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MOJUK: Newsletter 'Inside Out' No 778 (29/01/2020) - Cost £1

Wang Yam Knocked Back by European Court of Human Rights

Holding part of a murder trial behind closed doors did not violate the right to a fair trial

In their Chamber judgment in the case of Yam v. the United Kingdom (application no. 31295/11) the European Court of Human Rights held, unanimously, that there had been: no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights on account of the courts' decision to hold part of the applicant's trial for murder in camera, and, held that the UK had not failed to comply with its obligations under Article 34 (right to individual petition) of the European Convention. It declared other complaints inadmissible. The Court found in particular that the order to close some of the proceedings to the press and public for national security reasons had not resulted in any unfairness at the trial. Furthermore, the domestic courts had carried out a thorough review of the prosecution request for such an order before granting it, a process in which the defence had fully participated.

Principal facts: The applicant, Wang Yam, is a United Kingdom national who was born in 1961. In 2006 the applicant was charged with murder and a number of other offences linked to alleged theft of the victim's mail. At the start of his trial in January 2008 the judge ordered that part of his defence evidence be heard in camera in the interests of national security and to protect the identity of a witness or other person. The defence appealed unsuccessfully against that order. At trial, the applicant's evidence, together with the evidence of prosecution witnesses led solely to rebut his defence, was heard in camera. He was subsequently convicted of murder after a retrial. His appeals were unsuccessful. The application was lodged with the European Court of Human Rights on 28 April 2011.

Decision of the Court Article 6 §§ 1 and 3 (d): The Court noted that the decision to hold part of the applicant's trial in camera had been made for national security reasons, and it had therefore not been provided with detailed reasons for that measure. However, it found that Mr Yam had been fully involved in the procedure which had led to the making of the in camera order: all the evidence concerning the reasons for the prosecution request had been made available to him and he had taken part in the hearing on the matter. In granting the order, the trial judge had also carefully balanced the need for openness against the national security interests at stake and had satisfied himself that Mr Yam could nevertheless have a fair trial. The decision to hold part of the trial in camera had also been reviewed on appeal. The Court concluded that the decision and the reasons for it had been subjected to rigorous and independent scrutiny by judges on several occasions. The Court also found it significant that the in camera order was limited to the extent necessary to protect the interests at stake and applied only to a specific part of the applicant's defence.

The Court further found that there was no evidence that the in camera decision had caused any unfairness at the trial. As to the applicant's argument that holding part of the trial behind closed doors had prevented more defence witnesses from coming forward the Court found this to be speculative and observed that most of the trial had in any case taken place in public and had attracted much publicity. Nor did it accept the applicant's argument that prosecution witnesses had had more standing, as they had been able to testify in camera. It noted that the manner in which evidence had been taken from them and put before the jury had been exactly the same as for all other witnesses in the case. The applicant had also argued that not being able to disclose the in camera material to the Strasbourg Court had affected his ability to present his case to it. However, the Court found that in his written submissions, he had made no further substantive arguments regarding the alleged unfairness at trial, even though the domestic courts had found that he would be able to do so while respecting the in camera order. The Court concluded that the request to hold part of the trial behind closed doors had been thoroughly reviewed, the applicant had taken part in those proceedings and the justification for the order had been examined in detail several times. Overall, there was nothing to suggest that the order had resulted in any unfairness to the applicant in the trial and there had been no violation of Article 6 §§ 1 and 3 (d).

Other complaints under Article 6 § 1: The applicant also complained about his being retried for murder, burglary and theft after the first jury had been unable to come to a verdict on those charges; about the admission of qualified identification evidence; and about the circumstantial nature of the case against him for murder. However, the Court found that he had not made out any arguable complaint of unfairness arising from these issues and rejected the complaints as manifestly ill-founded. It also rejected a complaint about the 2017 appeal proceedings as it had been raised outside the six-month time-limit. Article 34 Mr Yam submitted that the UK authorities' refusal to disclose the in camera material to the Court had interfered with his right to individual petition. The Court noted the applicant had asked it to request the material in question from the UK authorities, but that it had decided not to do so. This would usually be fatal for a related complaint under Article 34. In any event, a refusal by a State to supply such material would generally not lead to a finding that Article 34 had not been complied with, provided that the decision had been subject to some form of adversarial proceedings before an independent body competent to review the reasons and the relevant evidence. In the applicant's case the UK decision to withhold the in camera evidence from it had been reviewed by the domestic courts at three levels of jurisdiction with the courts handing down detailed justifications for their decisions. The Court found accordingly that there had been meaningful independent scrutiny of the asserted basis for the continuing need for confidentiality. There had therefore been no failure by the authorities to comply with their obligations under Article 34.

Messages of Support & Solidaity to:

Wang Yam A5928AL, HMP Lowdham Grange, Old Epperstone Road, Lowdham, NG14 7DA

CCRC Refers For Appeal Conviction of Fourth Member of the 'Oval Four'

The CCRC has referred the 1972 theft and police assault conviction of Omar Boucher to the Court of Appeal on the basis of police misconduct. Mr Boucher was one of the so-called Oval Four co-defendants. The four men, Winston Trew, Sterling Christie, George Griffiths and Omar Boucher , were convicted together at the Old Bailey on 8th November 1972. All four were convicted of assaulting a police officer and attempted theft. Mr Christie was also convicted of the theft of a police woman's handbag. The four men became known as the Oval Four. The CCRC referred the convictions of Messrs Trew, Christie and Griffiths in late 2019 on the basis of new evidence and arguments concerning the integrity of DS Derek Ridgewell who was the arresting officer and key prosecution witness. Mr Boucher, who lives in the USA, contacted the CCRC after the Court of Appeal quashed the convictions of his so co-defendants on 5th December. The Commission has now referred Mr Boucher's conviction on the same basis on which it referred his co-defendants' convictions. Those reasons are set out in the earlier CCRC statements linked below. (13th January 2020)

Staff Shortages Leave Probation Service In Crisis, Report Finds

Jamie Grierson, Guardian: Public safety is at risk as huge workloads and staff shortages continue to place the probation sector under pressure, inspectors have said, while officers lack the "professional curiosity" needed to spot potentially dangerous behaviour among offenders managed in the community. Her Majesty's Inspectorate of Probation has painted a picture of a service in crisis with hundreds of vacancies, overstretched officers and managers, and crumbling, overcrowded buildings, including hostels for recently released offenders. An inspection of the central functions supporting the National Probation Service (NPS), the publicly run arm of the probation sector, which supervises about 105,000 high-risk offenders, found that some officers were not properly reviewing their cases. The report follows a number of high-profile cases with links to probation, including those of the London Bridge terrorist Usman Khan and the serial rapist Joseph McCann.

