

## MOJUK: Newsletter 'Inside Out' No 991 (21/02/2024) - Cost £1

### The Troubles: Former Soldier Charged With Murder Over 1972 Shooting

*Julian O'Neill, BBC News:* An Army veteran is to be charged with the murder of a man and the attempted murder of six others in Belfast during the Troubles more than 50 years ago. Three other former soldiers will also face prosecution for attempted murder. The move was announced by the Public Prosecution Service (PPS) after examining evidence submitted following a police investigation. Due to the timing of the decisions, the cases are not affected by the Legacy Act. From later in 2024, the Legacy Act will offer amnesties in Troubles cases.

A veteran referred to as Soldier F will face a charge of murdering Patrick McVeigh, 44, at Finaghy Road North in May 1972. He will also be prosecuted for the attempted murder of four other people in the same incident. Along with individuals referred to as Soldiers B, C, and D he is also to be charged with the attempted murder of two people in a separate shooting at Slievegallon Drive in west Belfast, also in May 1972. The individuals referred to as Soldier F and Soldier C are not the same individuals involved in any previous or on-going prosecution relating to events in Northern Ireland in 1972. All the shootings involved a undercover Army unit called the Military Reaction Force (MRF), which operated in Belfast in the early 1970s.

The PPS said in a related case - the killing of 18-year-old Daniel Rooney at St James' Road, west Belfast, in September 1972 - there was insufficient evidence to charge two former soldiers. PPS assistant director Martin Hardy said all victims and families involved were informed of the decisions before they were made public. He added: "Regardless of the differing outcomes in relation to each incident examined, we in the PPS recognise that this is a painful day for all victims and families involved and that they have waited a long time to reach this stage of the process.

"Where a decision to prosecute has been taken, I would emphasise that criminal proceedings will commence in due course and there should be no reporting, commentary or sharing of information which could in any way prejudice these proceedings. We will keep in touch with the relevant victims and families as these cases progress. "Where a decision not to prosecute has been taken, I can assure victims and families involved that the prosecution team, which included an independent senior barrister, considered the available evidence thoroughly, independently and impartially."The MRF was a small, secretive unit within the Army and consisted of about 40 undercover soldiers who patrolled west Belfast in unmarked cars. It operated for about 18 months before it was disbanded in 1973.

### France: Kettling of Demonstrators Against Pension Reform Bill - Violation of Articles 2 & 11

(The Pension Reform Bill in France raised the state pension age from 62 to 64. The bill was met with widespread protests and strikes across France)

Recourse by police to kettling technique, which at the relevant time had no legal basis, violated the rights to freedom of movement and assembly of the applicants, who were prevented from participating in a demonstration. In Chamber judgment<sup>1</sup> in the case of *Auray and Others v. France* (application no. 1162/22) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 2 of Protocol No. 4 (freedom of movement) to the European Convention on Human Rights, and a violation of Article 11 (freedom of assembly and association) read in the light of Article 10 (freedom of expression)

The case concerned the applicants' containment for several hours on Place Bellecour in Lyons on 21 October 2010, during a demonstration against a pension reform bill. Having noted that the reason for cordoning off Place Bellecour had been to separate and contain potentially violent trouble-makers in order to avert a risk to the safety of persons and ensure the proper conduct of the demonstration, the Court acknowledged that such a restriction on personal freedom had been necessary in order to avert a real risk of serious harm to people or property, and that it had been limited to the minimum needed to achieve that aim. It concluded that, despite its duration and its effects on the applicants and having regard to its nature and the manner in which it had been implemented, the restriction had not therefore amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

As to the complaints concerning the rights to freedom of movement (Article 2 of Protocol No. 4), freedom of expression (Article 10) and freedom of assembly (Article 11), the Court reiterated that any measure restricting those freedoms had to be "prescribed by law". However, it noted that the general legal framework on maintaining order in force at the time of the events at issue could not be regarded as defining the rules on the use of the kettling technique with sufficient precision to represent a safeguard against the risk of arbitrary interferences with the freedoms of the individuals likely to be affected by it. The Court concluded that the police's use of the kettling technique had not, at the relevant time, been "prescribed by law" within the meaning of the provisions relied on. For that reason, having noted that in December 2021, that is to say after the events of the present case, the Minister of the Interior had issued a new national instruction on maintaining public order, the Court concluded that there had been a violation of Article 2 of Protocol No. 4 and Article 11 of the Convention read in the light of Article 10.

