**Rape Victims With Minor Criminal Convictions Blocked From Financial Compensation**

Maya Oppenheim, Independent: Hundreds of sexual assault and rape victims with minor criminal convictions are being denied financial compensation, The Independent can reveal. Exclusive data shows that 895 sexual assault survivors were refused redress in the five years to 2020 – around two-thirds of whom were assaulted when they were children. The figures, obtained by campaign group Women Against Rape, found an additional 331 victims saw their compensation curbed. Over five years, 349 female victims were outright denied compensation because of a criminal conviction – 239 of them were children when they were assaulted. Meanwhile, 546 men were denied compensation, 380 were children at the time of the attack. "These convictions are often for low-level offences such as shoplifting, underage drinking, and not paying a TV licence fine," Lisa Longstaff, a spokesperson for Women Against Rape, told The Independent. She said the statistics suggest more men than women are refused compensation due to having a criminal conviction.

"This could be to do with high-profile men facing child abuse in the press such as football coach scandals and abuse of boys in religious institutions. But always remember that more females suffer rape than males, but it remains hidden," Ms Longstaff said. Women Against Rape has been working for decades with women denied compensation for violent crimes they suffered, overwhelmingly as children. This is part of the injustice of decriminalising rape and other sexual assault. The victims' convictions were petty, such as for shouting at someone, and this criminal conviction usually many years later stopped them getting any compensation." The campaigner argued that being refused financial compensation is particularly "devastating" given compensation is the "only official acknowledgement" of their injustice in many cases.

People who are victims of a violent crime or see someone close to them fall prey to violence are eligible for financial compensation. "Given so many of these victims were attacked as children by grown men, the trauma is lasting," Ms Longstaff said. "Compensation can't take away the pain, but it could have helped with the costs of their recovery and safety." She criticised the government for refusing to take action to overhaul the rule on convictions in the face of a great deal of pressure from both campaigners and the public in recent years. Ms Longstaff cited the example of a woman who worked with another victim to take a private prosecution against a serial rapist and succeeded – establishing a legal precedent. While the man was sentenced to 11 years in prison, the victim saw her financial compensation substantially reduced because she had been a sex worker. The Ministry of Justice has been approached for comment.

Serving Prisoners Supported by MOJUK: Kieron Hoddinott, 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

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**MOJUK: Newsletter 'Inside Out' No 878 (22/12/2021) - Cost £1**

**Dither and Delay Over Miscarriages of Justice Inquiry Findings**

Justice for Mark Alexander: When the Westminster Commission on Miscarriages of Justice published the findings of its inquiry into the Criminal Cases Review Commission ('In the Interests of Justice') on 5 March 2021, it made over 40 recommendations. Whilst the vast majority of these were directed at the CCRC, 9 of the recommendations made by the inquiry require legislative change (listed below). These reforms fall into three broad categories. Reforms to the Court of Appeal, reforms to the Crown Prosecution Service, and reforms to assist the work of the CCRC.

Earlier this year Justice for Mark Alexander campaign, asked the Minister for Justice and his colleagues how they planned to implement the first category of changes relating to the Court of Appeal. In response, Tom Pursglove MP acknowledged that "the judicial process including how potential miscarriages of justice are reviewed must be transparent and fair", but insisted: "The Ministry of Justice is proud of the work of the independent CCRC. Last year, it referred its 750th case for appeal. This equates to one case referred for every 8 working days since it was established in 1997. Of those cases, more than 450 appeals have been allowed by the appeal courts".

Whilst grateful for his response, we were disheartened that the Minister failed to address our concerns directly, commenting instead on the Report's recommendations for changes to the CCRC: "in my opinion the CCRC performs well. It carries out investigations of good quality in a timely manner. A Tailored Review of the CCRC in 2019 found that it is effective and efficient".

The Westminster Commission Report of course, paints a very different picture, describing the CCRC as "too deferential to the Court of Appeal". In particular, the Commission noted that: "Financial constraints and an increased caseload have compromised the CCRC's ability to carry out its role effectively in all cases. Without increased resources the CCRC cannot examine all relevant documents, carry out enough face-to-face enquiries and take advice from external forensic experts. The report also expresses serious concerns about the non-disclosure or destruction of exculpatory material. It recommends changes to the retention of documents and that the CCRC should have additional powers to obtain information and material from public bodies in a timely manner."

