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# MOJUK: Newsletter 'Inside Out' No 722 (02/01/2019) - Cost £1

## 'Gareth Jones Spends his first Christmas at Home After 10 Terrible Years'

The case, which was worked on over six years under the supervision of Dr Dennis Eady as part of the Cardiff University Innocence Project, was heard at the Royal Courts of Justice on 22 November, and judgment was handed down today. We are pleased to note that the lord and lady justices of appeal acknowledged 'the significant contribution of Cardiff University Innocence Project which has, through the pro bono input of its supporters, advanced this appeal on the appellant's behalf'.

Gareth Jones was convicted of a serious sexual assault at the age of 22 in July 2008, despite there being no physical evidence to suggest that there had been a crime. He was a care worker in a nursing home when an elderly infirm lady suffered serious injuries, whose cause could not really be explained. Gareth's appeal proceeded on several grounds. The medical evidence at the trial covered only what medical experts agreed on, not what they disagreed on. They weren't called for cross examination on medical issues in dispute. So the jury was left without the option of concluding that the injuries may have been accidental on fragile skin, then compounded by efforts to stop bleeding. The appeal also considered that Gareth's learning difficulties had not been taken into proper account at trial, which could have resulted in him being unable to understand questions being put to him.

As well as dozens of students, the project has had the pro bono support of two Cardiff University alumni who are practising barristers (Philip Evans QC and Tim Naylor), a criminal appeals solicitor in Cardiff (Andrew Shanahan) and five medical/psychology experts. Around 17 Cardiff law students, past and present, were at the November hearing to see the result of their investigative work presented by barristers to a panel of appeal court judges, chaired by Lord Justice Simon. The project first became aware of Gareth's case in 2012 through his long-term supporter Paula Morgan.

This is the second conviction that the Cardiff University Innocence Project has helped to overturn, but this is the first appeal directly to the Court of Appeal. In 2014, Cardiff was the first ever UK university innocence project to successfully bring a case to the Court of Appeal, on that occasion following a referral by the Criminal Cases Review Commission. Dwaine George had already served 12 years in prison for murder. Cardiff University's Innocence Project was launched in 2006, following the lead of Dr Michael Naughton at Bristol University, and was one of the first three innocence projects in the UK. The project allows students who are passionate about investigating alleged miscarriages of justice to work on cases of long-term prisoners who maintain their innocence of serious crimes for which they have been convicted.

Our success today demonstrates that universities are about more than research. Our work is making a real impact from innovative learning and teaching. This decision will hopefully allow Gareth to start re-building his life. The more we studied the evidence the more we became convinced that no crime had been committed. Instead, it was clear to us that there had been an unfortunate series of events for which there was no obvious explanation, and in our view Gareth should never have been charged. Gareth would not be in this position now without pro bono assistance from a number of people. We are very grateful to those individuals, and to our students past and present for their efforts.

University projects are a sticking plaster only and cannot replace a properly-funded legal aid system. If Gareth had had to privately fund this appeal, he could not have afforded it. We estimate that it would probably have cost at least £70,000. It can't be right that someone in Gareth's position has to find experts prepared to do this free of charge – that makes justice a lottery. We have to address these fundamental problems with our criminal appeals system. I am keen to thank formally the experts who gave their time free of charge to support Gareth's case. Apart from the lawyers mentioned earlier, vital support on this case has come from: In addition, the Cardiff project is very grateful to other long-standing pro bono expert supporters, including forensic scientist Nigel Hodge, police experts Des Thomas and Steve Christopher, barrister Pamela Radcliffe, and the many other people who are readily and generously at the end of the phone when help or a guiding hand is needed. It is impossible to thank everyone personally – from the miscarriages of justice survivors such as Mike O'Brien, to colleagues in other universities facing the same challenges that we do, to the many sympathetic journalists, scientists and legal practitioners. We are grateful to each and every one of them for their commitment to improving our problematic system. We hope they will forgive us for not including all names. We are proud and humbled to say that our list of supporters is a long one, so this is not an inclusive list!

Most importantly, we want to acknowledge the courage and dignity with which Gareth has endured this dreadful experience and injustice of the last 10 years, and we salute Paula Morgan's unstinting support. This decision has come at an important time for Gareth and his family and supporters. He can spend his first Christmas in more than a decade knowing that he was the victim of an unfortunate set of circumstances. We hope that people in his village will embrace this decision and recognise that Gareth's innocence should now be widely recognised. Let's continue to acknowledge this failing of any system involving human beings, and be more ready to embrace and correct errors, as this court has done today.

