of under-18s in custody, down by more than two thirds since 2001, to a current total of about 860. In contrast almost 13,000 were given community sentences. But Mr Chalke says those in the youth prison system are now a more hard-core group of serious offenders, often with complex psychological problems.

Most young offenders are likely to get community sentences. He wants to use the expertise of mental health services working with dangerous people in secure settings - and to use advances in neuroscience to address the impact of neglect and abuse. Alongside the education and therapy inside, he wants to set up a much more effective safety net for when inmates are released - helping with accommodation and employment.

In trouble in a day. Mr Chalke tells the story of what he's trying to avoid - a 17 year old released from custody in London, being intercepted by their former gang and sent out as a drugs courier and getting stabbed in a dispute, all within a day. But the secure school is being built on a troubled site - the former Medway secure training centre. This was the subject of an undercover investigation by BBC Panorama and was later closed. It's also not far from the village of Borstal, which gave its name to a previous approach at youth justice. There is a plan for better support for young inmates when they are released

Frances Crook of the Howard League for Penal Reform rejects the positive claims for the secure school - and said it is "not the answer". She says it is just another in a long list of

"reinventing ways of punishing children by locking them up - which always failed". The prison reform organisation's chief executive said the problem was sending so many children to prison, rather than cosmetic changes to how they were treated. But the Ministry of Justice says that secure schools, with their focus on education and "wrap-around health services" are going to be the future model which will "guide our transformation of youth custody".

Death of Kevin Clarke: Serious failures by MET, London Ambulance Service, et al,

An inquest has today, Friday 9th October, 2020, concluded that the death of Kevin Clarke was contributed to by restraint and highlighted serious failures involving Metropolitan Police Officers, the London Ambulance Service, South London and Maudsley NHS Trust (SLaM) and Jigsaw, an assisted housing provider. The jury found that opportunities for earlier, less restricted intervention were missed by SLaM and Jigsaw, and that the use of restraints by police were 'a high risk option' which 'escalated the situation to a medical emergency'.

Kevin Clarke, a 35 year old black man, was experiencing a mental health crisis when he died following restraint by Metropolitan Police officers in Lewisham, South London, on 9 March 2018. During the restraint, which lasted 33 minutes, he told officers 'I can't breathe' and 'I'm going to die', but they said they did not hear him. Despite this, the jury concluded that it was 'highly likely' that at least one officer heard Kevin say 'I can't breathe'.

The medical cause of Kevin's death was Acute Behavioural Disturbance (in a relapse of schizophrenia) leading to exhaustion and cardiac arrest contributed to by restraint struggle and being walked. The jury found the following issues possibly or probably contributed to Kevin's death: > The failure of the ambulance crew to conduct a complete clinical assessment on their arrival, and provide appropriate clinical advice, both of which amounted to a failure to provide basic medical care. > Jigsaw's and SLaM's crisis management plans did not include critical information to assist with Kevin's wellbeing and relapse management which was inadequate and a serious failure in the quality of care. > Inappropriate management of the relapse by the community mental health team. > Inappropriate restraint and failures to properly supervise the restraint by police officers. > Inadequate risk assessments by the paramedical staff together with the police officers of Kevin's condition. > Inappropriate way in which Kevin was moved from the playing field which impaired his breathing and increased the stress on his body.

Kevin (known as KC) was diagnosed with paranoid schizophrenia when he was 17 years old. From February 2016 he resided in assisted living for people with complex mental health needs run by Penrose Jigsaw Project. He was under the clinical care of South London and Maudsley NHS Trust (SLaM). The inquest heard that two days before his death, Kevin had not attended his mandatory medication supervision. When staff next saw him the next day, he appeared unwell and staff become concerned that he may be relapsing. When Jigsaw staff notified the SLaM team, Kevin's responsible clinician advised that he would likely need to be taken to a place of safety by the police under Section 136 as he deteriorated quickly when he was relapsing. Kevin was considered high risk by SLaM on the day of his death. Despite this, no plans were made by SLaM to manage the Section 136 process and nobody was specifically assigned to see him. The inquest heard evidence that the care plan drawn up by SLaM and in place for Kevin had not been updated to include crisis management advice.

On the day of his death, Kevin had been standing outside in the cold for over four hours before the Jigsaw staff called the police. When the police did eventually arrive to see Kevin, officers assessed that they did not have sufficient grounds to use their Section 136 powers to detain him.

