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25 Vital Reform Steps for the Criminal Justice System

During APPEAL's eight years of legal casework and campaigning APPEAL have encountered first-hand many ways in which the system refuses to be held accountable, from police station interviews to pre-trial disclosure, through to the trial process and to the Court of Appeal. We are convinced that there is still a long way to go to ensure that fewer innocent people spend time behind bars. Here APPEAL lists 25 vital reform steps – that must be implemented to ensure a fairer and more accountable justice system over the next 25 years. APPEAL welcomes feedback and debate on these proposed reform steps.

#1 Bring People With Lived Experience to Forefront of Criminal Justice Discussions and Reform

Nobody understands the causes and impact of miscarriages of justice more than those who have been personally affected. APPEAL advocates that all stakeholders including innocence projects, lawyers, the Criminal Cases Review Commission and government must be informed by those that have lived experience of being at the sharp end of wrongful convictions and unfair sentences when considering reforms.

#2 Appoint Judges Who Reflect the Diversity of the Community

Despite the diverse make-up of the United Kingdom, our senior judiciary is dominated by older white and privately educated men. A senior judiciary that fails to reflect the ethnic, gender and social composition of the nation seriously undermines justice in England and Wales, compromising the quality, fairness and legitimacy of judgments. APPEAL joins the call made by Justice and others for structural and cultural reform to judicial recruitment processes to create more inclusive routes to the senior bench. We also believe the selection process should be more independent of the judiciary and civil service.

#3 Show us the Evidence – Increase Defence Access to the Results of Police Investigation

Crucial evidence pointing towards innocence gathered by the police is being withheld from defendants by police and prosecution agencies. This is because the current system expects these bodies to act in an impartial and inquisitorial manner while at the same time acting as adversaries to the defence. APPEAL recommends that the default position is that the defence have access to all "Unused Material" gathered by the police both pre-trial and in post-conviction proceedings, and the establishment of an Independent Disclosure Agency to address requests from the prosecution that material deemed "sensitive" be withheld from the defence, and requests from the defence for access to further material.

#4 Fund Full Defence Investigation in Advance of Criminal Trials

In an adversarial system, investigation cannot be left simply in the hands of the police – the defence must be able to investigate their client's side of the story, interviewing witnesses, visiting crime scenes and instructing experts. In the United States such defence investigation is the norm, with public defender offices employing in-house investigators and routinely instructing experts to check and expand upon the work of those employed by the prosecution. APPEAL argues that in this country, legal aid funding for this crucial work should be provided as a matter of course and law firms and public defenders should bring professional investigators on staff and deploy them in all cases.

#5 Stop Presenting Accused People to the Jury in a Cage – Drop the Dock

In England and Wales, an adult defendant must remain in a dock (effectively a cage in the courtroom) throughout their trial. There is evidence to suggest that this impacts on a defendant's right to the presumption of innocence and a fair trial – it makes them appear dangerous and thus guilty, and prevents them from communicating with their legal team. The adverse impact of the dock has been recognised by appellate courts in both the United States and Australia. APPEAL proposes that in England and Wales docks should no longer be used and there should be a presumption that defendants sit with their legal team

#6 Make Opening Statements Explaining the Defence Case to the Jury

In criminal trials in England and Wales the defence often do not make an opening statement directly after the prosecution's, which severely undermines the fairness of the proceedings. Research in the United States has shown that jurors make up their minds regarding guilt at the beginning of the trial when hearing the prosecution's opening statement. APPEAL recommends that in addition to the defence actively investigating the case, it is given and routinely takes the opportunity to challenge the prosecution case by giving a back-to-back statement fully presenting the case on the defendant's behalf.

#7 Only Allow Scientific Evidence That is Reliable and Relevant to go Before a Jury

The testimony of experts is given tremendous weight by jurors, but the criteria for the admissibility of such testimony is currently insufficiently stringent and this leads to miscarriages of justice. In 2009 the Law Commission acknowledged this problem, stating that "the current judicial approach to the admissibility of expert evidence in England and Wales is one of laissez-faire" and recommended a new admissibility test. The proposals were not implemented. In 2019 the Select Committee on Science and Technology inquiry into Forensic Science and the Criminal Justice System made similar recommendations that were also ignored. APPEAL calls for this to be addressed by the Ministry of Justice as a matter of urgency.

#8 Require all 12 Jurors to be Sure of Guilt Not Just 10 or 11

Since 1967, people have been routinely sent to prison in England and Wales even where one or two members of the jury consider them to be not guilty. In the United States, it is been proved through a combination of legal action and campaigning – and acknowledged by the Supreme Court – that non-unanimous jury verdicts are more likely to result in innocent people being convicted of crimes. APPEAL advocates that England and Wales must abolish non-unanimous verdicts and instead require all 12 jurors to be sure of guilt before sending a person to prison. After all, this was a cornerstone of English criminal law since the 14th century.