As part of their work, probation officers are tasked with rooting out offenders who claim their behaviour has improved but have not actually reformed – known as "false compliance". Khan, a convicted terrorist who killed two people on London Bridge in November while out of prison on licence, appeared to have convinced professionals around him that he was no longer a risk by taking part in rehabilitation courses. Inspectors said false compliance was a real challenge for probation officers who needed highly tuned skills and expertise to interview and challenge offenders effectively. Justin Russell, the chief inspector of probation, said the lack of skills could be down to inexperience in the job. Amid questions over the failings in the case of McCann, a convicted burglar who carried out a string of sex attacks after being freed in a probation error, Russell said probation officers were still not carrying out basic domestic violence and child safeguarding checks for some offenders.

The inspectorate said having a workload that offered "enough space and time to do that reflective thinking" was important. The NPS has a workforce including 6,500 probation officers and a budget of more than £500m a year. Inspectors rated all of its divisions as requiring improvement on staffing, and none of the areas are fully staffed. High rates of staff sickness average 11 days per person, 50% of which relate to mental health difficulties, and there are 650 job vacancies nationwide. Russell said the vacancies were in part related to a pause in recruitment from 2014, when disastrous privatisation reforms introduced by the then justice secretary Chris Grayling were being pushed through. Those reforms are in the process of being unravelled after the Ministry of Justice (MoJ) decided to renationalise the sector.

Those probation officers in place had an average of 39 cases on their books but could have up to 60 at any one time, while victim liaison officers had an average of 215. Russell said staff shortages were especially acute in London and the south-east. He said putting probation officers under such pressure could compromise effective work with offenders and their ability to manage cases properly. Staff were being "driven spare" by offices in disrepair, he added. Inspectors found broken CCTV, plumbing and heating problems and one case of a rat infestation. Russell said it was unacceptable that outstanding repairs also meant premises approved for housing high-risk offenders when they were initially released from prison were out of action. The inspectors also found significant areas of positive performance, including better services for victims and women under supervision. Leadership was good but middle managers were too stretched, the report found.

Among 24 recommendations made to HM Prison and Probation Service – the part of the MoJ that runs the NPS – department bosses missed opportunities to make improvements, inspectors said. Russell said immediate steps should be taken to tackle workloads and more investment in training was needed. The justice minister, Lucy Frazer, said: "We know that probation is not

getting enough of the basics right – that's why we are bringing all offender management back under the National Probation Service, which the independent inspectorate says is good at protecting the public. "It is also clear that the workload is simply too high for many probation officers and the 800 new officers currently training to join the NPS will make a real difference. I am reassured that the chief inspector shares my confidence in the vision and leadership of the National Probation Service – which will be essential to delivering these reforms."

Sunlight is the Best Disinfectant for our Ailing Justice System.

Law charity APPEAL welcomed the announcement that TV cameras are to be allowed in Crown Courts in England and Wales for the first time as a positive step forwards for open justice. All Crown Court trials are currently audio recorded, but these are not made publicly available and transcripts can only be ordered with the court's approval and at cost. Video recording in court has been prohibited thus far. Emily Bolton, director of APPEAL, a law charity that represents alleged victims of wrongful convictions, commented: "Increased transparency in our courts is welcome. Sunlight is the best disinfectant for our ailing justice system. However this proposal does not go far enough, and will lead to only a fraction of what goes on in our courts being visible to the public. For real transparency that will allow miscarriages of justice to be exposed, the Ministry of Justice must also end the reckless destruction of trial audio recordings after just 7 years and make transcripts accessible and affordable."

Alleged Rape Victim Awarded £15k Over PSNI Failings

A vulnerable alleged rape victim is to be awarded £15,000 for failings in the PSNI investigation into her complaint, a High Court judge has ruled. Mr Justice McAlinden held that the woman's human rights were breached by the operational and systemic shortcomings identified. The woman - referred to as C in court proceedings - is in her 30s and has Asperger's syndrome, She reported being raped by a man during a night out in June 2007. A decision was subsequently taken not to prosecute her alleged attacker, who maintained any activity was consensual. But in the first lawsuit of its kind in Northern Ireland, the woman sued the police over its handling of the investigation. Psychiatric injuries: She claimed the flawed investigation violated her entitlement to freedom from inhuman or degrading treatment under Article 3 of the European Convention on Human Rights. Her lawyers argued that she went on to suffer distress, psychiatric injuries, depression, psychotic symptoms and an eating disorder. The court heard police only interviewed C six months after the date of the alleged attack.

Following the no prosecution decision, her family lodged a complaint with the Police Ombudsman. In 2009, the watchdog recommended at least two police officers be subjected to disciplinary sanctions over the handling of the case. The Ombudsman concluded that the PSNI probe did not meet the basic principles of investigation. He also found: Officers initially visited the location of the suspected sex attack, but did not seize any possible CCTV footage or conduct house to house inquiries for further witnesses. No initial statements were taken from those who were with the woman on the night in question, or from anyone in the taxi firm she used to get home. The chief constable at the time, Sir Hugh Orde, wrote to the woman's family stating that she had suffered an "horrendous attack" and offered an apology. Since then new guidelines have been produced and a specialist rape crime unit introduced.

