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One Death, 11 BAME Teenagers Jailed: was a Moss Side Murder Trial Racist?

David Conn, Observer: In 2017, 11 Manchester teenagers were jailed for a total of 168 years for their part in a killing. Now three are appealing amid claims that the investigation and trials were riddled with racism. Early one morning in Moss Side, Manchester, several winters ago, a group of teenagers gathered at a youth club to make a rap video. The shoot had been arranged by Kemoy Walker, an award-winning youth worker who is now a head of year at a large school in the city and an ambassador for Manchester city council. Walker's organisation, "Manchestarz", had attracted public funding, including from Greater Manchester Police (GMP), for work that engaged young people in music. The video, shot by a film student at Manchester Metropolitan University who had answered a call on the social network Instagram for somebody with the necessary skills, was the perfect project. "We met early in the morning, everybody came on time," recalls Walker. "We made the video in the park – it was quite cold – and it was really good. It was friends coming together and creating music."

The rap and video was entitled Active Only, or AO. Walker says it was a term that young people in Moss Side were then using: "They used to say, 'I'm active,' meaning they're up for going out. 'Active only' meant a group that was always out and about." They made the video, mixed the rap track, and posted it to YouTube. More than a year later, the video would be used as a key piece of evidence to convict seven teenagers of murder and four of manslaughter under controversial "joint enterprise" laws. The video – organised by a youth worker, part-funded by the GMP – was proof, according to the CPS, that Active Only was actually a violent gang that controlled territory in Manchester. On 12 May 2016, 12 young Moss Side men, all black or mixed race, were in the area of Broadfield Park, known locally as "the rec", in front of Powerhouse, the publicly funded youth club facility built with a millennium lottery grant in 2000. They were not one close-knit group of friends, they say; some were more engaged with music – three had been in the AO video, in non-rapping, peripheral appearances – others had grown keener on playing football, including two dedicated enough to play semi-professionally.

The afternoon took a dreadful, violent turn when they saw Abdul Hafidah, 18, whom some said they feared and resented. Hafidah is alleged to have attacked one of the group a year earlier and broken his arm with a baseball bat, another said he had recently threatened him. Hafidah was apparently drunk, and carrying a large knife. The group started to chase him, going across the traffic on Princess Parkway, the dual carriageway that bisects Moss Side, which was filmed on CCTV and shown in court. Some of the teenagers joined the chase and did nothing further. Some assaulted Hafidah when they caught him, badly beating him. But when a woman on her way home from work, one of many witnesses, shouted at them to leave him alone, all ran off except two. Then one, Devonte Cantrill, 19, wielded a knife, and stabbed Hafidah, who later died from those knife wounds. Hafidah's sister, Safia, would read a victim impact statement at the end of the subsequent murder trials, speaking of how the killing had devastated her family. However, the way GMP investigated, the Crown Prosecution Service brought charges, and the judge, Sir Peter Openshaw, presided over the trials, one held in Manchester the other in Preston, have led to complaints of racism by the defendants and their families, and prominent supporters, who argue that the outcome is a miscarriage of justice.

Instead of charging Cantrill with murder, and any other participants in the chase or violence with specific offences according to what they did individually, which could include affray, assault, violent disorder or no crime at all, the CPS charged all 12 with the killing itself. The prosecution alleged that all 12 were in a gang, or loyal to the gang, and that they united to kill Hafidah because he was from a rival gang, and had encroached on their "territory", centred on the rec. The gang they were alleged to be in was Active Only – AO. A key element of the GMP evidence and prosecution case, to prove the existence of this ruthless gang, was the AO video that had been made two years earlier. Its circumstances, that it was made as part of publicly funded projects to encourage young people to be involved in creativity, in which GMP itself had been a partner, were not presented at the trials. "That was not a gang video," Walker said. "It was a project we did." But Walker would not be called to give evidence.

The gang narrative formed the basis of a prosecution under the "joint enterprise" law. A controversial legal mechanism, it holds all participants in a violent incident, however minor individual actions, equally guilty if they are found to have intentionally "encouraged and assisted" anybody who committed the most serious violence. For the defendants and their families, the fact that the juries in both trials were all white, as were all the lawyers, and the judge, was distressing, particularly as Manchester and Preston are both multicultural cities with large black and Asian populations. The defendants and their families saw the video presented in court by the prosecution as disturbing, portraying the teens as menacing. The juries in the two trials convicted seven of the teenagers of murder; four more were convicted of manslaughter. Oddly, one older man, who had been alleged in both trials to be the ringleader, recruiting the younger members to attack Hafidah, was acquitted in the second trial. Judge Peter Openshaw declined to comment on his handling of the trial. Openshaw, a senior judge on the northern circuit hearing his last case before retiring, sentenced the 11 to a total minimum in prison of 168 years.