#9 A Realistic Time in Which to Appeal by Extending Time Limit For an Appeal to 12 Months

The 28-day time frame to lodge a first appeal against conviction or sentence should be extended to reflect the difficulties faced by applicants, 90% of whom are unrepresented and many of whom are vulnerable. 28 days is rarely enough time to uncover and investigate the fresh evidence upon which many appeals rely. APPEAL proposes that the time period in which a first appeal can be lodged without the need to seek leave should be extended to at least 12 months.

#10 Stop Threatening Prisoners Who Appeal With an Increase in the Time They Will Serve

The risk of lodging an appeal is that if the Court of Appeal considers that the appeal has no merit, the Court can in certain situations direct that any or all of the time spent by the applicant in custody since the date of the application does not count towards the length of the sentence. If an order is made, the effect is to extend the amount of time that someone must remain in prison. This is an alarming deterrent for many prisoners who would otherwise lodge an appeal and

unfairly discriminates against those prisoners serving shorter sentences. APPEAL advocates that such "loss of time orders" should be scrapped.

#11 Stop Destroying the Evidence – Retain Trial Records For All Time

Audio recordings and court documents from trial proceedings are being destroyed after seven years, hindering the work of the Criminal Cases Review Commission and appeal lawyers. A precise record of trial proceedings may be required several decades after a conviction – as highlighted by Lord Justice Fulford's comments in the Shrewsbury 24 judgment. Instead, recordings and court documents should be retained until at least seven years after the end of a convicted person's prison term. For more information, see APPEAL's briefing here.

#12 Give Free Access to a Full Trial Transcript for Appeals

Transcripts of everything that was said at a trial by witnesses, judges and lawyers are not provided in England and Wales but they provide crucial evidence for appeals. At the very minimum at the outset of case screening by an appeal lawyer, a transcript of the Crown Court judge's summing up should be made available at no cost to an indigent convicted person. However, APPEAL argues that a summing up by its nature can only offer a subjective and incomplete account of a trial – so production of a full transcript is vital once the screening lawyer makes a decision to take on a case.

#13 Increase the Scope of Work That Can be Covered by Legal Aid

To stand a chance of receiving a hearing in the Court of Appeal, innocent prisoners need access to lawyers who will review what has happened in the case and then conduct investigation to find 'fresh evidence'. The scope of what Legal Aid will pay for is absurdly circumscribed – for instance the Legal Aid Agency actually states that it will almost never be necessary for an appeal lawyer to read the entire file. Further, unsustainable rates of remuneration for publicly funded criminal appeal work and prohibitive bureaucracy for applying for further funding mean that specialists are increasingly driven to undertake unremunerated work or to abandon practice in this area altogether (see University of Sussex report here). The public cares deeply about the conviction of the innocent and the legal representation needed to free them, as well as about the system learning from its mistakes – APPEAL calls for an expansion of legal aid funding for such work.

#14 Improve Prisoner Access to Information Right to Appeal/Access the Evidence

With a stark lack of access to information about the appeal system in prisons, how should prisoners, 90% of whom are unrepresented, be expected to comply with the rules and effectively appeal their convictions? With more unrepresented appellants in the courts than ever, APPEAL believes it is vital that those behind bars have easy access to information on their rights to access the evidence in their case and the appeal procedure they need to follow.

#15 Significantly Increase Funding to the Criminal Cases Review Commission

A parliamentary inquiry reported that the miscarriage of justice watchdog, the Criminal Cases Review Commission, received just £5.93m in 2019 in government funds compared with £9.24m in 2004, making it the part of the criminal justice system that has suffered the biggest cuts since austerity measures were introduced. These funding cuts plus a higher workload for each caseworker has created a greater propensity for miscarriages of justice to fall through the cracks as staff morale decreases and the efficiency of the CCRC is severely hindered.

#16 Make the Criminal Cases Review Commission Independent of the Court of Appeal

The Criminal Cases Review Commission has the legal power to send a case back to the Court of Appeal only if it concludes that there is a "real possibility" that the Court will overturn the conviction or reduce the sentence. This test hinders independent decision-making about investigation resource allocation at the CCRC, as well as decisions about whether to refer cases, preventing some

wrongfully convicted people from accessing the appeal court and allowing miscarriages of justice to go unidentified and unremedied. The "real possibility" test should be urgently reviewed and replaced with a referral test that does not anchor CCRC decision-making to the perceived mood of the CACD. For more, see our consultation response to the Law Commission here.