The Minister's response not only ignores these widely acknowledged and carefully evidenced criticisms, but leaves open a number of important questions, which we now want to follow up on. We encourage all of you reading this to do the same:

*What action is the government taking to implement the 4 legislative changes recommended by the Commission in respect of the Court of Appeal, to assist it in its consideration of criminal appeals?*

*What action is the government taking to implement the 2 legislative changes recommended by the Commission in respect of the Crown Prosecution Service, to assist in evidence retention and disclosure?*

*What action is the government taking to implement the 3 legislative changes recommended by the Commission to extend the powers of the CCRC and assist it in carrying out its role?*

9 months have passed since the Westminster inquiry published its recommendations. Indeed, the specific recommendation to amend the Criminal Appeal Act 1968 which we contacted the Minister about in May was originally made by the Justice Select Committee in 2015 ('Criminal Cases Review Commission', Twelfth Report, Session 2013 – 14, HC 850).

It is deeply disappointing therefore, that 6 years on from the Justice Select Committee, and so many months after the Westminster Commission, Tom Pursglove MP tells us that "we continue to consider its findings". Every day this government fails to take action, innocent men and women continue to languish needlessly in prison. We cannot afford further delay or prevarication. The time to act is now. If the Committee and the Commission are simply to be ignored on every occasion, then it is entirely unclear why they were convened in the first place. It critically undermines public confidence in their credibility, and will have a chilling effect on the willingness and good faith of stakeholders to participate in future inquiries. Their voices are being disregarded, while the good work of the Honourable Members of Parliament who heard all of the evidence and compiled these reports is going to waste.

The Police, Crime, Sentencing and Courts Bill – now approaching its third reading in the House of Lords – presents a perfect opportunity for these recommendations to be brought into law. The absence of these reforms from the current draft represents a glaring and damning gap in the Bill that tells miscarriage of justice campaigners and victims exactly what they have always felt: that this government doesn't care, and that their voices and lives are neither valued nor important.

*As such, we invite you to ask your local MPs:*

Why has this government not taken the opportunity to table amendments to the Police, Crime, Sentencing and Courts Bill, implementing the legislative changes recommended by both the Committee and the Commission?

*Will it commit to doing so now?*

If this opportunity is missed, we will be calling on MPs to bring forward a private member's Bill instead. We urge you to do so as well. Our focus has been on points 1 and 2 below, the changes to the Criminal Appeal Act 1968. These are particularly relevant to my own case. You can ask your MP to raise these specific and urgently needed reforms at Prime Minister's Questions (PMQs), to ensure that this Report and its recommendations aren't allowed to fade into irrelevance.

In many ways the constant dithering and delay, failure to act, and rejection of recommendations will not come as a surprise to criminal justice practitioners, campaigners, and victims. When I wrote about the launch of the All Party Parliamentary Group on Miscarriages of Justice in October 2020, there was some hope that this time things would be different, but this optimism was qualified:

"The APPG membership must be prepared to face the same kind of resistance to change that their colleagues in the House of Commons Justice Committee had to deal with. Miscarriage of justice victims can only hope that they will muster all of their combined influence to bring about the remedial action so urgently needed – and now five years overdue."

Sadly, the Minister has only confirmed our worst fears. The only sensible response for us now is to remind MPs that we have not forgotten, and will not be forgotten. We do not need further Commissions or Committees to confirm what we all already know. We need action.

*Category 1 – Legislative Reforms to assist the Court of Appeal*

1. Amend the Criminal Appeal Act 1968 to "allow and encourage the Court of Appeal to quash a conviction where it has serious doubt about the verdict, even without fresh evidence or fresh legal argument" (pp 40 – 42, 68 Commission Report 2021, p. 28 Justice Select Committee Report 2015). This is critical because, as the Commission found, "the Court of Appeal's approach to cases may prevent some miscarriages of justice being corrected", like my own. "This is particularly the case where there is little or no fresh evidence and argument, but where it appears that the initial verdict may nonetheless be flawed or perverse: the classic "lurking doubt" cases".



Many staff were well-meaning and seemed to want to do a good job, but as a group they were not sufficiently effective. Standards were not maintained and poor behaviour not addressed. Many prisoners told us that staff were either unable or unwilling to deal with their reasonable requests. Whatever the problem at Woodhill, be it the safety of the prison, the confidence prisoners had in staff, the total inadequacy of the daily regime or weaknesses in the provision of services, the source seemed to be the inability to recruit and retain staff. This was the fundamental strategic priority that need to be addressed.

Leadership at Woodhill had huge challenges. Apart from the issue of human resources, the complexity of the prison and the risks managed were significant. The governor was both energetic and enthusiastic in her approach, she had shown considerable commitment to the establishment over time and it was clear to us that most staff were aware of her priorities. In specific departments we saw other examples of good leadership and there was evidence of initiative and effort across the prison, but this was not bearing fruit in terms of improvement. Arguably HM Prison and Probation Service needs to take stock of what is happening at Woodhill and reflect on what it can do to support change. Local leaders need more support to address issues beyond their control and, most of all, there needs to be a deliverable local plan to recruit, retain and equip the staff needed to run the prison.