Ruling on the action, Mr Justice McAlinden found the woman had been the victim of a serious sexual assault where no consent was given. He identified a delay in conducting and achieving

best evidence interview, adding that a number of the Ombudsman's criticisms of the police investigation were justified. "The operational failings in this case cannot be described as minor or insignificant," the judge said. "These failings occurred against a background of systemic shortcomings in relation to training." He went on: "I have no hesitation in making a declaration that the plaintiff's Article 3 rights were breached by reason of the failings in the defendant's investigation into her complaint of rape." Mr Justice McAlinden held that C would have experienced some upset and frustration at the shortcomings. But he concluded that her severe psychiatric and psychological deterioration would still have occurred even if the police probe had been flawless. He confirmed: "I consider that the appropriate award of damages in this case is the sum of £15,000."

Police Reject Judge's Call To Apologise Over Wrongful Conviction

Peter Walker, Guardian: Police have refused to apologise to a man wrongly jailed for 25 years because officers lied at his trial, even after the now-retired appeal court judge who quashed the conviction told the Guardian that the force should say sorry. Cheshire police said that while they were "concerned" at the wrongful jailing of Paul Blackburn, who was convicted as a teenager in 1978 for the attempted murder and sexual assault of a young boy, no apology was needed as procedures at the time of the investigation were "very different". Blackburn, then in a reform school in Warrington, Cheshire, was arrested shortly after he turned 15. The only notable evidence against him was a confession he signed after four hours of questioning by two senior officers, with no parent or lawyer present. The appeal court, which quashed the conviction in 2005, two years after Blackburn was released on license, said the police claim he wrote the confession unaided "can now be seen to have been untrue" after linguistic analysis showed it was littered with police jargon almost certainly unknown to a poorly-educated teenager. The ruling said this cast doubt on other police claims.

The Guardian covered Blackburn's case for its Justice on Trial series in 2009. In follow-up interviews recorded for the Today in Focus podcast, the lead appeal court judge, Sir David Keene, recalled it as "a shocking case". Keene, who is now retired and thus able to speak publicly for the first time, said the evidence about Blackburn's confession was "manifestly absurd" and that the police should apologise. "In the light of the findings of our court about the way in which some of the officers of that force had lied at trial, leading to a wrongful conviction, I would have thought it would have been appropriate for them to apologise," he said. When asked about Keene's view, assistant chief constable Matt Burton said the Cheshire police would not do so, despite accepting the appeal court decisions. Burton said the force was "satisfied that we do not need to reopen the investigation", an apparent intimation they still believe Blackburn was responsible. "An independent investigation into the conduct of the officers involved in this case was also undertaken in 1996 which concluded that there was no evidence of any misconduct nor was there any evidence to pursue criminal proceedings against the officers concerned," Burton said. "This case was investigated more than 40 years ago, at a time when the procedures and rules around the questioning of suspects and the submission of evidence were very different to that of today."

Blackburn's ordeal in more than a dozen prisons over his sentence was made even worse by his refusal to accept the protection offered to sex offenders because he maintained his innocence. Over his first 15 years in jail, Blackburn said, he endured "beatings on a daily basis, abuse on a daily basis, spit on a daily basis", adding: "The first time I was placed on report officially by a prison officer, was for refusing a direct order to mop my own blood up off the floor." Blackburn was later assisted by older, more educated prisoners, who helped him push for an appeal. While he has worked since his release to highlight other miscarriages

of justice, Blackburn has described how he still struggles to cope with the trauma of his experiences in prison. "I still get quite distressed, on a daily basis, replaying things over and over again," he said. "You're standing there doing the ironing, and all of a sudden your in Full Sutton [jail], in the punishment block. Different things will set me off – uniforms, keys, all this sort of thing." Some semblance of stability has been brought by marriage, and by compensation Blackburn was awarded after the appeal – though changes to the system made under the 2010 coalition government means it would be unlikely he would be awarded this now.

UK Legal System Allowing Known Offenders To Sexually Abuse Children Abroad

The Independent Inquiry into Child Sexual Abuse (IICSA) has published its second report in its Protection of Children Outside the UK investigation, focusing on the legal measures designed to prevent British child sex abusers from offending overseas. The report finds that offenders from England and Wales are travelling to commit extensive abuse of children across the world, including in eastern Asia and Africa. The Inquiry concluded that civil orders are not being used effectively to stop offenders visiting countries where poverty and corruption leaves children vulnerable to sexual exploitation. The Inquiry additionally found that the disclosure and barring system, including the International Child Protection Certificate which overseas institutions can request when recruiting British nationals, is confusing, inconsistent and in need of reform. The Inquiry has highlighted the need for increased awareness among police forces of section 72 of the Sexual Offences Act 2003 to ensure the prosecution of British nationals and residents for child sexual offences committed outside the UK. The Inquiry has made five recommendations to government, including measures aimed at restricting foreign travel of sex offenders more frequently, substantially extending the reach of the Disclosure and Barring Service overseas and the introduction of a national plan of action on child sexual abuse outside the UK.

Disabled Prisoners Facing Challenges in 'all Areas of Prison Life'

Irish Legal News: Disabled people in Irish prisons face challenges in "all areas of prison life" and have poor understanding of their own legal rights, according to new research published by the Irish Penal Reform Trust (IPRT). The penal reform group commissioned the report, entitled Making Rights Real for People with Disabilities in Prison, from the Centre for Disability Law and Policy at NUI Galway with funding from the Irish Human Rights and Equality Commission. Speaking at the launch event, IPRT executive director Fíona Ní Chinnéide said barriers and human rights issues facing disabled prisoners include isolation in cells, limited availability of accessibility aids, lack of appropriate information on prison services, and limited opportunities to communicate with peers and family members. Although Ireland ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2018, prisoners with disabilities continue to face "widespread discrimination and human rights violations which greatly affect their ability to participate fully and equally in prison life", she said. The report highlights incidences of prisoners being confined to their cells because they cannot navigate the steps in a prison, leading to unnecessary isolation, which has a negative impact on mental health. There is also "extremely limited" access to sign language interpretation for Deaf prisoners and inadequate provision of information about the prison in accessible formats, Ms Ní Chinnéide added.