#17 Give Teeth to the CCRC's Investigatory Powers

There should be a statutory power requiring public bodies to comply with the Criminal Cases Review Commission's requests for records under Section 17 Criminal Appeal Act 1995 within a fixed timescale, which is appropriate and reasonable based on the nature of the request. Sanctions for non-compliance should be introduced, along with a quick and inexpensive enforcement mechanism via the courts.

#18 Make the Criminal Cases Review Commission More Transparent

APPEAL proposes that all documentation detailing decisions made by the Criminal Cases Review Commission relating to an applicant's case be made available to an applicant and their representatives, including Case Plans, schedules for work and arrangements to use experts to examine or test evidence. Alongside this, applicants and their representatives should be given access to all non-sensitive material obtained by the CCRC in the course of its enquiries so that they have the opportunity to make informed submissions in support of their applications.

#19 Recruit CCRC Personnel With a Full Range of Criminal Justice Experience

APPEAL believes that those working at the Criminal Cases Review Commission in both investigation roles and in senior positions including those making referral decisions should have substantive experience in criminal justice. Their experience should reflect a balance across defence, prosecution, policing, lived experience as defendant / appellant, forensic science, academia (law and criminology) and journalism. Commissioners should also be on full time contracts.

#20 Improve the CCRC 's Accountability - Provid a Tribunal for Challenging its Decisions

The Criminal Cases Review Commission's decisions are currently only challengeable through Judicial Review litigation – a process which is notoriously expensive and difficult, and does not allow decisions to be challenged on their merits. To remedy this lack of accountability, APPEAL calls for a cost-free independent tribunal (such as the First-Tier Tribunal (General Regulatory Chamber)) with the power to hear appeals against a Commission decision not to pursue a line of enquiry, or refer a case to the Court of Appeal.

 # 21 Provide an Objective Standard for Identifying Which Convictions Should be Overturned

The test of 'safety' applied by the Court of Appeal when considering appeals against conviction allows for vast discretion by any judge or panel of judges and leads to inconsistent decision-making by the Court. APPEAL calls for the test to be reformed so that it includes standalone grounds of appeal – for example where the prosecution has withheld material evidence from the defence, or where the standard of representation received by the defendant is so low that the trial was unfair. It is time for the test to be reviewed and reformed.

#22 Distinguish Between Lead Perpetrators of a Crime and Those With Lesser Roles

Grass roots organisation JENGbA has launched a private members bill in Parliament pushing for legislation to fix the injustice of joint enterprise cases (where everyone involved in a crime are held to be equally culpable). The bill was tabled six years after the Supreme Court ruled in Jogee that the law had taken "a wrong turn". Following this ruling it was anticipated that there would be a significant number of successful appeals but the Court of Appeal has placed insurmountable hurdles in the face of would-be appellants. APPEAL supports JENGbA's reform efforts to stop people being found guilty simply by association with other people who have committed crimes.

#23 Allow Investigative Journalists Access to Prisoners Challenging Their Convictions

Members of the senior judiciary have acknowledged the importance of the media in exposing miscarriages of justice (for example, see Lord Hughes in Nunn). APPEAL calls for journalists to be permitted to visit prisoners claiming they have been subject to a miscarriage of justice within 28 days of the journalist making the request to the prison, provided they have the consent of the prisoner and his or her representatives if they have any. If the access is refused full reasons should be given and the decision should be appealable. Currently such requests are not addressed for months, despite the important role investigative journalists have historically played in exposing miscarriages of justice.

#24 Introduce Police & Crown Prosecution Service Conviction Integrity Leads in Each Region

In various states in the United States an increasingly pivotal way in which miscarriages of justice are identified is through police and prosecutors actively trying to confront past harms and injustice by working collaboratively with 'innocence projects' to identify and remedy wrongful convictions. This co-operative and non-adversarial approach serves the defence, the prosecution and the wider public since we all want the same thing – to ensure the right person is in jail rather than left free to commit other crimes. APPEAL calls for Conviction Integrity Leads to be established within police forces and Crown Prosecution Service regional offices in England and Wales to encourage dialog and co-operative working on cases of concern.

#25 Collate and Publish Statistics on Numbers Accessing the Appeal System and Outcomes

Increased transparency is crucial for our understanding of where the system may be getting it wrong and how it can become fairer and more equitable. Successive reviews have called for access to better data, including the Lammy Review, yet this has not been actioned. APPEAL proposes that the numbers of appellants

CCRC Strike Again - No Posthumous Pardon for 'Sally Arsenic'

Inside Time: In its most unusual case yet, the watchdog for miscarriages of justice has completed a two-year investigation into the case of a woman hanged 170 years ago – with a decision that she should NOT be granted a posthumous pardon. Sarah Chesham, a 41-year-old farmer's wife, was accused of poisoning her husband, her two sons and another infant. Convicted of "felonious administering of poison with intent to endanger life", she was dubbed Sally Arsenic and became one of the most notorious female serial killers of Victorian England. When she was hanged at Chelmsford prison in 1851, a crowd of 6,000 turned up to watch.