**CCRC Refers Case After "Wrong Man" Convicted At Court**

15 December 2021 - The Criminal Cases Review Commission (CCRC) has referred a sexual assault conviction from 2008 to the Crown Court, after finding compelling evidence that the person arrested at the scene, was not the same man who was later convicted at court. The convicted man, "Mr H", was placed on the national Sex Offenders Register as a result of this conviction. In April 2008, a woman was sexually assaulted by a man in Wakefield town centre. She was able to identify her attacker to nearby police officers, who immediately arrested the man. This man gave Mr H's name, date of birth and address to the police and was later released on bail. Several months later, Mr H attended a trial at Wakefield Magistrates' Court and was convicted.

Mr H applied to the CCRC in September 2020, saying that he was not the man who had sexually assaulted the victim. After looking into his case, the CCRC discovered that the fingerprints taken from the man identified and arrested at the scene did not match those of Mr H. The police had discovered this in 2009 and concluded that Mr H was not responsible for the crime. Attempts made to resolve this situation at that time were unsuccessful and Mr H remained convicted of the offence. The CCRC has decided that, as there is no evidence to link Mr H to the offence and the police now accept that he was not to blame, there is a real possibility that an appeal in the Crown Court will succeed. Due to the unusual nature of this case, the CCRC has also found "exceptional circumstances" which allow it to refer the case, even though Mr H has not tried to appeal in the usual way.

Helen Pitcher, Chairman of the CCRC said: "We knew quite quickly that this was an unusual case as the police accepted that Mr H was not the man responsible. Although there are a number of unanswered questions about how this situation occurred, the important fact is that there is absolutely no evidence that Mr H committed the offence. If we had been alerted to this case sooner, it seems likely that this would have been resolved years ago. This shows how important it is that people across the Criminal Justice System know about the CCRC and the work that we do." Mr H was not represented in his application to the CCRC.

ball pitch when the residents could not. This contributed to break down in trust between staff and residents.' There were also issues raised with the lack of rehabilitative activities. 'They need to tell us what they mean by words such as "punishment" and "rehabilitation". One prison officer will tell you the punishment is taking away your liberty; another will tell you, "where do you think you are, the Ritz, you are in prison" when you ask for cleaning materials to clean the toilet.'

The lack of modern technology was another theme. 'There were a great call for the use of technology. If people had access to a controlled internet applying for employment at a jobcentre would be easier,' one prisoner said. The introduction of video calls that replaced visits in some prisons during was generally welcomed and suggested to be kept in place for the future. A mother explained: 'I don't want my children coming through security and seeing their mummy in prison. So a purple visit (video call) works for them. It don't work for me in that I can't see them in the flesh, but I know it's better for them to not be here.' In terms of 'building back better', prisons should mirror life on the outside. One prisoner explained, 'Prison needs to be designed on the basis that we are going out, back into the community. You will go to shops, find a place to live, get a job. We're used to sitting in a cell. The opportunity to take part in work and courses was not only vital in rehabilitation but humanised an otherwise dehumanising environment, as another said: '[Outside work] is the most amazing experience, to be out in the fresh air, but more importantly to be trusted.'

Prisoners identified positive initiatives and so one prisoner proposed a trial of a small personal budget for prisoners annually linked to enhanced status. 'A budget of £500.00 a year, available to prisoners for which each individual must decide what to do with (excluding work based wages). The money is budgeted so that year, the prisoners can purchase a keyboard, long distance education, charitable donations, educational laptop with access to preloaded tuition lessons for piano, tai-chi, guitar, beats-making, accountancy, mathematics, business planning, etc. etc. Successful applications similar to attempting to ascertain grants etc. with careful planning and intelligent application of one's faculties. Unused finances are recycled back to the prison budget. The £500+/- budget must be available to every prisoner and marketed as the primary tool of rehabilitation.' There were calls for prisoners to eat with the staff. 'It would be good to have a sit down meal on the wing with the govs, it would help bring us together and we could just chat and feel human.' Another suggested 'TED talks and guest speakers who are inspirational'.

**Unannounced inspection of HMP Woodhill - Marked Deterioration Prison Not Safe Enough**

Our findings at this inspection were disappointing. As in 2018, outcomes in safety and purposeful activity were poor, while outcomes in respect and rehabilitation and release planning had deteriorated and were now not sufficiently good. Against nearly all the main measures, the prison was not safe enough. Violence was higher than comparable prisons; use of force, though mostly legitimate, was also high; use of segregation was considerable; and there had been seven self-inflicted deaths since we last inspected. Self-harm was also high. It would be wrong to say the prison had done nothing to try to address these issues. There had been some useful work led by the governor to try to better understand the causes of these problems, but this had yet to translate into action that was making a difference.

