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Price of Innocence: PPCS Close off Hope of Transfer to an Open Prison

Justice for Mark Alexander: For the past few years, the hope of spending the end of his 16-year sentence in an 'open' prison where he could spend more time with his family, travel to university during the week to conduct research for his PhD, and begin making plans for his future beyond prison, has kept Mark going through the hardship and extreme isolation of 23 hour-a-day lockdown during the pandemic. For the vast majority of long-term prisoners, time spent in an open prison is an essential pit stop along the road to release, enabling them to reacclimatise to life outside after lengths of imprisonment many of us would struggle to contemplate, let alone survive. On 19 July 2022, Mark and his family received the awful and shocking news that – under new rules announced by the government on 6 June 2022 – he was no longer considered eligible for a move to open conditions. Instead, he is expected to remain in a 'closed' prison until his tariff expires in 3 ½ years' time. The Public Protection Casework Section (PPCS), responsible for implementing the new rules, seem to be interpreting them in the narrowest and strictest form possible.

In their view, because Mark is maintaining his innocence, moving him to an open prison would "undermine public confidence in the criminal justice system". The decision letter from PPCS rather unhelpfully assures Mark that "denial is not a barrier to your progression" while, in the very next breath, denying him that very progression. The cruel irony is that if Mark was actually guilty, he would have spent less time in prison and already be in open conditions, if not free altogether. Anyone who pleads guilty receives up to a 5-year reduction in their sentence (16%). Mark also turned down a manslaughter plea-bargain before trial which would have seen him serve just 5 years of a 10-year sentence. Whichever way you look at it, Mark has already been 'punished' for maintaining his innocence, making this latest decision all the more appalling. You can download our quick fact sheet here. The decision comes in the same week that Mark's successful letter writing campaign prompted the Law Commission to launch a review to consider reforming the criminal appeals process – and just a few months after Mark championed media rights to access prisoners maintaining innocence in a Judicial Review challenge against the Ministry of Justice, currently awaiting appeal, leading some to question whether this latest decision by the MOJ is malicious.

Collateral Damage: Stuart Andrew MP, in his letter to the Prison Reform Trust of 16 July 2022 bemoaned: The recent abscond of several high-risk prisoners [which] gave cause for concern. The Deputy Prime Minister's view was that we must make these changes to ensure public protection. These prisoners present an unacceptable risk to public protection and have a detrimental impact on public confidence in the criminal justice system. This is not something we are prepared to allow to continue, hence the change to the test".

The response from PPCS however, overshoots its target by miles. Instead of focusing on high-risk prisoners, prolific offenders, and absconders – the policy seems to be being applied much more liberally and widely to include even model prisoners, like Mark, who fall far outside of these targeted categories. This could not have been the intention of Dominic Raab and his colleagues, and needs to be brought to their attention as quickly as possible so that they can modify the policy's application before widespread havoc occurs.

Secretary of State Refers Court of Appeal Safety Test to Law Commission

The Deputy Prime Minister, Secretary of State for Justice Dominic Raab has confirmed to 'Justice for Mark Alexander' that he has asked the Law Commission "to consider including a review" of the threshold test for overturning convictions in the Criminal Appeals Court, in line with recommendations made by the Westminister Commission on Miscarriages of Justice in 2021, the Justice Committee in 2015, and indeed the Royal Commission on Criminal Justice as far back as 1993. The proposed reform to s2(1) Criminal Appeal Act 1968 would "allow and encourage the Court of Appeal to quash a conviction where it has a serious doubt about the verdict, even without fresh evidence or fresh legal argument", essentially placing Lord Widgery's original, broad interpretation of the 'safety test', set out in the case of R v Cooper [1969] 1 QB 267, on a statutory footing. The safety test requires a conviction to be deemed "unsafe", but the way in which 'safety' is defined determines how easy it is to overturn wrongful convictions. The proposed reform would address the problem of the disappearance of the 'lurking doubt' doctrine from everyday use, and the corresponding narrowing of the safety test which has become increasingly difficult for appellants to meet, which Mark has written about previously. As the Justice Committee put it in 2015: The central complaint about the Court of Appeal is that it is overly reluctant to interfere with a properly delivered jury verdict, requiring appellants to show some material irregularity or fresh evidence, which creates a higher barrier for the CCRC to meet if a conviction is to have a 'real possibility' of being quashed…" (paragraph 21)

