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# MOJUK: Newsletter 'Inside Out' No 905 (29/05/2022) - Cost £1

**Criminal Barristers Vote to Strike Over Pay Rates**

*Dominic Casciani, BBC:* The vote by defence barristers is likely to cause chaos in the criminal courts, delaying trials and sentencing. Eight out of 10 barristers voted for the walkouts amid concerns the government will not improve a proposed increase in criminal Legal Aid. The Legal Aid system is at the heart of justice - ensuring that all defendants get proper and fair representation. An independent review of the future of the system, ordered by the government, told ministers they needed to increase funding by at least 15% to prevent a major crisis in criminal justice. Over the last decade the number of lawyers working in criminal justice - both barristers who appear before judges in court and solicitors who instruct them - has declined, as many say they cannot make a living anymore. That loss of criminal barristers is reflected in the current court backlogs which show that many prosecutions are being delayed because of a shortage of representatives to make sure hearings can go ahead.

Announcing the strike, the Criminal Bar Association said of the 2,055 of its members who had voted, 80% had backed court walkouts from Monday 27 June. In practice, that means that defence barristers will refuse to work - including taking on new cases - meaning judges will be forced to delay hearings and put back trials. Under the plan, the number of days that defence barristers will refuse to work will increase week-on-week until a pause at the end of July - and then a resumption of the action on the same pattern. In a joint statement, Jo Sidhu QC and Kirsty Brimelow QC, chair and vice chair respectively of the association, said the "extraordinary" result "reflects a recognition amongst criminal barristers at all levels that what is at stake is the survival of a profession of specialist criminal advocates and of the criminal justice system". "Without immediate action to halt the exodus of criminal barristers from our ranks, the record backlog that has crippled our courts will continue to inflict misery upon victims and defendants alike, and the public will be betrayed," they added.

Courts Minister James Cartlidge said the result was "disappointing" and the proposed action did not represent a majority of those who had voted. Under the association's ballot, more than 80% backed some form of strike action. The greatest level of support, 43%, was for strikes plus a refusal to take on new Legal Aid work. "The 15% pay increase we consulted on would mean a typical criminal barrister earning around £7,000 extra per year and only last week I confirmed we are moving as quickly as possible to introduce fee rises by the end of September," said the minister. "We encourage the Criminal Bar Association to work with us, rather than escalate to unnecessary strike action, as it will only serve to harm victims as they are forced to wait longer for justice."

**Sentencing for Serious Offences Has 'Lost Its Way'**

Samantha Dulieu, Justice Gap: An independent group of experts has called for a 'fundamental reassessment of the policy and practice of sentencing' in a wide-reaching examination of the treatment of victims and perpetrators of serious crimes. The Independent Commission into the Experience of Victims and Long-Term Prisoners chaired by Bishop James Jones, former head of the Hillsborough Independent Panel, published its findings this week, including that victims of crime feel 'overlooked, disregarded, neglected, marginalised and further traumatised' by the criminal justice system. The report, which also centres on the experiences of people imprisoned for the most serious crimes, says that sentencing for serious offences has 'lost its way', and is not working to rehabilitate prisoners or offer redress or resolution to victims.

The purpose of the commission has been to initiate a debate into sentencing, which has become gradually more punitive over the last two decades. As of June 2021 the number of people serving prison sentences of ten years or more had almost trebled in 20 years, and over the same period the number of people sentenced to 20 years or more had quadrupled. The average minimum term imposed for murder rose from 13 years in 2000 to 20 years in 2020, and while the average time spent in prison by someone sentenced to life in 1979 was nine years, by 2019 that figure had doubled. The Commission says this has happened 'without public knowledge or understanding' of this shift.

In order to counter this trend, the report calls for a review by the Law Commission into the sentencing framework for serious offences, a strengthened role for the Sentencing Council, a Citizen's Assembly on sentencing policy and a consideration of sentencing by the Justice and Home Affairs Select Committees. The Commission also makes several recommendations around the wider Criminal Justice System, including an expanded role for restorative justice, and an end to the injustice faced by prisoners serving indeterminate sentences of imprisonment for public protection (IPP).

Speaking on the Today programme on Radio 4, the Chair of the Commission Reverend James Jones said: 'Understandably when there is a terrible crime, the natural reaction of the public is to want the person to be found, to be punished, and for society to be protected, but the purposes of sentencing are more than just punishment and protection, they're about reducing crime, rehabilitation and reform. The truth is that unless we do pay more attention to the reform and rehabilitation we don't make society safer, because if a person comes out of prison as dangerous as when they went in, then society is less protected.'