Prisoners were frustrated about the confidence and competence of staff and the inconsistency of their interactions with them. In our survey only two-thirds of respondents felt respected by staff; a reflection, perhaps, of the fact that about a third of all officers had been recruited in the last 12 months, 40% were only in their second year and many supervisors were similarly inexperienced. Our own observations were largely consistent with the views of prisoners.



2. Amend the Criminal Appeal Act 1968 to mandate and encourage the Court of Appeal to conduct a "cumulative review" of the issues in a case, rather than approaching the issues in an atomistic fashion and without reference to issues raised in previous appeals. It is often the cumulative effect of evidence that is probative and decisive. The Court of Appeal must be able to "take the widest view of the circumstances which may have resulted in a wrongful conviction" (pp. 43, 68 Commission Report 2021).

3. "Introducing the premature destruction of crucial evidence which could have undermined the safety of a conviction as a standalone ground of appeal" (p. 68 Commission Report 2021).

4. Extend the 28-day time limit for applicants to lodge appeals after conviction (p. 68 Commission Report 2021)

*Category 2 – Legislative Reforms affecting the Crown Prosecution Service, Attorney General, Police, and Crown Courts*

1. Broadening the law on post-conviction disclosure to assist appellants in accessing evidence to make applications for leave to appeal (pp. 49 – 52, 68 – 71 Commission Report 2021)

2. Amend the Crown Court and Retention and Disposition Schedule so that Crown Court trial audio recordings are held for the duration of a prisoner's custody (or for at least 5 years, whichever is longer) and not destroyed (p. 71 Commission Report 2021).

Category 3 – Legislative Reforms to assist the work of the CCRC and extend its powers

1. Introducing a statutory power requiring public bodies to comply within a fixed timescale with requests for disclosure made by the CCRC under s17 Criminal Appeal Act 1995 (pp 40 – 42, 68 Commission Report 2021, p. 29 Justice Select Committee Report 2015).

2. Amend the Criminal Appeal Act 1995 to enable the CCRC to disclose material gathered during its review to the applicant (p. 72 Commission Report 2021).

3. Amend s13 Criminal Appeal Act 1995 to mandate that the CCRC makes a referral where an application meets the criteria (p. 68 Commission Report 2021).

Mark Alexander A8819AL, HMP Coldingley, Shaftesbury Road, Bisley, GU24 9EX

**Prisons Strategy White Paper**

"Safer prisons that rehabilitate are in everyone's interests. So investment in preventing drugs from getting into prisons and helping people get clean is all welcome. But it's hardly a new ambition and the track record of delivery on prison promises is poor. You can't build prison reform on a foundation of overcrowded, dilapidated prisons where prisoners spend most of their day in their cells. That's what life is like in the prisons where these problems are most acute. The government is in danger of addressing the symptoms of our broken prison system, not its causes."

**Inspection of HMP Erlestoke - Little improvement - Deterioration in Respect**

When we last inspected in 2017, we assessed outcomes for prisoners as not sufficiently good against our healthy prison tests of safety, purposeful activity and rehabilitation and release planning. Only in the healthy prison area of respect were outcomes reasonably good. Similarly, our findings from a scrutiny visit to the prison a year ago, at the height of the pandemic, were so concerning that my predecessor raised his concerns directly with the Secretary of State. A deterioration in safety, poor living conditions and a lack of purposeful relationships between staff and prisoners were among the serious issues identified. At this inspection we found little improvement, and respect had deteriorated to the extent that it too was now not sufficiently good.

The prison had undoubtedly been impacted by COVID-19 outbreaks in addition to the general restrictions imposed by the pandemic, but it was clear that prisoners were becoming increasingly frustrated at what they perceived to be a growing divergence between their experience and the general easing of restrictions in the community. Some restrictions in the prison were applied inconsistently and the prison leadership needed to be more ambitious about the pace for opening up the regime safely - which might have overcome the sense of aimlessness that we observed. This frustration among prisoners was linked to some concerning outcomes, for example increasing violence and high levels of self-harm. Basic standards were not upheld and opportunities were missed. Examples included: limited reception and induction arrangements and a lack of motivational and rehabilitative culture; both were opportunities that could have been used to encourage and connect constructively with longer-term prisoners. Leaders were not visible, oversight arrangements lacked rigour and priorities were not communicated. Forums for the oversight of operational practice were often poorly attended and the leaders did not use data effectively to inform decision making. In a survey we undertook, staff (many of whom were inexperienced) told us that their wellbeing was not supported, and that morale was low. A clear agenda aimed at practical steps to build confidence and competence among staff, as well as some supervisors, was needed.