We are concerned that there may be some miscarriages of justice which are going uncorrected… as a result of the Court of Appeal's approach. While it is important that the jury system is not undermined, properly-directed juries which have seen all of the evidence may occasionally make incorrect decisions. The Court's jurisprudence in this area, including on 'lurking doubt', is difficult to interpret and it is concerning that there is no clear or formal mechanism to consider quashing convictions arising from decisions which have a strong appearance of being incorrect. Any change in this area would require a change to the Court of Appeals' approach… We are aware that this would constitute a significant change to the system of criminal appeals in this country and that it would qualify to a limited extent the longstanding constitutional doctrine of the primacy of the jury. Neither of these things should be allowed to stand in the way of ensuring that innocent people are not falsely imprisoned". (paragraph 27)

Problems With Video Link Hearings

Inside Time: Prisoners appearing in court via video link from their prison should be given 15 minutes before and after the hearing to talk privately with their lawyer, a report has recommended. HM Courts and Tribunal Service commissioned the charity Revolving Doors to investigate users' experiences of video link hearings, and how they compare with defendants appearing in court in person. Researchers interviewed seven prisoners who had chosen to take part in remand hearings via video link, to avoid the disruption of a day in court. Several complained that they did not have enough time to talk to their lawyers. Other complaints included lack of confidentiality, because a prison officer was present in the room, and technical problems with the video link, which affected their ability to follow what was going on. Authors of the report, which was published last month, made two priority recommendations: "Provide the defendant with the opportunity to communicate in private with their representative for at least 15 minutes before and after their prison to court video link" Provide training and guidance to judges and court staff around the steps they can take to communicate with the defendant more effectively during a PCVL". Although it was the Courts Service which commissioned the research, decisions on whether to implement the recommendations are a matter for HM Prison and Probation Service.

Halt This Tide Of Joint Enterprise Convictions

Janet Cunliffe, Guardian: How many more boys' lives will be destroyed because they were at the wrong place at the wrong time? In 2008, my son Jordan was convicted of a joint enterprise murder, along with two other teenagers. He was 15 at the time of the incident, and blind, with a visual acuity of less than 10%. The victim died due to a single injury to the neck, a kick delivered by a 16-year-old, who confessed in the police station. Another boy, who was 18, pleaded guilty to manslaughter, accepting that if being part of the 30-second altercation with the victim contributed to his death, he would take responsibility. Jordan had an eye condition called keratoconus that was so severe he was scheduled for transplant surgery in both eyes. Given that my son could not have seen the altercation, or run away from it, and did not come into contact with the victim, I assumed it was a no-brainer that he would be let off.

The prosecutor, Michael Chambers QC, thought differently. He wanted all five of the boys who had been charged to be prosecuted under joint enterprise, a 300-year-old common law doctrine, which was controversially brought back into use under the guise of prosecuting gang violence. Instead, it has led to innocent people – many young, working-class and black and minority ethnic boys – facing mandatory life sentences for crimes committed by others, as was the case for Jordan and so many others like him.

On Friday, I heard a judge in another case at Newcastle crown court hand out life sentences to 10 children, totalling 124 years. There had been an 80-second altercation at Houghton Feast funfair in October 2021. An 18-year-old had died, tragically, from a single knife wound to the back. The wound was inflicted by a 15-year-old who was new to the area; the other nine defendants either didn't know him or had only recently met him. There is no escaping who used the deadly weapon; he pleaded guilty to manslaughter. However, the prosecutor, Mark McKone QC, was adamant that all defendants were guilty of murder under the concept of joint enterprise; their presence and actions, even if relatively minor, "encouraged" the others in the group. I struggled to understand. Is there now a new definition of the law, whereby murder no longer requires intention or premeditation? That mere presence at the scene is enough to convict? The judge clearly thought so, even when he dished out a life sentence with a tariff of 11 years to one of the children though, he acknowledged, there was "very little evidence of how he came to be at the scene" and he did not murder anyone. There are plenty of other charges that would have been more appropriate for the other nine defendants.

In June, I sat through part of a trial in Manchester, where 10 black youngsters ended up in prison for conspiracy to cause grievous bodily harm. The racism that played out in this case left my head spinning. The evidence was based on messages they sent to one another on the Telegram app after a friend had been murdered, and the youngsters having the audacity to make drill music as a way of expressing themselves. There was fury in Manchester and protesters took to the street. And rightly so – the Crown Prosecution Service is clearly not only institutionally racist but out of control. I attended my son's trial every single day bar one, and did not see any semblance of justice being played out. And then the verdict: I have never felt anger like it. We are supposed to see our justice system as the envy of the world, but what do we have to envy? Life sentences for murder for children who did not kill anyone? In 2010, I met Gloria Morrison and we set up a grassroots organisation, JENGbA (Joint Enterprise Not Guilty by Association). Gloria's son's best friend was convicted of murder under joint enterprise and also given a life sentence. We could both see that the justice system was rigged – running roughshod over natural justice and turning innocent until proven guilty on its head.