These officers had not been aware that a community mental health nurse had spoken to Kevin not long before they arrived, albeit completely by chance, and had assessed that Kevin was relapsing, hallucinating and needed to be taken to a place of safety. The police did not consult any mental health professionals before making their decision not to use their Section 136 powers.

Minutes after these police officers left the scene, the police were called to a report of a large man running through gardens and climbing over fences. When police arrived, Kevin was found lying on the wet muddy field, rolling side to side and mumbling to himself. In total nine officers attended. Evidence was heard at the inquest that the officers had recognised signs of mental ill health and Acute Behavioural Disturbance (ABD**) and were aware of the risks of restraint. Police called an ambulance but did not communicate their concerns about ABD.

After been contained for over ten minutes, as soon as Kevin attempted to get to his knees, although swaying from side to side and visibly unwell, police officers lay hands on him and immediately restrained him. Kevin was handcuffed in the rear stack position, placed in the prone and then semi-prone position and then had leg restraints placed on him. The jury found that the officers' decision to use restraint was inappropriate because it was not based on a balanced assessment of the risks to Kevin, compared to the risks to the public and police. They concluded that Kevin was generally cooperative and responsive up until the point when officers laid hands on him.

When the ambulance crew arrived at the scene around ten minutes after the restraint began, they stood back and did not carry out a proper assessment of Kevin's health, with the lead paramedic telling the inquest that she felt too scared to get close to him to do so. The paramedics did not bring their medical emergency bag. The LAS were not made aware of and did not recognise signs of ABD.

The police officers and paramedics briefly discussed carrying Kevin to the ambulance using a carry sheet or moving the ambulance to the field, however it was decided by the police to walk Kevin under significant restraint. When Kevin was eventually taken to the ambulance, he bent over at the waist and handcuffed behind his back, with officers at his sides and back. His hoody was pulled over his head and downwards, obscuring his face. Officers and paramedics accepted at the inquest that this inhibited their ability to monitor Kevin's vital signs. The jury found that the choice of conveyance worsened Kevin's state of exhaustion, added more strain on his body and led to his cardiac arrest.

During this move, Kevin collapsed twice over a short period. No medical intervention or assessment was offered by the paramedics and the police officers did not conduct a check on his welfare. After the second collapse, his head appeared limp and he was unresponsive. A carry sheet was then used to move Kevin to the ambulance, where at 3.14pm cardiac arrest was reported, and chest compressions initiated. Restraint devices were initially kept on even as paramedics administered emergency treatment. Kevin was pronounced dead at 4.17pm at Lewisham hospital. Kevin's death comes in the broader context of a disproportionate number of black men who have died following use of force by police in England and Wales, and the well-known risks of restraint as highlighted in recommendations arising from previous deaths.

Wendy Clarke, Kevin's mother, said on behalf of the family: "KC was a loving kind caring person who always looked out for others. But those involved in his death saw him as the stereotyped big black violent mentally unwell man. KC was restrained unnecessarily and with disproportionate force. There was a lack of engagement, communication and urgency by all those who owed him a duty of care. Despite the fact that KC can be heard saying 'I can't breathe' and 'I'm going to die' they ignored him. So to hear officers say they would not do anything different is shocking. My son lost his life because of a number of missed chances by the mental health team, the accommodation provider, the police and paramedics who all stood

by and let KC die. KC was loved by many and will be missed dearly. In his memory we want to see accountability, and real change, not just in training, but the perception and response to black people by the police and other services. We want mental health services better funded so the first point of response is not just reliant on the police. There must not be another George Floyd, Sean Rigg or Kevin Clarke."

Anita Sharma, Head of Casework at INQUEST, said: "INQUEST has documented a long history of Black people disproportionately dying following use of force and neglect by police, particularly those experiencing mental ill health. This inquest is further evidence of discriminatory treatment which is rooted in racial stereotypes of the violent and dangerous 'big Black man', rather than the relevant training or procedures. There is an urgent need for structural and cultural change in policing, mental health and healthcare services. One which ends the reliance on police to respond to public health issues, and which confronts the reality of institutional racism in our public services."