**Questioned in Police Station Having Been Taken There by Force: Violation of Article 5**

Applicant Questioned in police station without being placed in police custody despite having been taken there by force: violation of Article 5. Applicant's Home Raided in Expedited Police Investigation: no Violation of Article 8; In Chamber judgment case of Jarrand v. France (application no. 56138/16) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and a violation of Article 5 § 5 (right to compensation for unlawful detention) of the Convention, and no violation of Article 8 (right to respect for one's home). The case concerned a police raid on the home of Mr Jarrand after he had failed to return his elderly, dependent and highly vulnerable mother to her care home, in breach of a placement order, in addition to his arrest and questioning at the police station without being formally taken into police custody.

The applicant began by challenging the necessity of the interference with his right to respect for his private life caused by the police intervention at his home. The Court took the view that the applicant's conduct had rendered the police intervention necessary in the context of an expedited police investigation opened for "ill-treatment of a vulnerable person". Having regard to the margin of appreciation afforded in such cases to the respondent State and given the particular circumstances of the case, and the pressing social need for the home raid, the Court acknowledged that it was necessary in a democratic society. Therefore there had not been a violation of Article 8 of the Convention.

The applicant further complained about the conditions in which he had been questioned at the police station. The Court found that the measure constituted a "deprivation of liberty" for the purposes of Article 5 of the Convention. After noting that in domestic law there had been, already at the time, a constitutional requirement that anyone brought before a police officer by force should enjoy the specific safeguards provided for within the framework of police custody, the Court observed that he had been questioned outside this framework, thus concluding that he had not been detained "in accordance with a procedure prescribed by law" as required by Article 5 § 1.In the very specific circumstances of the case, where the courts which examined the applicant's complaint had failed to consider whether his detention had been compatible with Article 5 § 1 of the Convention, the Court found that there had also been a violation of Article 5 § 5, as he had not been able to claim compensation for his unlawful detention in breach of Article 5 § 1.



Mr Travers, who was 24 at the time, said his life had been defined by a "terrible, premature sadness". "Sadly my abiding memories of these three talented young men, who I had just been on stage with playing Clap Your Hands, Stomp Your Feet, are forever fused with the most horrific, ever-present images imaginable," he told the court. Mr McAlea said he wakes up to the murders every day of his life. There are photographs of Fran, Brian and Tony in my apartment," he said. That night will live with me until the day I die." Rachel O'Toole said her father Fran's death had left her family "broken", while Brian McCoy's widow Helen told the court she was "not bitter" but wanted "all those who colluded in his murder to know how much they damaged" their lives. Mr McAlea told the court he would like to see a monument built in Northern Ireland to remember the murdered members of the Miami Showband.

Judge Mr Justice McAlinden said he had heard some difficult cases "but the comments expressed will remain with me throughout the rest of my career and indeed throughout the rest of my life". Counsel for the Ministry of Defence and the PSNI told the court the claims had raised complex, novel and unusual issues of both fact and law. "The major issues which arose in this case concern questions of vicarious liability and limitation," said Paul McLaughlin QC. The settlements which have been reached represent compromises. They are compromises in the interests of all parties in the case, and therefore avoided the necessity of reaching a final adjudication, one way or the other, on these difficult issues."

**400 Internment-Related Civil Claims Against the Northern Ireland Office**

Baroness Hoey To ask Her Majesty's Government, further to the Written Answer by Lord Caine on 23 November (HL3800), how many internment-related civil claims for compensation for unlawful detention have been received by the Northern Ireland Office arisingfrom the Supreme Court judgement of 13 May 2020 in the case of R vs Adams (Appellant) (Northern Ireland); and who signed the 1973 interim custody order. [HL4553]

Lord Caine: There are currently approximately 300 to 400 internment-related civil claims against the Northern Ireland Office brought on a similar basis to that of the case of R vs Adams. As noted in the Supreme Court judgement of 13 May 2020 in the case of R vs Adams, the 1973 order was signed by a Minister of State in the Northern Ireland Office.