In 2016, the supreme court acknowledged that the common law interpretation of joint enterprise had taken a "wrong turn" by the judiciary in 1984. It had been wrong to convict people of murder on the grounds that they had foreseen the possibility that someone could be killed. That meant we had a different fight – to quash existing convictions and these miscarriages of justice. But the supreme court ruling stated that "simply because the law applied has now been declared to have been mistaken" was not enough to hear the appeals of those convicted under the wrong interpretation of the law. So I must ask you, the readers, to look at a child you know and love, your own child maybe, and imagine them, as my boy was, sitting shaking uncontrollably in a courtroom, trying his best to look dignified but failing miserably, being told he will never go home to the mother he loves and needs, for almost as long as he has been alive. And for what?

Sunak and Truss: Pledge Tougher Justice

Inside Time: The two contenders to become the next Prime Minister have unveiled hardline policies on crime and justice as they battle for the votes of Conservative party members. Former Chancellor Rishi Sunak announced that if he was in charge, people considered 'career criminals' would automatically have an extra year added to their sentence when they are convicted of another offence. He did not specify who would qualify for the extra time and what offences would be covered by the pledge; journalists were briefed that it would be for the Ministry of Justice to decide. He said: "I will cut crime by locking the most prolific offenders up, keeping them locked up, and building the prison space needed to do so." Setting out more detail of the pledge on Twitter, he added: "We will create a new offence for the prolific career criminals to blame for as much as half of all crime in the UK. Those who commit the most crime in this country will have an automatic one-year custodial sentence added to their latest crime." He cited a statistic that "9 per cent of career criminals are responsible for 52 per cent of crime excluding fraud". In a separate pledge, Sunak said he wants to change deportation rules in order to double the number of foreign nationals who are sent back to their homelands after serving sentences for crimes committed in the UK. At present, overseas citizens sentenced to more than 12 months in prison are considered for deportation after release. Sunak would cut this to six months, and introduce a "three strikes and you're out" policy so that even people convicted of minor crimes which attract shorter sentences could be deported after their third conviction.

However, supporters of his rival Liz Truss claimed that the proposed changes would not make a big difference to the number of deportations because people convicted of petty crimes would be likely to win appeals against deportation on the grounds that the impact of deportation on their private and family lives was disproportionate to the severity of their offence. Truss said she wanted to impose targets on police forces to cut homicide, serious violence and "neighbourhood crime" by 20 per cent before the next general election. Her government would publish league tables to show which forces were hitting the target, and summon chief constables of lagging forces to explain themselves to ministers. Truss's opponents warned that such target-setting for police forces had been tried in the past and had produced unintended consequences, with police trying to reach their goals by mis-recording crimes and ignoring categories of crime which were not covered by the targets. Truss is also promising faster processing of rape complaints, a national register of people convicted of domestic abuse, and a new criminal offence of street harassment. Sunak has pledged a new offence of "downblousing" – taking a photograph down a woman's top without her consent.

Deportation Delays "Lead to Self-Harm"

Inside Time: Foreign national prisoners who are being held beyond their release dates whilst the Home Office attempts to deport them are self-harming out of frustration, a watchdog has warned. The Independent Monitoring Board at HMP Risley in Cheshire – a regional hub for overseas citizens serving sentences in the UK – highlighted the trend in its annual report published last month. It said: "The board must note the increase, in recent months, of self-harm by foreign national prisoners, who feel that their deportation to their home countries is taking too long and they do not understand the reason for the long delay." The IMB added: "While immigration surgeries took place once a month on all wings, legal advice on immigration issues was not always easily accessible for many prisoners. This resulted in a high level of frustration, which, together with long repatriation delays, manifested itself in a rising number of incidents of self-harm among this section of the prison population."

Almost a quarter of Risley's 1,000 residents are foreign nationals. In a letter to the IMB responding to its concerns, then-Prisons Minister Victoria Atkins said: "I share your concerns about the self-harm rates among the foreign national population and recognise that they are at higher risk of suicide and self-harm and have specific vulnerabilities." The minister said officials were making "every effort" to ensure that deportation took place as soon as prison terms were completed – or where this was not possible, that an assessment was made as to whether the individual could be moved to an Immigration Removal Centre (IRC). Atkins added that those kept in prison "are there because they have been assessed as unsuitable for the conditions of IRCs, because they pose a high-risk or high harm to others". She said such residents had their status "regularly reviewed".

MPs Ask: 'Why Build 500 New Prison Places for Women?