When asked about recent YouGov polling that showed two thirds of Britons don't think current sentencing is harsh enough, Reverend Jones responded that we need a new national debate on sentencing 'where we don't just give our view in the aftermath of a serious crimes but we stand back and say what's going to be best for the victim, what's going to be best for the offender, and what's going to be best for society.'

**Blunderbuss' Public Order Proposals 'Unacceptable Threat' To the Right To Protest**

Jon Robins, Justice Gap:MPs and peers damned the government's draft Public Order Bill as posing 'an unacceptable threat to the fundamental right to engage in peaceful protest'. The joint committee on human rights argues that the proposals go beyond the 'stated intention behind the Bill is to strengthen police powers to tackle dangerous and highly disruptive protest tactics'. The Bill proposes new offences including 'locking on and being equipped to lock on' (i.e., attaching oneself to something to prevent removal), obstructing major transport works such as airports and motorways; and interfering with key national infrastructure. 'Each of these offences has a very wide scope, and risks criminalising individuals legitimately exercising their Article 10 and 11 rights,' the report says. 'They also unnecessarily place the burden of proving that actions were reasonable on to the defendant, which appears inconsistent with the presumption of innocence and the right to a fair trial guaranteed by Article 6 ECHR. These offences all need amendment to ensure they are not incompatible with Convention rights.'

'The right to peaceful protest is a cornerstone of democracy, which should be championed and protected rather than stifled,' the group says. 'The right to peaceful protest is a cornerstone of a healthy democracy, it should be protected,' commented acting chair of the joint

committee on human rights Joanna Cherry QC. 'The law must strike a careful balance between the right to protest and the prevention of disruption to the wider population. This requires a nuanced approach, yet in reaction to what it perceives as overly disruptive protests the Government has decided to take a blunderbuss to the problem.' Cherry continued: 'Everyone has the right to protest within reasonable limits. The police already have a range of powers to take action against protests that are violent or excessively disruptive. The draft Bill would tip the balance, putting peaceful protestors at risk of being criminalised, leaving people fearful of severe consequences for minor infractions. It lowers the bar for prosecution while significantly ramping up the penalties, putting protected rights at risk.'

The report points out the right is protected in law by the Human Rights Act 1998 and guaranteed under the European Convention on Human Rights. While restrictions on protest may be justified in the interests of preventing disorder and protecting the rights of others, a degree of tolerance towards disruption is necessary. According to the report, the Bill would 'significantly increase' stop and search powers for articles connected with protest related offences with the risk of such powers 'being misused, including in a discriminatory manner that infringes the European Convention and having a chilling effect on the right to protest'. Such a risk is 'substantially higher' in relation to powers to stop and search without the need for reasonable suspicion.

It also highlights the proposed Serious Disruption Prevention Orders, which place conditions on individuals to prevent them engaging in disruptive protest, could impose 'long-lasting, wide-ranging and onerous restrictions and requirements' on individuals 'significantly interfering with their right to respect for their private lives and their right to engage in peaceful protest'. It continues: 'These measures could be imposed on the basis of relatively minor offending connected with protest – or even without the individual having committed any offence at all. They represent a disproportionate response to the problem of disruptive protest and should be removed from the Bill.'

**Life Experiences and Mental Health of People Who Have Been Wrongfully Convicted**

Dr Rebecca K. Helm (Senior Lecturer in Law and Clinic Solicitor at the University of Exeter and Director of the Exeter Evidence-Based Justice Lab) has asked if we can distribute the following to people who have been wrongfully convicted to discover more about their life experiences and mental health issues following their wrongful conviction.

Rebecca says: Greetings, we are researchers at the University of Exeter conducting an online survey of the life experiences and mental health of people who have been wrongfully convicted. We hope that the results of this survey can be used to better support those who have been wrongly convicted. We're hoping that as many people as possible who have been wrongly convicted will complete the survey. We are particularly interested in the experiences of people who have been acquitted by the courts but are also interested in hearing from people who have not yet been acquitted. Everyone who completes the final 20-minute online survey will receive a £25 Amazon gift card via e-mail. We are currently asking anyone who might be interested in taking part to confirm their eligibility and provide their email address at the following link: https://exeterssis.eu.qualtrics.com/jfe/form/SV_3l9svVvC2tdbF0G

If you are interested in taking part, please click on the link for more information and to tell us you're interested. All information that you provide will remain strictly anonymous and confidential. If you know of other exonerees who may be interested, please feel free to share this e-mail with them. If you have any questions, please e-mail us at b.growns@exeter.ac.uk. Thank you in advance for your consideration, and we wish you all the best. Rebecca and Beth.