Now, three convicted of murder, Nathaniel "Jay" Williams, 17 at the time, Reanu Walters, then 18, and Durrell Goodall, then 19, are preparing an appeal to the Criminal Cases Review Commission, to contest the gang narrative constructed against them, and the evidence, including the video, presented to support it. An appeal in 2019, arguing that splitting the trial – which was done due to the practical difficulties of charging so many people together – produced injustice, was turned down by the Court of Appeal. The three are represented by Keir Monteith QC, from Garden Court chambers, whose barristers have forcefully argued that joint enterprise prosecutions, and portraying young black men as gang members, are based too often on racist stereotyping. They argue that rather than charging participants in chaotic, spontaneous violent incidents for offences according to their actions, collective prosecutions have led to "black youths serving hundreds of years inside for crimes they just didn't commit".

Amnesty International has argued that young black men are classed as gang members and criminalised "based on weak indicators", including themselves having been victims of violence, or "for reasons as trivial as the music they listen to and the videos they watch online". Research published in January 2016 by Patrick Williams and Becky Clarke, senior lecturers at Manchester Metropolitan University, also argued that the "gang narrative" is racist. They found that although just 6% of serious violence in the Manchester area had been committed by black young people, the people listed on GMP's gangs databases were 81% black. In February, 1,000 young black men were taken off the Metropolitan police's Trident gang "matrix", after a review found they posed no or little risk of committing any violence. Monteith argues that the Moss Side prosecution is an extreme example, extraordinary, he says, for how little solid evidence was produced to support the allegation that the teenagers were members of a gang fearsome enough to control territory in a tough, inner-city area of Manchester.

A GMP officer, PC Bryan Deighton, gave evidence in both trials, placing the Moss Side teenagers in a tradition of globally infamous gang violence, likening the alleged rivalry between AO and Hafidah's alleged gang, Rusholme Cripz, to the world renowned, decades-long serious criminality of the Los Angeles Bloods and Crips. Deighton directly compared AO to Doddington, one of the gangs from a notorious previous era of drug-dealing and gun violence in Moss Side in the 1990s and early 2000s, saying they controlled similar territory. But Monteith argues that the evidence to suggest AO was a real gang, let alone one that controlled territory, was thin. Only Cantrill, who had a conviction for violence, and two other of the Moss Side teenagers, had any relevant previous criminal record. Five had no criminal records at all, three had minor previous convictions that Openshaw said were not relevant. The teenagers were mostly at college, had good, even glowing character references, and were planning further study or work when the incident erupted. They all denied being in a gang, even being one group of friends. Walters and others said they were not particularly friendly with Cantrill, just that he happened to be in the park at the same time as them that day. All denied that they had any intention or idea that the chase of Hafidah would end in him being killed. A welfare worker said a defendant had told him the day after the killing that seven of the teenagers were "part of AO". In court, the defendant denied that conversation; in summing up Openshaw said the defendant had said AO "meant nothing to him", but someone had told him earlier that AO was a gang.

Of the 11 convicted, just one was still with Cantrill when he stabbed Hafidah. Some were on the other side of the road or even further away. Neither GMP nor the CPS advanced any case that the teenagers were involved in drug-dealing, the standard financial reason for a gang to control territory – or, indeed, involved in any other criminal activity. The allegation of gang activity was based on "affiliation", an allegiance of belonging or loyalty, based centrally on the 2014 rap video. Also advanced as evidence were some photographs and social media images, taken from thousands on the teenagers' mobile phones, showing some of them making AO hand signals, and some with red imagery. Deighton said the red showed emulation of the notorious LA gang Bloods. But as the teenagers and their families point out now, none of them habitually wore red.

Openshaw said in his sentencing remarks that there was "a long history of gang feuding and tit-for-tat violence", but the facts agreed in the trial by the prosecution and defence consisted of the rap video and four incidents. One was a stabbing, by the rapper himself in 2015, of a friend of Hafidah's, which had not been prosecuted as a gang incident. The other three incidents were violence allegedly committed against two of the defendants, Reanu Walters and Durrell Ford, whose arm was broken in the 2015 attack, and another Moss Side teenager, who was not a defendant.

The call for a review of the case is supported by the local Labour MP, Lucy Powell, who argues that similar incidents involving groups of white teenagers are not similarly prosecuted, the academics Williams and Clarke, and Eithne Quinn, a senior lecturer at Manchester University who has appeared as a defence expert in cases where rap and drill music have been advanced as prosecution evidence. Angela Lawrence, a campaigner against Manchester gang violence in its era of notoriety, and a member of the police and crime panel for Greater Manchester Combined Authority, also supports the group, arguing that it was a racist, "lazy" prosecution. "We've transformed Manchester, and Moss Side, in recent years, in partnership with GMP," Lawrence says. "This was a terrible incident, but those boys were not a gang, they weren't involved in drugs or crime, they didn't all kill that young person. I would not be lending my support if I thought they were all guilty. But you have to look at the facts of the case, and you cannot ignore racism in the way the police went for joint enterprise here. They should have brought in experts on the community."

