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THE NEWSLETTER OF THE LONDON CRIMINAL COURTS SOLICITORS' ASSOCIATION

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Welcome to this slightly-delayed edition of The Advocate. I am writing this one the day of the most significant relaxations to the Covid restrictions since the national lockdown was imposed in January (though many had been living under an effective lockdown for some weeks or months by then). Relief is tinged with concern about the unwelcome Indian variant news, which sadly seems to have the potential to delay the date of full relaxation in June.

The powers that be in the Criminal Justice system are understandably anxious that a return to normality is achieved as soon as possible, so that efforts to tackle the backlog of cases (which, as we all know, long predates the pandemic but was undeniably exacerbated by it) can begin in earnest. The "5-point plan" for the magistrates' and youth courts (covered in more detail below) aims to eradicate the Covid backlog by the end of the year and, by means of "trial blitzes" and flexible listing, can be expected to have a significant impact on how these courts operate.

Also of immediate importance to practitioners will be the call to evidence of the Criminal Legal Aid Review, the outcome of which has the potential to, at least in part, address the funding crisis. Without engagement from the profession, however, we risk the Review being insufficiently informed and its conclusions being insufficiently robust.

The articles in this edition deal with the recently emergent scandal of sexual misconduct in schools, an important case in the Court of Appeal on expert evidence and depressing picture regarding prison numbers and sentencing policy. But to restore morale, there is also a dose of Bruce Reid, so it's not all bad…

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LCCSA NEWS

CLAR CALL FOR EVIDENCE

The Criminal Legal Aid Review is now in its second stage, which consists of an independent review (by the panel referred to in the previous issue of The London Advocate). To inform this review, which will focus on the long-term sustainability of criminal legal aid, the panel has issued a **call for evidence**. The deadline for responses has been extended from 7 May to 28 May. The Association has prepared a response, which can be found **here**, but all members are encouraged to engage. The review's terms of reference contain five themes - resilience, transparency, competition, efficiency and diversity – and the call for evidence sets nine questions. It is hard to overstate the importance of this process to criminal defence practice in London (and beyond) so please take the time to send individual or firm responses if you can.

THE 5-POINT PLAN

On 14 May 2021, the Senior Judiciary of England and Wales and HMCTS published a **5-point plan for the recovery of magistrates' adult and youth courts dealing with criminal matters.** The ambition is to safely restore court listing and timings to pre-pandemic levels at the earliest opportunity and at the latest by 31 December 2021, assuming the roadmap for lifting current restrictions remains on track.

The 5 points are:

1. Improving on pre-Christmas listing and disposal rates from April 2021. This should reduce waiting times for victims, witnesses and defendants, and the burden on the Criminal Justice agencies in the number of live outstanding case files kept under review.
2. Returning to Transforming Summary Justice charging timings by July 2021. The Transforming Summary Justice timescales 14/28 days provide optimum bailing patterns for case file preparation and constructive engagement to ensure effective first hearings.
3. Focusing on trial activity to reduce trial waiting times through trial blitzes. Improving effective trial rates and reducing trial listing delays will improve

victim and witness confidence and attrition rates as well as reducing the strain on witness services.

4. Continuing to maximise court capacity with flexible listing. Saturday courts assist in clearing the backlogs and freeing up court rooms to hear more serious offences and trials while using resources efficiently.
5. Magistrates returning to normal arrangements by July 2021. Restoring normal arrangements, including benches of three, thus enabling more magistrates to resume sitting and assist mentoring, appraisal and training programmes.

MESSAGE FROM THE CHIEF MAGISTRATE

DJ Goldspring, the recently appointed Chief Magistrate, issued the following message - related to CVP hearings - on 9 April:

"The increased use of live links during the pandemic has become an invaluable tool in keeping our courts running by maintaining a safe working environment.

Following a clear indication by the Lord Chief Justice, my predecessor gave a blanket direction that extradition prosecutors and defence lawyers could appear by CVP as the default position. I reviewed that direction and renewed it until the 12th April 2021.