IPRT has formulated 16 recommendations for addressing barriers facing prisoners with disabilities in Ireland, which includes a call for the Irish Prison Service (IPS) to undertake accessibility audits of all prison settings and engage in a disability equality analysis of its service.

Commenting on the report's recommendations, Ms Ní Chinnéide said: "The Irish Prison Service has taken positive steps towards meeting its obligations under the Public Sector Equality and Human Rights Duty, including the recent appointment of an equality and diversity lead. We welcome this appointment, as well as the IPS's positive engagement with this research and its facilitation of the research team. "However, as evidenced by this report, prisoners with disabilities face significant barriers in Ireland, which need to be addressed. While the recommendations in this report should be a starting point, they should be expanded with the direct involvement of organisations for people with disabilities, as well as prisoners and former prisoners with disabilities, who are often best placed to determine the changes required. "Adaptations to prison rules, the provision of supports and training of prison staff are necessary, but these steps can only be a foundation for more fundamental changes required throughout the criminal justice system as a whole to address the discrimination faced by people with disabilities."

Prison Staff Misconduct Investigations Rise By Third

BBC News: Investigations into alleged misconduct by prison staff have risen by a third in a year, figures have revealed. More than 2,500 charges were investigated in 2018-19, up from 1,894 the previous year. Alleged "breach of security" - which can include bringing contraband into jails - and use of "unnecessary" force contributed to the rise. The Prison Service said action was taken against the "small minority that engaged in inappropriate behaviour". Mick Pimblett, assistant general secretary of the Prison Officers Association (POA), blamed some of the rises on inexperienced staff and a lack of training. There were 2,511 investigations into alleged misconduct by 1,286 prison staff in England and Wales in 2018-19, according to figures obtained by BBC Radio Kent. Prior to that the number of investigations had been falling. In the same time, 529 staff were disciplined, with 112 recommended for dismissal. Nearly 500 investigations into allegations of "breach of security" in prisons took place in the year ending March 2019. The charge covers a "wide range of disciplinary offences", which can include anything from leaving an internal gate unlocked to "conveying unauthorised articles into a prison", Mr Pimblett said. In the same year there were 169 investigations launched into alleged assaults and unnecessary use of force on prisoners. Mr Pimblett said use of force generally had increased since 2014 "due to the violent workplace prison officers have to work in". The Prison Service "appears reluctant" to provide personal protective equipment - such as pepper spray - that "would prevent any accusations of unnecessary force", he said. "In this day and age it is unreasonable to expect prison officers to roll around on the floor with prisoners," he said. Dave Cook, a member of the POA's executive council who works at a prison in Kent, said the figures did not show how many allegations were proven and represented "a very small number of corrupt staff, or wrongdoing staff".

Peter Dawson, director of the Prison Reform Trust, said the rise in investigations may "provide reassurance that people feel able to speak out, and that when staff are found to have acted inappropriately their misconduct will be formally challenged". However, he said it was unclear if the rise in allegations was the result of "declining standards of conduct" or an increase in people reporting misconduct. The figures cover 105 prisons across England and Wales, excluding the 14 institutions run by private companies. A spokeswoman for the Prison Service said: "The overwhelming majority of our prison staff are dedicated and honest, but the small minority that engage in inappropriate behaviour are investigated and suitable action is taken. "Last year, the government announced £100m to improve prison security, including increased funding for our counter corruption unit, which roots out the small minority of dishonest staff and the criminals who seek to manipulate them."

Serious Crime Victims Wait Longer for Justice After Court Days Cut

Guardian: Victims of serious crime now wait almost a year-and-a-half for the suspects to go on trial while judges sit "idle" after the government cut their sitting days – despite Guardian analysis finding almost half of all crown courtrooms in England and Wales are empty each day. Government statistics show that the average crown court case takes 525 days to go from offence to completion, up 34% from 392 days in 2010. The delay begins with the police, who have had their numbers cut by 20,600 since 2010. Ministry of Justice (MoJ) statistics show that overwhelmed forces now take an average of 331 days from the date of the offence to charge someone with a crime that will see them tried at a crown court, up from 205 days in 2010.

The suspects then wait longer for their cases to be tried in court because the government has been reducing the number of sitting days for crown court judges as part of cost-cutting measures at the MoJ. Allocations fell from 97,400 in 2018-19 to 82,300 in 2019-20, according to the senior presiding judge, Lady Justice Macur. Judges are still paid the same annual salary but find themselves idle behind the scenes, unable to hear the mountain of cases piling up. The Guardian analysed the listings for all crown courts in England and Wales on one day in December and found that of the 729 available courtrooms showing on the government's Xhibit system, which relays hearing information, 350 were not sitting.

In St Albans crown court in December, one "extremely serious" historic sex case was postponed for six months because of a lack of court sitting days, leaving both the complainants and the defendant in "a dreadful state", according to Caroline Goodwin QC, chair of the Criminal Bar Association (CBA). "They only found out on the Friday before the Monday trial that the case was not being listed," she said in her weekly roundup. "The defendant was elderly. The list office said there would be a six-month delay before the new trial date. The local head of the Crown Prosecution Service rape and serious sexual offence unit became involved as the complainants were exceptionally distressed and unable to support such a long delay."

One crown court judge expressed frustration with the cost-cutting: "There is a simple solution. These cases need judges. This is not rocket science. There are significant numbers of fully trained, part-time criminal judges who are ready, willing and able to help out, yet they are sitting idle whilst the criminal justice system suffers delay after delay." They added said: "The judges, the buildings, the staff are all there but there will be no solution to this problem until Government fund the system properly. Justice delayed is justice denied. "

On 16 December, 10 out of 21 courtrooms at Snaresbrook crown court in east London were not sitting; at the central criminal court, also known as the Old Bailey, 10 out of 22 were empty. Reading crown court was the only one of 84 crown courts in England and Wales to use all of its available courtrooms that day. Snaresbrook is likely to become further overwhelmed when Blackfriars crown court closes on 20 December, sold by the government for an estimated £32m. "What is Snaresbrook going to do with the 300 extra cases it receives once Blackfriars closes and its work is redirected there?" said Goodwin in her roundup. "Resident judges must dread having a hung jury. Just when can they relist those trials? From information passed to the CBA, if such a situation were to occur at Southwark, it is likely the new date for trial would be mid-2021-22. We need more sitting days."