Walker, who knew several of the boys well, is also supportive, and particularly bewildered at the use of the rap video. "Labelling them as a gang was wrong, it shouldn't have happened. It was absolute rubbish to say they were 'controlling territory' because they hung around in the park. The boys chilled as friends. They came to the youth club from a young age and we did a lot of activities. They were never classed as at risk – if they were, their activities would have been restricted. We were still working with them at the time, building up their CVs and looking at opportunities for them."

The defendants' families also have serious concerns about the handling of the trial by Openshaw, including the admission of the AO video, his summing up in the first trial on the basis that AO was indisputably a gang, and not warning the jury to avoid preconceived or prejudiced views of rap music. They also had concerns about whether Openshaw could fully separate himself emotionally from the details of the incident. Considered a hardliner by some barristers on the circuit, his father and grandfather were also senior judges in Preston. In 1981, Openshaw suffered a horrific trauma when his father, Judge William Openshaw, was killed in a stabbing, by a man, John Smith, he had sentenced years before to borstal.

Remi Williams, Jay Williams's father, who gave up his job as a quantity surveyor so he could attend the trial every day, said he "had a sinking feeling" when he looked up Openshaw on the internet and saw the reporting of his father's stabbing. "Obviously, I feel sorry for a man who has been through that, and as a parent I sympathise with the parents of the victim in this incident," Williams says. "But I didn't see how a judge could impartially try the same offence as the one that killed his own father. "From the minute our boys walked in, the only black people in that courtroom, I never felt that the judge saw them for who they really are. One person was the knife man; my son and his friends weren't even friends with him, they were a close group who all liked playing football. They never committed any crime ever before this, but my son is serving 19 years in prison. It's a nightmare; I can't fathom it."

A CPS spokesperson said that the gang prosecution was justified, that the 2014 rap video had "referred to territory", and pointed to the fact that the convictions were arrived at by juries: "Our practice on gang-related offences has always been to be extremely careful not to use that label when it is not justified. Evidence of the gang affiliation of each individual defendant was considered carefully to see if it was relevant and used to show motive and to rebut any defences. It was the prosecution case that these defendants acted together in chasing down Abdul Hafidah, outnumbering him and subjecting him to a violent attack in which he died. Evidence at the trial included many hours of CCTV, more than 20 eyewitness accounts, DNA, as well as evidence from the mobile phones and social media accounts." GMP declined to answer specific questions about PC Deighton's evidence, the rap video, or the way the gang allegations were presented. A spokesperson said in a statement: "This tragic and complex case was investigated by GMP and presented to the CPS who authorised charges. Prosecution evidence was laid out before a jury during two trials and the jury returned their verdicts on the basis of the evidence heard. GMP will cooperate with the CCRC, should any assistance be required." Openshaw declined to respond to questions about his handling of the trial or families' concerns, citing a convention that judges do not comment publicly on cases they have heard.

Akemia Minott, another experienced Moss Side youth worker with Williams, Walters and several of the other teenagers, attended both trials, which she believes were a travesty against the defendants and the neighbourhood itself. Working at the time with Manchester Young Lives, another charitable initiative whose partners included Manchester city council and GMP, she provided a character reference for Williams after his conviction. She wrote to Openshaw that he was "an exceptional role model" whom, "due to his articulate and intelligent approach", she had

advised to apply for university. “The joint enterprise murder charge seems inappropriate and unfair,” she wrote, “and, in my opinion, has the potential to be a miscarriage of justice.”

Openshaw acknowledged Williams’s character witnesses, the good testimonials for Walters and several others, the fact that five of the 11 had no criminal convictions and three had no relevant convictions. But the judge said: “Although each denied it, I find as a fact that each convicted defendant was a member of the … AO (or ‘Active Only’) gang, or at least was affiliated to it.” Principally, he said, this was due to the fact that “some had AO signs or symbols on their mobile telephones”. He then sentenced the 11 to a minimum 168 years collectively, seven for murder, four for manslaughter, for a stabbing that only one carried out.