Cyrilia Davies Knight, Solicitor at Saunders Law who represented the family, said: "This inquest has highlighted the many failings by all those who were involved in the events that led to Kevin's death. The jury have found and it is clear from the body worn camera footage shown during this inquest that the officers did not need to restrain Kevin, and when they did, the force used during the restraint was excessive, inhumane and contributed to his death. This inquest has also highlighted the systemic problems associated with the way in which people with mental ill health are often treated as criminals rather than patients by public bodies in times of crisis. This is all too familiar and needs to change."

MPs Call For Resumption of Visits to Prisons and a Review of Immigration Detainees

Ellie Williams-Brown, Justice Gap: MPs called for a resumption of visits to prisons and a review of immigration detainees. The joint committee on human rights have published a report on how the government's COVID-19 measures were restricting movements, gatherings and how closing schools affected other rights. While acknowledging the response was to protect lives, a right protected in Article 2 of the European Convention on Human Rights, the committee noted the need for a public inquiry. It suggested the Government undertake 'some form of swift lessons-learned review as soon as possible in order to fulfil its human rights obligations and to prevent future unnecessary deaths'. 'This is an unprecedented and uncertain time for everyone, and the Government must act in a justifiable, fair and proportionate way,' said the chair of the committee, Harriet Harman QC. 'As we approach the Coronavirus Act's six-month review, there are a number of concerns that the Government must urgently address.'

The Children's Commissioner for England raised the issue that children remanded to custody were effectively serving time in prison without a sentence and, in particular, those awaiting trial who are close to turning 18: 'If they are not tried before their 18th birthday they will be tried as adults,' the commissioner told MPs. 'These children will not benefit from the youth justice system, which is more rehabilitative. They will be given adult sentences which are much longer despite having committed the crimes as children.' The MPs called for those who turn 18 between the commission of the offence and sentencing 'should be dealt with as children in the youth courts'.

The committee also highlighted problems caused by trials being adjourned for significant periods of time and the post Covid extension to custody time limits. 'All defendants have the right to a timely trial before an independent and impartial tribunal and this right must be respected and provided for as speedily as possible,' the MPs said. The committee had previously called for a maximum time limit for immigration detention of 28 days. Home Office

statistics revealed that the number of people held under immigration powers fell by 939 between the end of December 2019 and the end of June 2020. 'However, hundreds of individuals remained in detention,' the MP said. '… Where there is no reasonable prospect of removal within a reasonable timeframe, immigration detention ceases to be lawful.'

The 'disproportionate impact' measures had on children with school closures, especially those with Special Educational Needs and Disabilities was also acknowledged. The committee urged the Government to address barriers children may face when returning to school and ensure 'unequal access to education for disadvantaged children […] does not lead to wider inequality in society'. The report also stressed the need to ensure evidence-based and non-discriminatory allocation of personal protective equipment and to protect the most vulnerable to the disease: the elderly and those from BAME backgrounds. The Committee wrote the government must be 'transparent', justifying 'the necessity and proportionality of interferences' with the 'latest scientific evidence'.

Margaret McQuillan (AP) For JRPermission to Appeal to the UK Supreme Court Granted

On the night of 8 June 1972, Jean Smyth was a passenger in a car which was stationary on the Glen Road, Belfast, when she was fatally wounded by a bullet striking her head. Following police investigation into her death and following the discovery of military logs suggesting the possibility that the fatal shot was fired by a member of the Military Reaction Force, the Police Service of Northern Ireland proposed to conduct a further investigation into Ms Smyth's death. The investigation was to be conducted by the Police Service's Legacy Investigations Branch. Before the proposed further investigation took place, the respondent issued judicial review proceedings seeking a declaration that the proposed further investigation of the death conflicted with the requirements of article 2 ECHR on the basis that the lacked the requisite independence required to perform an Article 2 compliant investigation into the death.

The Court of Appeal found, in the appellant's favour, that article 2 was applicable and that the Police Service lacked the requisite independence to satisfy the requirements under article 2. The appellants appeal to this court against the Court of Appeal's findings. The respondent cross-appeals. The issues are: In the Appeal: (1) The extent to which the article 2 investigative obligation arising under the Human Rights Act 1998 applies retrospectively to deaths which occurred prior to the commencement of the Human Rights Act 1998; and (2) Whether the Legacy Investigations Branch of the Police Service of Northern Ireland is sufficiently independent to investigate and / or review the investigations into such deaths and what steps are necessary to ensure that the investigation / review meets article 2 standards and the point in time at which those steps must be taken. In the Cross Appeal: (1) Whether the NI Court of Appeal erred in finding that there was no obligation to ensure that the investigation into the death in question was independent under (1) the common law; and (2) under the Police (Northern Ireland) Act 2000, s. 32(1)(d) read in conjunction with the Code of Ethics 2008 as contained in the Police Service of Northern Ireland (Conduct) Regulations 2008.