Some cases are taking so long to reach trial that suspects on remand have to be released from jail because the custody time limit has been reached, posing a potential danger to the public. The lack of available court time can have a serious effect on vulnerable victims. In Leeds crown court at the end of October, another rape trial involving an elderly complainant with dementia collapsed after several days of problems playing video interviews in court.

The jury was discharged and the first date the court could find to hear the case again was in May 2020, almost two years after the alleged rape took place. The complainant's niece said the delay was devastating for her and the family. She said: "The stress this has placed on my aunt is catastrophic with all the emotional psyching up required each time the trial is scheduled. She is physically disabled and extremely frail. She also has dementia, which is known to be accelerated by stress and her rapid deterioration has been marked over the course of these events. Not to mention the family and everyone else involved in the case."

A spokeswoman for Her Majesty's Courts and Tribunals Service said the technology problem at Leeds crown court was a one-off and apologised to the complainant for the distress caused. The Ministry of Justice said: "The number of outstanding cases at the crown court has decreased by almost 40% since 2014 with waiting times for these cases at their lowest ever. "We keep sitting days under constant review and allocated an extra 700 crown court sitting days for the remainder of 2019/20 in response to an increase in cases coming to court."

Islamists Get Longer Jail Terms Than Far-Right Extremists

Mark Townsend, Guardian: Islamist offenders convicted of online extremist crimes received prison sentences three times longer than those of their far-right counterparts, according to new analysis. Researchers found that Islamists received on average 73.4 months compared with 24.5 months for far-right offenders, despite the government's ambition to treat both strains of extremism in the same way. The study by the Henry Jackson Society (HJS), a foreign policy thinktank, said a primary reason for the disparity was a failure by the Home Office to proscribe far-right groups, making them harder to prosecute than their Islamist equivalents. Although National Action became the first and only far-right group to be banned as a terrorist organisation in 2016, other organisations such as the neo-Nazi System Resistance Network, which advocates zero tolerance of non-white people, and of Jews and Muslims, has yet to be outlawed.

By contrast, it is illegal for a British citizen to be a member of at least eight Islamist organisatations, including Sunni militia group Ansar al-Sharia and the Islamic State. "The lack of far-right groups subject to proscription in the UK, when compared to Islamist groups, has left the authorities reliant on hate-crime legislation rather than specific terrorist offences which carry heftier sentences," said the report's author Nikita Malik. She added: "The government needs to keep this situation under review in a fast-moving online world, where offending causes real and significant harm." Malik examined 107 cases in which an individual was convicted of an "extremist-related" offence committed on social media from 2015-2019. Almost a third of the offenders used Facebook to disseminate their views, with 14.7% using Twitter, followed by the encrypted messaging services WhatsApp (14%) and Telegram (9%). A quarter of offenders had ignored warnings from technology companies, friends, family, or the police, and continued posting extremist context. Nearly two-thirds were aged 30 or younger, while a fifth had a history of criminal behaviour.

Of the 107 cases, almost 90% entailed attempts to glorify or justify violence, while two-thirds incited violence directly. The majority of hate material identified, almost three-quarters, was Islamist, with much of it linked to Islamic State. Of the cases, 12% involved individuals who belonged to no identifiable group but who spread anti-Muslim hate. Another 10% promoted anti-semitic or Nazi-related material. Islamists were more likely to commit offences on encrypted platforms, making them harder to monitor than their far-right counterparts. "They do so with intent and to a large audience," said Malik. The research, released in parliament next week, was commissioned by Facebook as it works on identifying individuals who spread extremism.

The world's largest social network, with more than two billion users, has been under severe pressure to curb the rapid global spread of hate messages, pictures and videos through its site and apps that it owns, such as WhatsApp. Last March, Facebook was used to disseminate the live video of the murders of 51 people in Christchurch, New Zealand. The HJS report also ranked those convicted of online-based extremism into six bands, using 20 indicators of risk level, including social media audience-size, lack of remorse, prejudice towards minority groups and glorification of violence.

According to the classification system, more than half of Islamists convicted of offences were in the highest three risk bands, demonstrating the most serious risk, compared to a third of far-right offenders. The six-band risk categorisation system is designed to help social media firms target their action at offenders while avoiding a "ban or no-ban" approach, which critics argue is too crude.

Jeremy Wright, the former culture secretary who co-authored last year's "online harms" White Paper, said: "A consistent, cross-platform framework of 'online extremist harm' as put forward in this report can be used to assess and flag patterns of behaviour, focusing on both violent and non-violent [harmful] extremism. Technology companies can consider tailored approaches based on similarities of those individuals falling within specific harm categories. Of course, there is space for such a framework to evolve with time and in response to certain offline events, such as terrorist attacks."

Malik endorsed a new independent regulator on online extremism to help technology companies monitor the most harmful offenders. Wright added: "This would assist with ensuring that a framework is implemented consistently across platforms, including lesser-known 'alt-tech' platforms where content and banned individuals and groups may migrate." A Facebook spokesperson said: "Our work with groups like the Henry Jackson Society is critical to helping the industry understand and make progress on these important issues. It is through collaborations like these and with governments, academics, and others companies, through the Global Internet Forum to Counter Terrorism, that we improve our collective ability to prevent terrorists and violent extremists from exploiting digital platforms."

Blind Stupidity

A bank robber who disguised himself with a pillow case had to remove it mid-robbery when he realised he couldn't see through it. Matthew Davies, 47, forgot to make eye holes in the pillow case he put over his head while robbing a bank in the Scottish town of Dunfermline last year. He threatened staff with a meat cleaver and made off with £1,980, but was followed home by a witness and subsequently arrested. Police recovered the cash and the pillow case from his home. Mr Davies pleaded guilty to a charge of assault and robbery at the High Court in Glasgow and has been remanded ahead of sentencing, the BBC reports.