**'Anger, Fear Resentment': Prisoners Speak Out About Lockdown**

*Beth Deer, Justic Gap:* Prisoners spoke out about their 'anger, fear and resentment' at the restricted regime post-lockdown which has seen many in their cells for 23 hours a day. The Prison Reform Trust (PRT) study, drawing on visits to 50 prisons and more than a hundred written responses, asked for 'aspirational thinking' in line with the HMPPS vision that reform must be 'aspirational but also deliverable'. The PRT noted that it quickly became 'very clear' that aspirational thinking was going to be challenging. 'We were shocked at the extent to which months of isolation have impacted on our membership,' the group said. One prisoner told researchers: 'I don't have toilet roll, I don't have a toilet seat, when that's in place we can think about a new regime.'

The sanctions placed on prisoners have been well documented, with prisoners spending on average all but an hour in their cells and mental health has taken a toll. As one prisoner explained: 'COVID fatigue, or rather, lockdown fatigue, set in months ago. Everyone who hasn't already lost their marbles pacing up and down the same damned corridor every day for the past year, is hopelessly bored and desperate for some respite.' Prisoners reported a loss of trust with prison staff as COVID rules were not followed by officers. Another prisoner spoke of an incident in his prison: 'People were upset with staff as they could hear them playing pool and using the Astro turf foot-

the US has, and continues to play, in supporting the Good Friday Agreement through peace and reconciliation, we urge you to make a public statement of unequivocal rejection of these proposals and work with your counterparts in the United Kingdom and Ireland to resolve this matter and ensure the past is dealt with in a victim centered, rights respecting way. The time to act is now; the UK Government is expected to progress legislation in the near future in the UK Parliament. Together, we urge you to call on the UK Government to abandon this unilateral action and establish mechanisms to deal with the legacy issues of the past that will discharge the UK's human rights obligations.

**Still no Disclosure Into Deaths of Gervaise McKerr, Eugene Toman and Sean Burns**

11 November 1982 – three unarmed men were shot dead near Lurgan by members of an elite, SAS trained, firearms unit of the RUC. 109 rounds were fired at a car killing its owner Gervaise McKerr (31), Eugene Toman (21) and Sean Burns (21). In 1984, three RUC officers were acquitted of Eugene Toman's murder and re-instated back into the RUC. John Stalker, Deputy Chief Constable of Greater Manchester Police, investigated the deaths but was controversially removed from his post shortly before finishing his investigation. His findings have never been made public. Sir Jack Hermon, Chief Constable of the RUC, steadfastly refused to disclose John Stalker's report to the Coroner for Craigavon, who subsequently abandoned the inquests into the deaths. In 2007, Madden & Finucane brought a successful legal challenge to the House of Lords in London on behalf of the families of Martin McCaughey and Dessie Grew, who were shot dead by the SAS in Co Armagh in 1990. This resulted in the obligations on the Chief Constable to make disclosure of ALL relevant documents to Coroners being finally and unequivocally defined. On the same year the families of Gervaise McKerr, Eugene Toman and Sean Burns made an application to the Coroner to re-open the inquests into the deaths of their loved ones. After 14 years of countless preliminary hearings, the PSNI has yet to provide full disclosure to the Coroner and a date for the inquest has yet to be fixed.

**Miami Showband Murder Victims Receive £1.5m in Damages**

BBC News: Survivors and relatives of those killed in the Miami Showband murders are to receive close to £1.5m in damages. The resolution of legal action against the Ministry of Defence and the Police Service of Northern Ireland was announced at Belfast High Court on Monday. The victims had argued there was collaboration between the loyalist killers and serving soldiers. Three band members were killed near Newry in 1975. The bomb and gun attack happened in July as the band, which toured across Ireland, travelled home to Dublin after a gig in Banbridge. Their minibus was stopped by a fake Army patrol involving Ulster Defence Regiment and Ulster Volunteer Force members. A bomb which was placed on the bus exploded prematurely, killing two of the attackers, Harris Boyle and Wesley Somerville. The gang then opened fire, murdering singer Fran O'Toole, guitarist Tony Geraghty and trumpeter Brian McCoy. Two other band members, Des McAlea and Stephen Travers, were injured but survived the atrocity. On Monday, Mr Travers was awarded £425,000 and Mr McAlea will receive £325,000 in damages. The court ruled the personal representatives of Fran O'Toole and Brian McCoy would receive £375,000 and £325,000 respectively.

The legal action followed a 2011 Historical Enquiries Team report which raised concerns about collusion around the involvement of an RUC Special Branch agent. It found that mid-Ulster UVF man Robin Jackson claimed in police interviews he had been tipped off by a senior RUC officer to lie low after his fingerprints were found on a silencer attached to one of the weapons. He was later acquitted on a charge of possessing the silencer. Two Ulster Defence Regiment soldiers were convicted for their roles in the attack.