Inside Time: MPs have queried the need for the Government to build 500 extra places in women's prisons and called for clarity on what the new cells will be used for. A report by the all-party Commons Justice Committee noted concerns that the prison-building plan announced in January 2021 is at odds with the Female Offender Strategy, agreed by ministers in 2018, which set a goal for fewer women to be jailed. However, the report also said that the new accommodation – which will cost £150 million – could improve conditions for women in custody in England and Wales. The committee called on ministers to answer questions about their plans, including: How many of the 500 cells will be new-for-old replacements, and how many will be additional? How many will be classified as open conditions? How many old cells have been decommissioned since the plan to build 500 more was announced, and how many will be decommissioned in coming years? How many of the 500 have already been built, and what the timescale for building the rest?

The report also asks the Ministry of Justice and HM Prison and Probation Service to set out the modelling they used to determine how many new cells were needed. Prison population projections from MoJ forecasters published in 2020 and 2021 have pointed to an expected rise of between 36 and 40 per cent in the number of women in prison by 2026, driven largely by the Government's drive to recruit 20,000 extra police officers. Ministers have said that the planned new cells will be added to the 12 existing women's prisons in England – there are none in Wales – and will have showers. They will offer "trauma-informed" accommodation, and some will allow women to have overnight visits with their children.

The 87-page report, titled Women in Prison and published on July 26, also criticises the slow progress in developing alternatives to prison for women who break the law. Ministers have pledged to build at least five Residential Women's Centres, and in 2020 it was announced that the first

would be in Wales, but the proposed site in Swansea has not been granted planning approval and the centre's opening date has been pushed back from 2021 to 2024. The MPs noted an "alarming" rise in self-harm in women's prisons over the past decade, but praised the Prison Service for its work "to implement a trauma-informed approach across the female prison estate".

Conservative MP Sir Bob Neill, chair of the committee, said: "It is welcome that the Government has understood that there are specific challenges around sending women to prison that need to be addressed, but it is disappointing that there is yet to be significant tangible change. "The 2018 Female Offender Strategy marked an important step in recognising the needs of women in the criminal justice system, but more needs to be done to understand whether it is targeting the right areas and having a meaningful impact. Women entering the prison system often have challenging needs and they must be supported from the day they arrive to the day they leave and beyond." Commenting on the findings, Peter Dawson, director of the Prison Reform Trust, said: "If it wants to be taken seriously, the government must now invest in supporting women in the community, not building more prison cells for them."

Responding, a Ministry of Justice spokesperson said: "Custody is used as a last resort for women and since we launched our Female Offender Strategy in 2018, the number entering prison has fallen by nearly a third. The new prison places we are building will, alongside our wider reforms, improve access to education, healthcare and work, so female offenders can turn their lives around."

Remand Numbers Hit 14-Year High

Inside Time: The number of people being held on remand in English and Welsh prisons has risen to a 14-year high despite the easing of Covid restrictions. At the end of June there were 13,409 prisoners awaiting trial or awaiting sentence, one in six of the prison population and the highest figure since 2008, according to quarterly Government offender management statistics. The Ministry of Justice said: "This likely reflects the impact of partial court recovery following COVID-19 restrictions, resulting in an increase in the number of prisoners held on remand." Among the total detained on remand, 8,763 were untried whilst 4,646 were convicted but unsentenced.

The number of people detained for long periods awaiting trial is also still rising, according to figures released by the MoJ in response to a Freedom of Information request from the campaign group Fair Trials. These show that the number held on remand for more than a year, which stood at around 1,500 at the start of the pandemic in 2020, rose to 1,710 in December 2021 and still further, to 1,777, in June 2022. The number of people awaiting trial for more than two years has also risen in the past six months and stood at 533 at the end of June. In law, people can only be held for up to six months awaiting trial. The custody time limit was temporarily extended during the pandemic to eight months, but has since returned to six months. However, judges routinely grant extensions.

A report last year by Fair Trials found some prisoners claiming they had pleaded guilty to crimes they did not commit in order to cut short seemingly-endless periods of detention on remand. Griff Ferris, Fair Trials Senior Legal and Policy Officer said: "There's no justice in a system that imprisons people awaiting trial for months and years, while many will walk free after trial." In response to criticism of the increasing number of people held on remand, ministers have pointed out that all defendants have the right to apply for bail; only those seen as posing a risk to the public or a risk of absconding are held on remand; and judges prioritise cases involving custody time limits for the earliest possible listing. The total prison population in England and Wales at the end of June was 80,659, which is still 3,000 below its pre-pandemic peak in March 2020.

Who's Your Daddy Now - The Right to Know Your Parent

"What, after all, to any child, to any parent, never mind to future generations and indeed to society at large, can be more important, emotionally, psychologically, socially and legally, than the answer to the question: Who is my parent? Is this my child?"