### Patients Left Languishing in Prisons For Months

Patients who should be in hospital are being left in prisons for more than a year, a review of prison mental health services has found. HM Inspectorate of Prisons' thematic review examined access to mental health services. In 2022-23, over three-quarters of prison reports included delays in mental health transfers. Patients under the jurisdiction of the Mental Health Act cannot be legally assessed or treated in prison; instead, they must be promptly removed to secure hospitals. Delays in transfer completion often leave patients lingering in the prison system 'for weeks, often months and, in the worst cases, for more than a year.'

The report evidenced that fewer than 15% of patients were transferred within 28 days, with the average time being 85 days. On numerous occasions, staff members miscalculated the length of the delays because they evaluated the wait time procedurally rather than from the patients' perspective. Far too frequently, 'those in mental health crisis were held in conditions that were clearly detrimental to their health and well-being, usually in segregation or inpatient units.' Worryingly, the report highlighted 8 key concerns such as prisons repeatedly being used as alternatives to secure hospitals and a lack of oversight and accountability for the long wait times. The shortage of beds was a significant obstacle to prompt patient transfer to secure hospitals.

Charlie Taylor, the chief inspector, of prisons stated, 'Fundamental change requires a commitment to placing the patient at the centre, creating an independent and accountable admissions process so that they can access early care and get the help they desperately need. There remains hope that findings will encourage immediate action so that acutely unwell people do not continue to suffer further harm awaiting the care that they need and to which they are entitled.'

Amelia Sharples, Justice Gap

### **Black Teenager Stopped by Met Police Six Times in Five Months**

*Jessica Baillie, Justice Gap:* An investigation of eight Metropolitan Police officers is being undertaken following repeated stop and searches of a 16-year-old boy. The 16-year-old, who is black, was stopped and searched six times in five months across Tottenham and Stafford in 2023. Each time the police took no further action.

The investigation has been launched by the Independent Office for Police Conduct (IOPC) after a mandatory referral from the Met in September 2023. The allegations include that there were insufficient grounds for the stop and searches, racial profiling by the officers and an unreasonable use of force. The IOPC said the teenager was told he was being searched on suspicion of drugs or theft and that he reportedly matched the descriptions of people involved in knife crime and robberies in the area.

Speaking to LBC News about stop and search, Alliance for Race Equality's Jeremy Crook highlighted that it is 'traumatising when you're innocent.' As reported by the BBC, the director of IOPC, Charmaine Arbouin stated 'The concerning allegations raised in the complaint – which include racial profiling of a child and insufficient grounds for stopping and searching them six times in five months – are issues that we know disproportionately affect Black and other minority ethnic communities and erode public confidence in policing.' Arbouin continued to say, 'It's therefore essential that we carry out an investigation – independent of the police – to look at each of these incidents and the actions and decision-making of the officers involved. We will continue to keep those involved updated as our investigation progresses.' The IOPC has explained that the investigation will not necessarily result in disciplinary proceedings.

### **Prisoners 'Die Of Natural Causes at 67' - Outside the Median Age is 86**

Prisoners recorded as dying of "natural causes" do so at a median age of 67, according to a study published in the respected British Medical Journal. The figure compares with a median age of death of 86 in the general population, according to the research undertaken by the National Confidential Enquiry into Patient Outcome and Death (NCEPOD). Mark Juniper, co-director of NCEPOD and a co-author of the report, said that whilst the healthcare need of prisoners is the same as for people in the community, provision of healthcare is not. He called for improvements across the board, from health assessments and monitoring, to how prison staff are trained to recognise and deal with acute deterioration in inmates.

The review sought to examine the healthcare provided to prisoners who died in prison, hospitals, or hospices whilst detained. Researchers examined the care of 247 prisoners who died from natural causes, or from non-natural causes such as accidental overdose, over the period between 2018 and 2020. A group of clinicians reviewed fatal accident reports, independent clinical reviews for NHS England, and clinical notes, as well as surveying healthcare professionals working in prisons, with the aim of identifying areas for improvement. They found evidence of clinical deterioration before death in 168 patients, and in more than a third of these cases they felt that the deterioration was not managed appropriately. They also identified 23 potentially-avoidable natural deaths, most of which had an acute condition such as severe infection or heart problem listed as the cause of death. Out of 129 cases where reviewers examined health assessments, they identified scope for improvement in 44 per cent.