Yet there have been lingering doubts over whether Sarah, who maintained her innocence to the last, was actually guilty of any crime. In 2019, a BBC documentary team reinvestigated the case and concluded that she was probably wrongly convicted. A distant cousin of Sarah's, Roz Powell, and her husband Stephen wrote to the Government asking for a new investigation. Sir Robert Buckland QC, then the Justice Secretary, decided in 2020 that the Criminal Cases Review Commission (CCRC) should review the case.

When the CCRC was established in 1997 it was given powers to investigate on behalf of the government whether people who have been convicted of crimes, but have since died, should be granted the Royal Prerogative of Mercy – in effect, a posthumous pardon. This was the first time it had been asked to investigate such a case. Its decision would be binding on ministers. Now, two years on, the CCRC has completed its review – and concluded that Sarah should not be pardoned. The decision is due to made public within weeks, but Inside Time has seen a document setting out the grounds for rejection. It states that "the CCRC did not identify any new evidence which demonstrates conclusively that no offence was committed, or that Sarah Chesham did not commit the offence for which she was convicted".

The document adds: "Whilst the CCRC acknowledges that by modern standards there are concerns over fairness of trial, the quality of the scientific evidence and the lack of representation for Mrs Chesham, it considers that none of the factors above, together with the absence of any new evidence, enables it to conclude that Mrs Chesham was innocent of the crime for which she was convicted." The decision has come as a blow to Roz and Stephen Powell. In a joint statement to Inside Time, they thanked the Ministry of Justice for referring the case to the CCRC but said: "We are disappointed in the decision, given that we thought Sarah was unfairly found guilty albeit with no defence council and unable to cross-examine witnesses. Previous trials were brought up during the trial, giving her a disadvantage from the start. Her character was vilified by the media. "In modern times we believe this case would have been thrown out, but we will accept the decision by the CCRC and move on."

Sarah, whose maiden name was Parker, was 19 when she married farm labourer Richard Chesham. The couple, who lived in Essex, had six children. Two of their sons, James and Joseph, died, seemingly from cholera, in 1845. The following year, Sarah was accused of poisoning a local baby boy called Solomon Taylor who died after eating food which Sarah had brought to his home as a gift. Solomon's body was found to contain no poison, but the bodies of James and Joseph were exhumed and found to contain arsenic. Sarah was put on trial for the murders of the three children in 1847, but was acquitted on all counts.

Suspicion continued to hang over Sarah, and when her husband died of an unknown illness three years later – and traces of arsenic were found in his body – she was tried again, without a defence counsel, and convicted of attempted murder. This offence would not normally have carried the death penalty, but the trial judge ordered her execution, saying he believed she had killed before.

Voiceless Inside - Mark Alexander

Part 1: The Ministry of Justice denied an investigative journalist access to interview with myself, Mark Alexander whilst in prison, effectively preventing further investigation being conducted in to establish my innocence. I has always maintained that I was wrongly convicted of murder in 2010. This is now the second time the Ministry of Justice has interfered in attempts by the press to publicise my family's campaign for justice.

We can often take our right to free speech for granted in a country like England and Wales, where the vast majority of us don't feel like our voices are threatened, or that we are being excluded from mainstream debate. Yet behind the scenes, battles are still being fought out amongst our most marginalised and forgotten communities. As solicitor Benjamin Bestgen has highlighted, where our government chooses to draw the line when it comes to freedom of speech determines who gets to have a voice in our society and who is left out, silenced and excluded. Most of these skirmishes go on unseen, and yet it is here that our most important and valued principles are truly tested. It is easy to grant freedom of speech to people we agree with, want to hear from, and remember exist.

Our free press plays a crucial role in shining a light on these forgotten sections of society, and identifying injustices where they occur. In order to do this job however, they need free and unimpeded access to those people. This includes some of the darkest and most secretive institutions in our country: prisons. We all have one nearby – those unsightly, brutal fortresses that we drive by or walk past with indifference or curiosity – but who amongst us really has any idea what happens inside? There is no doubt that there are many people in our prisons who shouldn't be there. As Lord Steyn remarked in R v Mirza [2004]: "nowadays we know that the risk of a miscarriage of justice, a concept requiring no explanation, is ever present".