Transparency Project: Declaration of Parentage? Section 55A of the Family Law Act (1986) provides that a person may apply to the High Court or the Family court for a declaration as to whether the subject of the application is or is not the parent of the applicant or another person. Section 14A of the Births and Deaths Registration Act (1953) permits the re-registration of a birth under limited circumstances, one being where the court has made a declaration of parentage. When a birth is re-registered, the birth certificate is amended (i.e., to add the newly discovered parent), but the original entry is not erased.

The court has jurisdiction and, therefore, will only consider applications under s55A if either of the named persons are domiciled in or have habitual residence in England and Wales on the date of the application. The court will also refuse to hear an application unless it considers that the applicant has "sufficient personal interest in the determination of the application."

Section 55A (4) sets out the "exceptions", or rather cases where such "personal interest" is assumed. Cases falling into this category are those where: The applicant is applying to be declared the parent of a child named in their application. The applicant is applying for someone else they name in their application to be declared their parent. Or the applicant is seeking to have another person named as the parent of their child. The court has further powers to refuse to hear an application under section 55A (5) if a named person is a child and the court does not consider that a determination would be in their best interests.

Women on Remand More Likely to Self-Harm

Prison Reform Trust: Women remanded to custody are more likely to self-harm than other women in prison. In 2021 this group represented 19% of women's prison population but accounted for 25% of all self-harm incidents in women's prisons. There were 467 incidents of self-harm for every 100 women on remand, compared with an overall rate of self-harm amongst women in prison of 370 per 100. Overall, women in prison are much more likely than men to self-harm. In total, women accounted for 22% of all self-harm incidents in prison in 2021, despite representing only 4% of the total prison population in England and Wales. There was a 7% increase in the rate of self-harm incidents in women's prisons in the year to March 2022. Women continue to be inappropriately remanded to custody. Almost nine in 10 women on remand are low to medium risk of harm and many will not go on to receive a custodial sentence. In 2021, over half of women (52%) remanded and tried by the magistrates' court did not receive a custodial sentence. In the Crown Court this figure was more than two in five (43%).

The briefing collates a wide range of statistics on women in the criminal justice system and highlights the need to focus on reducing the imprisonment of women in England and Wales. It reveals that women are more likely than men to be on short sentences, have multiple and complex needs and be primary carers of children. Other key facts highlighted in the briefing include: In 2021 50% of prison sentences given to women were for 6 months or less. Women were sent to prison on 4,932 occasions in the year to March 2022 – either on remand or to serve a sentence. In the year to March 2022 there were 1,513 recalls of women to custody. Women serving sentences of less than 12 months account for just under half (44%) of all recalls. Less than half (47%) of women left prison in the year to March 2022 with settled accommodation.

The briefing is released only weeks after the publication of the Justice Committee report into women in prison, and a few months after the report of the Public Accounts Committee on improving outcomes for women in the criminal justice system. Both reports criticised the slow implementation of the government's Female Offender Strategy, originally published in 2018. A key aim of this strategy is to reduce the number of women's prison places. Although there has been a recent decline in women's prison numbers, in part due to the Covid-19 pandemic and subsequent court closures, the number of women in prison is beginning to tick upwards again. The women's prison population currently stands at 3,210 and is projected to increase to 4,300 by July 2025. Although progress in implementing the strategy has been slow, the briefing does highlight some welcome moves by the government to better support women who offend. This includes the recent announcement to introduce a pilot of three Problem-Solving Courts which are intended to provide tailored, wraparound support for individuals. The briefing also welcomes the continued roll out of the Community Sentence Treatment Requirement protocol and encourages the government to extend it to a larger number of court areas.

Commenting, Peter Dawson, Director of the Prison Reform Trust, said: "The shockingly high number of self-harm incidents by women on remand should be a stark reminder to the government that more must be done to stop women being swept up into the vicious cycle of imprisonment. It's time for the government to stop investing in pointless short spells behind bars. Money designated to increasing women's prison places should instead be spent on sustainable funding for women's community solutions."

In the Matter of Regina v Robin Garbutt

In March 2022, law students at York St John University, under the supervision of qualified solicitors within York St John Law Clinic, began investigating the safety of Robin Garbutt's conviction in 2011 of the murder of his wife, Diana. Following the conclusion of our work, we are writing to urge the Criminal Cases Review Commission (CCRC) to refer Robin's case to the Court of Appeal on the basis that there is a real possibility that the conviction would not be upheld given the fresh evidence that was not considered by the convicting court. Principal submissions have been made to the Criminal Cases Review Commission (CCRC) on behalf of Robin by his solicitor, Martin Rackstraw, of Messrs Russell Cooke requesting that the CCRC investigate this case and make a referral to the Court of Appeal. York St John Law Clinic does not act for Robin in those proceedings.