Since that review, a number of things have moved on; the incidence of disease has decreased, the vaccination programme has continued with over 31m adults now vaccinated to some degree and the next stage of the Prime Minister's 'road map' out of lockdown is due to be implemented also on 12th April. At this point, in England at least, all non-essential retail can reopen and the hospitality industry may again provide service outdoors.

In addition, the LCJ has issued an updated announcement and so I consider I should further review the default position. Thus, from Tuesday 13th April, the default position can no longer be that all parties attend remotely but rather the court will consider each application on the statutory interests of justice test.

I am not minded to issue detailed guidance as it may fetter judicial discretion, but I would imagine that a significant factor in any determination on the interests of justice would be whether the hearing is contested or not. Those matters which are contested are broadly unlikely to be suitable for live link directions without specific reasons being provided to satisfy the test. It is considered that the interests of justice are normally best served by punctual and efficient hearings, these are harder to achieve with parties attending remotely. Factors which fall to be considered are wide and include vulnerabilities and distances to travel but also include caring responsibilities and the efficient disposal of the courts business.

In the absence of a direction from the court, parties are expected to be present in the courtroom."

CPR COMMITTEE INTRODUCES REVISED PET FORM

You will find the new version of the Preparation for Effect Trial form **here** and will note there is now a dedicated form for use in the Youth Court. The forms are for use on and after Monday 7 June 2021. Please also **read** the announcement from the CPRC Secretariat who explains how the form will be integrated with Common Platform in due course.

S.28 VULNERABLE WITNESS CASES

Please share your experiences of s.28 cases in the London region. We sit on many local implementation teams and want to hear about problems and successes to share with judicial leads. Please email feedback to **admin@lccsa.org.uk** and use the court name and s28 in the subject line.

THE LAPG CENSUS

The LAPG launched their census of the legal aid sector this week, something we wholeheartedly support. The success of this project could be critical to a lasting reform of legal aid fees. Failure to engage would be an opportunity missed. Please read the Open Letter or the FAQs **here**. Not only does the Association ask that you find the time to complete the survey but perhaps more importantly that you promote it to those you know have left the sector so we can reflect a wider experience.

PRE-CHARGE ENGAGEMENT CONSULTATION

The MOJ has published its response to the feedback they received from the LCCSA and other professional bodies. You can read the response in full **here** and what we had to say **here**. The Association is pleased they listened to our criticism of the need for a formal written agreement. A more informal method can be adopted and we will now work with the LAA to ensure there is clarity over what they expect to see on files. There is currently too much uncertainty over what falls within scope, a point the Association intends to make to the LAA at the point of implementation.

We argued the levels of pay were so low it was likely to frustrate their aims in the cases most suited to this work. Time will tell, we note there is a review mechanism which we look forward to in due course.

IDENTITY CARDS AND PUAS SCHEME

There are currently 7 sites that do not permit the use of our cards, all in London and the 4 most relevant to members are Westminster Magistrates' Court, the Central Criminal Court, Kingston and Woolwich Crown Courts. The Association is in early discussions with the MOJ around whether members could apply for Counter Terrorism Clearance so their cards would be accepted at those locations. The process requires the completion of a lengthy application form and consent to undergo vetting. Though it is at an early stage we do not think this could be offered routinely and anyone interested in such an additional clearance might be required to pay an additional fee. We would be interested to hear from any members who think this would be advantageous to them in practice; would you be willing to pay extra to obtain clearance, possibly for many years before requiring renewal?

WALWORTH OVERNIGHTS FROM 29 MARCH

From 29 March, to ease cell capacity pressure at Croydon Magistrates" Court's, detainees at Walworth will be taken to Westminster until further notice. It does lead one to consider how we could have done with another court only a mile or so south of Walworth…

REMOTE POLICE INTERVIEWS (JIIP)

We will provide feedback on how this process has worked keeping us safe in the pandemic. What was successful, what caused you concern and, if it needs to be used again, what improvements need to be made? Please send your views to **admin@lccsa.org.uk**

SOUTHWARK LATERAL FLOW TEST PILOT

If you attend this court please send feedback on the pilot, even if you decided not to use it: **https://www.surveymonkey.co.uk/r/QGGHQSV**

COMMITTEE MEETINGS

The LCCSA committee meets on the second Monday of each month at 6:30pm, for the foreseeable future, by telephone or video-conference. All members are welcome so if you wish to participate please contact the editor or Sara Boxer.