CCRC Calls for Law Commission to Review Criminal Appeals Proces

Jon Robins, Justice Gap: The miscarriage of justice watchdog has backed calls for the government’s law reform body to review the criminal appeals process over concerns that the threshold for sending cases back to the Court of Appeal is too restrictive. The Criminal Cases Review Commission (CCRC) in it’s response to a report by the All-Party Parliamentary Group on Miscarriages of Justice (the Westminster commission report) published in March has recommended that the Law Commission should review the Criminal Appeal Act 1968 with a view to recommending any changes it deems appropriate in the interests of justice. The group said:

‘The CCRC supports the recommendation that the Law Commission reviews the Court of Appeal’s test and issues around post-conviction disclosure.’ As a result of a controversial 2014 ruling of the Supreme Court in the case of Kevin Nunn, police forces have been refusing to disclose evidence that might assist in the overturning of a conviction. The watchdog also gave its backing for the Law Commission to urgently consider a change in law to remove the ‘substantial injustice’ test currently applied by the Court of Appeal to block the progress of joint enterprise appeals. In 2016 the Supreme Court ruled in the Jogee case that the law on joint enterprise had ‘taken a wrong turn’. However, that seemingly landmark judgment did not prompt the predicted wave of successful appeals as the court also asserted that new appeals needed demonstrate a ‘substantial injustice’ prior to any leave for appeal being granted.

This has proved an almost impossibly high bar for applicants to clear. Within a year of Jogee, the watchdog received 99 applications citing the ruling but only one case has been overturned. ‘We support the suggestion that the Law Commission considers the issue of ‘substantial injustice’ as part of a wider review of the Court of Appeal’s test and, by implication, our statutory test,’ the CCRC said. The chairman of the CCRC, Helen Pitcher, welcomed the Westminster Commission report and its calls for more funding for the group. ‘We are a vital public function, so it is important for us to recognise proper public scrutiny in relation to how we operate,’ Pitcher said. ‘In the current climate this has never been more crucial given the impact of reduced funding across the criminal justice system.’

Growing concerns over the falling number of referrals back to the Court of Appeal and a creeping conservatism on the part of appeal judges has led to repeated calls on the Law Commission to review the criminal appeals process. Most notably in 2015 when the House of Commons’ justice committee recommended such review in its final report which included a request to ’look specifically at whether there needs to be a change in the law to “allow and encourage” the court to quash a conviction where it has a serious doubt about the verdict even without fresh evidence’. As reported on Justice Gap, the then Lord Chancellor Michael Gove rejected that proposal on the basis of a last minute assurance from the organisation that was being criticised

(here). ‘We note the views expressed by the former Lord Chief Justice, Lord Judge, and we do not believe that there is sufficient evidence that the Court of Appeal’s current approach has a deleterious effect on those who have suffered miscarriages of justice,’ Gove wrote.

In 2018 a former appeal judge argued that the watchdog had become more cautious because the court had set the bar higher than it had been in living memory. ‘It’s become much more difficult for an appellant to succeed…and, therefore that will no doubt influence [the CCRC] on what cases that they send through,’ Sir Anthony Hooper told a BBC Panorama reporter. When asked if he was saying the bar currently set by the Court of Appeal was wrong, Sir Anthony said: ‘I’m saying that.’ The CCRC also backed moves to make public the reasons why it turns down cases ‘where this appears to be in the public interest’. The CCRC does not release the documents known as ’statements of reason’ which outline its reasons for turning down a case. Criminal appeal specialists have become increasingly concerned over the CCRC’s recent shortening of SORs and critical about the lack of detail.

The CCRC said it ‘welcomes transparency and the more transparent we can be with our reasons the more people can have confidence in our decision-making’. ‘We see the ability to publish SoRs (perhaps in a redacted format or a summary report) as good for confidence in the CJS overall,” it says. ‘We note that applicants may choose to publish the decision or extracts should they wish to do so and have always been free to do so. Very few have done so.’ The watchdog also endorsed the Westminster commission’s call for a statutory power requiring public bodies to comply with ‘section 17’ requests within a fixed timescale including sanctions for non-compliance. The CCRC said it used its statutory power to obtain public body material ‘on thousands of occasions each year’ and reported that compliance was ‘generally very good’. ‘However, it would undoubtedly assist our work if sanctions could be applied to those public bodies who do not comply or who delay unreasonably in complying with CCRC statutory notices,’ it said.

Prisoner Solidarity Network - Believe

That crime and harm are two different things. Some people are convicted of crimes but have not harmed anyone. Others do great harm to many people but are never convicted of a crime. For example, people can be convicted of crimes for shoplifting or begging while others are celebrated for polluting the environment and exploiting workers.

That the concept of crime developed alongside the criminal justice system to control and punish people who are in difficult situations, to reinforce systems of class divide and racism, and to contain people who might pose a threat to existing power structures. It continues to play this role today.

That violence is constant and widespread in our current society. While individuals might engage in violent behaviour, this does not mean that violence is in their nature. Harm and violence are caused by dysfunctional systems and cultures in society. Therefore we cannot prevent harm and violence by locking up individuals.