**Number of Serving Prioners With Health Issues by Gender and Kind**

Philip Davies: To ask the Secretary of State for Justice, how many and what proportion of (a) male and (b) female prisoners have (i) mental health issues; (ii) a physical health condition; (iii) a learning disability; (iv) a physical disability; (v) unemployment histories; (vi) housing issues or are homeless; (vii) family or relationship difficulties; (viii) social isolation; (ix) financial issues; (x) substance misuse issues; (xi) experienced physical, psychological or social trauma and (xii) two or more of these needs or issues.

| | Female | Male |
|---|---|---|
| Mental Health Issues | 628 | 7,555 |
| Learning Disabilities | 35 | 889 |
| Physical Disabilities | 163 | 3,391 |
| Unemployment Histories | 783 | 15,590 |
| Housing issues or homeless | 1,521 | 34,705 |
| Relationship Difficulties | 1,841 | 40,614 |
| Social Isolation | 298 | 5,058 |
| Substance Misuse | 1,341 | 31,267 |
| Financial Issues | 1,299 | 35,680 |
| Physical or Psychological Trauma | 1,694 | 21,883 |
| Two or more issues | 1,973 | 47,050 |

Above data as at 30th June 2021 - Source Written Answers 16/06/2022

**Revealed: Policing Bill Was Dreamed up by Secretive Oil-Funded Think Tank**

Adam Bychawski, Open Democracy: The UK government's legislative crackdown on protest in England and Wales was dreamed up by a secretive right-wing think tank that had been funded by US oil giant ExxonMobil, openDemocracy can reveal. Policy Exchange explicitly said the government should pass legislation to target Extinction Rebellion (XR) in a 2019 report that got the attention of Tory MPs and peers. The report called for protest laws to be "urgently reformed in order to strengthen the ability of police to place restrictions on planned protest and deal more effectively with mass law-breaking tactics". Sections of Priti Patel's controversial policing bill, which became the Police, Crime, Sentencing and Courts Act, appear directly inspired by the Policy Exchange report.

Patel said openly that the legislation was intended to stop tactics used by Extinction Rebellion. The home secretary first pledged to introduce the bill just over a year after the Policy Exchange report was published. Policy Exchange does not disclose its donors, but openDemocracy has uncovered that ExxonMobil Corporation donated $30,000 to its American fundraising arm in 2017. "It appears that the Policing Bill is stained with the grubby, oil-soaked hands of the fossil fuel lobby," Green Party MP Caroline Lucas told openDemocracy. "And no wonder – this cracks down on the fundamental rights of protestors to challenge the very climate-wrecking policies espoused by this downright dangerous industry."

The bill gave police new powers to place restrictions on the noise and duration of static protests, or shut them down if they were deemed a "serious disruption", and introduced a new public nuisance offence that carries a maximum ten-year jail sentence for obstructing the public. Patel also tried to expand stop and search powers so police could search protesters without grounds for suspecting lawbreaking – a provision that was eventually defeated in the House of Lords. The bill spurred months of protests around the country and was fiercely criticised by civil rights groups.

Policy Exchange: Funded by oil money has been one of the most influential conservative think tanks in Britain. ExxonMobil said in its annual giving report that it supported the American Friends of Policy Exchange, along with several other organisations, because they "assess public policy alternatives on issues of importance to the petroleum and petrochemical industries". The donation was given for "energy and environment", the name of a policy area listed on the think tank's website. The American Friends of Policy Exchange, a US non-profit set up in 2010 to "to support and advance the program of Policy Exchange UK", has received almost $5m in anonymous donations since 2012, according to publicly available financial filings. Of this, $3.5m has been forwarded to Policy Exchange's UK charity. Exxon is the largest oil company in the US and has been accused of purposely misleading the public about the threat of climate change. It spent more $37m funding groups promoting climate denial in the US between 1997 and 2008. Policy Exchange has also received donations from several leading UK oil and energy companies, including the industry lobby group Energy UK, to organise events at the Conservative Party's annual conferences.

Policy Exchange's 2019 report claimed XR wanted to overturn democracy, and speculated that its members could "break with organisational discipline and become violent". The report, titled Extremism Rebellion, was authored by Tim Wilson, the former head of Policy Exchange's security and extremism unit, and Richard Walton, a former head of the Metropolitan Police's counter-terror branch. Walton retired in 2016, six days after the police watchdog found he had a misconduct case to answer over his alleged involvement in police spying on the family of the murdered schoolboy Stephen Lawrence in the late 1990s. Months after the report was published, counter-terror cops placed XR on a list of extremist ideologies. Priti Patel defended the decision to designate XR as an extremist group even after Counter Terrorism Policing South East said XR's presence on the list was an error and the document in question would be recalled.