**Our Criminal Records System Stops People Providing for Their Families**

Action Network: 1 in 6 people in the UK have a criminal record. The criminal record disclosure system puts people's jobs and families at risk, even when they have already paid their dues. 50% of employers would not hire someone with a criminal record regardless of what's on it Some domestic violence shelters turn away victims just because they have previous convictions Many insurance companies refuse to provide insurance to people with cautions or convictions. People who have already taken responsibility for their actions cannot move on and provide for themselves and their families Even after paying their dues and living a normal life for years or even decades, people with cautions and convictions are still treated like criminals and are prevented from moving on with their lives and contributing to their communities. Lois was exploited and used as a drug mule when she was just 16 years old. She's always dreamed of being a nurse in the NHS, but her conviction is holding her back. She's scared that she won't even be allowed to study if the university learns about her criminal record.Everybody should have the right to provide for their family and fulfil their potential. No one should have to live in fear and face discrimination for decades once they have served their sentence and moved on with their lives. We are calling for the government to reform the criminal records system, so that everyone has a chance to move on from their past and provide for their family. Add your name to show your support and opt in to hear updates on our campaign to fix the UK's broken criminal record disclosure system.

**'Our Politicians Should Be Careful About What They Wish For'**

Nicholas Reed Langen, Justice Gap: Stability is crucial for anyone to have faith in the law. Laws cannot blow hither and thither, changing with every shift in the wind, but must provide a firm, clear framework by which people can guide their behaviour. But at the same time, laws cannot not be treated as though they are divine revelation, infallible pronouncements that can never be changed or revised. The challenge is how to balance these two contradictory positions, recognising that laws must adapt and develop- but not too much, and not too often.

It is judges, rather than legislators, that more frequently face this quandary. Rarely do politicians in liberal democracies gain power and then choose to sweep whole swathes of statute from the books, with changes instead made piecemeal, and with new legislation often passed on the basis of a democratic mandate from the people. Judges, despite having no such democratic mandate, are more often presented with opportunities to change the application or interpretation of the law, particularly those judges sitting on the higher appellate courts. They must ensure the law is stable and predictable, while also ensuring that justice is done.

To deal with this challenge, common law courts developed the idea of precedent, or stare decisis, which obliges judges to decide similar cases in similar ways, and which binds lower courts to follow the decisions of their superior courts. It was the importance of precedent that was in the dock of the US Supreme Court last week, as the justices heard a challenge to the constitutional right to abortion, protected by Roe v Wade.

In oral argument, the US Attorney General argued in defence of Roe. US solicitor general Elizabeth Prelogar, seeking to discourage the conservative wing of the Court from overturning a decision that has stood for over thirty years, and which has been integral to the advance of gender equality, focused upon the importance of this principle. She told the justices that it would be a 'stark departure from the principles of stare decisis, while Justice Kagan noted that precedent is crucial to 'prevent people from thinking this court is a political instituiton that will go back and forth…depending on changes to the Court's membership'.

Justice Kavanaugh pointed out the obvious flaw in relying too strongly upon precedent, noting that the Supreme Court had previously upheld the constitutionality of slavery, segregation, and racial internment, 'precedents [that] are seriously wrong'. His criticism is strengthened by the fact that Roe v Wade is a constitutionally problematic judgment. Rather than being constructed upon the much more stable notion of gender equality, Roe is built upon the more contentious right to privacy, which prevents the state from intruding too far into the sanctity of people's homes. It is this constitutional principle that has led to the Court striking down anti-sodomy laws and legalising mixed-race and same-sex marriage, laws that stopped people from engaging in acts that they all freely consented to. In Roe, however, there is no such mutuality of consent.

The liberal justices know this, which is why much of their questioning focused upon the importance of respecting precedent. What is clearly in their favour is that any wholesale reversal of Roe will unquestionably draw the Supreme Court into the political mire. The impartiality of the Court is already severely in doubt, after Mitch McConnell, then the Senate Majority Leader, stonewalled President Obama's nominee, Merrick Garland, in 2016, and after President Trump appointed justices who were not particularly shy about which side of the political aisle they fell on. In his confirmation hearings before the US Senate, Kavanaugh was happy to criticise Hilary Clinton in strongly partisan terms, while Amy Coney Barrett, the final justice appointed by Trump stood, Eva Peron-like, on the White House balcony after her nomination, and recently delivered a speech at the inauguration of the Mitch McConnell Center at the University of Louisville. Hardly the behaviour of the legal philosopher Ronald Dworkin's idealised jurist, Hercules.