Robin and Diana Garbutt ran the village shop and Post Office in Melsonby, North Yorkshire. Diana, who acted as postmistress, was murdered there on 23 March 2010. Robin's case has always been that there was an armed robbery and that the robbers must have killed Diana whilst she lay in bed and Robin was working in the shop downstairs. Robin had got up around 4:00am, leaving Diana asleep and well, to open the shop. He served more than 60 customers between opening the shop at 4:30am and 8:30am, as recorded on the tills. He was confronted by an armed robber shortly after 8:30am when, as is well-known, Post Office safes are opened by a centrally controlled system. The robber told Robin not to do anything stupid as they had his wife and instructed him to hand over money from the safe, which he did. The robber then left, and Robin ran upstairs to find Diana dead. In considerable distress, he ran for help from his neighbour and called the emergency services. It is important to note that there had been an armed robbery at the Post Office in March 2009, just over a year before Diana's murder.

Whilst there was no direct witness or forensic evidence to suggest that Robin was the killer, the prosecution advanced the theory that the couple was in financial difficulties and that

Robin was defrauding the Post Office; the theory being, perhaps, that Diana had discovered this, and that Robin had been motivated to murder her as a result. The prosecution said that Robin had fabricated the suggestion that a further armed robbery had taken place to cover up his having murdered Diana. An appeal to the Court of Appeal[1] in May 2012 failed on the basis that, notwithstanding the prosecution had failed to disclose Post Office records which would have materially undermined its case that Robin had been committing a fraud, the conviction remained safe as the trial jury must have discounted Robin's suggestion that an armed robbery had taken place independently of the financial evidence.

Messrs Russell Cooke have made substantive submissions regarding the frailties of the evidence relied upon by the prosecution relating to the now well-known faults with the Horizon accounting software system used by the Post Office. They will not be repeated here, other than to say we consider that Messrs Russell Cooke have made strong and compelling submissions that this evidence would have weighed heavily on the jury given its prevalence in the trial judge's summing up and that it was central to the prosecution's case as to motive. This evidence is manifestly unsafe, and we urge the CCRC to review its position that this evidence was not central or essential to the prosecution's case. It clearly was. The evidence now relied upon to undermine the Post Office evidence is more compelling than that which was considered by the Court of Appeal in 2012, which simply addressed the fact that records which should have been disclosed had not been.

Other evidence central to the case against Robin was that which relates to the time of Diana's death. The evidence from the two pathologists in the case, instructed on behalf of the prosecution and defence respectively, was that Diana had likely died at some time after 4:30am. The Home Office pathologist, Dr Hamilton, gives this conclusion at page 2 of the post-mortem report. This is crucial, because from 4:30am onwards Robin was downstairs working in the shop and his movements are effectively accounted for by records of over 60 till transactions between 4:30am and approximately 8:30am, shortly after which Diana's body was found. Realistically, he could not have killed Diana once the shop was opened as he would not have known when customers would enter the shop. The shop was busy during this period, and nobody reported finding the shop unattended or having to wait for Robin. Nobody reported him being flustered or anything other than his usual and friendly self. The only evidence that Diana may have died before 4:30am came from Dr Jennifer Miller. She was not a pathologist but gave compelling evidence at trial that the contents of Diana's stomach suggested she may have died earlier, at a time when the only conceivable killer could be Robin.

Under cross-examination, Dr Miller maintained that once death occurs the stomach effectively 'seals' and that food which had moved into the small intestine could not move back into the stomach. This was important, as her evidence as to time of death rested entirely on the precise contents of Diana's stomach. Dr Miller's experiment was rudimentary given the evidential weight that was placed upon it. She had purchased a portion of fish & chips from the shop where Robin had purchased the couple's meal the night before the murder and subtracted from that an amount of waste fish & chips, which it was thought were the leftovers of Diana's meal but which may not have been, and the volume of food in her stomach to arrive at a likely time of death.

There are several significant issues with Dr Miller's evidence. She is not a pathologist and did not perform the post-mortem. The exact timing and size of Diana's last meal cannot be precisely known. Moreover, Dr Miller failed to take proper account of the great many variables that determine the speed of the digestion process. Professor Bernard Knight, to whose work Dr Miller referred in her evidence, argues that these include, but are not limited to, whether a person is in fear, suffering an injury or whether they have consumed alcohol. There are innumerable factors that lead to a great variation as to the time in which a stomach digests its contents. Moreover, Dr Miller has since contradicted her own evidence. During cross-examination in the case of R v Vincent Tabak (concerning the murder of Joanna Yeates) in 2012, Dr Miller did acknowledge that there are variables which can affect the rate of digestion and undermine the accuracy of any attempt to use stomach contents as an indicator of time of death. In that particular case, it was in relation to the consumption of alcohol. Dr David Rouse, Consultant in Forensic Medicine and Pathology, has considered Dr Miller's evidence and describes it as 'simply not scientifically correct'; particularly in relation to Dr Miller's testimony that it was highly likely, based on her experiment, that death occurred some time before Diana was found.