The Policy Exchange report that appears to have contained the seeds of the policing bill was later cited in the House of Commons by Tory MP Steve Baker, who urged ministers to read it, and in the Lords by Tory peer Matt Ridley. Baker is a trustee of the Global Warming Policy Foundation, a climate sceptic group that has received money from groups with oil interests in the US. Ridley is a member of the group's academic advisory council. Months after the Policy Exchange report was published, counter-terror cops placed XR on a list of extremist ideologies. Tory MPs and ministers have continued to repeat several of the claims made by Policy Exchange, despite the government's Commission for Countering Extremism subsequently insisting that XR should not be considered an extremist group. In September 2020, Patel referred to climate protesters as "criminals" in a speech to the Police Superintendents' Association conference, and claimed that XR was an "attack on capitalism" in the Daily Mail. Paul Stott, the head of security and extremism at Policy Exchange, wrote in a blog that the policing bill was evidence that the recommendations set out in its previous report on XR were being followed by the government.

Alanna Byrne of Extinction Rebellion UK told openDemocracy: "These revelations show us clear as day that not only is the government being directed by think tanks working for fossil fuel clients, meaning our laws are being written for the benefit of foreign oil and gas corporations, but that protests of the last three years are having an impact." Civil rights groups have condemned the Police, Crime, Sentencing and Courts Act, with Amnesty International UK saying it is comparable to "repressive policies" used in Russia, Hong Kong and Belarus.

Close ties to current government: Policy Exchange was founded in 2002 by a group that included Francis Maude, who served a minister in both Margaret Thatcher and David Cameron's government, and Michael Gove, who was then a journalist. The think tank has close ties to the government: six of its former staff members are now serving MPs, including the chancellor of the exchequer Rishi Sunak, and a further five are special advisers. Since 2012, ministers have disclosed 43 meetings with Policy Exchange on issues including the environment, defence and Northern Ireland. Several of the think tanks' policies have been adopted by the government. Most recently, Gove announced plans to allow residents to vote on whether to accept planning proposals on their street, an idea first proposed in a 2021 Policy Exchange paper.

The government has explicitly cited a Policy Exchange paper, which academics said was "McCarthyite" and "littered with statistical errors", as justification for its Higher Education Free Speech bill, announced in the Queen's Speech last month. Ministers claim that the legislation, which would make the universities regulator responsible for policing academic freedom, is needed because free speech is under threat on campuses. But the University and College Union dismissed the claims as a "think-tank-inspired bogeyman" and accused the government of trying to "police what can and cannot be taught at university". In 2020, Dean Godson, the director of Policy Exchange, was made a Conservative life peer by the government. The Home Office did not deny that the Policy Exchange report had been considered while drafting the policing bill and subsequent Public Order Bill. A spokesperson said: "The government regularly consults a wide variety of opinions to develop legislation – this is no different." Policy Exchange declined to comment.

**ADHD 'Critically Under Diagnosed' in Prisons**

*Jon Robins, Justice Gap:* One in four prisoners in Britain are reckoned to have attention deficit hyperactivity disorder (ADHD), according to a report that describes the condition as 'critically underdiagnosed'. The report published by the ADHD Foundation flags up academic literature point to 'a five to tenfold' increase in prevalence in jails compared to the general population rate. According to the new study if ADHD is recognised in prisons and 'managed appropriately', there can be a reduction in criminality of 32% for men and 41% for women

The report which draws on a roundtable event with experts enclosing psychiatrists, psychologists and GPs calls for consistent screening across the criminal justice system to identify people with ADHD. The current approach is 'inconsistent and of an insufficient quality to accurately recognise people who might have ADHD'. 'Screening should be introduced across all different parts of the criminal justice system, not just within the initial few days of entering prison,' it says. ' There is currently no standard across the adult prison system. According to the study, 'around 96%' of prisoners with ADHD have a comorbidity, including substance use, conduct and personality disorders. Research indicates an increased link to aggressive incidents compared to other prisoners without ADHD, of up to eight times.

The report highlights the 2021 Neurodiversity in the criminal justice system: A review by the Criminal Justice joint inspectorate which called for the introduction of a neurodiversity strategy to address unmet need across the justice system. The Prisons Strategy White Paper, published in December last year, aims to increase understanding of the specific needs of people who are neurodiverse, including ADHD, and what is required to enable a successful transition back into society such as continuity of care post release and in prison. The new report highlights 'gaps' such as improved screening, an appropriate care pathway 'integrated into existing mental health and neurodiverse pathways as there is currently no consistent approach to diagnosing, managing and treating ADHD across the CJS'. 'Care needs to be continued upon release from prison to reduce reoffending and to ensure optimal outcomes for the patient, with an integrated health and social care system providing an interface between the CJS and wider community services,' the report continues.