Law Society Urges Review to Protect Six Fundamental Principles of Judicial Review

Law Gazette: The Law Society has set out six fundamental principles of judicial review that it says the Independent Review of Administrative Law (IRAL) "must protect", arguing that judicial review is "a pillar of democracy and a vital check on power". The IRAL was set up in July this year and is chaired by former government minister Lord Faulks QC. Chancery Lane said: "There are legiti-

mate questions as to whether improvements can be made to judicial review so that it functions more effectively and keeps the focus on testing the lawfulness of decisions. "However, judicial review must continue to be available to provide a vital check on executive power, whichever the government of the day, and ensure accountability of state authorities. It's a limited but important legal process in a modern democracy." The Law Society's "fundamental principles", which it said should be at the heart of any proposals for reform, are as follows:

Maintaining Checks and Balances: The fundamental purpose of judicial review is to determine whether public authorities are acting in accordance with the law. Without an effective system of judicial review, other fundamental constitutional principles, such as parliamentary sovereignty, will be weakened. Its essential contribution to upholding the rule of law and principles of democracy within the broader constitutional system must not be diminished. Guaranteeing that it remains an effective and accessible mechanism for ensuring the accountability of government, public bodies and regulators according to the laws made by parliament must be a cornerstone of any possible reform.

Judicial Independence: Judicial review brings law and politics into close contact. A mature democracy must be prepared to deal with these tensions. Judges must be free to exercise their duties in judicial review without fear or favour, away from political considerations and criticism, and without being assumed to have an agenda beyond their role in upholding the law, so that they can fulfil their constitutional role and effectively enforce the rights of individuals and organisations.

Eligibility: Judicial review is concerned with decision-making by government, public bodies and regulators, and so must be available to all who are affected by those decisions. This includes citizens and non-citizens, when relevant, such as immigration cases or when a company has business interests in the UK. Organisations such as charities or trade unions should also be able to act, within reasonable limits, in the interests of the people, bodies or issues they represent by initiating or intervening in judicial review claims.

Accessibility and Affordability: There should not be excessive procedural hurdles which act as a barrier to bringing a claim. The need for prompt resolution and sufficient opportunity to pursue a claim must be appropriately balanced. To be fully accessible, bringing a judicial review claim must also be affordable. Where individuals lack their own financial means, adequate levels of legal aid must be provided to ensure equal access to the courts to enforce their rights. Costs awards and court fees must not be so punitive or unduly burdensome that they prevent claims being brought.

Scope: As judicial review concerns decisions made by public bodies, it often touches on decisions which may be political or seen as political. As the remit of the state has expanded, so too has the breadth of decisions subject to judicial review. It is not the role of courts to second guess political decisions and judicial review should not encroach upon the legitimate use of state power. Judges are sensitive to this and they can and routinely do make decisions about what is outside the scope of judicial review. However, there should be no artificial or inconsistent restrictions upon the type of decisions that can be reviewed. Where there are legal questions the court should rightly be able to decide these and certain issues, or categories of issues, should not be precluded from this. Given the imbalance of power between individuals and the state it's important that people have a meaningful ability to challenge decisions which affect their lives and legal rights to ensure these have been made lawfully. In order for judicial review to operate effectively as a remedy of last resort, there must be adequate alternative mechanisms in place for people to assert their rights.

Effective remedies: The circumstances of judicial review cases are wide-ranging. What will be a fair outcome in one will not necessarily be so in another. Judges must have a range of remedies at their disposal and discretion to award these to ensure that justice is meaningfully done.

Black Working-Class Youth Criminalised and Excluded in the English School System

Liz Fekete, IRR: The conservative government of Boris Johnson, who once described black children in Africa as having 'water melon smiles', is appointing people to inform and head inquiries on racial disparities, who are scornful of the very idea of institutional racism. They front a system of denial, where the structural causes of racial disparities and disproportionalities are brushed off as 'flimsy' – the result of the 'internalised perceptions' of 'BAME communities' and their 'grievance cultures'. A particular view of the British black Caribbean heritage community, as mired in gang culture and prone to violence, is also advanced. And the black family – absent fathers and weak single mothers – is discussed as dysfunctional.