ARTICLES

'EVERYONE'S INVITED': THE ROLE OF POLICE

The recent (overdue) widespread concern about sexual misconduct in schools and universities, highlighted by the "Everyone's Invited" website and campaign, shares some of the worrying hallmarks of previous scandals, whereby "something must be done". Danielle Reece-Greenhalgh, senior associate at Corker Binning and LCCSA committee member, reminds us of the importance of considering each allegation on its own merits, and that – however well-meaning – such campaigns carry a risk of unintended consequences.

Almost all of the commentary on the eponymous online movement has focussed on how schools and educational institutions should react and reform. And quite rightly so; one cannot understate the weight of the obligations incumbent upon those institutions to protect those in their care against unwanted and potentially unlawful harassment, abuse and assault. The time has come for real change, and not a moment too soon. Schools and universities will be only too aware of the task which lies before them in reviewing and overhauling their existing policies and engaging with students on crucial life lessons which will shape the adults they become and the society they will inhabit.

The purpose of this piece is to consider the 'Everyone's Invited' scandal from a different, perhaps less attractive, perspective. It offers a counterpoint amidst a swirling storm of rage and discontent. It is based purely on experiences and observations representing those accused of the types of thing which appear on the 'Everyone's Invited' site.

Reviewing the testimonies of these young (predominantly female) individuals evokes feelings of abhorrence and outrage, and rightly so. The experiences they recount have no place within society, much less within institutions entrusted with *in loco parentis* care responsibilities. However, as those practicing in criminal law will attest, it is dangerous to treat every single allegation as unassailable truth, merely by virtue of the well-intentioned platform upon which it is made. Whilst a significant proportion of the 13,000 allegations are undoubtedly accurate, the possibility that some *could* be retrospective reconstructions of events cannot be discounted.

The Metropolitan Police have commenced a series of investigations, and the minefield they and the Crown Prosecution Service are entering is one which must be carefully navigated. Given the sheer volume of allegations on the site, it is inconceivable that police will have the resources to investigate every single one.

However, there are those which clearly stand out, both in terms of the nature of the act alleged (i.e. rape, assaults by penetration, sexual assault by touching) and in the detail provided (i.e. names of schools, and locations of incidents) which will make it entirely possible for police to commence enquiries.

In the coming weeks and months, it is inevitable that individuals (mostly male, and many still children themselves) will be identified as the objects of the anonymous complaints. Allegations such as these do not exist in a vacuum and will frequently have been discussed or shared within the educational environment. Consequently, it will not prove too onerous for police to draw evidential threads together, despite the assurance of anonymity provided on the website. An assurance which many young women may have relied upon as cast-iron, only feeling comfortable sharing their experiences in the knowledge that they would not be questioned about them. In real terms, it was outside the power of the website's creators to make such a guarantee.

Many of the allegations constitute serious criminal offences and will be treated as such. Police officers will deploy resources in speaking to schools or universities, who may wish to then exclude the students under suspicion for safeguarding reasons. Those students may ultimately fail to complete exams or to graduate as a result of an investigation being opened, regardless of whether they are ultimately charged with a criminal offence. Those who reside with younger siblings or children will be flagged to social services, who are duty bound to consider whether risks may exist within the home environment.

Officers will visit homes/schools/halls of residence and inform individuals that they are suspected of having committed serious offences. They will be interviewed under caution at police stations, possibly (although not necessarily) following arrest. Their phones and computers may be seized and examined, and private conversations reviewed. They will be questioned about the allegation(s), as well as about their sexual orientation, sexual history, previous partners; likes and dislikes and their online pornography habits. All matters which are potentially relevant to an incident or pattern of sexual behaviour. The individuals who are still children at the time of interview may find themselves talking about their formative sexual experiences for the first time out loud in front of parents and police officers and whilst being audio and video recorded.

It goes without saying that the above are all entirely necessary steps for the course of justice to run in the proper way. Allegations with proper evidential merit will be rightly pursued to prosecution. However, it is important not to lose sight of the devastating impact which experiences like this can have on those under suspicion.