The study points out there can be long waiting lists for treatment in the community 'sometimes up to five years'. 'This can mean that people with ADHD can face a cliff edge when they leave prison, with a postcode lottery in accessing appropriate care and continuing treatment,' the report says. 'A particular challenge when people leave prison is that they are often on medication, and only leave prison with a week's supply.'

**Foreign Convictions In Deportation Appeals**

When the Home Office is deporting someone for being convicted of a criminal offence, does it matter what country that conviction is from? In practice, probably not. This seems to be the effect of the Court of Appeal's decision in Gosturani v Secretary of State for the Home Department [2022] EWCA Civ 779. This is because the public interest in deportation remains the same, regardless of whether the conviction is from the UK or abroad.

*When is a Foreign Criminal Not a Foreign Criminal?* The definitions of "foreign criminal" in section 32 of the UK Borders Act 2007 and Part 5A of the Nationality, Immigration and Asylum Act 2002 both refer to conviction in the UK. This means that someone who has been convicted of a criminal offence abroad is not a "foreign criminal" as that term is understood in deportation law. This was confirmed by the Upper Tribunal in SC (paras A398 – 339D: 'foreign criminal': procedure) Albania [2020] UKUT 187 (IAC) (see Free Movement write-up here). This was taken as a given by the Court of Appeal in Gosturani. What was less clear was the effect this had on the proportionality balancing exercise.

*Is the Public Interest in Deportation the Same*? Mr Gosturani argued that convictions from the UK and abroad should not be treated the same. UK convictions are included in the statutory regime which, it was argued, suggests that Parliament intended for them to be given greater weight than convictions from abroad. Lord Justice Lewis did not see such a distinction: The fact that such a crime was committed outside the territory of the deporting state does not, of itself, indicate that a different, and lesser, weight is to be given to the legitimate public interest recognised in Article 8(2) of preventing crime and disorder. [Paragraph 32]

The enactment of Part 5A does not change this. In several previous decisions, judges have observed that Part 5A is intended to cater for all cases in which Article 8 of the European Convention on Human Rights is in play. But all those decisions concerned people who met the definition of "foreign criminal": There is nothing to suggest that those observations were intended to indicate that Part 5A was intended to ascribe a particular (and lesser) weight to the public interest in deporting persons liable to deportation but who were not foreign criminals or how that public interest was to be balanced against consideration of family and private life. For those reasons, I do not consider that Part 5A, or more specifically section 117C, impliedly limits or prescribes the weight to be attached to the public interest in deporting a person who has been convicted of a criminal offence abroad. [Paragraph 35]

This conclusion was fortified, as in the SC (Albania) case, by the entry clearance rules: The Immigration Rules contemplate that a person convicted of a serious offence ought not to be granted entry clearance to come to the United Kingdom unless refusal would have unjustifiably harsh consequences for the applicant or members of his family. There is a need to bear in mind that, where the conviction occurred abroad, the seriousness of an offence cannot necessarily be measured by the sentence imposed by the foreign courts… Subject to that caveat, the fact that a person has been convicted of a serious offence abroad is seen by the executive as relevant to whether a person should be allowed to enter the United Kingdom. By analogy, it is legitimate to have regard to the fact that a person has been convicted of a serious criminal offence abroad when deciding whether it is in the public interest to deport that individual. [Paragraph 36]. The public interest in deporting someone convicted of a criminal offence abroad is therefore the same as deporting someone convicted in the UK. The question remains, how to balance this with the other factors in the case.



*"Unvarnished" Article 8 Balancing Exercise:* As someone convicted abroad is not a "foreign criminal", they are therefore free from the strictures of section 117C when a judge is deciding whether it would be proportionate to deport them: Neither the relevant statutory provisions nor the Immigration Rules provide a structure for that assessment in the case of a person who is liable to deportation because he has been convicted of an offence abroad. Consequently, a court or tribunal would need to adopt what was described in argument as an "unvarnished" approach to the assessment. [Paragraph 37]. An "unvarnished" approach is essentially an old-style proportionality balancing exercise, as would have been carried out before section 117C was enacted (note that section 117B of the 2002 Act continues to apply, as it is not only applicable to foreign criminals).