Judging from the questioning by the conservative justices, the need to respect precedent may check them slightly, but will not prevent them overturning Roe in all but name. A probable outcome is that the decision will follow the path first forged by the Supreme Court in Planned Parenthood v Casey, which allowed states to place restrictions on abortion provided that they did not place an 'undue burden' on women seeking abortions before foetal viability at twenty-four weeks. Continuing along this path will most likely see a majority of the justices reject the bright-line rule of viability, a relatively objective measure by which the constitutionality of limitations on abortion can be assessed, and move towards a more subjective test of what an 'undue burden' means. This will free conservative states to impose punitive restrictions on abortion – that will most likely affect poor and black households – like requiring abortion clinics to have hospital admitting privileges, or requiring them to meet heightened standards of care that are expensive but medically unnecessary, in effect forcing them to close.

Should the conservative justices so nakedly use their numerical advantage to overturn a longstanding precedent, it would shatter the stability of the law. As many commentators have pointed out, if the principle that underpins Roe can be so easily overturned, there is little to stop the Supreme Court overturning other Republican bugbears, such as the right to gay marriage, concluding that as it is not specifically enumerated in the US Constitution, it is a matter for the legislature and for the people, rather than for the courts. It makes the law subject to the whims of the judges, abandoning legal objectivity in favour of political objectives.

In the UK, we do not face the same scale of challenge. Judges are not appointed on the basis of their politics and their fidelity to a particular interpretation of the constitution – or at least not yet. When faced with the question of overturning precedent, or establishing a novel constitutional principle, such as in the Supreme Court's Miller judgment in 2019 on prorogation, or in the High Court's decision this week on the justiciability of the ministerial code, judges are careful about where they tread, and are often emphatic about their political neutrality.



The reforms mooted this week by the government, however, may shatter this stability. While there has always – rightly – been the presumption that Parliament can legislate to overturn the decisions of the judiciary, this does not extend to ministers being able to unilaterally reverse decisions they object to. Even if the government pursues the more superficially constitutional route, which would see these decisions reinterpreted under an 'Interpretation Act' at the end of every year, maintaining the facade that the decisions are being overturned by Parliament, rather than the executive, it would steamroll the ordinary legislative process, removing the checks and balances that are crucial for any legislation to be legitimate.

Not only might such a power check the courts, who will be wary of seeing their decisions held up for review at the end of the year, it will deter individuals and campaigning organisations from bringing challenges before the courts. What is the point of litigating an issue if the government can simply impose whatever outcome it likes at the end of the year, particularly if the reversal has retrospective effect?

Consequently, the outcome of such an act would either be stability at the expense of justice, with the courts and the government's political opponents quietened into acquiescence, or chaos, as the judiciary strains against the injustice of the executive. So far, despite the British government's rhetoric, the UK courts have not strayed beyond their constitutional bounds, maintaining a clearly non-partisan stance in upholding the values of the British constitution. Legislation like this however, drags them into the political thicket, moving us closer towards a US style politicised judiciary. As the debate over abortion rages on, the threat this poses to the British constitutional order is all too apparent, and our politicians should be careful about what they wish for.

**Concerns Regarding UK's Plans for De Facto Amnesty for Human Rights Abuses**

Twentyone members of the USA Congress, have expressed concerns regarding the United Kingdom's plans, announced on July 14, 2021, to introduce legislation that will result in de facto amnesty for human rights abuses committed by both state and non-state actors during the Northern Ireland 'troubles' and call on you to urgently make a public statement of opposition to these proposals. The UK Government plans for dealing with the legacy of the conflict in Northern Ireland will close all paths to justice for victims denying them the truth, justice and accountability to which they are entitled. The recently published UK government command paper indicates legislation will end all Northern Ireland conflict-related 'judicial activity' – i.e., current and future prosecutions, inquests, civil actions, and investigations. These proposals breach the UK's international and domestic human rights obligations, unduly interfere in the justice system, undermine the rule of law and dismiss victims' suffering. We note the unequivocal rejection of the United Kingdom's plans by the Irish Government, Northern Ireland political parties, human rights organizations including Amnesty International, victims and victims' groups and many others.

For decades, victims of human rights abuses, and their families in Northern Ireland, have been failed denied justice by a piecemeal approach to dealing with the past. Human rights monitors, activists and victims' families have long pressed authorities to institute credible mechanisms capable of vindicating the rights of victims. Instead, the UK Government have declared their intent to remove all remedies available under the law. It is clear that the UK Government's primary motivation is to ensure security forces are placed beyond accountability for the human rights abuses committed during the 'Troubles'.

We wish to express deep concern at the continual undermining of the rule of law, Good Friday Agreement and ongoing process of peace and reconciliation. People in Northern Ireland have been clear in their rejection of a de facto amnesty. Victims' families have had decades of justice delayed and now, if these plans become law, they will have justice denied – permanently. Given the role