Hundreds of Allegations of Abuse Against Child Prisoners Revealed

May Bulman, Independent: Hundreds of children are alleged to have been abused and neglected in prison over the last three years amid a dramatic rise in young offenders being injured.There were more than 550 allegations of child abuse or neglect made against staff in England's seven child prisons between 2016-17 and 2018-19, according to figures obtained through freedom of information (FoI) requests to local councils by charity Article 39. And the number of restraint incidents that have resulted in children suffering injuries or compromised breathing have more than tripled since 2014, from 54 to 193 last year, according to data obtained by charity Article 39. Young offenders are being failed by a system that is starved of resources and facing a "calamitous" turnover of staff, campaigners say.

The number of children being physically assaulted by prison officers is increasing despite a considerable drop in the child prison population. Government statistics show there were 1,157 young offenders in custody in 2013-14 compared with 832 in 2018-19 – a decrease of 28 per cent. Experts speculated that the increase was in part due to improved reporting of serious incidents by prison staff, but said such a dramatic rise was also down to a lack of funding in the youth custody estate and failure to adopt a "child-focused" approach towards young offenders. It comes after scandal-hit youth jail Medway was judged by Ofsted to be placing children at "unacceptable risk", with a significant increase in use of force against children, despite efforts to improve conditions since a BBC Panorama investigation four years ago exposed widespread abuse at the facility. The report found that around 359 incidents involving force were reported in the last six months – of which approximately 115 incidents occurred in September alone – and that staff were still using techniques during physical-restraint incidents that inflicted pain on children, with seven such incidents recorded since January.

Carolyne Willow, director of Article 39, said the rise in serious restraint incidents was "deeply concerning" but the true number of abuses against incarcerated children would be far higher, as flaws in the recording of these incidents and fear of retribution among young people meant many went unreported. She pointed out that only half of the six councils with child prisons in their area provided information showing how many allegations referred to them were substantiated, indicating a lack of data and auditing that she said "obscures the true picture". Ms Willow added: "It is also down to the difficulty children face when reporting abuse within closed institutions – they're often scared of retribution and being treated less favourably by staff. It is often one child's word against several members of staff. They know that the odds are they won't be believed. "They're kept in a state of subservience and powerlessness, where grown adults in uniform are allowed to inflict physical and psychological pain. And often they don't know when something is unlawful and abusive. They think if something is commonplace and is done in public and more than one member of staff is doing it, then that must be the official way." She said staff shortages were a "massive issue", with the institutions operating with the "least number of staff that the state can get away with", adding: "It creates the most appalling physical environments for children. The government has publicly acknowledged that they're not fit for purpose." Frances Crook, chief executive of the Howard League for Penal Reform, said the charity was "very worried" about child abuse in jails and that the figures "appeared to represent the tip of the iceberg". "We intend to do some further work ourselves in the coming months to explore what is going on, and to find out why children and young people are being placed in such dangerous prisons," she added.

The data on restraint, published in documents released by the Ministry of Justice under FoI laws, show the number of reports made by prison staff under the Serious Injury and Early Warning Signs process – used to record restraint that has resulted in a child having breathing difficulties or other injuries – has increased by 257 per cent in four years. Of these reports, 28 involved a child having breathing difficulties, 124 had complaints of such difficulties, seven had serious injuries, 11 had a loss of or reduced consciousness and 22 complained of feeling sick.

Responding to the findings, Anna Edmundson, NSPCC policy manager, said there should be clearer and more robust child protection procedures in place, adding: "Many of these children have already experienced abuse and neglect and that complex background is part of the reason they might be detained. "Despite a long list of recommendations about how these institutions need to change to better protect children, progress is painfully slow and safeguarding still doesn't appear to be the top priority."

John Drew, former chief executive of the Youth Justice Board (YJB), said the rise was "very concerning" and that while it was in part attributable to greater awareness of the importance of reporting abuse, it was also the result of a "demoralised prison service, starved of resources and facing a calamitous turnover of staff". He continued: "Almost all of the staff working in child prisons are good people doing a very difficult job in circumstances that very few of their critics would be able to do. But until we start spending a lot more money looking after children in custody, these figures will not fall. "More money for smaller units, which can be nearer to home, and more money for more staff are obvious places to start. A child-focused approach, based on children's rights, will also make a big difference. "Listening to children in custody can lead to big differences in attitude, as well as better support for staff, including clinical supervision so that they understand why the children in their custody behave the way they do and how they can be helped."

A Youth Custody Service spokesperson said: "Staff are trained to resolve conflict verbally and we are clear that restraint should only be used as a last resort, where there is a risk of harm to self or others, and no other form of intervention is possible or appropriate. "We asked the chair of the Youth Justice Board, Charlie Taylor, to undertake an independent review of pain-inducing restraint techniques and we are now carefully considering it before responding in the new year."

Inquest Into Death of Conner Marshall Identifies Serious Failures In Wales Probation

Conner Jake Marshall was 18 years old when he was killed on 12 March 2015 by a man unknown to him who was on probation and had breached the terms of his license. The inquest concluded with the coroner finding Conner's death was 'unlawful killing', and identifying major failings in probation services in an extensive fifty page document setting out his findings. Conner's family described him as a sweet, polite boy, who was bright, inquisitive and had a wicked sense of humour. He enjoyed playing the saxophone, athletics and triathlons. Conner was a stranger to the man who killed him, David Braddon, who was under the supervision of Wales Community Rehabilitation Company (CRC). He was on probation following offences relating to drugs and assaulting a police officer. He also had previous convictions for domestic abuse.

While the coroner did not draw a direct link (causative or contributory) between failings in probation services and Conner's death, he identified several major failures in the Wales CRC including: Inadequate oversight of staff and workloads and caseload by Team Managers; Inadequate management and supervision of staff with no management consistency; Inadequate allocation and management of resources leaving some staff overwhelmed with their respective workload and caseload; A lack of regular, meaningful supervision for staff, delivered in a timely manner.