## Prisons Ban Christmas Cards With Glitter Due To Drugs Epidemic In Jails

*Eric Allison and Simon Hattenstone:* The latest smuggling method is spraying post with drugs, particularly psychoactive substances such as spice. The drug dissolves into the paper and is then smoked as a joint. Last year, prison governors introduced a policy of only providing inmates with photocopies of original letters as a precautionary measure, after it was revealed books and letters were being soaked with LSD-like hallucinogens. Now, as part of their "robust drug strategy", many prisons have banned cards containing glitter, concealed panels, sticky bits, organic material and cloth. The Guardian contacted a number of jails to ask about their policy. HMP Manchester said: "Shop-bought cards without glitter are OK. No handmade cards." HMP Liverpool said it would allow "bog standard, shop-bought cards without glitter", while HMP Leeds said: "Plain Christmas cards, no glitter or sticky stuff. If handmade, it must be on plain white paper." HMP Birmingham said "nothing must be stuck to cards" and HMP Belmarsh said: "Plain cards. No sticky bits, no glitter – for security reasons." Feltham young offender institution said its rule was "plain cards, no glitter, nothing stuck on it", while an institution in Aylesbury stipulated "no glitter, and nothing raised". In her annual report, published in October, prisons and probation ombudsman, Elizabeth Moody, said the use of psychoactive substances was "completely out of control" in prisons because they were readily available. "Prisons are struggling with the consequences of bad batches of psychoactive substances, which can result in simultaneous multiple collapses of prisoners, unsustainable demand on prison resources, ambulances queuing up at the prison gate and, all too often, death," she said. "This destructive epidemic has become the 'new normal'." While acknowledging the scale of the drugs crisis in prisons, watchdogs have argued banning Christmas cards is dehumanising and may have a damaging impact on prisoners.

Carolyne Willow, whose charity Article 39 fights for the rights of children in institutional settings, said: "It's shameful enough that children will wake up in locked cells on Christmas morning, let alone withholding

cards from family and friends. This is yet another kneejerk government response to understaffing." Frances Crook, the chief executive of the Howard League for Penal Reform, said: "Christmas is a particularly hard time for people in custody and anything that can alleviate the distress should be done. Drugs and consequent debt are real challenges, but it is humanity that will reduce demand, not just security."

The Ministry of Justice said: "The safety of staff and prisoners is absolutely paramount. A number of prison governors have decided to intercept Christmas cards to prevent them being used to smuggle in dangerous psychoactive substances. "Photocopies are usually provided to prisoners so that they still see the messages sent from their families and friends." The MoJ stressed that this action had been made by individual prison governors and was not mandatory. The Scottish Prison Service told the Guardian there were no restrictions on the types of Christmas cards allowed in its jails.

### CPS Thought No Jury Would Accept Natalie Connolly Was Murdered

*Barbara Ellen, Observer:* Natalie Connolly, mother of one, would have been 28 this year. There you go – some overdue humanisation for Connolly, whose brutal death in 2016 has been in the news. Elsewhere, Connolly has been portrayed as a woman who liked "rough sex", so much so that she died for it, at the hands of her partner, John Broadhurst, a millionaire property developer. Wanting to "teach her a lesson" (for sending photos to other men), Broadhurst "lost it" and inflicted around 40 injuries on the heavily intoxicated Connolly, including fracturing an eye socket and severe internal trauma; he also sprayed bleach on her face because "he didn't want her to look a mess". Connolly was left bleeding at the bottom of the stairs. When Broadhurst finally called for an ambulance, he described her as "dead as a doughnut", a phrase filled with chilling disrespect.

Doubtful of achieving a guilty murder verdict, the Crown Prosecution Service reduced the charge to manslaughter. Broadhurst pleaded guilty – effectively to not ringing for help quickly enough. He could be out within two years. Well done to the former solicitor general Harriet Harman for officially querying this outcome, but what was the CPS thinking – perhaps something along the lines of: "Any conviction is better than nothing"? Did it really not trust a jury to be convinced of intent in this instance? If not, exactly what would it take for a woman's violent death at the hands of her partner to be called murder?

The recent census on femicide reported, among other things, that 139 women died as a result of male violence in 2017, with three-quarters of the victims knowing their killers. In Connolly's case, much has been made of her sexual predilections, but, really, so what? It doesn't mean that she fantasised about being beaten, killed or leaving her young daughter motherless. Besides, rough sex means different things to different people, and even very serious BDSM practitioners would have a safe-word to stop things going too far. This overplayed rough sex angle comes across as cynical victim-blaming – it fails to explain 40 injuries and bleach sprayed on her face.