Lord Justice Lewis provides some guidance on carrying out this exercise: A useful starting point is the factors identified in the case law of the European Court such as Unane at paragraphs 72 to 74 and Boultif at paragraph 48. Factors such as the seriousness of the offence or the time since the offence was committed and the person's conduct since the commission of the offence, or, in the case of young offenders, the offender's age, go to the weight of the public interest in deportation. Some factors relate to the effect of deportation on the person to be deported such as the length of time he has spent in the country, the seriousness of any difficulties he would encounter in the country to which he is to be deported, and the strength of the social, cultural and family ties with the host country and the country to which he is to be deported. Other factors relate to the effect of deportation on the person and his family including, as a primary consideration, the best interests of any children. The list of factors is not exhaustive. [Paragraph 38]. Once they have identified factors in favour of deportation, and those against, the decision-maker should adopt the "balance sheet" approach advocated by Lord Thomas in Hesham Ali [2016] UKSC 60 at paragraph 83. In Mr Gosturani's case, the Upper Tribunal had correctly followed this balance sheet approach when dismissing his appeal. The Court of Appeal was therefore unwilling to interfere with the decision and dismissed the appeal.

**Music Artist Secures Acquittal of After 3-Month Murder Trial**

Represented by Rabah Kherbane leading Chloe Carvell (15NBS), H was acquitted after a 3-month trial. Rabah represented the music artist and fashionista charged with perverting the course of justice in a murder investigation. The prosecution alleged H had assisted in the disposal and destruction of a vehicle used in a double shooting in Northwest London. The Crown's case asserted a carefully planned and sophisticated double shooting, targeting specific rival gang members as revenge for a previous violent attack on a high-profile music artist. One of the shootings at point-blank range to the victim's face causing his death was caught on CCTV from a nearby store. The first two defendants were charged with murder, and the Crown's case against all defendants relied on a vast volume of complex material, including CCTV footage, substantial phone material, cell site, alleged gang 'membership', social media material, and extensive police intelligence. Defendants including H were music artists signed to award-winning music outfits. Rabah instructed gangs and music (hip-hop/rap) experts, and a private investigator to build the Defence case. Rabah built a case discrediting the prosecution assertion of gang membership, and guided his client through five-days of giving evidence from the witness box in an Old Bailey courtroom. Rabah also challenged alleged 'gang' materials during legal argument.

**Thousands Locked Out of Jobs Because of Mistakes in Youth**

*Emily Dugan,Gardian:* Thousands of people are also still having to disclose decades-old adult cautions and historical, irrelevant offences in routine criminal records checks every year. Cautions were released in more than 23,000 DBS certificates last year, more than 8,000 of which were a decade or more old. Politicians and justice campaigners are calling for a reform to the criminal records check system. They say the widespread release of minor historical offences does not protect the public and leaves people with no opportunity for a clean slate.

More than a third of the childhood offences set out in Disclosure and Barring Service (DBS) certificates in 2021 happened more than 40 years ago. The oldest was a 74-year-old conviction for simple larceny (petty theft without violence). The government data was released under freedom of information to FairChecks, a campaign backed by justice charities pressing for reform of the system. It is calling for an end to cautions being automatically revealed in checks; to wipe the slate clean for childhood offences and to stop forcing people to reveal short prison sentences for Penelope Gibbs of FairChecks, said: "For too long reform of criminal records checks has languished in the 'too difficult' box. Of course we need some checks. But our disproportionate system ruins lives by forcing people to disclose relatively minor crimes to employers decades on. Rehabilitation involves allowing people to move on in their lives. The government could facilitate that by making criminal checks fairer."

A supreme court ruling meant the rules were changed in November 2020 so that cautions for under-18s are no longer automatically released – though adult ones still are. But youth convictions, including those so minor they result in a community or suspended sentence, are still automatically released in DBS certificates. These should stop appearing in the most basic checks after five-and-a-half years, but continue to be released on enhanced certificates.

Shami Chakrabarti, the former shadow attorney general for England and Wales, said disclosing childhood offences and historical cautions damaged people's life chances and was a matter of cross-party concern in the Lords. "There's been a huge move towards encouraging people to accept police cautions in recent decades without proper legal advice. And these cautions are then attracting greater legal and practical consequences for their lives in the years to come. It's not helping us to rehabilitate people. It's all part of turning more and more people from citizens into suspects."

The criminal records vetting system was toughened up after the 2002 Soham murders. Ian Huntley, who murdered the schoolgirls Holly Wells and Jessica Chapman, had been reported to police on six occasions over sexual assaults on underage girls but was still cleared to be a school caretaker. The reforms were designed to make it easier to identify potential predators and block them from working or volunteering with vulnerable people. But there are concerns that the wide release of historical irrelevant convictions, particularly in enhanced checks, is making it impossible for people to rebuild their lives. Those working with young or vulnerable people are subject to enhanced checks, which means the police can disclose even minor decades-old interactions that resulted in no charge.