Dr Cooper, the defence pathologist, and Professor Dr Berkhard Madea, a Professor of Forensic Medicine, also make the point that bile from the small intestine can move back into the stomach following death; something which was denied by Dr Miller during cross-examination at Robin's trial. We understand that the CCRC has access to reports from Dr Rouse, Dr Cooper and Professor Madea and together they represent fresh and compelling evidence which was not considered at the trial. Dr Miller's evidence is not a safe basis on which to draw firm conclusions as to time of death. There is a real risk, given the emphasis placed on Dr Miller's evidence at trial, that the jury will have placed more weight on it than it ought reasonably to bear. This is the only evidence in the trial which suggested that Diana could have died before Robin had opened the shop. If this evidence is disregarded, then the evidence of both pathologists suggest Diana likely died at a time when the shop was open and Robin's movements were accounted for by the many customers he served between that time and finding Diana's body. The other evidence relating to time of death was that concerning the onset of rigor mortis and hypostasis. It is said that Robin's neighbour, who accompanied him back to the scene when he went for help upon finding Diana's body, found her fingers to be stiffening. It is said that the paramedics noted the onset of rigor mortis and hypostasis and concluded that Diana had been dead for some time. This evidence was relied upon to undermine Robin's case that an armed robbery had taken place.

In a report dated 3 September 2013, Dr Rouse states that the onset of rigor mortis is a temperature dependent process; it occurs more rapidly in a warm environment that a cold one, for example. Diana was lying on a warm bed when she died. He describes it as the best known but most uncertain and unreliable indicator of time of death. Dr Rouse also points out that the evidence of the neighbour and Home Office pathologist, Dr Hamilton, contradicts the evidence of the paramedics as to the presentation of hypostatic staining. Hypostasis, or pooling of the blood at lower extremities of the body once the action of the heart has ceased, has fallen into disrepute as a determinant of time of death. In Dr Rouse's opinion, 'it is not possible to determine how long hypostasis takes to develop or when this fixation of hypostasis would occur'. He argues that it must be taken together with blood staining and bed compression to indicate that she had died face down and laid there for a period of time which could have been very short, even just minutes, before she was discovered. He concurs with Dr Cooper that, taking everything together, death could have occurred after 6:45am.

Now, when assessing the safety of Robin's conviction, it is important to avoid the temptation to hypothesise or speculate about a positive alternative version of events. The task before us is to evaluate the safety of the evidence upon which Robin was convicted and to consider whether there is fresh or compelling evidence that would mean there is a real prospect that the Court of Appeal will overturn the conviction. For the reasons outlined above, we argue there clearly is. However, in the first appeal, the Court of Appeal did fall into this trap. One of the reasons given for concluding that Robin's conviction remained safe notwithstanding the failure to disclose Post Office records was that the court found it difficult to accept that a robber would have entered the premises some time

before carrying out the robbery, murder Diana and lie in wait until the Post Office central system opened the safe at 8:30am. Why would they arrive in advance? It must be remembered that there had been an armed robbery just over a year prior to Diana's murder. It is perfectly conceivable that the robber on this occasion was either someone involved with that first robbery or a person who was given information by someone that was involved. Now, there were two safes in the premises. One downstairs that was centrally controlled by the Post Office and which could not be opened before 8:30am, and one upstairs in the spare room where Diana was sleeping and which was not centrally controlled. Anyone planning a robbery with information about the premises would know to deal with this safe first, so that they could then deal with the downstairs safe when it was opened and quickly leave the premises. They would not, however, have expected to find Diana in the spare room. She was there because the couple was packing to go on holiday to the USA shortly afterwards, and having a kitchen renovation, and space was temporarily being taken up in their main bedroom.

So, imagine that you are a robber with detailed information about what to expect on the premises, perhaps under great pressure from other criminals as to what must be brought back. You get into the spare room to tackle the safe there, expecting to find the room empty, only to find Diana lying asleep in the bed. How do you deal with her quickly and quietly so that you can continue with the robbery? There is forensic evidence to suggest that someone may have stood in the corner of the room for some time. What if that was the robber contemplating their unexpected situation? We know that Diana was killed by three very rapid, forceful blows to the head. Perhaps they were calculated to ensure that Diana could not raise the alarm. The pathological evidence, disregarding that of Dr Miller, is consistent with Diana's death occurring a short while before she was found. We do not argue that this speculative hypothesis is what happened. We do not need to be sure about a positive alternative version of events before we can conclude that Robin's conviction is unsafe. We offer it only to counter the speculation of the Court of Appeal as to why a robber may have arrived at the premises and gone upstairs before making an attempt on the main safe.