Then another disturbing thought – that the CPS might have a point. That extreme violence against women by their partners, even when it results in death, remains so systemically downgraded in this country that trying for a guilty murder verdict could result in men such as Broadhurst walking free. It's as though we've been "groomed", en masse, as a society to keep accepting the historical fallacy of domestic violence as a non-serious issue. Increasingly, there's an argument for losing the word domestic altogether and just calling it what it is – violence, mainly against women, usually extreme, and all too often fatal. In the meantime, how many more killings of women are going to be demoted to manslaughter for the sake of, what – improved conviction stats? In cases such as these, if British courts and jurors can't be trusted to deliver true justice, what hope is there?



### Judges Duties on Hearing Appeals

Emphasised: That, fundamentally, each of the grounds of appeal is, properly, to be viewed and evaluated through the prism of each party's inalienable right to a fair hearing. Bearing in mind the context of this appeal, it is appropriate to formulate some general rules, or principles. It is important to emphasise that these are general in nature, given the unavoidable contextual and fact sensitive nature of every case.

(i) Independent judicial research is inappropriate. It is not for the judge to assemble evidence. Rather, it is the duty of the judge to decide each case on the basis of the evidence presented by the parties, duly infused, where appropriate, by the doctrine of judicial notice.

(ii) If a judge is cognisant of certain evidence which does not form part of either party's case, for example as a result of having adjudicated in another case or cases, or having been alerted to something in the news media, the judge must proactively bring this evidence to the attention of the parties at the earliest possible stage, unless satisfied that it has no conceivable bearing on any of the issues to be decided. If the matter is borderline, disclosure should be made. This duty may extend beyond the date of hearing, in certain contexts.

(iii) The assiduous judge who has invested time and effort in reading all of the documentary materials in advance of the hearing is entitled to form provisional views. Provided that such views are provisional only and the judge conscientiously maintains an open mind, no unfairness arises.

(iv) Footnotes to decisions of the Secretary of State are an integral part of the decision and, hence, may legitimately be considered and accessed by Tribunals.

(v) If a judge has concerns or reservations about the evidence adduced by either party which have not been ventilated by the parties or their representatives, these may require to be ventilated in fulfilment of the " audi alteram partem" duty, namely the obligation to ensure that each party has a reasonable opportunity to put its case fully. This duty may extend beyond the date of hearing, in certain contexts. In this respect, the decision in Secretary for the Home Department v Maheshwaran [2002] EWCA Civ 173, at [3] - [5] especially, on which the Secretary of State relied in argument, does not purport to be either prescriptive or exhaustive of the requirements of a procedurally fair hearing. Furthermore, it contains no acknowledgement of the public law dimension and the absence of any lis inter-partes.

### Recent Developments in Extradition and Prison Conditions

On 11 December the Chief Magistrate sitting at Westminster Magistrates Court concluded that there were no bars to extradition and referred Mr Mallya to the Secretary of State to decide on his extradition. The Secretary of State has limited powers and rarely refuses extradition when it is ordered by the court. It is no surprise that Mr Mallya yesterday confirmed that he will apply for leave to appeal the Magistrates Court decision to the High Court. Mr Mallya argued many points against extradition but this article is concerned with his arguments that relate to prison conditions; Article 3 of the ECHR (the right not to suffer torture or ill treatment) and assurances in extradition proceedings. Mr Shmatko was wanted by the Russian Federation. The Chief Magistrate concluded that, despite providing evidence of torture when he had previously been detained, his case could be sent to the Secretary of State because of assurances offered by the Russian Federation with regards to prison conditions.

On appeal the High Court did not agree and discharged the extradition request concluding that extradition is barred on Article 3 grounds. The High court had grave concerns about the ability to independently monitor prison conditions in Russia once an individual was extradited, especially given the fact

that the monitoring unit has largely become populated by those who lack independence and the Russian authorities have "staged" visits by independent UK experts when they have attempted to monitor prison conditions for court reports. Unlike India, the Russian Federation do allow access to prison experts, but they have made such adjustments to "impress" experts such as staging rock concerts or removing hundreds of prisoners before the inspection, the inspections should carry very little weight. Fortunately the High Court has taken this point on board. Shmatko v The Russian Federation [2018] EWHC 3534 (Admin) (19 December 2018) Whether or not Mr Mallya can take any comfort from the Shmatko appeal is questionable given that these are fact specific rulings and Shmatko's case largely focussed on the inability to monitor prison conditions when there were grave concerns about them.