T*hat all people are capable of causing harm to and being harmed by others*. Whether or not we have been convicted of a crime, we all have a responsibility to respect the humanity of others and to try not to cause harm. Where we have harmed others, we all have a responsibility to try to make amends and should be supported to do this by our communities.

That the criminal justice system does not prevent harm and violence in wider society but in fact creates more of it. Locking people up creates devastation in their lives and the lives of their families, friends and communities. While hundreds of thousands are imprisoned each year, violence and suffering in our society and communities continues, with little to no sup-

port available for those who experience it. Politicians and the media constantly use 'public safety' to legitimise imprisonment but the criminal justice system does not keep us safe.

That nobody, regardless of any harm they may have caused to others, should have to endure the conditions regularly experienced by people in prison. These are conditions such as solitary confinement, lack of access to healthcare, bullying, physical violence and the destruction of hope.

That all people, regardless of their class, gender, race, religion, sexuality or dis/ability deserve access to the resources they need to live and to thrive. While people from a range of backgrounds can find themselves imprisoned, the criminal justice system locks up a bigger proportion of people from working class backgrounds and from other groups that are discriminated against in wider society. In this way, the system contributes to inequalities in wider society, and must be dismantled to achieve freedom for all.

Protesters Gather Outside Prison Against Expansion and Alleged Racism

Peter Lazenby, Morning Star: HMP Full Sutton prison was picketed on Saturday 5th June by campaigners demanding an end to racism and the dumping of plans to more than double the number of people it incarcerates. The government is planning to create another 10,000 places in Britain's prisons, on top of the 80,000 which already exist. Under its prison estates transformation programme, Full Sutton prison in East Yorkshire will be extended to create a "mega prison" holding 1,440 prisoners, instead of its current capacity of 597.

National organisation Campaign Against Prison Expansion (Cape) and campaign group Sisters Uncut Leeds are opposing the project. Action is being taken at prisons which are part of the expansion plans. More than 50 people marched to HMP Full Sutton on Saturday and demonstrated, including residents from the local community who are opposing the expansion. Campaigners are also protesting against the treatment of two prisoners incarcerated in Full Sutton, Kevan Thakrar and Dwayne Fulgence, who they say have been subjected to racist treatment and violence – allegations which the prison service denies

A spokesperson from Sisters Uncut Leeds said: "As we see from the horrific racist attacks experienced by Kev and Dwayne, prisons are not the answer to serious violence in our society – they instead create more violence. The planned mega prison at Full Sutton means throwing more money at violence against people from marginalised communities at a time when essential domestic violence services are critically underfunded and austerity has deprived our communities for over a decade. The prison estates transformation programme is costing the government obscene amounts of money, yet they continue to refuse to invest in preventing crime from taking place in the first place. Affordable housing, education, mental health services, domestic and sexual violence services are the solutions, not more prisons."

CCRC Calls for Extra £1m as it Struggles to Recruit Experienced Case Workers

*Jon Robins, Justice Gap:*The head of the miscarriage of justice watchdog has called on ministers for £1m extra funding to increase the number of case workers with the expectation that any new money must be 'ring-fenced' from extra demand caused by more applications as a result of the Horizon Post Office scandal. The House of Common's justice committee shone more light on the long term funding crisis at the Criminal Cases Review Commission with MPs hearing the group was struggling to recruit experienced case workers and that its fee for commissioners was one third that of comparable roles. In response to questions from MPs, the CCRC chair Helen Pitcher said that she and chief executive Karen Kneller had been 'very clear about what we need' in talks with the

Ministry of Justice (MoJ and that the recent Westminster Commission report was 'also very clear in its recommendations. 'Both Karen and I said we needed at least another million, and that was before we realised the magnitude of the Post Office issue,' she added.

Earlier in the year a report by the All-Party Parliamentary Group on Miscarriages of Justice reckoned that the group has suffered the 'biggest cut' of any part of the criminal justice however as long ago as 2008 the group's then chair Graham Zellick went on the record about the urgent financial problems. The Westminster Commission revealed that the CCRC received just £5.93m in 2019 compared to £9.24m in 2004. Its report reveals that the average workload for case review managers climbed from 12.5 in 2010 to 27 in 2017. The CCRC is presently waiting for confirmation of increased funding from the MoJ. 'We want both to protect and enhance the casework frontline so we can have more case review managers and more commissioners, but we also want to do more outreach and engagement work so that people who need our services are aware of us and can find us,' said Kneller. She added added: 'If we do get several hundred more Post Office cases, we will be going straight back to the MOJ to say we need to ring-fence funding to deal with that'. 'It is still quite shocking that many members of the legal profession are unaware of our existence or do not quite understand the role that we play. That is down to us. It is down to having the resourcing to do that. We absolutely need more funding.' Karen Kneller