I am one of them. My father was murdered in mysterious circumstances over a decade ago. Rather than investigating his criminal lifestyle and dozen or so aliases, the police embarked on a flawed inquiry in which I became the central focus. My violent and abusive upbringing became their chief distraction. Neither my mother or I ever received any support in our grief, and our past victimisation was used as a weapon against us. Like many families blighted by miscarriages of justice, our family has spent years searching high and low for that all-elusive breakthrough – fuelled by the goodwill and generosity of countless individuals who have pitched in along the way. We don't have the powers of the police, and we certainly don't have the resources to reach out to the people we need to reach. After 12 years, I am still sat in prison, knowing that I am innocent, but powerless to do anything about it. As Lord Hughes highlighted in R (Nunn) [2012]: "Miscarriages of justice may occur, however full the disclosure at trial and however careful the trial process. A convicted defendant clearly has a legitimate interest, if continuing to assert his innocence, to such proper help as he can persuade others to give him… Quite apart from the defendant's interest, the public interest is in such miscarriages, if they occur, being corrected. There is no doubt that there have been conspicuous examples of apparently secure convictions which have been demonstrated to be erroneous through the efforts of investigative journalists"

Some time ago, our family was approached by an investigative journalist who was interested in making a podcast about my father's murder, and undertaking the real boots-on-the-ground investigative work we so desperately need. It could well unlock everything for us. Lord Hobhouse has previously emphasised the potential impact of such press intervention in R (Simms) [2000]: "Someone has to unearth that evidence if it exists… The media have a role to play. They have the funds and have an interest in applying them to the investigation of meritorious cases. Many successful referrals have only come about because of the help of journalists"

Journalists who are interested in conducting these kind of case reviews in England and Wales have to ask the prisoner they want to interview to make a formal application for permission from the Ministry of Justice. Often, such interviews are essential for effective scrutiny of a prisoner's case. If justice campaigns like ours are appealing to the public for information and asking for the public's support and trust, then the public needs to know that they have nothing to hide. In depth interviews are often the only real way people can reach an informed judgement about someone, particularly when the subject matter is as complex and emotionally fraught as a miscarriage of justice. As Lord Steyn has remarked in the past: "My view is that investigative journalism, based on oral interviews with prisoners, fulfils an important corrective role, with wider implications than the undoing of particular miscarriages of justice".

When the Ministry of Justice denied a film crew access to interview me in prison in August 2017 and again in July 2018, the planned documentary had to be abandoned, and we lost out on the investigative assistance of an exceptional team of journalists. Our efforts to uncover the truth behind my father's murder largely stalled. When we were approached with the idea of creating a podcast, it seemed like a much more straightforward proposition. All the new team would need to do is record my telephone calls. Even so, the Ministry of Justice turned down this much more modest request in June and December 2021.

Solicitor Gareth Pierce highlighted the problems this kind of obstruction to justice can cause when he gave evidence in the case of R (Simms) [2000]: "There is no difference in the approach of members of the Press to that of solicitors; the commitment of an author to writing a book about a case, of a journalist to writing an insightful article, or a television company to the making of a programme involves a major deployment of resources, budgets and time.

Each task demands that those making such a decision believe that their choice is an appropriate one. Such a decision is almost impossible if the individual cannot be seen; where it remains impossible, that individual's case is the less likely to be taken up by that section of the Press that might have become interested in the abstract".

My mother wrote to the Ministry of Justice asking them to reconsider their decision: "Please respect my son's right to be able to express his account… to support his mental health… We all, as a family, love Mark very much… He is constantly battling for a fair justice system that seems to make it harder to break through and progress". Yet the Ministry of Justice brusquely brushed off her request, with little regard for the distress this would cause her. My grandmother has since endeavoured to explain how: "As a family we need this to happen, to speak out… We all feel that the documentary can bring about fair justice, prove his innocence, and clear his name… We will always support him, because I know in my heart that he is innocent…".

The MoJ should be doing all it can to support families and prisoners where there is even the remotest possibility that someone might have been imprisoned for a crime they didn't commit. Instead, the Ministry of Justice seems to be going out of its way to obstruct such efforts. As Lord Woolf has observed, "the existence of a free press is in itself desirable and so any interference with it has to be justified" (A v B plc [2003]). Suppressing information about a potential miscarriage of justice simply to avoid public embarrassment is not a good reason to hinder press access to prisoners.

When it comes to reporting news, decisions about what is in the 'public interest' should be left to our free press to make, particularly when potential shortcomings of the State are being highlighted. When government bodies intervene in ways that stop the press carrying out this important role, we all have a duty to call them out on it. I say this as someone who has not always had a positive experience with the press. A lot of the coverage surrounding my trial was extremely misleading and inaccurate. Even so, I believe in the importance of a responsible free press, and – in particular – the power of quality investigative journalism. To paraphrase Voltaire, "I may disapprove of what you say, but I will defend to the death your right to say it". Not doing so only gives the State a licence to cover up its own mistakes.