Were Robin's trial to take place today, with a jury able to consider all that is now known about the Post Office records and systems and the wealth of evidence that calls into question the safety of Dr Miller' conclusions and other evidence relating to time of death, it is inconceivable that any jury could be satisfied so that they were sure of Robin's guilt. The evidence of Dr Rouse, Professor Madea and Professor Knight, coupled with the evidence relating to the Post Office about which robust submissions have been advanced by Messrs Russell Cooke, amount to fresh and compelling evidence which lead to a very real prospect that Robin's conviction would be overturned if referred on appeal. It must be emphasised at this point that even taking account of the evidence which we have sought to discredit, the entire case against Robin Garbutt is circumstantial. There is no direct witness or forensic evidence which corroborates that Mr Garbutt killed his wife. It is difficult to think of a weaker case for murder that has resulted a conviction.

We respectfully urge the CCRC to investigate this case and refer it to the Court of Appeal.

Protestor 'Convicted Behind Closed Doors' to Sue Metropolitan Police

Monidipa Fouzder, Law Gazette: A woman 'convicted behind closed doors' under the controversial Single Justice Procedure for breaching Covid regulations after attending a vigil for murder victim Sarah Everard last year plans to sue the Metropolitan Police, a human rights firm has confirmed. Bindmans announced it has formally notified the Metropolitan Police Service of Dania Al-Obeid's intention to pursue claims that the force breached her article 10 (freedom of expression) and 11 (freedom of assembly) rights under the Human Rights Act

when it decided to arrest, detain and charge her. The firm said Al-Obeid was convicted under the Single Justice Procedure for breaching the Health Protections (Coronavirus Restrictions) (England) Regulations 2020 by attending the vigil. She did not know she had a criminal record until she was contacted by the media. After arguing that she had not been given the chance to plead not guilty, a trial was due to be held this year where she would try to overturn her conviction.

The Crown Prosecution Service, which took over prosecution proceedings from the Metropolitan Police, confirmed this week that it was discontinuing the case because its legal test for prosecution had not been met. In a statement, Al-Obeid said: 'I had a criminal record over the last few months because the Met were able to have me convicted under the Single Justice Procedure. I was devastated when I found out. To be convicted behind closed doors for standing up for my human rights, and our rights just to be safe from violence, felt extremely unjust.' Al-Obeid said she was 'extremely lucky to have a legal team of amazing women who told me my rights and said what was happening was unlawful'. She was taking steps to bring a civil claim alongside other women 'seeking to hold the police accountable for their actions both at the vigil and since'. Al-Obeid is being represented by Bindmans solicitor Rachel Harger, and Doughty Street Chambers' Jude Bunting QC and Pippa Woodrow.

FACT - Supporting Victims of Unfounded Allegations of Abuse

Supporting Victims of Unfounded Allegations of Abuse' is a nonprofit Company (known as FACT) and is UK wide. It is a membership based, voluntary organisation run by an elected national governing committee accountable to its directors and members. Our work is focused on providing support to those who have been accused of abuse who maintain their innocence and who have never carried out similar offences or pleaded guilty to such offences. Most people initially contact us though our telephone helpline (see side panel), or by email, sec@factuk.org. We provide support free of charge to the general public and also encourage people to become members and make financial donations, which in turn helps us to continue supporting others. We hold at least two meetings a year when members, their families and guests can get together for mutual support helping them to cope with their problems as well as giving them access to expert views on legal matters. When an accusation is first made the effects on the accused, their family and close friends is horrendous and regardless of how far that accusation is taken: be it an investigation that is dropped or a wrongful conviction followed by prison, the effects are hugely damaging and last a life time. Knowing you are not alone and have someone to call on is vital.

Our aim is to: provide advice and support to those working in positions of trust, including volunteers and their families and colleagues; raise public awareness concerning the reality and risks of false allegations of abuse; encourage and promote research into the reasons why false allegations are made; It is clear to us that many whose work regularly brings them into contact with children and/or vulnerable or dependent adults, do not realise just how: vulnerable they are to being falsely accused of abuse or misconduc; closed safeguarding bodies are to any possibility that the allegations made might be untrue; inadequate the justice system is .in establishing truth. he group is therefore well-placed to comment on the vulnerability of men and women whose occupation brings, or brought them, into regular contact with children and vulnerable or dependent adults at all levels throughout the UK.

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