They said there was a need for improvement in monitoring physical health problems, mental health conditions, smoking, alcohol, or drug abuse, and said "increasing the number of appropriately skilled prison healthcare staff would help to tackle this". The report also called for

improved cardiopulmonary resuscitation training for non-clinical prison staff – "In six cases examined, patients could not receive immediate resuscitation because of the lack of training, even though prison staff were the first on the scene." They felt prisons should also make better use of the national early warning score system (NEWS2), which was used to assess on 135 occasions, but could have been improved in 73 others. They found there needs to be an improvement in protocols and policies for emergency transfer to hospitals to minimise delays. They also found that for 45 per cent of patients where death was from natural causes, palliative and end of life care was inadequate. Mark Juniper said, in conclusion, "Just like the wider population, the prison population have longstanding or new long-term conditions, such as diabetes or heart or lung disease, which need monitoring and treating, and acute emergency conditions that need rapid action. Ensuring that there are enough skilled healthcare professionals available to monitor long term conditions, recognise acute deterioration in health, and know how to respond quickly is essential." The work was funded by the Health Foundation.

### **Women in Prison - Lessons and Ambitions**

*Sonya Ruparel, Women in Prison:* It's hard to believe that a year has already gone by since I joined Women in Prison, new to being a CEO and new to criminal justice. It's been a year of deep learning, a lot of reflection, some successes, some mistakes, some fun, some hard times, and a lot of support from the people around me. At 3 months I wrote my early reflections about power. I had a lot of questions about how this might show up in my role, in our work at Women in Prison and, in the systems, we operate in. One year on, and I am still in the midst of learning about the role and the sector. I still feel 'new'. I thought now would be a good time to share some of what I have been learning. For those who might read this from within the criminal justice sector, this won't be revelatory. But for me, coming into a sector that I didn't know or understand before has given me some insights that I hope don't become jaded with time so that Women in Prison can continue to be an organisation that speaks truth to power and works side by side with women affected by the criminal justice system.

*Justice:* This is such a loaded term. I have spent my career fighting for social justice in different ways and in different sectors. If we were to close our eyes and dream about what a justice system might do, how it might work, and who it would exist for, I strongly doubt we would create it the way it has evolved today. So many people in society are treated unjustly and inequitably. Women bear the brunt, always, of an unjust society and unjust policies. The Corston Report (a seminal and important report published 16 years ago) is still as relevant today as when it was written. The experience of women in contact with the justice system and the need for a gendered approach to meet their needs is well documented. The Female Offender Strategy was published in 2018 – and yet it is predicted that the women's prison population will rise over the next three years despite a commitment for the opposite to take place. It's well known that women are unfairly discriminated against, particularly those from black and minoritized backgrounds, and that so many women in prison just should not be there – justice is a word that too many women caught up in the system cannot relate to.

*Rights:* Intimately linked to justice are rights. Prison by its nature is a denial of rights. Denial of a right to liberty and the right to vote are legislated if you are imprisoned. We are all born with rights, including the right to a standard of living adequate for your health and wellbeing including food, clothing, and medical care. When it can take 2 weeks for a woman in prison reliant on medication to access it, when she is not enabled to earn enough to be able to afford the clothes

that bring her dignity and has to wear second hand underwear – these fundamental rights are being denied. If a woman leaves prison and due to the stigma and discrimination, she faces from being criminalised can't access adequate housing or is unable to find employment her fundamental rights are being denied. Our frontline staff have heard these and similar stories time and time again. Women whose rights were already threatened having faced violence and abuse, who have not had adequate support for their mental health needs or drugs misuse who are then drawn into the justice system often face further indignity and rights denials. How can we, as the 6th wealthiest, supposedly developed, country in the world bear to let this happen? As Nelson Mandela so eloquently put it 'No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.'

*Community Support:* We all too often send women to prison who have experienced complex disadvantage for low-level offences, remove them from their families and communities, deny them their rights, take away their agency and decision making over their own lives. Communities must be empowered and resourced to support women's urgent needs such as mental ill health and homelessness. And to provide the services that are so desperately needed that would prevent women from offending in the first place. Women must have opportunities for economic empowerment; for agency in their lives; for being able to access the right support at the time when they need it the most; to access adequate, safe, and affordable housing and to live lives with dignity and free of fear.

For these reasons, and many more, it is a privilege to work at Women in Prison with a staff team with deep expertise, an award-winning diverse board, and dynamic women with lived experience. Because change can and must happen. Because we cannot stand by while women's rights violations affect those most excluded in society. Across the organisation, on top of the impactful and important work that we do in service of women in contact with the criminal justice system, we have been reflecting and dreaming. We have been reflecting on our roots and why we came into existence. And we have been dreaming about the organisation we want to be to help create a future where women are no longer unnecessarily criminalised, where we all have real justice and can access our rights. Over the coming months we will be launching our new vision and purpose, and our new organisational values. We have been developing plans to recognise our 40th Anniversary, to deepen our learning from our heritage so that we can develop a new strategy in 2024. We could do none of this without the support of our partners and donors, and I'd like to acknowledge and thank each and every one of you for continuing to support women who have found themselves facing multiple disadvantages.