*The Indian Position:* Before 2018 the Indian Government rarely succeeded in having individuals extradited from the UK largely due to the UK court's concerns about treatment in India once extradited. These concerns primarily focussed on the appalling prison conditions reported on by those experts allowed access to inspect. In recent years the Indian Government has refused to allow inspections of prisons by UK experts for the purpose of providing expert reports in extradition cases. Westminster magistrates court took a robust view and drew adverse inferences if prison inspections were refused. This all changed with the Mallya case.

*In the Mallya Case,* the defence prison expert was refused access to inspect the prison where Mr Mallya would be held and had to rely instead on publicly available reports and his experiences of prisons in other Indian states. In contrast, the Indian Government, who clearly had no difficulties with access, provided numerous photographs over time and a video of the newly decorated cell where it was assured Mr Mallya would be detained, which, if convicted, could presumably be many years. Assurances were also given regarding the conditions in which Mr Mallya would be kept and the possibility of him having access to his own doctor and food from outside.

The Court accepted the Indian Government's assurances and did not accept that the specific conditions in which Mr Mallya would be held violated Article 3. Although the Chief magistrate did not state this, it was presumably accepted that, but for the assurance with regards to prison conditions and access to private doctors, extradition could not take place. The court heard evidence that the general parts of the prison which had capacity for 804 in fact held 2801 and the prison hospital was "overflowing". It is of concerns that the cell highlighted in the video and photographs had clearly had a "makeover". This was not a "staged" visit of Russian standards, but it will be interesting to see how the High Court views this.

*How reassuring are assurances: trends in UK Extradition:* Requesting States are increasingly relying on assurances but is this the correct way to approach extradition? The House of Lords in their assessment of the Extradition Act expressed grave reservations about the increasing use of assurances to offset the risk of extradition leading to human rights abuses. Assurances are almost impossible to monitor; once an individual is extradited they may well lose their ability to speak out or have their complaints heard, and are in an isolated and vulnerable position. If they are not British citizens the British Embassy has no power to visit to monitor treatment. If they are British citizens, the Embassy has insufficient resources to monitor in a meaningful way. Assurances are not regulated and it is down to bodies like Fair Trials international or family members and local lawyers to highlight any breaches of assurances. But this is a slow mechanism and little reassurance for the individual who has been extradited. Many of those who are extradited are detained for years after extradition. Who monitors those assurances or who can guarantee the assurance can be complied with if resources, personnel, political will, reduces over time? The Judges in the Shmatko appeal were whole



heartedly alive to this issue and did not accept that individuals could be left in such a vulnerable position on extradition when there was clear evidence of abuses in the prison system.

Extradition operates on the basis of mutual international cooperation. It is a two- way process. To refuse extradition to a country may mean that a UK request is not honoured. It is of note that Westminster Magistrates Court has heard from numerous experts regarding the appalling nature of prison conditions in countries such as Russia, yet assurances are accepted and extradition ordered to ensure that UK does not become a "safe haven". Membership of the Council of Europe has almost made those countries immune to criticisms regarding prison conditions by the courts on the basis that members of the Council will comply with assurances. The same now appears to apply to countries where human rights concerns exist but there is an extradition arrangement, such as India.

However, following the Shmatko ruling in the High Court, the Courts may well be less willing to accept assurances from Members of the Council of Europe where it can be clearly demonstrated that Article 3 will be violated and assurances cannot be complied with. The High Court did not "reconsider the benefit of doubt afforded to the Russian Federation in cases of this kind" as they did not feel the need to, given their clear conclusion that Article 3 would be violated due to the lack of independent monitoring of the prisons, but the events of Salisbury must have weighed on their mind.

*Have assurances Run Their Course?* Arguably, rather than accepting assurances, a way forward to ensure improvements in prison conditions and non violation of human rights abuses for all those detained, not just those to be extradited, would be to refuse extradition until prison conditions are improved. This would have to be on a case by case basis and with the benefit of expert evidence, but it could have a powerful impact. Commission for the prevention of Torture (CPT) reports and pilot judgments have seen prison conditions improve, but more could be done through international pressure. Mutual cooperation is not only about the efficient administration of justice, but also the raising of standards to ensure that all those sharing the fate of individuals protect their basic human rights in the process. Robust judgments in the extradition arena could well play a role in this. Maybe the Shmatko judgment is a start.