Firstly, investigations can cause individuals to experience significant declines in their mental health. Depression, anxiety, isolation from friends and family and well-founded fears of online abuse from strangers and peers are all common side-effects. Amidst the whirlwind of condemnation, those individuals and their families will need to be afforded some level of support and understanding, regardless of the nature of their actions.

Secondly, there will be individuals who feel that they have done nothing wrong, and that false allegations have been made against them, possibly in the context of a relationship breakdown or an awkward and ill-advised sexual encounter, which they reasonably believed was consensual. The law of averages dictates that some will be correct, and some will be incorrect. In all cases the question of what constitutes "reasonable belief" is shaped by societal attitudes, which is precisely what movements such as #MeToo and 'Everyone's Invited' properly seeks to address. However, those against whom false allegations have in fact been made must have the opportunity to defend themselves before a fair and impartial tribunal to avoid wrongful conviction.

Those who are incorrect in their assertion that an allegation is false should, of course, be held accountable for their actions. However, the overwhelming sentiment of those who feel they have been unfairly accused (whether rightly or wrongly) tends towards resentment of (a) those in positions of authority (such as the schools who have excluded them or the police who have investigated them); (b) the complainants themselves; (c) witnesses who may have corroborated the story; and (d) women in general. The consequences of such resentment being fostered at a young age should not be underestimated. In some cases, it may lead to an inability to form healthy and lasting intimate relationships and in others an entrenchment of existing misogynistic tendencies. Neither is beneficial to the improvement of society at large.

In some respects, it is questionable whether the creators of 'Everyone's Invited' actually intended this

consequence at all; for individuals to be identified, investigated and prosecuted with all the resultant issues for both defendants and victims. Their mission statement, displayed on the front page of the website, declares that *"To reconcile is to understand both sides, to listen, and try our best to understand people's experiences, thoughts and actions."* They urge the community to practice empathy and dedicate the site to *"improving and healing the wounds we have uncovered."*

Whilst this is an honourable intention and should ideally inform the policy basis for police and educational institutions in response to the scandal, in practical terms it is highly unlikely to be reflective of the fallout to come. There appears to have been a tacit acknowledgement of this since the launch of the website, with the names of schools no longer appearing alongside the testimonies. In conclusion, viral movements like 'Everyone's Invited' are crucial for opening discourse on difficult issues in the social media age. There is an important debate to be had, and there are changes which should be made, but the interests of all children and young people on both sides must be carefully protected and respected.

https://www.corkerbinning.com/people/danielle-reece-greenhalgh/

"EGREGIOUS" FAILINGS IN EXPERT EVIDENCE: A SHOT ACROSS THE BOWS FROM THE COURT OF APPEAL (CRIMINAL DIVISION)

Simon Ray and Leila Gaafar, barristers at 6KBW College Hill, look at a recent appeal case brought on the basis of the discrediting – in a subsequent, unrelated matter – of the Crown's expert.

The conjoined appeals in *R v Byrne and ors.* [2021] EWCA Crim 107 related to the safety of convictions arising from separate trials in which the Crown had instructed the same expert, Andrew Ager. Although the convictions were found to be safe, both Ager himself and the prosecution came in for stark criticism, particularly in light of previous high-profile failings in this area in *R v Pabon* [2018] EWCA Crim 420. The case provides the clearest reminder to all parties in criminal proceedings to ensure compliance with the requirements relating to expert evidence.

What are the practical implications of this case?

As well as providing a helpful reminder of the nature and scope of experts' duties in criminal cases, and the importance of complying with them, three practical points of interest arise from the judgment.

- **First**, the Court noted that the appellants' position might have been different had they called a defence expert to challenge the substance of Ager's evidence on key issues (as opposed to focussing on his conduct). Those instructed for the defence who suspect that a prosecution expert lacks the relevant expertise should therefore ensure any challenge sufficiently addresses issues with the content of his or her evidence.
- **Second**, this appeal confirms the high, fact-sensitive bar for appealing against conviction in light of fresh evidence. While the Court expressed not inconsiderable disapproval of Ager's conduct – and the conduct of the Crown – this did not affect the application of the test for an appeal against conviction. In other words, the Court of Appeal is unwilling to quash a conviction as an expression of disapproval even of "*egregious*" behaviour, where that behaviour does not ultimately impact the safety of the jury's finding.
- **Third**, the Court rejected the argument that Ager was not capable of giving expert evidence. In doing so, it adopted the "*pragmatic*" approach to determining expertise in criminal trials, as summarised in *R v Pabon*. This assessment will depend on the circumstances, and a lack of formal qualifications (as was the case for Ager) will not necessarily determine one way or the other whether a person is suitably expert in a particular area.