### **'Send Elderly Prisoners to Secure Care Homes'**

A prison governor has called for ageing residents to be housed in secure care homes rather than in standard jails. Natalie Beal, governor of HMP Glenochil in Scotland, says that over 700 prisoners out of a total of 8,000 in Scotland are aged over 60, and that 50 out of the 730 in her prison have personalised healthcare requirements. She says the prison was not built to cope with their needs. There has been a significant increase in recent years in the numbers from this age group in jails throughout the UK, largely due to convictions being handed out for historic sex offences. Elderly men in jail may require help with mobility such as wheelchairs and hoists, or with dressing and feeding. "We were not built with an ageing population in mind" The Times reports Beal as saying. "We don't have enough accessible cells and need to think about something like secure care homes instead. We have people whose needs are wider than can be met in a secure prison regime."

The Scottish Prison Service (SPS) has increased spending significantly on Social Care over the past five years. Figures show that £636,000 was spent on this in 2018, but the figure had more than trebled to £2.1 million by 2022. Beal says that £500,000 of that was spent in HMP Glenochil. Prison reform charity Howard League Scotland said the proportion of prisoners over 50 had doubled in a decade, from 6.5 per cent in 2010/11 to 14.8 per cent in 2022/23. The organisation said it was "sobering" to enter a prison and see banks of wheelchairs and hoists, and notice the significant number of prisoners needing 24-hour assistance. Whilst healthcare in Scottish jails is an issue for the NHS, social care is the responsibility of the SPS, which said that despite a tight settlement from the Westminster Government, the Scottish Government is increasing overall spending on prisons in Scotland by 10 per cent. In English and Welsh prisons, out of 84,000 prisoners detained in 2023, there were 5,700 (7 per cent) aged 60 or over.

### **Women's Prisons More Violent Than Ever**

In the year to September 2023 the 12 female jails in England saw 1,630 reported assaults, a 19 per cent increase on the previous year's total and equating to 488 per 1,000 residents. The rate in male jails was 292 per 1,000 residents. Historically, there were more assaults in men's prisons, but since 2019 the rate has been higher in women's prisons. Of the assaults in female jails, 110 were described as serious, of which 39 were against prison staff. The women's estate also saw a 38 per cent year-on-year increase in self-harm, to a record rate of almost 6,000 incidents per 1,000 prisoners. The self-harm rate was 10 times higher in the female estate than in the male estate.

Prison reform charities expressed concern at the figures. Andrea Coomber, chief executive of the Howard League for Penal Reform, told The Independent: "Too often, shortages in hospital places and community interventions mean vulnerable women end up in jails instead of getting support." Although the government committed six years ago to significantly reduce the number of women in prison, the Howard League pointed out that under current plans to expand the prison system there would be around 40 per cent more women in jail, "in a system clearly unable to meet their complex needs". Pia Sinha, chief executive of the Prison Reform Trust, said: "These figures are shameful. When prisons are this overcrowded, they become ill-equipped to deal with the scale of trauma and despair amongst the prison population. Self-inflicted deaths, self-harm, assaults, all up. For women in prison, the rate of self-harm is at the highest level ever recorded.

"Prisons are often the place that people find themselves when they have fallen through the cracks of other social services, but this doesn't have to be the case. Measures already exist which provide support for people whose offending is linked to mental health. The solution to reversing the mental health crisis in prisons lies in ensuring these services are given the long-term support needed." Steve Gillan, general secretary of the Prison Officers' Association, said, "Overcrowding and understaffing with no meaningful activity for prisoners leads to our members being assaulted on a regular basis. It is totally unacceptable. We call on HM Prison and Probation Service, and government, to deal with it robustly, so our members are safe at work." A Ministry of Justice spokesperson said: "The number of women in prison has fallen dramatically since 2010 and we are continuing to invest millions into community services to steer female offenders away from jail and help get their lives back on track. However, for those women who have committed crimes which warrant a custodial sentence, we are transforming the mental support on offer in our jails, including tailored, round-the-clock care, extra face-to-face time with specialist staff and improved self-harm training for all frontline officers."

### **Lingering IPP Sentence Has Cost Taxpayers More Than £1 Billion**

Taxpayers have spent more than £1 billion keeping people in prison on endless Imprisonment for Public Protection (IPP) sentences since 2012, when the sentence was abolished but not retrospectively, according to an analysis by Sky News. The finding will pile more pressure on the Government to hasten the process for releasing those in prison years over their IPP tariff. The analysis comes as data released by the Ministry of Justice (MoJ) shows 2,852 people remain incarcerated under the IPP system. Included in that number are 1,227 who have never been released, of whom 1,210 are beyond their original tariff.