Wera Hobhouse MP, the Liberal Democrats' justice spokesperson, said: "The government must commit to reforming criminal record disclosure rules so that people do not have to declare irrelevant old and minor convictions that could impact their future. "These figures prove that the government's 'look tough' approach on crime is simply not working. If the Conservatives were serious about reducing crime rates they should put dignity and respect at the heart of our criminal justice system." When crimes become "spent" they no longer have to be automatically disclosed but many employers, such as schools, care homes and hospitals, require more advanced background checks. Any offence resulting in a prison sentence, even if it is suspended or committed as a child, will be disclosed for life in all but the most basic checks. This means thousands of people have to declare very short sentences, for example, for petty theft or drug possession, for life. In 2020,6,500 people were sentenced to less than a month in prison. More than 31,000 certificates detailed prison sentences last year, of which more than a quarter were suspended.

The Ministry of Justice said: "Protecting the public is our number one priority and those sentenced to the most serious crimes will have convictions on their records for life. "At the same time, reformed low-level offenders shouldn't be held back by their criminal records, which is why we have already reduced the time it takes for their convictions to be spent."

**5,800 Victims of Serious Violent Crime Waiting For Justice For Over a Year**

*Elena Colato, Justice Gap:* The Crown Courts are currently experiencing the worst backlogs ever seen with more than 5,800 victims of serious violent and sexual crime stuck in the system awaiting justice for over a year. According to the latest figures as reported in the Observer, the overall number of cases awaiting trial in the Crown Courts has increased nearly 50%, from 39,000 pre-pandemic to nearly 60,000. Before the pandemic the backlog began increasing, largely owing to cuts to the legal aid budget, which has fallen 43% in real terms since 2004-2005.

It was reported that there are now 5,849 cases of violent and sexual crime waiting over a year for trial, contrasted to 755 cases previously. More than a thousand of these victims have been waiting over two years. Continuous cuts to legal aid have accelerated the exodus of lawyers leaving publicly funded criminal work, with the Secret Barrister describing the current reality where 'juniour colleagues are struggling to make minimum wage – an average income of £12,200 a year – and the toll of working 80 hour weeks'.

Earlier this year criminal barristers across England and Wales voted in favour of strike action, together enforcing a policy of 'no returns' – see here. Jo Siddhu QC, chair of the Criminal Bar Association (CBA), told the Guardian: 'The evidence from the courts does not support the fantasy being fed to the public by ministers that delays are beginning to reduce. Each week, dozens of trials, including those for rape and other serious sexual offences, are being postponed at the last moment.'

**Home Office's NRPF Policy Found Unlawful For The Third Time In as Many Years**

*Deoghton Pierce Glynn:* On 20 June 2022, the High Court upheld an application for judicial review brought by a mother and her two British children against the Home Office's 'No Recourse To Public Funds' NRPF policy on the basis that it still fails to comply with the legal obligation to safeguard and promote the welfare of children. The 'No Recourse To Public Funds' policy was introduced in 2012 as part of the 'hostile environment', and has led to thousands of children growing up in abject poverty, because their non-British parents are denied the same state support that other low-income families can claim.

The policy has now been found to be unlawful five times: In 2014, it was declared unlawful because it was not authorised by the Immigration Rules and did not comply with the Public Sector Equality Duty. In 2018, shortly before trial in another case, the Home Office conceded as part of the settlement that a Public Sector Equality Duty compliant review of the policy needed to be undertaken. In May 2020, the Divisional Court declared the policy unlawful because, in breach of Article 3 ECHR and the common law of humanity, it required people

to become destitute before they could apply to have recourse to public funds. In April 2021, the Divisional Court declared the Immigration Rule (GEN 1.11A) and associated guidance unlawful because it failed to comply with the duty under section 55 Borders, Citizenship & Immigration Act 2009 to safeguard and promote the welfare of children. On each occasion the Home Office changed its policy in response to the judgments, but the substance of it remained in place. It is still unlawful. The High Court has today found that the Home Office's guidance still fails to comply with the section 55 duty, as it still focuses on applicants proving their destitution rather than looking at the impact that lack of recourse has on their children in and of itself.

**Clarity Needed on Changes to Eligibility for Open Conditions**

Peter Dawson, Prison Reform Trust Prisoners and families are confused and deeply apprehensive about the implications of new "much stricter criteria", announced by the Ministry of Justice earlier this month, for people seeking to progress their sentence by transferring to open prison. Prison Reform Trust Director Peter Dawson has written to the prisons minister Victoria Atkins seeking further clarity, in the apparent absence of any policy or operating documents to accompany these significant changes. The changes have the potential to dramatically lengthen time that people who have served the requirements of punishment still remain in custody. Peter's full post below. On 5 June, by way of press release, the government announced a profound change in the way indeterminate sentence prisoners will be given the opportunity to show that they can safely be released. Ministers have always been able to veto Parole Board recommendations that a prisoner should be moved to an open prison as part of their progression towards eventual release on licence. But the criteria by which ministers will now exercise that veto — and which will therefore govern the Parole Board's recommendations — have been dramatically changed. The clear intention and expectation is that significantly fewer indeterminate sentence prisoners will be allowed to go to open prisons, making it much harder to show that they can safely be released.