What was the background?

The Court of Appeal heard conjoined appeals against conviction brought by seven appellants, convicted across four different first instance trials, each of which took place between April 2016 and January 2019. All seven appellants were convicted of charges relating to improper investment activity in the carbon credit market. In each of these trials, the Crown instructed Ager to provide expert evidence on certain issues relevant to carbon credits, including on the critical issue of whether or not there existed a secondary market for carbon credits, and the extent to which this was widely known.

Following the conclusion of each of these four trials, Ager was instructed in a separate trial (Operation Balaban) which was not the subject of this appeal. In cross-examination during a *voir dire*, it was established (among other things) that Ager (i) had no training in his duties as an expert, (ii) had failed to comply with several obligations as an expert under the Criminal Procedure Rules, and (iii) had misled the expert jointly

instructed for the defence, Dr Frunza, and attempted to dissuade him from giving evidence at trial. Ager was abandoned as an expert for the Crown, and the jury were directed in no uncertain terms by the trial judge to ignore his evidence.

Following a public statement from the CPS that Ager would not be used as an expert witness in any further cases, each of the seven appellants in *Byrne* appealed against conviction on the basis that Ager's evidence in their respective trials – and his failure to adhere to the principles and behaviours governing the conduct of expert witnesses – rendered their convictions unsafe.

What did the court decide?

Ultimately, the Court of Appeal found that none of the seven convictions were unsafe as a consequence of Ager's evidence in those trials. This was a fact-specific conclusion applying the principles set by the Privy Council in *Dial v Trinidad and Tobago* [2005] UKPC 4; [2005] 1 WLR 1660, the ultimate question for the court being "*whether, in the light of the fresh evidence, the convictions are unsafe*" (at [32]). The court concluded they were not.

In reaching this conclusion, the Court noted that while the circumstances surrounding Ager's evidence at these trials were clearly far from ideal, the substance of his evidence was essentially unchallenged by the defence, both at the original trials and on appeal. The Court also found that beyond Ager's testimony, there was "*abundant other evidence*" that the carbon credit schemes in question were in fact improper, as Ager had broadly contended.

Notwithstanding its ultimate conclusion, the Court of Appeal did not miss the opportunity to point out that Ager's "*egregious behaviour*" in Operation Balaban indicated a "*clear preparedness*" on his part to "*disregard his basic duties as an expert*". It was not clear the extent to which this behaviour had been precisely replicated in the four trials at issue in *Byrne*. However, certain common themes were identified, including the fact that Ager:

- Demonstrated "little or no understanding" of his duties as an expert;
- Failed to sign the expert's statement of understanding and declaration of truth;
- Failed to conduct an independent review of the carbon credits market;
- Failed to bring to the court's attention material that might undermine his evidence; and
- Misled and put inappropriate pressure on the expert instructed for the defence, Dr Frunza.

The Court's criticism was not limited to Ager himself. The Crown's failure in each of these cases to detect the underlying problems with Ager as a witness was a "*notable error*", which the Crown needed to take "*all necessary steps*" to avoid in future.

https://www.6kbw.com/people/barristers/simon-ray

https://www.6kbw.com/people/barristers/leila-gaafar

PRISON POPULATIONS, SENTENCE INFLATION AND THE FUTURE OF PUNISHMENT

What can be done to reverse the spiralling numbers of prisoners, and how have we got to where we currently stand? Dylan O'Connor, paralegal at Brett Wilson LLP, dissects the figures, looks at the driving forces and proposes some strategies to deal with the ever-worsening problem.