Labour MP Maria Eagle raised concerns over the change in commissioners' tenure from generous salaries to a relatively modest day rate (£358) as a result of a controversial MoJ review. Those concerns led to the Westminster commission calling on the watchdog to 'demonstrate its independence' from government. Pitcher gave a robust defence of the changes. 'There is a myth that goes around that says commissioners are on one day a week. That is not true,' she said. In her words, commissioners 'flex up' according to demand and that was 'enormously helpful for us when we have issues such as the Post Office, Shrewsbury 24, and a couple of other linked cases where we need more commissioner time'. 'That is why we have referred more cases in the last financial year than we have ever done before,' she insisted. She also claimed that the new arrangements increased commissioners' independence. The changes were resisted by former commissioners who have since left the CCRC on the basis that they compromised their independence. Not so, according to Pitcher: 'My argument would be that, if the organisation is your sole employer for pay and rations, that could lead to a slowing down and a caution in your decision making, which we do not want as an organisation and we do not support.'

The Tory MP Dr Kieran Mullan asked them about a 30% drop in commissioner days over the last year. Pitcher dismissed concerns saying that drop 'reflected case loads'. 'Where the rubber will hit the road is as we get more and more cases, which we anticipate not only in relation to the Post Office but we anticipate that there could be more claims of miscarriages of justice because of the delay in cases coming to court for prosecution, witnesses' memories fading and so on,' she continued. 'We would need significantly more funding as that unfolds, and we really anticipate it will unfold post pandemic and also in relation to the Post Office.'

However Pitcher acknowledged that commissioners' day rate was an issue. 'My commissioners will freely admit that the other elements of their portfolio fund underpin the money they get from the CCRC, and that cannot be right,' she said. Luckily, they are all passionate about miscarriages of justice and do it because they believe in our core purpose, not because of what they actually receive in remuneration.' The CCRC's chief exec said that the commissioners' fee had dropped behind comparable roles, when pressed as to how much Karen Kneller said 'probably a good quarter or a third. We are talking a substantial uplift, in my view.'

Case review manager Miles Trent was asked about whether he felt overly-constrained by the CCRCs 'real possibility test' – the group can only send a case back to the Appeal judges if they are satisfied there is a 'real possibility' that the court will over turn it. The Westminster commission has called for that test to be reviewed over long standing concerns it was making the commission too deferential. 'That is the easiest question I have been asked all day,' Trent replied. 'I and all the other case review managers would answer the same. We are not sitting around saying, "If it was not for this pesky real possibility test, I would have this case referred." Case reviewers do not feel the wording inhibits us.'

Murderer's Bid to Get Out of Prison Early Foiled by Extradition Request

Freemovement: A convicted murderer and father of a Portuguese football star has lost a legal challenge arguing for his own deportation in order to get out of prison earlier than the Parole Board will allow. The case is R (Lopes) v Secretary of State for the Home Department & Anr [2021] EWCA Civ 805. Filomeno Antonio Lopes, 53, is originally from Guinea-Bissau but moved to Portugal in the early 1990s. He is wanted by the Portuguese authorities for several armed robberies allegedly committed in 1999. That same year, he came to the UK — the government's take is that he "fled" Portugal — and claimed asylum. The Home Office refused his asylum application almost immediately but he seems to have remained in the UK nevertheless. In October 2003, Mr Lopes was convicted at Norwich Crown Court of the murder of his partner, Domingas Olivais. He was sentenced to life with a minimum term of 15 years and 6 days, but remains in prison. The Parole Board's assessment is that Mr Lopes still poses a risk to the public, as he maintains his innocence and for that reason has not taken part in rehabilitation programmes. Strange, legally irrelevant but true: Mr Lopes's son, known professionally as Eder, scored the winning goal for Portugal in the Euro 2016 final.

Outstanding extradition request blocks deportation: The Home Office originally sought to deport Mr Lopes to Guinea-Bissau. He is keen to go, if only to get out of prison: under the tariff-expired removal scheme (TERS), foreign national offenders who have served their minimum term can be taken out of prison to be deported "without the need for authorisation from the Parole Board". Complicating the picture is an outstanding extradition request from Portugal. The Home Office position is that "extradition takes precedence over deportation" and that it cannot now proceed with deportation while the extradition warrant remains outstanding. But extradition, unlike deportation, requires the Parole Board to sign off on Mr Lopes's release first. He therefore has to satisfy the Parole Board about his risk to the public before he can be removed from the country (whether through extradition or deportation). This, so far, he has been unable to do: so he is stuck. Mr Lopes issued judicial review proceedings challenging the refusal to remove him under the TERS as irrational and/or a failure to follow Home Office policy. He also argued that his continued imprisonment under the circumstances was arbitrary and/or disproportionate under Article 5 of the European Convention on Human Rights.