This reactionary and irrational change has been introduced without even a statement to parliament, much less any debate on its merits. It is clearly designed to achieve in practice what the government has said it eventually wants to do by legislation, which is to make release harder and to give ministers a personal veto in cases which they consider notorious. There is no detailed policy or operational guidance to go with the broad announcement. So everyone in the system from prisoners through to parole board members, officials, probation and prison staff, is having to do their best to interpret what the new tests actually mean in practice. I have therefore written to the prisons minister, Victoria Atkins, asking a series of practical questions about the evidence to support this change, and how it will actually operate. The fact that someone has to write asking those questions shows what a half-baked policy this is, but also the lack of concern for the people who will be most affected by it. We know that there are likely to be legal challenges to the policy, and we can only hope that in due course the courts may agree that it is both procedurally unfair and actually more likely to harm public protection than to promote it. But in the meantime, we will do all that we can to clarify its immediate implications and reduce the chaos which the manner of its implementation has created.

**Severity of Criminal Penalty for complicity in public Defence Of Terrorism Violation of Aricle 10**

In Chamber judgment 1 in the case of Rouillan v. France (application no. 28000/19) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 10 (freedom of expression) of the European Convention on Human Rights on account of the severity of the criminal penalty imposed. The case concerned the sentencing of Jean-Marc Rouillan, formerly a member of the terrorist group Action directe, to a term of 18 months' imprisonment including a suspended portion of 10 months with probation, upon his conviction as an accessory to the offence of publicly defending acts of terrorism for remarks he had made on a radio show in 2016 and which had subsequently been published on a media website. The Court took the view that the applicant's conviction and sentencing as an accessory to the offence of defending acts of terrorism had amounted to an interference with his right to freedom of expression. It recognised that the interference had been prescribed by law and had pursued the legitimate aim of preventing disorder and crime.

Turning to whether the interference was necessary in a democratic society within the meaning of Article 10 § 2, the Court accepted, first, that the remarks in issue fell to be regarded as an indirect incitement to terrorist violence and saw no reasonable basis on which to depart from the meaning and scope attached to them by a decision of the Criminal Court, whose duly stated reasons had been adopted by the Court of Appeal and the Court of Cassation. The Court further stated that it saw no reasonable ground, in this case, on which to depart from the domestic courts' assessment regarding the principle behind the penalty. It held in this regard that their reasoning as to why the penalty imposed on the applicant had been warranted – based on the need to combat defence of terrorism and on consideration of the offender's personal characteristics – appeared both "relevant" and "sufficient" to justify the interference at issue, which fell to be regarded as responding, in principle, to a pressing social need.

However, after reiterating that the authorities were required, in matters of freedom of expression, to exercise restraint in the use of criminal proceedings and especially in the imposition of a sentence of imprisonment, the Court held that, in the particular circumstances of the case, the reasons relied on by the domestic courts in the balancing exercise which had been theirs to perform were not sufficient to enable it to regard the 18-month prison sentence passed on the applicant – the suspension of 10 months notwithstanding – as proportionate to the legitimate aim pursued. The Court thus concluded that there had been a violation of Article 10 of the Convention on account of the severity of the criminal penalty imposed on the applicant.

**CCRC: Council Tax Benefit Fraud Conviction Referred to Crown Court**

In June 2018 Asma Bibi was found guilty at Warrington Magistrates Court of falsely obtaining council tax benefit. She was given a 12-month conditional discharge and ordered to pay £1000 costs. Following an unsuccessful appeal, the Crown Court resentenced her to a community order with a 28-day curfew and ordered her to pay £2,500 in costs. After careful consideration, the CCRC has decided to refer Ms. Bibi's conviction to Chester Crown Court, based on an argument that her original prosecution by Manchester City Council was 'out of time'. The Council Tax Regulations state that proceedings must be started in the magistrates' court either within 12 months of the completion of the alleged offence or within 3 months of evidence, sufficient in the opinion of the prosecutor (in this case Manchester City Council) to justify a prosecution for the offence, coming to the attention of the prosecutor. According to the charge, the offence concluded on 6 September 2016, but the information was not laid until 15 November 2017, over 14 months later. In the CCRC's view there is a real possibility the Crown Court will find that the date on which there was sufficient knowledge by the prosecutor was either 17 March 2017 (when legal proceedings were recommended). As both dates are over three months before the information was laid, the CCRC has decided that there is a real possibility that Ms. Bibi's conviction will be overturned on appeal.