In recent decades, England and Wales has seen a colossal leap in the number of those incarcerated, with the prison population **almost doubling in size** from 44,246 in 1993 to a peak of 85,134 in 2015. As of 2019 the country has the **highest imprisonment rate** in Western Europe.

Whilst the impact of coronavirus and other mitigating factors has helped slightly reduce prison numbers in recent years, The Ministry of Justice's **projections** for prison population, anticipates a rise to 98,700 by 2026.

The charity, the Prison Reform Trust (PRT) in their research **estimate** that "sentencing changes alone" can account for an increase of around 16,000 prisoners since 2003. This rise can largely be attributed to the increase in those sentenced to 10 years or more. The population of those serving a mandatory life sentence has **doubled**, since 1993. Additionally more life sentences are being handed down by the courts, with the number rising by **240% from 2000**. As such, those guilty of serious crimes are spending **longer on average** in prison before being released from life sentences.

The average custodial sentence length for prisoners sentenced to immediate determinate custody for indictable offences has also risen from **16 months in 1993 to 21.4 months in 2019**, with the steepest rise coming in the last decade.

Glancing over these statistics, one may think that this is something to be celebrated rather than castigated. Put colloquially, do they not suggest more criminals are being

caught? No, figures from the Crime Survey for England and Wales show violent crime has decreased from **4.5 million incidents in 1995 to 1.2 million incidents in March 2020, a fall of 72%** accompanying a general downward trajectory in crime rates. Since midway through the twentieth century there has been **no tangible link** between the recorded crime rate and the number of people behind bars, yet the prison population, since the 1990s has more than doubled. PRT, Peter Dawson has stated there is not a ***"shred of evidence to show this runway sentence inflation reduces crime."***

Whilst some may instead point to harsh sentencing as an efficient way to deter criminals, we are also seeing greater numbers of people being **recalled to prison**. Those released having served a longer sentence particularly face a much higher likelihood of being recalled to prison after release than previously. PRT state **"around 8,000 people are currently in prison for that reason alone"**.

Whilst there have been reductions in the number of prisoners serving short sentences of six months or less, those convicted of less serious offences still make up a majority of those being sent to prison. The Ministry of Justice reported **69% of the 59,000 people sent to prison to serve a sentence in 2018** had committed non-violent crime. However, evidence indicates that sending people to jail for shorter sentences is ineffective. The **rate of recidivism** is higher amongst those who are given a prison sentence of less than 12 months (63%) compared with those given either a **community order (56%) or a suspended sentence order (54%)**. Some may argue for certain offences, a community order does not bring justice to victims and their families. Arguably however, the better outcome for society is minimising the chance that offenders will continue to make the same costly mistakes.

In 2019, statistics on recidivism have led former justice secretary David Gauke to suggest that there is a **"a strong case to abolish sentences of six months or less altogether"**. The rationale for this, he states is also due to the destabilising impact on individuals lives and society more generally. "Prison," in this instance he states, "simply isn't working."

The Future of sentencing

This rise in prison population in the last few decades is a reality that contravenes recent rhetoric of Prime Minister Boris Johnson, who in 2019 bestowed ridicule upon our "**cockeyed crook-coddling"** justice system. His views enjoy significant support in large sections of the media and amongst the general public as well. A recent poll suggests 70% of the population **believe the justice system to be too lenient**, whilst only 4% of those questioned believed sentencing to be too harsh.

For this reason alone, it did not come as a particular surprise when Johnson commissioned a **sentencing review in 2019**, to tackle 'dangerous criminals' who he said 'must be kept off our streets, serving the sentences they deserve.' This White Paper now forms the foundation for the controversial **Policing, Crime, Sentencing and Courts Bill**, currently being passed through parliament. Whilst it has yet to receive royal assent, the Bill proposes a dramatic shift in sentencing.

The Bill introduces potential life sentences for drivers who kill in the course of driving, Whole Life Orders for child killers and, in exceptional circumstances 18–20-year-olds, and an end to automatic halfway release for serious violent and sexual offenders who are sentenced to between four and seven years. Perhaps most controversially, as far as sentencing is concerned, the Bill includes an increase in the maximum penalty for criminal damage of a memorial, from three months to 10 years.