Leaving aside the legal details, one can see Mr Lopes's point. If it weren't for the Portuguese warrant for his arrest, he would have at least been considered for deportation under the TERS and potentially be "a free man in Guinea Bissau" today, Parole Board or no Parole Board. An extradition request made, it appears, over 20 years ago is the only reason that process has not taken its course. Be that as it may, two High Court judges dismissed the case. Mr Lopes appealed. The Court of Appeal's decision: Lady Justice Elisabeth Laing took a look at the TERS policy and made two observations about its contents. First, "that a person cannot be deported under the TERS if the

Secretary of State has not made a deportation order in his case". Second, that "the Secretary of State's policy is to give precedence to extradition over deportation". There was, she held, nothing irrational about any of this. Nor was there anything in the TERS policy, properly understood, to suggest that the precedence of extradition falls away if there is no progress being made with extradition. In this case, the reason there was no extradition was because of the Parole Board's decision on risk, which was essentially Mr Lopes's own fault: "he has refused to co-operate with any work which might reduce his risk". The court dismissed the Article 5 argument for the same reason: "the key lies in his own hands". Elisabeth Laing LJ concluded: "it is not arguable that the Secretary of State's refusal to deport the A pursuant to section 32A of the 1997 Act was irrational, or a breach of any published policy, or that his detention is unlawful, whether pursuant to article 5 of the ECHR or otherwise". The rest of the court agreed; Mr Lopes stays in prison until he can persuade the Parole Board to let him go. At that point, he can be considered for extradition and then, if not extradited, deportation.

Trafficking Authorities Not Experts on Trafficking Says Criminal Court of Appeal

Freemovement: The Court of Appeal's Criminal Division has concluded that Home Office trafficking decisions are not admissible in criminal proceedings. Brecani v R [2021] EWCA Crim 731 concerned a 17-year-old convicted of taking part in a conspiracy to supply cocaine. During the trial, the Single Competent Authority — the arm of the Home Office that deals with trafficking cases — issued a conclusive grounds decision that he is a victim of trafficking, but the judge refused to admit it as evidence. The Court of Appeal confirmed that this decision was correct. As a general rule, opinion evidence is excluded in criminal proceedings unless it is provided by an expert. Therefore, the critical question for admitting a decision of the Single Competent Authority is whether the caseworkers who make decisions can be properly described as experts. On the one hand, caseworkers clearly develop expertise about trafficking through their work and their decisions are of sufficient quality that they are relied upon to make very significant decisions in the immigration context. On the other hand, their expertise and the decisions they reach are not as developed and rigorous as normal expert evidence in criminal proceedings, like that provided by forensic scientists.

CoA had no hesitation in determining that decisions of the Single Competent Authority are not expert evidence: In respectful disagreement with the Divisional Court in DPP v M we do not consider that case workers in the Competent Authority are experts in human trafficking or modern slavery (whether generally or in respect of specified countries) and for that fundamental reason cannot give opinion evidence in a trial on the question whether an individual was trafficked or exploited. It is not sufficient to assume that because administrators are likely to gain experience in the type of decision-making they routinely undertake that, simply by virtue of that fact, they can be treated as experts in criminal proceedings. The position of these decision-makers is far removed, for example, from experts who produce reports into air crashes for the Air Accident Investigation Branch of the Department of Transport which are admissible in evidence in civil proceedings: see Rogers v Hoyle [2015] 1 QB 265. Moreover, none of the requirements of CrimPR 19, designed in part to ensure that the person giving evidence is an expert, understands he or she is acting as such and understands the obligations of an expert to the court, were complied with. On the facts of this case, the jury was better placed to consider whether the appellant had been trafficked: it had been presented with relevant evidence from his phone records which had not been before the Single Competent Authority and tended to demonstrate that he had not been trafficked. That may not always be the case and it might be surprising to immigration practitioners that a type of decision which is highly regarded in the immigration context will be excluded in the criminal justice context.

Women Offenders Being Released to Homelessness

BBC News: Thousands of women are being released from prison each year without adequate help, a group of MPs and peers say. In a letter to the government, they warn that releasing prisoners with just £46 and a plastic bag, often to homelessness, is tough on women. It adds that the current lack of provision prevents rehabilitation and puts women at risk. And it claims up to 60% of female prison-leavers have nowhere to go after custody, with 65% of these reoffending. In January, the government announced £70 million to keep prison leavers off the streets, including £20 million for a new accommodation service that will house former prisoners for up to 12 weeks. But campaigners say it will be rolled out in fewer than half of the probation regions across England and Wales. It does not deal with many vulnerable women's needs, which include being relocated away from where they have been victims of domestic violence, or to be rehoused with their children. A lack of safe, supported and permanent accommodation puts vulnerable women at risk and makes it near impossible for them to turn their lives around", the MPs' letter says. They are also calling for designated officers to act as "brokers" for housing in every women's prison. Prisoners are currently given a so-called "discharge grant" of £46 to cover travel and food on release, a rate set more than 25 years ago. Ministers have promised to raise that to £76 in the summer. A government spokesman said: "Having a safe and secure place to stay reduces reoffending, which is why we provide temporary accommodation on release and have invested £200 million in rehabilitation support, including specialist women's services."