In respect of the management and supervision of Brannon, the coroner found: The Risk Assessment (known as OASys) and consequent Sentencing Plan was delayed by some eight months, which meant that it was not implemented effectively or in a timely manner. Too much reliance on self-reporting and as a consequence, poor compliance was not identified at the earliest opportunity resulting in a possible failure to explore other avenues of robust management and supervision. No effective communication to support a joint risk management plan in order to provide structured sessions, which would have highlighted the inconsistencies in the self-reporting by Brannon to both the Offender Manager and the Intervention Provider.

In May 2013, probation services were overhauled through the 'Transforming Rehabilitation' policy programme, which split delivery of services between the publicly run National Probation Service and mainly private sector CRCs. The changes were widely criticised, and in July 2018 the Justice Secretary announced CRC contracts would be terminated early as services were "falling short" of expectations.

The inquest heard that the probation officer supervising Braddon had recently started the role. The probation officer described being overwhelmed, juggling 60 cases at a time in a difficult working environment. The coroner described the support, management and supervision of the probation officer as “woefully inadequate”. Despite being aware of Braddon’s previous domestic violence offences, the probation officer was unaware that he was in contact with an ex-partner against whom there was a history of violence. On the night of the attack, Braddon was heavily intoxicated with alcohol, Valium and cocaine, and described himself as “off his head”. Braddon had mistaken Conner for his ex-partner’s former boyfriend, and attacked him after he had an argument with her about their relationship. The coroner found that, despite being alert to some of the risks presented by Braddon, the probation officer was readily accepting and over-tolerant of self-reporting as a consequence of being a brand new probation officer with inadequate management and supervision. The circumstances, he found, were not of her own making but of the Wales CRC in the levels of staffing, caseload and structures they had in place for managing and supervising new PSO’s. Deborah Coles, Director of INQUEST said: “The Ministry of Justice and those responsible for the Transforming Rehabilitation programme must now take a long hard look at the consequences of their actions. The rushed privatisation of an essential service was done in the interests of profit over public safety. Conner’s death is one of many which relates to these catastrophic ‘reforms’. The findings of this inquest and others should be considered alongside the voices of bereaved families, and the probation staff who were in the midst of this chaos, to ensure such failures are not repeated.”

Minorities More Likely to Be Jailed for Drug Dealing

BBC News: Black and Asian men are more likely to be jailed for drug dealing offences in England and Wales than white men, a study of 14,000 people suggests. The Sentencing Council looked at the penalties received by defendants aged 26-50 for possession with intent to supply from April 2012 to March 2015. Its analysis also found men were more likely to be jailed than women. The council said it was seeking views on whether its sentencing guidelines could lead to discrimination. Its study found that for possession with intent to supply a class B drug, 37% of white offenders would be expected to receive an immediate custodial sentence, compared with 46% of Asian, 44% of black and 46% of Chinese and other ethnicities. For a class A substance, around 93% of white offenders, 95% of Asian offenders and 95% of black offenders would be expected to be jailed. The length of sentence also differed, with Asian offenders being jailed for an average of 4% longer, equal to around one month extra, than white counterparts. Black and other ethnicity offenders did not have statistically different sentence lengths to white offenders. The researchers also compared men and women and found 37% of men would be expected to be jailed for possession with intent to supply a class B drug, compared with 20% of women.

For class A substances, around 93% of male offenders and 85% of female offenders would be expected to be sentenced to immediate custody. Men received sentences that were on average 14% - or around five months - longer than women. Researchers said not all the factors considered by judges could be taken into account in their analysis, meaning the results should not be regarded as conclusive. But the organisation said it would be seeking views on whether its guidelines could potentially be interpreted in ways that could be leading to discrimination.

Lord Justice Holroyde, chairman of the Sentencing Council, said: "The sentencing guidelines are intended to apply equally to all offenders, irrespective of their sex or ethnicity. In drafting the guidelines, the council always takes great care to use language that is clear and unambiguous and will ensure the equal application of sentencing factors to all social groups. We do recognise, however, that there is potential for draft guidelines to be interpreted in different ways. The council is seeking views on whether any of the factors in the draft drug offences guidelines could be interpreted in ways that could lead to discrimination against particular groups, and we are asking whether there are any other equality or diversity issues the guidelines have not considered."

Legal system 'overwhelmingly white': Andrea Coomber, director of legal reform group Justice, said "significant investigation" was required to properly understand the research's findings. She said: "We need to look at who's in the system, who are the people who are on the bench, who's doing the representation. We know that we have a legal system that is overwhelmingly white, the judges are overwhelmingly white. You can sit at the Old Bailey for a day and not see any black barristers, and if you were a black boy in the dock... you do think that the system is skewed against you."

The council is also proposing changes to guidelines to reflect the growing exploitation of children and vulnerable people by county lines drug gangs. The new draft guidelines would allow this exploitation and so-called cuckooing - where a home is taken over for drug dealing - to be taken into account as "culpability factors". A 12-week consultation on the proposals will close on 7 April. Lord Justice Holroyde added: "The nature of offending is changing and we are seeing more vulnerable people including children being exploited either through grooming or coercion. The proposed guidelines will provide guidance for courts and clear information for victims, witnesses and the public on how drug offenders are sentenced." A Ministry of Justice spokeswoman said: "We are working across government and with partners to tackle the overrepresentation of BAME individuals in the criminal justice system, which we know has deep-rooted causes. That work includes taking forward the recommendations in David Lammy MP's extensive independent review and developing a number of interventions aimed at reducing disproportionality."

Convictions for Rape - Quashed

1. On 6 April 2018, the appellant, Edward Gabbai, was convicted of two counts of rape contrary to Section 1(1) of the Sexual Offences Act 2003, and sentenced to terms of 7 and 13 years imprisonment, to run consecutively. This is an appeal from those two convictions.