Sky News took the average cost of a prisoner in each financial year between 2012 and 2023, and multiplied this by the number of prisoners remaining on expired IPP sentences at the end of each year. The total came to £1.1 billion – a figure which excludes the cost of those recalled to prison under the terms of the endless IPP licences.

### **Prisoners Should Work Longer Hours, Says NACRO**

A campaign to make working hours in prison jobs more like those in the real world of work has been launched by a prisoner rehabilitation charity. The National Association for the Care and Resettlement of Prisoners (NACRO) has produced a short video called Wasting Time (screenshot above) to demonstrate how training in jail gives too little time for those taking part to learn worthwhile skills. It points out that a working day in a prison workshop might be only three-and-a-half hours, compared with seven hours for someone working in a typical job in the community. Often work is interrupted by general alarms or staff meetings.

NACRO suggests ways that working hours could be increased through simple and cost-free amendments to the system, such as permitting lunch breaks to be taken in workshops rather than moving prisoners back to their cells for a lunchtime lock-in. The charity is also calling for better wages to be paid for training and working, so those leaving prison would have earned money to take home. The charity's Justice Exchange group, who have been through the system, advised on the scheme.

Campbell Robb, Chief Executive of NACRO, said: "Having a job after you come out of prison can make the difference between building your life back or not. Yet most people are denied the opportunity to work in or outside prison, which is setting them up to fail. "Many people instead spend their time in prison locked in a cell for 22 hours a day, without meaningful activity, work or training, and no opportunity to address mental health or substance misuse issues, unable to turn their lives around. That's not doing time, it's wasting time." Nacro pointed to official figures showing that 70 per cent of prison leavers remain unemployed six months after release.

### **If Justice Were a Delusion it Would Not be Worth Fighting For**

*Francis FitzGibbon KC, Justice Gap:* How sad and alarming to read that Dr Dennis Eady, so powerful an advocate for victims of miscarriages of justice, now believes that the justice he has campaigned for is a mere delusion. The delusion, he argues, lies in 'unquestioning faith' that 'the system demands and often receives'. He holds that justification by faith alone, like Lutheran dogma, props up the system. His despair seems to me to rest on two false premises, one theoretical and the other practical.

The theoretical premise is that the concept of justice exists almost as an ethereal form, like a mathematical truth, if only we could realise it in the world. If it were, we would first need to define it. In Plato's Republic, Socrates and his interlocutors talk about founding an ideal state based on justice. They offer different formulations: for Thrasymachus, the philosophical ancestor of Thomas Hobbes, justice is no more than the exercise of the will of the powerful over the

weak; for Polemarchus, it is giving each man (sic) his due, but he does not tell us how to work out what each man is due: that's left to later rights-theorists and Utilitarians. Socrates has justice as the correct alignment of the elements of our souls, which is not a formulation that gets you far in The Old Bailey. The point is that an idealist concept will always be contested and won't command universal nor even local assent. So comparing our secular justice with the ideal will not only lead to disappointment but will end up with the bleak Eady vision of justice being a delusion.

On to the practical: The notion of what is just depends on the legitimacy of the institutions that exist to uphold justice and prevent injustice. Ours live by basic principles such as hearing both sides of a case, having impartial courts, and only deciding issues on the basis of relevant evidence, and above all by acting according to the law. Without law, there would be no justice – only the Hobbesian war of all against all with the mighty prevailing until someone mightier came along. In other words, for justice to have any meaning and heft in practice, it has to be grounded in rules which those in its jurisdiction (or enough of them) willingly obey. The justice that the rules promote changes over time. Until 1898, criminal defendants were not allowed to give evidence on oath because it was considered that would be certain to lie and break their oaths, rendering themselves liable to divine as well as secular punishment – an unjust outcome. Now justice demands that they have the right. I maintain that it is the working of practices and procedures that gives us in the here and now the real meaning of 'justice'.

Hence, blind faith is not required to see that justice is possible in our criminal courts. Confidence and trust suffice and have to be repeatedly earned. The family of a defendant convicted by a jury of murder is likely to think that justice has been done; so is one acquitted in a weak case. Members of the public who serve as jurors would be surprised by Dr Eady's view that the justice they dispense is a delusion based on their unquestioning assumptions. As would judges and all those who dedicate themselves to making the institutions of law work better and campaign for change. Are they all deluded? I believe, through decades of first-hand experience rather than blind faith, that our practices and procedures are generally good enough.