Whilst arguments could be made that these reforms may reflect the public's desire and increase community confidence in the justice system, the Bill's own **impact assessment** states there is "limited evidence" the measures will deter offenders or reduce crime. It also states that the cost for the prison service will be "increased population and longer times spent in custody which may compound prison instability, self-harm, violence and overcrowding."

With a sense of obstinacy that they are doing the right thing by imprisoning more people for longer stretches, the Government's plan is to pump **£4 Billion into the prison system to deliver up to 18,000 more prison spaces**. With the **backlog of criminal cases being brought before the crown court mounting**, one cannot be criticised for wondering if that money might be better spent elsewhere in the justice system. As chair of the Bar Council Derek Sweeting commented **"decades of underfunding and mounting backlogs will not be turned around… by tougher sentences."**

What can the government, or any other authority for that matter, practically do to alleviate the various stresses on the prison system? Whilst it is courts who hand down sentences, the sentencing framework of England and Wales is established by parliament. In response to the prison population crisis of the 2010s, which led to widespread panic and the early release of many prisoners, the government introduced the Sentencing Council, which was established in April 2010, under the **Coroners and Justice Act 2009**. The Sentencing Council's primary

task is to act as an independent advisory body, which issues guidelines on sentencing to judiciary. Judges and Magistrates are obliged to follow the guidelines issued by the Council, unless the court is satisfied that it would be **"contrary to the interests of justice to do so."**

The House of Commons Justice Committee, a key stakeholder in the Council, made clear that the Council's statutory role should include 'evaluating government policy and bills' directing the Council to **Section 132 in the Coroners and Justice Act 2009**. Since its foundation, whilst the Council has produced a vast quantity of definitive guidelines covering over 200 criminal offences, it has received criticism for its absence in influencing policy and law-making. The Council was not involved in the white paper sentencing review in 2019, nor is it mentioned in the Bill. There have been no formal studies undertaken by the Sentencing Council as to why England and Wales have seen such sentence inflation either. It has also failed to conduct any overview of sentence levels as a whole, something which a 2014 British Academy Report labelled **"sorely needed"**.

It is clear therefore that to reduce prison numbers whilst maintaining proportionality, preserving cost and reducing recidivism, a number of reforms are required. Advisory councils, such as the Sentencing Council, need to fulfil their statutory duty and embellish a more prominent role in law-making and policy issues.

Secondly, the Government ought to engage in open dialogue with experts in the field, as to whether inflating sentences is likely to bring any real positive change or if its sole merit is the galvanising of mass political support.

Further, a greater emphasis on alternative forms of punishment for low level offending, should be pursued by lawmakers and, where possible, courts. Community orders, suspended sentences and **electronic tagging** have proved to be more effective at reducing recidivism.

Finally, the government should seek to invest in reconciling the root causes of crime. It is **widely accepted** that socio-economic factors are significantly influential in leading individuals down criminal paths. A glaring example of this is that although they only make up **1% of the population**, around **two fifths of children in secure training centres** and young offenders institutes have been in care. **Several studies** have highlighted the role of stable and positive relationships between offender and caseworker in helping individuals break free from a life of crime. **Evidence** also shows punishment, in any form, ought to be intertwined with social services such as housing, skills development, and drug treatment.

However, by viewing the criminal justice system in isolation from other institutions, ramping up sentencing and preparing for thousands of new prison spaces, the likelihood is the numbers of offenders trapped in a viscous prison cycle will only increase.

An emphasis on rehabilitation, alternative punishment, a reduction in harsh sentences and addressing social causes may appear costly, whether in terms of political point scoring or government expenditure, but the evidence suggests rethinking our approach to punishment can drastically improve the state of the prison system and society as a whole.

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BRUCE REID

"HEALTH AND SAFETY IS OUR FIRST PRIORITY"

The customary pall of boredom hangs heavily over Camberwell and nowhere heavier than outside Court 7 and the Local Authority list, where the spectres of dodgy 'Disabled' badges, kebabs past their sell by date and unpaid parking tickets, sometimes all three attached to the same Defendant, await the luckless Duty slave. In this case Felix Mansfield.

Squirrel Nutkin – Cheer up, Felix, none of them seem to have personality disorders…..