In its Open Justice Charter, the criminal justice charity APPEAL has called for improved access to prisoners – in recognition of the extraordinary difficulties and obstacles faced by journalists under the current policy. I am not personally aware of a single prisoner who has successfully applied to the Ministry of Justice for permission to be interviewed. Their narrow and restrictive application of their own rules on press access amounts to a blanket ban on all interviews relating to potential miscarriages of justice.

Paradoxically, it was only last December 2021 that the Secretary of State for Justice, Dominic Raab, himself argued for expanding free speech protections: "We also have the opportunity to reinforce the weight we attach to freedom of speech, a quintessentially British right—the freedom that grants all the others—that we have seen eroded of late by a combination of case law that has introduced continental-style privacy rules and the incremental narrowing of the scope for respectful but rambunctious debate in politically sensitive areas, which is something we in this House should resist both on principle and in the interest of effective decision making that comes only from a full airing of contrary views. Freedom of speech sometimes means the freedom to say things that others may not wish to hear."

It doesn't take a Master of Laws degree to realise that the Ministry of Justice have got this policy wrong, but as a law graduate myself, I felt I was well-placed to make a stand on this issue, for free speech and for our free press. I am conscious that I am doing so from a posi-

tion of vulnerability and weakness, against the might of the very State mechanisms that seek to legitimise and sustain my wrongful imprisonment. Nevertheless, while the Ministry of Justice have sought to silence me – and so many others like me – I will be making my voice heard on 23 March, when I appear before the High Court as a litigant-in-person to present my case. Hopefully it won't be my last opportunity to do so, and I can perhaps make some meaningful difference for others in my situation, both now and in the future. Wish me luck!

Part 2: Thanks for all of your support over the past few weeks guys. I know one or two of you thought last week's Court hearing was the 'big one' and I might be coming home, but we're not quite there yet. It was more of a stepping stone along the path to freedom, not the gatehouse itself! So, some context for you: We've been carefully gathering evidence for many years now, as you know, but what we need now is someone who can actually follow the new leads that have come out of that, someone who can do the real boots-on-the-ground investigative work. Our family has been working with Rob Eveleigh – an investigative journalist who has the expertise to do just that on our behalf. To fund his work, and to appeal to the public for new information, he plans to create a podcast series with some of his media colleagues, and obviously needs to interview me as part of the re-investigation itself.

We had to apply to the Ministry of Justice for permission to record my telephone calls, but they refused, effectively blocking my access to justice. I challenged their decision on the basis that it violates freedom of expression and amounts to State censorship of our free press (Read more here: https://www.freemarkalexander.org/voiceless-inside.../)

The hearing was on Wednesday, but it didn't go our way sadly. The Court essentially gave the MOJ carte blanche to override the professional judgment and editorial discretion of the media when it comes to deciding what is in the public interest, and what form of expression is necessary for the purposes of a broadcast. I prepared and presented the case myself and tried to cover all of the legal points as thoroughly as possible. Robin, mum, and my grandmother all gave evidence in support and we all felt like we had a strong basis for challenging the MOJ's decision. Some of my family had been given permission to watch the hearing remotely, including our dear Kenwyn Kirkham. A big thank you and kudos go out to Katie Spain and Matthew Steeples for making the journey to be there in person, in the Royal Courts of Justice, on the day.

I spoke for about an hour in front of the Judge, and it all seemed to be going well until she gave her decision! It felt pretty deflating after all of that to find the Court ultimately unreceptive, and I was completely exhausted afterwards. Resilience in situations like this is so important. It's easy to give up, and it often feels like the system is designed to push you to breaking point. You need real tenacity and stamina to get over these hurdles. I'm pretty used to the constant setbacks by now though, and have learnt to take them in my stride. So, *big sigh* – after a couple of days rest – I'm ready to go again.

Real change requires real effort, and this MOJ policy needs real change if wrongly convicted prisoners are ever going to get the help they need – particularly in the context of a criminal justice sector in crisis. Funding for criminal legal aid is now less than it was in 1996 and lawyers are leaving the sector in their droves. The media have a really important role to play in plugging the gaps, but that requires unimpeded access to the prisons and prisoners, which the MOJ aren't allowing them.

I'm now taking the decision to the Civil Appeals Court on the basis that the MOJ policy amounts to a blanket ban on all prisoners giving interviews to the press. Although the policy theoretically allows for exceptions, in practice no exception has ever been made. In Court, the MOJ barrister couldn't even give one example of an interview they'd actually approved. I'll be arguing that this makes the policy unlawful.