Which is not say that our system of criminal justice is perfect. Its failings are manifest: poorly resourced, excessively punitive, too reactive to short-term political imperatives, too slow to correct the miscarriages of justice for which Dr Eady so tirelessly campaigns. If justice were a delusion, it would not be worth fighting for. We are on board a ship which we must repair at sea with the tools at hand. I do not believe that abandoning the goal of justice is the answer.

### **Four Deaths in Custody Every Week in Scotland**

*Maria Siti, Justice Gap:* A new report reveals that four people die in custody in Scotland every week. Meanwhile, the head of the Scottish Prison Service Prisons is calling for the release of inmates early, as overcrowding reaches a "tipping point" The report, by the Scottish Centre for Crime and Justice revealed that, in Scotland, an average of four people die in in state custody every week. More than 240 people died in prison or custody between October 2022 and September 2023. The majority of these deaths occurred while under detention pursuant to the Mental Health Act (144), followed by 39 in prison deaths, and 39 people died after police contact. The research team also carried out 22 Fatal Accident Inquiries (FAIs) which are mandatory for deaths in custody which comprises predominantly deaths in prison. Off 22 FAIs, twenty died in prison, one in police custody and one in migration detention. The backlog of inquiries remains, and the FAIs are not keeping up with the deaths of individuals in detention.

Professor Armstrong said "We identified reoccurring themes in these deaths such as inappro-

priate care for people with drug issues, ignoring medical histories when assessing suicide risk and delays in medical treatment. Of four suicides in prison investigated in FAls, not a single one made identified any precautions, defects or made recommendations to prevent future deaths.” At the same time, the head of the Scottish Prison Service has highlighted the overcrowding of Scottish prisons. In some prisons, the ratio of prisoners to staff is 23:1. Ms Medhurst, head of the Scottish Prison Service, said “we cannot take any more. Prisons become very unsafe. The atmosphere, the tension, the volatility increases.” This mirrors the similar capacity crisis in England and Wales.

#### **Provisions Police Crime Sentencing Act 2022 incompatible with Articles 5 and 14 ECHR**

Judgment was handed down 9th February in R(Quaye) v Secretary of State for Justice. The Claimant sought a declaration of incompatibility in respect of part of the Police Crime Sentencing and Courts Act 2022 which made sweeping changes to the treatment of child offenders convicted of murder and subject to the mandatory sentence of detention during Her Majesty’s Pleasure. Previously, in accordance with the House of Lords Judgment in R (Smith) v SSHD, it had been recognised that the sentence of HMP detention contains a duty to keep the provisional minimum term fixed by the sentencing judge under review and that a detainee can subsequently apply for a review of that minimum term in light of exceptional and unforeseen progress as they mature. This was a feature that unique sentence - recognising the special considerations and reduced culpability that applies to those who offend as children.

Section 128 of the Police Crime Sentencing and Courts Act purported to remove the right to seek a review of the provisional minimum term for all those child offenders who had happen to have reached their 18th birthday on or before their sentencing hearing. It also contained other provisions limiting the right to more than one review for all HMP detainees. The Claimant argued that the removal of his right to seek a minimum term review was discriminatory (for the purpose of Article 15, within the ambit of Article 5) because a difference in treatment between child offenders subject to HMP detention, based solely on age at the date of sentencing could not be objectively justified. Further removal of an inherent feature of the sentence, and a safeguard ensuring detention remained to longer than necessary having regard to the detainees progress, rendered the detention arbitrary for Article 5 purposes. Arguments were also made in the alternative in relation to Articles 6 and 7.

In a very strong judgment, the experienced divisional Court (consisting of a current and former judicial lead for youth justice) robustly endorsed the Claimant’s arguments under both Articles 5 and 14. In particular the Court roundly rejected the Secretary of State’s contention (and the “principal adopted by Parliament”) that the difference could be justified because 18 represents the end of any relevant cognitive maturation and that exceptional or unforeseen progress was therefore unlikely to be made past 18. The Court restated and emphasised the overwhelming body of scientific evidence and judicial observation that maturation continues until at least 25. As too any purported benefit for victims, the Court observed that victims are unlikely to play any significant role in minimum term reviews and that any benefit was dwarfed by the adverse and arbitrary impact of discriminating based on sentencing dates.

A declaration was therefore granted that the relevant provisions are incompatible with article 5 and 14 (within the ambit of Article 5). Parliament remains sovereign, and as such, the effect of the judgment is that (in accordance with the human rights act) the legislation remains in force unless and until it is repealed/altered by Parliament. However, the onus is now on the government to swiftly bring forward legislation to ensure compliance with the UK’s interna-

tional law obligations under the Convention. The Claimant’s solicitor Simon Crieghton said: “This judgment confirms the principle, from 1908, that there’s a difference in culpability for crimes committed by children & adults. Also that children shouldn’t be subject to arbitrary detention for periods longer than necessary to promote their rehabilitation”. It is anticipated however that the current Lord Chancellor will seek to appeal. As such those child offenders affected will therefore remain in limbo for the foreseeable future, with rehabilitative progress (plainly in the interests of the public) stalled or undermined in the meantime.