## JENGbA Campaign Update From Gloria Morrison

For the lirst time I can remember I didn't attend the Royal Courts of Injustice for an appeal for one of our cases a few weeks ago. As I live in London it is easy for me to go to the Court. The reason is I simply detest the place particularly after attending Kelvin Horlock's and Laura Mitchell's in November. Kelvin's case was heard by Lady Hallett and 2 other judges who frankly need to go back to Law School (words of Felicity Gerry QC) and he was refused. That was shocking enough and then the first CCRC referral to the Court of Appeal Laura Mitchell was heard the next week. Laura was seen trying to defend her boyfriend after an altercation - she is a petite young woman, who was training to be a midwife and had a young son. However Lady Hallett once again deemed that Laura's actions in shouting and punching two 6ft men meant she was responsible for the assault which resulted in his death, six minutes later on the other side of the car park. something she did not even witness let alone contribute to.

Rodney's was also denied. So we finally know that Jogee solved nothing. The court of appeal are simply 'in denial' (which is what they call prisoners who maintain innocence) that there has been a problem with joint enterprise cases for the past three decades. They are refusing cases such as Laura's and Kelvin's because the facts are so strong that neither are guilty of murder and they are trying to keep their legal dirty linen secret. As we all know the

criminal justice system is scewed towards a wrongful conviction but it seems that it is now so corrupt that we are back to the 70's and 80's when the Birmingham Six, Guildford Four and McGuire Seven were convicted using little or no evidence, just mere association.

We have come full circle and the only way JENGbA will achieve justice is like they did, through political and public pressure. The outside campaigners have come to the conclusion that we have been duped. We believed that the Supreme Court decision in 2016 R v Jogee would mean that wrongful convictions would be overturned but it has all been a ploy to shut us up. We hadn't stopped campaigning but we really believed the Courts would do the right and legal thing and accept joint enterprise convictions were simply unsafe! But no, they couldn't do that because if it got reported in the papers that a trainee midwife, a young mum who wanted to help bring life into the world was not actually a murderer then people would start to realise how archaic and outdated our criminal justice system actually was and that while it continues to use joint enterprise in the way it has, it is simply not lit for purpose.

So our fight is entirely political now and I am glad I do not have to go back to that infernal court that doesn't care about justice they only care about their image and we must expose them. Kelvin and Laura's decisions have sent shock waves through the legal system especially with those lawyers and QCs who have been hardened lighters for change. But at least we now know categorically where we stand. The fight is political and once it is explained to MP's they are shocked and willing to support us.

So as you know we have asked you before, write to your MP ask them to contact us. We are going to set up an All Party Parliamentary Group on Joint Enterprise and other miscarriages of Justice for an urgent reform of the Criminal Justice System and an Inquiry into our goo plus cases. And it is back on the agen¬da we are getting new families every week. Ask your MP why the MOJ does not store data on joint enterprise as we were promised they would in the Justice Select Committee Inquiry in 2013. Ask them to visit you. But most of all do not give up. JENGbA has a fantastic reputation and we are considered one of the leading campaigns for Justice by MPs and lawyers alike. We will not give up and we need to know that you won't either.

**Australia: When We Put Children In Prison We Condemn Them To Fail**

The youth detention centre in Alice Springs is a short walk from the adult prison. When the children turn 18 they “graduate” and get shifted a couple of minutes down the road to the place where some of them will spend large portions of their adult lives. This graduation alone should make it clear that there is something fundamentally broken with a criminal justice system that catches children and spits adults out into the prison system. The fact that it feels normal – even inevitable – to many of these young people that at some point they’ll move up the road to the “big house” is surely one of the clearest indications that we’ve failed these children. He reassured me that it was better anyway at the big house; they get more time outside of their cells and in the prison yards.

A 2005 study found that 90% of Aboriginal and Torres Strait Islander youths who appeared in a children’s court went on to appear in an adult court within eight years. Over a third of them received a prison sentence later in life. Just as predictable as the cycle that churns children through youth detention and pumps them into adult prisons are the factors that push these kids into the criminal justice system in the first place.

Children in out of home care are 16 times more likely to end up in the criminal justice system than the rest of the population. Many children are locked up on remand because their families are living in insecure housing or homelessness and there is nowhere else for the courts to send them. A



Victorian snapshot survey of kids in custody found that 62% of the young people had been expelled or suspended from school. Rates of mental illness and disability are higher than in the general community. Aboriginal or Torres Strait Islander children are grossly overrepresented – in the Northern Territory every single child in youth detention is Aboriginal. And by actively promoting law and order strategies such as increased policing, stricter bail conditions and more punitive sentences, governments are not just failing to prevent children (particularly Aboriginal children) from entering the broken criminal justice system, they are actively driving them to it.