Such views are not new, nor do they exist in isolation. There is a long history of New Right thinking (that first came to prominence under Thatcherism) placing the blame for racial disadvantage on the failures of the black family. But, today, this racial stereotyping is bolstered by a common-sense racism popularised by the media and its reporting on serious youth violence and knife crime, often discussed as though it was the disease of 'black on black violence'. The 'disease' parallel informs police strategy, resulting in relations between the Metropolitan Police and London's black communities now being at its lowest point since the 1980s. London has the highest rate of child poverty in any English region and more children living in poverty than the whole of Scotland and Wales combined. Yet, in the stampede to embrace a quasi-pathological view of knife crime as rooted in black gang culture, there is next to no interrogation of class, or the way austerity has stripped communities of any hope of a more racially and socially just future.

Thankfully, though, a new generation of researchers and activists are challenging media and policy frameworks. They know that racial stereotyping, force, surveillance, stigmatisation and repression are not the answer to social problems like youth violence and knife crime. Community campaigners, charities, academics, researchers and even some voices in parliament argue that the systematic dismantling of vital services, especially youth provision, and the restructuring of education to the detriment of the working class as a whole, has quite literally created an educational underclass, whose only prospect is a downward spiral from school exclusion, to youth detention and ultimately prison. How Black Working-Class Youth are Criminalised and Excluded in the English School System is a follow up to the IRR's 2019 report The London Clearances: Race, Housing and Policing. In her passionate defence of young poor working-class black Londoners' right to a 'shot at life', researcher Jessica Perera amplifies the voices of existing campaigners, while offering her analytical perspective of 'educational enclosure'. She argues that, from the 1980s onwards, the state has been engaged in an ideological onslaught on the black radical tradition and its vision of a democratic, anti-racist and culturally inclusive education. She sees this as part of a system of 'educational enclosure' through which the state takes back control of education and stymies the dreams of those black and anti-racist educators who have fought so valiantly for a more egalitarian and just education system. In the process, the state has also imposed its own ethnocentric view of British culture on the school curriculum. Perera sees a connection between this 'colour blind', monocultural approach and the alienation of young black people from an educational system that erases their lived reality.

Many young people, whose campaigns today centre around decolonising the curriculum, may not know that in the 1980s and 1990s – when the original New Right created the ideas that inform Conservative structural racism deniers today – there was indeed a vibrant anti-racist movement in education. The IRR contributed to that movement with the publication of Roots of Racism and Patterns of Racism and How Racism Came to Britain. Our office is now home to the Black History Collection, an archive of the documents, magazines and leaflets that prove beyond doubt that the black self-help educational movements and anti-racist curriculum campaigns

of that time, were making ideological inroads. That all too brief period of black radical anti-racist history in this country (we will not call it a 'moment'), was overtly contested by the Thatcher government and the New Right of that time, which viewed anti-racism as a subversive force. How Black Working-Class Youth are Criminalised and Excluded in the English School System recounts that history to show how the past continues to shape the present.

Perera's findings echo the demands of the Black Lives Matter movement which heralds a new struggle for transformative change, similar to that of the 1980s. In today's fights for racial justice, the education and criminal justice systems have emerged as key concerns. But, as Perera argues, they are in fact not separate sites, but conjoined – part of a continuum, as technologies of control, such as CCTV and biometrics make schools the labs in which the securitisation of society is trialled. Undoubtedly there exists, today, a trajectory that takes young black children from mainstream education, to Pupil Referral Units (PRU) and Alternative Provision, to youth detention centres, and, on reaching adulthood, to prison. Campaigners are calling for an end to the 'PRU-to-prison' pipeline. This report, in helping us understand how the pipeline came about, reinforces the transformative demands of abolitionists.

Recent analysis by the Guardian reveals that, although UK schools are permitted to teach 'black history' as well as the history of people outside the global North, very few actually do.1 In fact, in 2019, just 11 per cent of GCSE students studied modules that referred to the presence of black people in British history and just 9 per cent of GCSE students, over a two-year period, opted for modules that make specific reference to the British Empire. Part of the answer as to how this has come about lies in a decision made in 2014 by the former secretary for education, Michael Gove, to make the teaching of black history optional. On the other hand, the government has made the teaching of the national curriculum in local authority schools, a legal requirement. But there are variations. Academies, free schools, learning centres providing Alternative Provision, and other private institutions, are legally entitled to teach what they like. (Alternative Provision is a confusing term used to cover a mixed public and private education sector comprised of local authority PRUs, privately run Alternative Provision academies and Alternative Provision free schools.)