It is a David and Goliath battle, for sure. The MOJ will resist any change to its position because – at the end of the day – they seem more concerned with saving face than actually helping people. Wrongful convictions are bad optics, it makes them look bad. So, it's better if as few people know about them as possible, right? Well, you know about this one, and together – we can let the whole world know. Please keep your support going, and invite people to join our campaign here, and on Twitter @PatientCaptive so we can get the word out far and wide! Take care for now guys,

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

Detained in Overcrowded, Pest-Ridden/ Poorly Ventilated Cells - Violation or Article 3

The applicant, Volodya Avetisyan, is an Armenian national who was born in 1963. The case concerns Mr Avetisyan's allegation of inadequate conditions of detention when he was being detained on remand in Nubarashen Remand Prison between 2013 and 2015. He lodged complaints with the courts against the prisons department of the Ministry of Justice and the prison, to no avail Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Avetisyan alleges that he was detained in overcrowded, pest-ridden and poorly ventilated cells, and exposed to round-the-clock secondary smoking, except for a one-hour daily walk. He also complains under Article 13 (right to an effective remedy) of the European Convention that he had no effective remedy in respect of his complaints about the inadequate conditions of his detention. Violation Article 3 Violation of Article 13 in conjunction with Article 3

Three-Quarters of Children on Remand do Not go on to Receive a custodial Sentence

Jon Robins, Justice Gap: Three-quarters of children remanded to custody last year did not go on to receive a custodial sentence. A new briefing from the Howard League for Penal Reform highlights the harmful impact of remanding children and includes the statistics for the year ending March 2021 recording the highest proportion of children on remand who did not receive prison sentences. The group is calling for the government to amend the Bail Act 1976 to remove the option of remanding a child to prison for their own welfare. It argues that every year children are remanded for their own welfare when 'in fact there are strict legal duties on local authorities to provide alternative care'. 'Prisons are not equipped to provide children with the support required in such cases,' they argue. 'Custodial remand punishes children for the mistakes of the services around them and exposes them to abusive prison environments,' commented Andrea Coomber, the Howard League's chief exec. 'Although the evidence is clear that remanding a child to prison must be an absolute last resort, we know that this is not being heeded in courtrooms across the country.'

The new study features accounts from five young people in prison who had come into contact with the criminal justice system whilst in care. Although on remand, all five told the Howard League that they had been treated the same as children who had been sentenced to prison. Seventeen year old Joshua, a Black British child, had spent 16 of the previous 18 months in custody on remand. 'He had never received a custodial sentence; previous charges against him had either been dropped or led to community sentences,' the report said. 'The remand decisions made no sense to him.'

Joshua was one of two children the Howard League met who had been convicted and were awaiting sentencing. The other was Aaron, 16, a mixed white and Black child. 'Both had experienced repeated trauma in their family homes, in care and in their social environments, and professionals suspected that they had been exploited to run drugs (though they did not see it this way),' the Howard League said. 'Neither felt that anyone else would keep them or their

friends safe.' Aaron said that one judge told him: 'If I see you again, I'll send you to jail.'

Hassan, a British Asian 16 year old, described prison as 'traumatising… even though I take sleeping tablets, at silly o'clock in the morning there are people banging on the pipes not letting me sleep, banging on the walls… being very rude.' Abdul, a mixed white and Asian 17 year old, was a victim of trafficking who claimed that he had lived in 15 or 20 care homes. According to the Howard League: 'He said that his exploiters had often threatened to hurt his family members if he did not do what they asked, and they were determined to punish him for having lost their drugs. But when Abdul tried to get his family moved out of the area, professionals did nothing.'

By the time the Howard League met Abdul, he had been remanded to prison for his own welfare as the court had considered he would be safe in custody. The report continued: 'Yet Abdul explained that his exploiters were giving orders to other children in the prison and he felt at even greater risk. He remained worried about his family, who had still not been moved.'

Aliens Behind Bars: Punishment and Human Rights of Foreign National Prisoners

Irtiza Majeed Sheikh, Oxford Law: In the year 2000, there were 5,586 Foreign National Prisoners (FNO's) in England and Wales. However, by March 2021, this figure increased to 9,850, representing a rise of almost 76% in the number of foreign national prisoners in the past two decades. As of March 2021, the foreign national prisoners represent approximately 13% of the total prison population in England and Wales.