The youth detention centres in Alice Springs and Darwin are reportedly understaffed and plagued with critical incidents. Earlier this year the official visitor called for the Alice Springs youth detention centre to be shut down after finding evidence of assaults, children subjected to long lockdowns and six children sleeping in a cell designed for two. As evidence delivered at the royal commission revealed, children were routinely locked in their cells for days on end. They lose their tempers and break things. They try to break out. There are child on staff incidents. There are staff on child incidents. The children are then charged with more criminal offences for behaviour that is entirely predictable and entirely explicable. It becomes painfully clear that we’ve locked these children in a catch 22.

When these children are released (often with unrealistic conditions that they will fail to meet, be re-arrested and sent straight back in) they carry the memories of being treated like animals with them into the outside world. They absorb into their muscle memory the frustration and powerlessness of being trapped, being denied phone calls to family, being denied access to school and spending hours and hours with nothing to do. One child told me that he was trying very hard to stay out of trouble but he could feel himself getting “hot” behind his eyes. He had been locked in his cell for four days.

Recently there was an incident at the Don Dale youth detention centre that saw armed police brought in, tear gas deployed and the school burnt down. The ABC revealed that the cost of repairs to the centre would be more than $1m. The more important question for us to be asking is what is the cost of places like Don Dale to these children’s lives and to our community? At reportedly $1,400 to keep a child locked up each day, what is the cost to our community of setting children up for a lifetime in and out of prison?

There is a national campaign to raise the age of criminal responsibility to 14 years old. This would be a welcome step in giving some of these young people a few more chances to avoid the clutches of the criminal justice system. But it’s not enough to delay the inevitable. We must also take collective responsibility for the children in our communities – and we must hold our governments accountable when they fail them. In the Northern Territory the majority of youths in detention are on remand. Court proceedings have not been completed. These children have not been found guilty and they should not be in prison. However, the Northern Territory is in the midst of a housing crisis. People are seeking housing support at greater rates than anywhere else at the country. And yet because the government has not met people’s’ basic needs to safe and secure shelter, children are spending the night at the police watch house and then weeks in the youth detention centre.

Housing, intergenerational trauma, racism, over-policing, removing children from their families and a blind adherence to punitive approaches to youth crime – instead of exploring justice reinvestment, diversionary programs and Aboriginal run and controlled service delivery – have all contributed to the chasm that we’re pushing these young people into. When we put children in prison we condemn them to fail. It is our collective responsibility to keep them out.

Sophie Trevitt, Aboriginal legal aid service:

### Decline in Community Sentencing Blamed on Probation Privatisation

*Owen Bowcott, Guardian:* A sharp decline in the use of community sentences is due to trust breaking down between judges, magistrates and the probation service after privatisation, according to a study by a justice thinktank. Since 2011, there has been a 24% all in the number of non-custodial sentences imposed in England and Wales at a time when Scottish courts are using them far more frequently A report by the Centre for Justice Innovation (CJI) blames the decrease chiefly on disruption caused by changes introduced by Chris Grayling when he was justice secretary. Those changes split the former probation service into privately operated community rehabilitation companies (CRC) and a residual National Probation Service (NPS), which only deals with high-risk offenders.

Judges and magistrates remain largely unaware about what happens after they hand down a community sentence, the report, entitled Renewing Trust, says. Few of them witness the progress of, and compliance with, court orders. Many on the bench still want to use community sentences, recognising them as a vital option, says the report. "It is simply that their trust in them has been dented recently, largely by reforms imposed by policymakers on hard-working probation practitioners in both the NPS and CRCs."

At his annual press conference two weeks ago, the lord chief justice, Lord Burnett of Maldon, acknowledged recent difficulties. "There were very profound problems in the delivery of the monitoring and implementation of community sentences for some time and … as a result, judges did lose confidence in it," he said. "It was simply that it became clear that many people were not complying with the orders, were breaching the orders, and little, if anything, was happening. The Ministry of Justice has been working hard with those who deliver community sentences and that problem is being resolved and so the confidence of sentences both in magistrates courts and crown courts is increasing." The CJI report found the number of drug rehabilitation and mental heath treatment requirements being issued by the courts had fallen by more than half from peaks earlier in the decade. A shortage of funding for treatment in community places was also blamed.