#### **Public Spending Watchdog Lays Bare the Dire State of Legal Aid**

A new report by the National Audit Office, Government’s management of legal aid, also says the Ministry of Justice lacks understanding of the demand for legal aid. This means it cannot ensure legal advice is available to those entitled to it. In real terms, government spending on legal aid fell by £728m from 2012-13 to 2022-23. This means it cannot ensure legal aid is available to those who need it. The real world impact of this has been the creation of large legal aid deserts. The vice president of the Law Society of England and Wales, Richard Atkinson, said: ‘Millions of people now live in areas where they can no longer access the help and advice that Parliament has said they are entitled to.’ This particularly impacts people fighting evictions, victims of abuse, or vulnerable people trying to access care they are entitled to.

The availability of legal aid impacts access to justice in many areas. On this, Richard Atkinson said: ‘The NAO report states that swift access to justice is one of the MoJ’s primary objectives. However, theoretical eligibility for legal aid is not enough to achieve this objective if there are an insufficient number of providers willing or able to provide it.’ ‘The MoJ must ensure that access to legal aid – which is itself a core element of access to justice – is supported by a sustainable and resilient legal aid market.’ The National Audit Office’s report also highlights the impact of legal aid funding on the overall efficiency of the justice system, as more people try to represent themselves in court, and there simply aren’t enough solicitors available to represent people at police stations and magistrates courts.

#### **Ministers Considering Alternative Redress For Wrongly Convicted Subpostmasters**

*Samantha Dulieu, Justice Gap:* Government ministers have held talks about a possible alternative means of overturning the convictions of victims of the Horizon scandal. As reported in The Guardian, the justice minister Alex Chalk and business minister Kevin Hollinrake, have discussed a method of exonerating wrongly convicted subpostmasters that would involve taking their cases through the courts. This would likely take longer than the government’s current method of dealing with the 700 wrongful convictions through a bill announced last month, that is currently making its way through parliament.

This new method of exonerating the victims of this miscarriage of justice has been proposed by members of the judiciary, with many expressing concern about the precedent that would be set by governmental and ministerial interference in the justice system. Downing Street’s proposal would see convictions overturned by statute, without those who have been wrongfully convicted having to go through the courts. A bill of this kind would be unprecedented, but ministers who support it say it would be the only way of quickly offering redress to subpostmasters. This comes as it has been revealed that at least 18 people have come forward with concerns about a previous accounting system used by the Post Office before the notorious Horizon system was rolled out.

### England and Wales Legal System ‘On Its Knees’

Shanti Das, Guardian: Victims of crime are dying waiting for justice as they face delays of up to six years for their cases to be dealt with in court, the victims’ commissioner for England and Wales has said. As a new law to enshrine victims’ rights is scrutinised in the House of Lords, Baroness Helen Newlove warned that the wider justice system was “on its knees”, with “shameful” backlogs leaving victims suffering acute mental health problems. “You’ve got victims waiting sometimes six years to go to court. These are victims of rape and sexual abuse, and children who have been abused. One girl, by the time it got to court it took six years. And she took her own life because of the process. People who are already damaged and traumatised are trying to get on with their life, and they can’t possibly, because it’s always waiting, waiting, waiting. Sadly, some people, it really affects their health and mental wellbeing, and they take their life.” She said that while legislation could improve the experience of victims in the system, little would change without separate action to tackle court delays. She also criticised government plans to draft in 150 judges and 100 officials and commandeer extra court rooms to deal with fast-track Rwanda appeals while not doing the same for the criminal justice system. “It’s shameful if they do get them because we’ve got other things to do,” she said. “Why can’t they do that with other cases? Why should it be one and not the other? That doesn’t sit well for victims waiting for a court date.”

Latest figures show the backlog of criminal cases in the crown courts is at an all-time high. In the year to September 2023 there were 66,547 cases waiting to be heard in England, Ministry of Justice data shows, with 28% in the court system for over a year. Such delays are on top of the time it takes for police to investigate, and for prosecutors and defence lawyers to build their cases, which can be several years. The average total time from an offence occurring to case conclusion is now 671 days. The Ministry of Justice said it had taken “decisive action” to “speed up justice for victims”, and that courts were now operating at “full throttle”, following disruption due to the pandemic and industrial action. Measures included opening two permanent “super courtrooms” in Manchester and Loughborough, running Nightingale courtrooms, and increasing investment in recruitment, with a goal of recruiting 1,000 judges. “More criminal cases are coming to the crown court than at any point over the last two years,” a spokesperson said.