Home Office defines the Foreign National Offender as someone who is not a British citizen and is convicted in the United Kingdom (UK) of a serious criminal offence. The number of deportations related to foreign national prisoners also appears to be increasing. Almost 50,000 foreign national offenders have been deported from the UK between 2010 and 2020 with approximately 4,700 foreign national offenders deported in a year between March 2019 to March 2020. The Ministry of Justice prison population projection shows that the prison population of England and Wales is expected to grow to 98,700 by the year 2026 – an increase of more than 25% from the current total of 78, 328. Considering this projection, the growing number of foreign national prisoners in the past two decades, and the increasing global mobility, it becomes important to research this group of prisoners. It becomes equally important to ascertain the reasons behind the exponential rise and to research the legislation and policies pertinent to the said group of prisoners.

Legislation and Policies: Whilst in the last two decades, the successive UK governments have introduced a number of legislation and policies pertinent to foreign national offenders, it may not be incorrect to say that the two significant pieces of legislation surrounding foreign national offenders are the UK Borders Act 2007 and the Hubs and Spokes policy 2009. The UK Borders Act 2007 enables automatic deportation of foreign national offenders sentenced to a prison term of at least 12 months unless there is evidence that the deportation will breach their human rights. Similarly, the Hubs and Spokes policy of 2009 is another crucial step taken by the then UK government that may be interpreted as controlling foreign national offenders. The said policy foresaw the creation of special prisons for foreign national prisoners with immigration officials implanted in these institutions to carry out administrative functions, including the facilitation of deportation orders. This policy also enabled authorities to detain foreign national prisoners beyond the length of their sentences to facilitate deportation. This restructuring of penal policy to control and punish foreign national offenders arguably represents an example of crimmigration - a term widely used to explain the convergence of criminal law with immigration. Given this stringent legislation and increasing number of deportations, it is worth asking how, and to what extent, the traditional purpose for punishment (that is deterrence, retribution, incapacitation, and rehabilitation) are applicable to foreign national prisoners?

Has Deportation Replaced Rehabilitation?

From a human rights and penological perspective, the core objective of prison management should be the facilitation of the rehabilitation and reintegration of prisoners. This clarity of purpose, however, seems to have become skewed and subordinated within foreign national only prisons. Prison inspections, empirical studies and academic scholarship all point to the restricted rehabilitation support and 'erosion of the rehabilitative ideal'. As a result, scholars are increasingly asking how deportability shapes the way foreign-national prisoners do time. Arguably, when deportation becomes the dominant political and practical function, there seems to be a correlating subordination or removal of rehabilitation and resettlement functions. Empirical research focusing on foreign national prisoners raise pertinent questions about their prison experience and broader issues in relation to the traditional purposes of punishment, such as, how is 'foreignness' transforming punishment in the criminal justice system of England and Wales? Are we witnessing, as several scholars have suggested, the emergence of a two-tiered system of criminal justice that sorts people on the basis of nationality?. How is deportation redefining what punishment means for foreign national offenders and how is it experienced?

Given the apparent emergence of a bifurcated system of justice that is directed at foreign nationals in the UK, it is important to consider how this particular aspect of British penalty is subjectively experienced 'on the ground'. My research, therefore, urges a rethinking of ways in which we consider punishment. How can we make sense of punishment when in the English and Welsh criminal justice system a criminal conviction for foreign nationals – including long term residents – may not only lead to incarceration but may also extend to a different nation altogether, as in the case of deportation? And what becomes of the traditional purposes of punishment, including rehabilitation and reintegration, when the governments' focus is on the deportation of foreign national prisoners? As much as these questions need rethinking, the carceral experiences of foreign national prisoners portray a rather gloomy picture. Existing literature confirms that foreign national prisoners are more likely to harm themselves and die by suicide than the general prison population. Language barriers, difficulty maintaining family ties, and uncertainty over immigration concerns are three major contributing factors. With their rehabilitative needs largely ignored, which ultimately makes it difficult for them to spend their time in prison and deprive them of the much-needed education and healthcare support, it can be argued that the traditional purpose of punishment is failing to meet its objective.

Research surrounding foreign national prisoners and the deportation regime is ultimately the need of the hour. Particularly, the questions surrounding their differential treatment in the criminal justice system and their restricted access to rehabilitative support in English and Welsh prisons need answering. What also needs to be investigated is the notion whether, and to what extent, the classic rationales for punishment (that is deterrence, retribution, incapacitation, and rehabilitation) are applicable to foreign national prisoners or whether their incapacitation is a mere practice facilitating deportation.

Civil Servant Wins Six-Figure Sum Over 'Insidious' Ministry of Justice Racism

A former civil servant received a six-figure pay-out from the government over discrimination after she says was subjected to "insidious" racism during a 20-year battle with the Ministry of Justice. Olivea Ebanks, 58, worked at the ministry for almost 20 years and took it to court three times; in 2008, 2011 and finally in 2020 for cases respectively won, lost and settled. *an internal investigation within the prison service found there was scope for institutional racism* yet the ministry has denied such issues plague the department.