2. At trial, it was the prosecution's case that the appellant raped three women ("HM", "VG", and "NR") over a three-year period. HM alleged anal penetration against her will, in the context of an otherwise consensual sexual relationship, characterised by a mutual interest in extreme bondage, dominance, sado-masochism ("BDSM") practices (count 1). VG's allegation was based on the removal of a condom during otherwise consensual sex (count 2). NR alleged violent vaginal, anal and oral penetration without her consent (counts 3, 4, and 5).

3. It was the appellant's case that he had engaged in sexual activity with the complainants, but only ever with their consent. The only element of sexual activity he denied was the claim by NR that he had penetrated her anus, although he somewhat qualified that denial in evidence. The convictions relate to the vaginal rape of VG (count 2) on 23 March 2016, and the anal rape of NR on 4 December 2016 (count 4). The appellant was acquitted of the other counts.

4. The appellant appealed initially on four grounds. He was granted leave on 25 October 2019. The grounds were: i) The trial judge failed to mention in the route to verdict document that any penetration of NR's anus had to be intentional before guilt could be established; ii) The judge erred in refusing to allow evidence that NR had made six previous, and at times inconsistent, complaints of rape or sexual assault against six separate and unconnected individuals; iii) The judge erred in refusing to allow the jury to hear extrinsic evidence that VG had a particular interest in rough, violent sex; iv) The judge erred in direct-

ing that the complaints made by VG and NR could be treated as cross-admissible.

5.Before us the appellant sought leave to appeal on the further grounds that: i) The prosecution failed to serve a bad character notice, which was required if cross-admissibility was to be relied upon, and the judge failed to give a ruling on that in advance of closing speeches; ii) The verdict on count 4 was illogical, inconsistent with verdicts on counts 3 and 5, and a verdict that no reasonable jury could have reached. iii) Alternatively, that the judge's direction as to consent in relation to count 4 was inadequate and misleading.

6.We allowed the appeal, and quashed the convictions as being unsafe. Access the full judgement: https://is.gd/JiFy4R

Ireland: Blasphemy Officially Abolished as a Criminal Offence

Charlie Flanagan, Irish Legal News: The criminal offence of blasphemy has been officially abolished following a referendum decision nearly a year and a half ago. Justice Minister Charlie Flanagan commenced the Blasphemy (Abolition of Offences and Related Matters) Act 2019 on Friday 17th january 2020. In October 2018, nearly 65 per cent of voters backed the repeal of the constitutional requirement that blasphemy be a criminal offence. Announcing the enactment of the law, Mr Flanagan said: "The very notion of criminalising blasphemy, with the risk of a chilling effect on free expression and public debate, has no place in the constitution or the laws of a modern republic. Ireland is a country of increasing diversity. The right to express differing viewpoints in a forthright and critical manner is a right to be cherished and upheld. With this Act we have also removed all identified references to blasphemy from the statute book, including those in the Censorship of Films Acts." I would like to emphasise that these changes are not an attack on religious beliefs. Nor are they intended to privilege one set of values over another. The new Act is a simple acknowledgement that the meaning of the concept of blasphemy is unclear in a modern state, and that the concept is rooted in a distant past where fealty to the state was conflated with fealty to a particular religion." Although the offence "has not been prosecuted in practice", Mr Flanagan said removing it from the statute books would ensure "that Ireland should never again be cited as an exemplar of such outdated concepts".

Part 36 Offers Excluding Interest Are Not Valid, Rules Court of Appeal

John Hyde, Law Gazette: Lawyers have finally been handed certainty on the validity of Part 36 offers after being met with differing interpretations from the High Court. Three Court of Appeal judges ruled last month in King v City of London Corporation that it was not possible to make a valid Part 36 settlement offer exclusive of interest. To do so, they agreed, would result in the offer not being compliant with Civil Procedure Rules. The dispute arose after the lawyers for the successful claimant Francis King had served a bill of costs for detailed assessment, with a Part 36 offer to accept £50,000 in full and final settlement of the costs detailed within the bill only. Crucially, the letter stated that the offer related to the whole claim for costs 'but excludes interest'.

Confusion ensued when the deputy master, upheld by the High Court, ruled that an offer exclusive of interest could not be a valid Part 36 offer. But in contrast, in Horne v Prescot (No 1) Ltd, Mr Justice Nicol held that, at least in the context of detailed assessment proceedings, an offer excluding interest could be valid.

Lord Justice Newey, giving the lead judgment in King, said differing opinions had also been expressed by other costs judges, not helped by an apparent conflict on the issue between Part 36 rules and the wording of practice direction 47, which makes provision for an offer to deal with interest. The judge stated that the rules as they stand remain clear: a Part 36 offer cannot generally exclude interest. 'Part 36 proceeds on the basis that interest is ancillary to a claim, not a severable part of it,' he said. 'Interest cannot be hived off. True it is that, on occasion, there may be room for substantial dispute as regards interest and that the amount at stake could be large, but the same could be said about costs.' He added the true position was not that King's offer was to be treated as inclusive of interest, but that it was a non-compliant offer. Lord Justice Coulson, agreeing to dismiss King's appeal, noted that the rules requiring compliant Part 36 offers to be inclusive of all interest were 'unqualified'. Lord Justice Arnold 'reluctantly' came to the same conclusion on the basis of the rules as they stand, but he noted that the issue merits further consideration by the rules committee. He said there remain arguments in favour of permitting Part 36 offers to be made exclusive of interest, and the committee could amend the rules to say so.

Can a Person Go Back to The Court Of Appeal, if An Initial Appeal Has Been Dismissed!

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

If a person has only ever appealed against Sentence or Conviction and wishes to appeal the other, they can do so. If more than 28 days have passed since the original appeal, you will need a very good explanation as to why you are appealing out of time.

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

The procedure is called CPR 36 15

Get Form NG for Sentence/Conviction/Confiscation

Form NG Conviction should be completed if appealing against conviction;

Form NG Sentence should be completed if appealing against the sentence

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

Hearing new evidence

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

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

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

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

Serving Prisoners Supported by MOJUK: Walid Habib, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.