But Newlove said the persisting backlogs showed ministers needed to “get creative”. She likened the situation to the Post Office and infected blood scandals in which people died awaiting justice. “People should realise the depth of what it can do to somebody’s mental wellbeing. This is about somebody’s life that has been damaged. They have never been listened to by a system that should be there to protect them.” Newlove, a Conservative peer who was appointed independent victims’ commissioner for England and Wales in October, having previously also held the post from 2013-19, has campaigned on victims’ rights since her husband, Garry, was kicked to death in 2007 in front of their two daughters. She said that since her husband’s murder there had been significant progress in some ways – with greater awareness of the challenges victims face and a bill aimed at increasing their rights in law currently going through parliament – but that in other ways things had got worse.

“We talk about victims more than we did. That’s a positive. But the negative is the criminal justice bit,” she said. “You’ve kind of got one area sorted to a degree, but the other area isn’t. It’s frustrating; it’s like wading [through] jelly at times.” She said there were no quick fixes, but that starting points could include courts being open for longer and judges being paid more to work in the evenings

and at weekends to help tackle a backlog of cases. Newlove said there appeared to be “a lot of goodwill” across parties to improve the experiences of victims, including the victims and prisoners bill, which is currently being scrutinised during the committee stage in the House of Lords. The legislation will place a statutory duty on police, council and health organisations to collaborate when commissioning support services for victims.

But she said that if the bill were to become law in its current form, she would be “very disappointed”. Along with victim support charities, she is calling for amendments, including an extension of support to the families of people murdered abroad; increased rights for victims of mentally ill offenders; safeguards to prevent the disclosure of victims’ records such as therapy notes; improved measures to hold agencies like the police to account over the provision of victim services; and an extension of the rights to victims of persistent antisocial behaviour. Without such changes, Newlove fears the bill has “no teeth” and will “let down victims”. “That wasn’t the purpose and the promise that we were given since I’ve been in this role and came into the House of Lords as a victims campaigner,” she said. With them, however, she believes it is a once-in-a-generation chance to transform how victims are treated: “We have to start listening to the victims. Not just to say ‘Thank you very much’ and do nothing. But to actually listen.”

### Detention at Her Majesty’s Pleasure Incompatible With Young Murderers’ Human Rights

*Bianca Castro, Law Society Gazette:* The High Court has ruled that detaining a young offender convicted of murder indefinitely is incompatible with the European Convention on Human Rights. Jesse Quaye was 18 when he was convicted in 2014 over a stabbing which happened when he was 17. He, along with another young person, was sentenced to detention at Her Majesty’s Pleasure (DHMP). The sanction is obligatory for any offender aged under 18 at the time the murder was committed. The judge specified a minimum term of 15 years.

In *Jesse Quaye, R (on the application of) v Secretary of State for Justice*, Quaye claimed that section 128 of the Police, Crime, Sentencing and Courts Act 2022, which deals with DHMP sentences, together with sections 27A(1) and 27A(11) of the Crime (Sentences Act) 1997, were incompatible with his convention rights, namely article 5 (the right to liberty and security) and article 14 (prohibition of discrimination), as well as articles 6 and 7.

Lord Justice Williams and Mrs Justice May acknowledged that where a DHMP was imposed on the offender on or after his 18th birthday, the offender would no longer be eligible to apply for a review. Those under the age of 18 at the date of sentence would remain eligible to apply for a review at the halfway point of their sentence. Those offenders would be eligible to apply for a further review only while they remained under the age of 18 at the time of any further application, the joint judgment said.

The judges said the age of the offender when the offence was committed was ‘critical’, adding: ‘The culpability of the offender must be assessed by reference to age at the time of the offence. This principle is made explicit by the statutory basis of the sentence of DHMP. It is to be imposed on an offender who had committed the offence of murder when aged under 18. In our judgment, even with a low level of scrutiny, there is no objective justification for the differential treatment of offenders sentenced to DHMP who are 18 at the date of sentence. There will be a declaration under section 4 of the Human Rights Act 1998 that sections 27A(1) and 27A(11) of the Crime (Sentences) Act 1997 as inserted by 128 of the Police, Crime, Sentencing and Courts Act 2022 are incompatible with articles 5 and 14 of the European Convention.’ - A Ministry of Justice spokesperson said: ‘We remain absolutely committed to ensuring murderers serve appropriate sentences and we will be appealing the High Court’s ruling.’