How Black Working-Class Youth are Criminalised and Excluded in the English School System is concerned with what happens to black students who may never get the chance of learning about the post-war history of BAME settlement in the UK and the struggles for social and racial justice that followed. Its special focus is on the most marginalised young people in society; those excluded from mainstream school and caught up in youth violence. It sets out to explore the race and class aspects of school exclusions, providing a historical overview of the legislation, policy and practices that have forced so many young people, stigmatised as 'disruptive' out of the mainstream state educational sector. This is already a huge issue in inner London, where according to conservative estimates, the proportion of students in Pupil Referral Units (PRUs) and Alternative Provision (AP) is almost double the national rate. As, in London, it is young boys of black Caribbean heritage that are significantly overrepresented in this sector, I have largely focussed on their experience. This is not to say that other communities are not affected. We know for instance that, nationally, Gypsy and Traveller children experience many of the same issues. We are also beginning to see evidence that girls, too are affected, but often by informal exclusions (particularly via 'early exits'), with recent research by the not-for-profit Social Finance drawing attention to higher rates of exclusion amongst girls in social care, with mental health issues or special educational needs. those working with excluded young people are rightly concerned about what has been described as the 'PRU-to-prison' pipeline. In what follows, I argue that this concept provides a useful way of describing an alarming trajectory of the criminalisation of young black students. But I also register concern about the way in which policy-makers have taken up the concept to expand and monetarise PRUs. By arguing that PRUs need to be opened up to the market, and professionalised, they are normalising permanent exclusion from mainstream education. Those being educated in what is now frequently called Alternative Provision, are used as pawns in a new education market – I call this 'marketing the marginalised'.

Another way of challenging the PRU-to-prison pipeline descriptor is by looking behind the scenes. By providing a synopsis of the recent history of systematic educational enclosure – a policy enacted by the state at various points to blunt the political aspirations for racial and social justice of multiracial working-class communities – this research report aims to support important ongoing campaigns. This historical context draws attention to the specific political conditions which have ushered in regressive reforms. Starting with the urban rebellions in 1981, the paper shows how, by the end of that decade, the government had almost abolished all forms of multiracial education and replaced it with a national curriculum. Since then, the neoliberal turn has given rise to more racialised policies targeted once again at rebellious and alienated inner-city youth, particularly after the 'riots' in the northern towns in 2001 and across England in 2011. Rather than the state examining carefully the causes of alienation and discontent, and forging a meaningful take on race and class specificities, it has resorted time and time again to the securitisation of schooling.

By educational enclosure I mean the mechanisms through which multiracial working- class youth living in the inner-city are: > denied the right to realise their academic potential through exclusion from mainstream education and enclosure in Pupil Referral Units and Alternative Provision, linked to the increasingly economistic thrust of education to serve only the needs of the labour market; > deracinated as students both from their collective histories of pre- and post- colonial societies and struggles, migration and settlement. As well as, their anti- racist and radical traditions of resistance here in England; > assimilated into nationalist ethnocentric educational culture due to a heightened focus on Fundamental British Values, which is closely aligned to the nature of the National Curriculum; > surveilled and secured by various initiatives, including the Troops to Teachers programme and the Safer Schools Partnerships, as well as technologies of control, such as CCTV and biometrics making schools the laboratory in which the securitisation of society is trialled.

Finally, I relate my research on schooling to our previous concerns highlighted in The London Clearances: Race, Housing and Policing, particularly issues of gentrification and housing. In the same way working-class families are severed from community networks through regeneration projects that displace them and price them out of upmarket local amenities, so too are young people excluded from mainstream schools, now a part of the emerging London 'education market' for gentrifiers. In fact, we ask whether processes of regeneration, which demand better educational provision for middle-class gentrifiers, leads to a concomitant cleansing of multiracial working class schools, whereby young people from poorer families, seen as 'disruptive' and/or 'involved in gangs', are blamed for lowering standards and hence decanted from state education into PRUs and Alternative Provision.

Serving Prisoners Supported by MOJUK: Walib Habid, 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.