Felix Mansfield – (Raising a quizzical whisker) Check out the dude in the lederhosen and white spats, will you? Already told me he wants to take the dog-pooping charge to the House of Lords. I told him it wasn't imprisonable so I can't do it as Duty. Shall I send the wheelie bag of newspaper cuttings, sweet wrappers with notes of recent appellate decisions on them and the stale banana skin that he proffers, in your august direction? Bonkers enough for a representation order…….

SN – Can't do it; private client. Wait a minute though; I think I can help you…(He picks up one of the several business cards with 'Tabitha Turtle' name on it from their scattering points around the foyer and advances on the lederhosen)…I am sure my colleague can help, Sir, you will usually find her outside court 5…..

FM – Thanks, that will stop her trawling the cells for an hour or so – well done.

SN – That will be the high point of my morning; Bertie Budgerigar's up for Health and Safety again.

FN – Not *the* Bertie of the 'Great Chicken Nugget Epidemic of 2015?' - The one that laid waste, literally, to East Street Market?

SN – The same, although he has gone up-scale. Black chinaware, umbrellas on the cocktails and Pan-Asian cuisine specialising in insect protein. In this case 'Cockroach Tempura with Sriracha Mayo"

FM – Pan-Asian? Bertie's a 10th generation Bermondsey boy, none of his family have been East Of Erith, not unless you count those of them that went on a one-way Super Economy to Australia in a Victorian hulk……

SN – Cultural appropriation is not Bermondsey Man's strongest point. Let me demonstrate today's problem with a quote from Bertie's website:

"…. All our mice are heirloom breeds, we have known them for generations."

Now to the menu:

"Our passion for freshness is unrivalled; our cockroaches are hand-raised in our own kitchens, dipped briefly in the same batter they have been feeding on before being crisp-fried to perfection"

It gets worse - DJ Bunnyhugger has just gone vegan. The Full Gwyneth Paltrow. You can't get into her room for chia seeds and candles. I am going to get slaughtered……………Much like the Chamber of Commerce who dined Chez Bertie…..

FM – Never mind closing Bertie down, they should start with this place; it's a danger zone, folk are dropping like flies. The cell area is like a Cup Final crowd. Why do you think all the Walworth overnights went off to Westminster? That suit for false imprisonment is why, when the SERCO van never got here 'cos the cells were rammed. The Top Brass in this place never do anything unless a writ arrives on their desk and even then the universal solution is increased use of black and yellow tape. Fancy contributing to Gustavo Guinea-Pig's collection? He went down with COVID last week.

SN – What, that guy who spends all day wiping the desks down? I know he's foreign but he'll get NHS cover, surely?

FM – Scant comfort for the wife and four kids in Ecuador he sends money to. And while we're at it, chip in for Ola Okapi from the cells, she went down on a Saturday shift. In the ICU and I don't suppose SERCO will pay for her to go private.

SN – That's not funny, Felix. (Squirrel reaches for his wallet and digs deep.) Oh dear, here comes the Hammer of God.

The steely blonde visage of Rebecca Roebuck for the London Borough of Southwark approaches and beckons Squirrel and Bertie. "We're on!" she smiles evenly.

30 minutes later

DJ Bunnyhugger - ……….. and if the Chamber of Commerce are willing to sacrifice the lives of sentient beings for their own pleasure they can reap the consequences……Conditional Discharge for 3 months and no costs.

Bertie Budgerigar – Brilliant, Squirrel! No more up-market stuff for me, I am going back to my roots. Do you and the Missus fancy a freebie fry-up or maybe a few eels and some Jaegermeister shots on the house?

SN – (Hesitating) Errr… (to divert matters he smiles unctuously at Rebecca.) Sorry about that – you win some, you lose some…..

FM – No hard feelings eh, Rebecca?

Rebecca Roebuck advances to both of them and then in one swift double-handed motion jams a swab up each one's nostrils. Whilst Felix and Squirrel are putting their eyeballs back in, she drops the results into test-tubes, pauses and smiles.

RR – Both positive! I'll take your witness statements on Zoom during your self-isolation. Be careful what you wish for. I am closing this place!

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