Boris Johnson - Unlawful Bufoonery

Name Withheld – HMP Oakwood: Boris Johnson has said in Parliament that IPP prisoners are in prison to protect the public and have been sentenced by a judge, even if the sentence is unlawful or not. Boris Johnson's words on national TV, not mine. First of all, yes, IPP prisoners were sentenced by a judge, but what Johnson didn't say was that when the IPP sentence came into effect this sentence became automatic, so the judges didn't have a choice whether to sentence an individual to an IPP sentence or not as it was an automatic sentence for certain crimes. So, it doesn't matter if the judge wanted to pass a different sentence. It also seems like Johnson doesn't care that there are prisoners in this country serving unlawful sentences, some of whom are dying and have died serving this sentence. We hear MPs saying repeatedly that we have the fairest justice system in the world, but, in reality the Prime Minister and the majority of MP's are quite happy to let IPP prisoners die in prison whilst serving an unlawful sentence. How is this the best justice system in the world, do they even know what 'unlawful' means?

Release on Temporary License (ROTL) - Reduced Due to Covid

HMP Sudbury: Simply, prisoners whose release is contingent upon a Parole Board's decision that 'he no longer poses an unacceptable risk', are being denied release as they have not been provided with reasonable opportunities to meet this test. A previous court held that the governors had breached public law duty to provide the claimant with an opportunity that he could be released on license. As ROTL and RDR are deemed by the Parole Board to be necessary to demonstrate that risks are manageable in the community (i.e., the behaviours exhibited in custodial environment translate to behaviour in the community). Failure to provide such opportunities may ultimately delay release. What mechanism of prioritisation for access to ROTL/RDR is being used? Has any guidance or directions been issued by the Parole Board to governors? 'It is not the role of the Parole Board to seek to help prisoners to progress towards release because of perceived shortcomings by other agencies.'

It must be logical to say that each governor holds the responsibilities to 'act rationally' and provide reasonable access to ROTL/RDR as it is a pre-requisite to release. Here, the governor says he stands upon a platform of openness, transparency, and honesty. Yet, he is unwilling to share with us his communications, redacted, of course, between Gold Command and Public Health England. He says he doesn't want to provide false hope, or to fuel speculation or rumours. 'You must place trust in me', says the governor, 'to make decisions on your behalf, but I'm not prepared to show you the evidence behind the decision'. Prisoners feel they are invisible in the decision-making process, governors must not hide from difficult questions or when their decisions are placed under the microscope. Especially when the outcomes of those decisions have an impact on men's future freedoms.

Respecting the Right to Religion for Prisoners

Over the past twenty years, the proportion of prisoners from religious minorities has steadily increased. EachOther asks how can listening to minority voices improve the right to religion in prisons? Since 2002, the number of Muslim prisoners in English and Welsh prisons has risen by 8%, the highest increase of any religious group. In London, in particular, 27% of the incarcerated population is Muslim, compared with 16% nationally. Despite these large and growing numbers, prison authorities continue to impinge on the rights of religious prisoners in general, and Muslim inmates in particular. A former prison officer once described how the officers she worked with wouldn't wake up Muslim prisoners for pre-fast meals because they'd decided the men were unlikely anyway to commit seriously to fasting. As a result of that decision and the absence of alarm clocks in prisoners' cells, the former officer herself took responsibility for waking the Muslim prisoners to eat before fasting during Ramadan, despite having received no training on religious needs. "I'm looking after 80 men," she told Maslaha, a charity which tackles inequalities affecting the British Muslim community. "I shouldn't be learning on the job." In 2017, a report called Tackling Discrimination in Prison, published by charities the Zahid Mubarek Trust and the Prison Reform Trust, found that 15% of complaints about discrimination in prisons were based on religion. The majority of these complaints focused on issues regarding dietary requirements, facilitating religious worship and access to a chaplain of one's own faith. "We found [in our own research] that prayer mats get mistreated," Lauren Nickolls, Senior Project Manager at Maslaha, says. "Whether that's intentional or a complete lack of understanding, it can be massively disrespectful." Religious observance can serve as an important part of a prisoner's rehabilitative experience.

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, 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.