Phil Bowen, the director of the CJI, said: "Despite the best efforts of practitioners on the ground, our report shows that the trust of sentencers in community sentences is fraying. "While sentencers still see community sentences as a vital option, the combination of cuts to justice budgets and the government's poorly implemented privatisation reforms to probation means that their trust in probation's ability to deliver them has been dented over the past six years."

Commenting on the report, John Bache, the national chair of the Magistrates' Association, said: "We share [this report's] concerns about magistrates' confidence in community sentences … There is an urgent need to ensure that effective community sentences are made available in every area of the country. "Sentencers should also be given opportunities to review the progress made by offenders on community sentences. This would enable magistrates to give community sentences with confidence, knowing that they will help offenders to turn their lives around."

### More Prisoners to Get Phones in Cells in Drive to Cut Violence

*Aamna Mohdin, Guardian:* Thousands more prisoners will be able to make phone calls from their cells as part of government plans to reduce violence and reoffending. In July, the government announced plans to install in-cell phones in 20 prisons in England and Wales to tackle the flow of illegal mobiles and reduce tension on wings. Under a further £10m roll-out, funded by additional money allocated to prisons in the budget, the number of prisons with phones in cells will rise to 50 by March 2020. Many prisoners queue for public phones on the landings, which



can act as a trigger for violence and fuel demand for illicit mobile phones, the Ministry of Justice said. It hopes the expansion of in-cell phones will also reduce the rates of reoffending, which is estimated to cost £15bn a year. The expansion of in-cell phone aims to also improve rehabilitation by allowing prisoners to make calls in private at a time that fits with their families, thus helping to maintain ties. Last year, a report by Lord Farmer (pdf) found that good family relationships were "indispensable"to the set of changes the government plans for prisons.

The justice secretary, David Gauke, said: "At this time of year more than any other we're reminded of the importance of family, and there can be few groups that this applies to more than prisoners. "In-cell telephones provide a crucial means of allowing prisoners to build and maintain family relationships, something we know is fundamental to their rehabilitation. Introducing them to more prisons is a recognition of the contribution I believe in-cell telephones make to turning prisons into places of decency where offenders have a real chance to transform their lives." The MoJ added that the phones also provided easier access to support services such as the Samaritans and Mind.

Authorities have identified the illegal use of mobiles as one of the most significant threats faced by prisons. In the 12 months to March, there were 10,643 incidents where mobile phones were found in prisons, a 15% increase on the previous year. The government has also introduced body scanners and improved searching techniques to stop mobiles getting in. All calls on the in-cell phones are recorded and can only be made to a small number of preapproved numbers. Prisoners will continue to pay to make calls, the MoJ added. If a prisoner is suspected of using the phone for criminal activity, their calls can be monitored and governors have the power to remove phones from those who have misused them.

### Open Justice Charter - Centre for Criminal Appeals

It is common sense that for our criminal justice system to be effective, the defence, prosecution and judge(s) must have access to the information and evidence that provides the facts on which any court decisions are based.

The information gathered in the investigation and trial process is a vital tool for criminal investigation and prosecutions in future cases, as well as for appeals of old cases. However, this resource is currently not always available to support such enquiries.

Accountability in any justice system is always a matter of access to information. Compared to other countries, British Justice lacks accountability, as access to information about how the system is functioning is restricted so severely.

The following "Open Justice" measures are proposed as a solution to these problems.

Access to recordings of court proceedings

1. Recordings of all criminal court proceedings including those made in the past should always be the property of HM Courts & Tribunals Service, and should be provided without cost to any person sentenced to serve time in prison, via that service, and not via private court reporting companies.

2. No recordings of criminal court proceedings should be destroyed until at least seven years after the end of the prison term and any post-release licence period imposed.

3. A transcript of the Crown Court Judge's Summing Up should be kept indefinitely and made publicly available at no cost to the convicted person, as a printed transcript.

4. Unavailability of a complete recording of the trial in any future case should in itself constitute a ground of appeal.

II. Access to police documentation

1. Where a trial could result in a prison sentence, the defence should by default have

access to an electronic copy of the HOLMES record (listing all police activity and documentation in a case) and be able to request and receive access to any document listed. The burden should be on the police to give the trial judge a specific valid justification for why a particular document or extract should not be disclosed, with the cost of redaction not constituting a sufficient reason.

2. In preparation for an appeal or an application to the Criminal Cases Review Commission, prisoners should be given free access to an electronic copy of the HOLMES record and be able to request and receive access to any document listed. The burden should be on the police to give the Court of Appeal a specific valid justification for why a particular document or extract should not be disclosed, with the cost of redaction not constituting a sufficient reason.

3. Where enquiries concerning the safety of a conviction are obstructed or prevented as a result of the police or Crown Prosecution Service having lost or destroyed documents or exhibits then this should in itself constitute an independent ground of appeal, where the Court is concerned about the safety of the conviction.

III. Access to physical evidence for scientific testing

1. Individuals seeking to appeal a conviction should be granted controlled access to evidence and exhibits for forensic examination and testing by qualified experts, with those experts taking direct custody of items from police and returning them to police.

2. The individual seeking to examine the evidence is not obliged to predict what the examination would show to gain access to the evidence.

3. Where there is a concern that testing would consume the remainder of the physical evidence, an order for sample splitting and / or agreement on experts to be used between the Crown Prosecution Service and the individual seeking an appeal should be entered by an independent arbitrator having heard from the parties.

IV. Access to prisoners

1. Journalists should be allowed to visit prisoners provided they have the consent of the prisoner and his or her representatives, if they have any.

2. The Ministry of Justice should be held responsible for ensuring that no more than one month passes between a visit request from a journalist and the decision being made regarding that request, and no more than one month between the visit being authorised and the visit taking place.

3. A prison governor must bear the burden of proof of showing a visit should not be allowed for security reasons. If access is denied, the decision should be open to appeal to an independent arbitrator.

V. Access to materials obtained or produced by the Criminal Cases Review Commission

1. The representatives of applicants to the Criminal Cases Review Commission should be permitted to inspect records obtained by the Commission under its powers to obtain public and private records that relate to a case.

The inspection should be made at the Commission's premises and documents may not be copied without the permission of an independent arbitrator, who may hear arguments from representatives of the applicant and the agency or private entity that had original custody of the records or produced them.

2. All decisions made by the Commission relating to an applicant's case should be made available, with the applicant's permission, to an applicant's representatives, including Case Plans, schedules for work, and arrangements to use experts to examine or test evidence.



This Charter has been drafted by Emily Bolton and James Burley at the Centre for Criminal Appeals, together with Marika Henneberg at the University of Portsmouth, Dr Dennis Eady at the University of Cardiff School of Law, Louise Shorter at Inside Justice and others.

We are aware that there are counter-veiling interests of privacy and Public Interest Immunity in play here, but in other jurisdictions the interests of justice have been given primacy through the interpretation of "Bill of Rights" style provisions and we believe that a similar line of jurisprudence should be developed in this country as a matter of urgency.

### "Unwinnable" Cases Can Be Won

Joe Stone QC - Doughty Street Chambers: The so called "Unwinnable cases" are won on the basis of sound trial preparation, a genuine proactive defence and incisive cross-examination on the live issue at trial. So many Crown Court defences fail at trial because these 3 golden rules are simply not observed for a whole raft of reasons. It is critical for any trial advocate to get a focussed DCS (defence case statement) out at an early stage which seeks core secondary disclosure documents. DCS with bland denials and endless shopping lists of items are all too commonplace and rarely effective. A good DCS should be a weapon in the defence armoury that should immediately put the prosecution on the backfoot not one that has the CPS lawyer yawning and reaching for a cup of coffee. A sound case strategy, knowledge of the best experts to instruct for the specific case facts, a clear understanding of crime scenes (via views), a detailed understanding of evidence, early case conferences with clients/experts to identify the weaknesses on both prosecution/defence sides are all essential for the advocate that is truly interested in securing an acquittal for the client. Defences which are put together as reactive last minute affairs are rarely robust and never immune from effective prosecution cross-examination. The defence should be the party that truly sets the parameters in which the trial is fought not the other way around. If these rules are truly adhered to experience shows again and again (that like the Sonnex case) the unwinnable case on paper becomes the winnable case at trial. Those who ignore them (for whatever reason) will inevitably reduce the probability of an acquittal.

### Netherlands Doesn't Have Enough Criminals to Fill Its Prisons As Crime Rates Drop

The Netherlands has an unusual crime problem: there isn't enough of it to fill prisons. Figures from the Dutch ministry of justice suggest overall crime will drop by 0.9 per cent a year in the next five years. Since a third of its 13,500 prison cells are unfilled, this means five prisons will definitely close, and the prison workers' union, FNV, fears 1,900 jail workers will lose their jobs, while 700 could become "mobile" employees based in more than one location.The drop in prison sentences is attributed to an older population – less likely to commit crime.

Hostages: Sally Challen, 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, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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 Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.