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Serving Civil Detainee Issues Claim Against Dominic Raab for 17 million Pounds

Giovanni Di Stefano, AKA 'The Devils' Advocate' is pursuing a claim for false imprisonment, unlawful detention, and loss of earnings, as a consequence, against the Secretary for Justice, Dominic Raab. Di Stefano was sentenced to a term of 14 years imprisonment on 27 March 2013 at Southwark Crown Court. That sentence expired on the 27 March 2020. However, release was conditional that he paid into the court £2 million pounds. Di Stefano raised various legal arguments including the question of ability to pay as opposed to unwilling to pay and further raised the question that in 2016 the Lord Chief Justice specifically specified in a Judgement that any default term was not consecutive. Further files on Di Stefano at the CPS, Police, Crown Court, and Court of Appeal have all suddenly vanished.

Background: On the 22 March 2014, a default term on confiscation was imposed in the term of 8 and a half years. In 2016, the Lord Chief Justice on Appeal reduced the default term to six years on appeal, and specifically did not order that term to be consecutive. On the 7 February 2017, the Westminster Magistrates Court issued a Warrant of Commitment for 2190 days specifically confirming the default was not consecutive. On the 30 April 2018, the London Regional Confiscation Unit issued a letter to the Claimant confirming that the Claimant was serving his default sentence. In 2015, the Court of Appeal awarded the Claimant 56 days loss of time. The Claimants release date was thus, the 21 May 2020. The Parole Licence issued to the Claimant, clearly stating that the Claimant was being released on the 21 May 2020. The default term expired on the 7 February 2020, and from the 21 May 2020 the Claimant has been falsely and unlawfully detained and as a consequence has suffered damages, and loss of earnings.

Giovanni Di Stefano, age 66, who became known as the Devil's Advocate for taking on "unwinnable" cases, was convicted on 25 charges including deception, fraud and money laundering between 2001 and 2011 at London's Southwark Crown Court. Whilst in prison, he has supported numerous serving prisoners, who were 'Miscarriages of Justice' and vigorously opposed, 'Joint Enterprise'.

Jim Sheridan takes on 'The Devil's Advocate'

Jim Sheridan, the six times Oscar nominated writer and director and his core documentary team has bought the exclusive rights to 'The Devil's Advocate', a biography of life with the infamous 'lawyer', Giovanni Di Stefano by his son Michael Di Stefano, and are currently in negotiations for a limited documentary series with broadcasters and major platforms. Sheridan, the acclaimed producer and storyteller has earmarked the story of the notorious lawyer, dubbed by the press as 'The Devil's Advocate, as one of his key projects for 2021 and 2022.

The working title is 'The Devil's Advocate – How to Win Fiends and Influence Despots'. Giovanni Di Stefano represented a collection of dictators and major crime figures, before being jailed for masquerading as a lawyer, it transpired that he had no formal legal qualifications. Di Stefano's cast of clients was impressive including Manuel Noriega, Saddam Hussein, Tariq Aziz, Ali Hassan al-Majid (known as Chemical Ali), Slobodan Milosevic, the Warlord Arkan, Charles Manson and gangsters Charlie Richardson and Brink's Matt Heist bandit - John 'Goldfinger' Palmer, amongst many other villains, convicted murderers and despots. Sheridan said "It's very easy to see this as a dramatic feature, but I think for now - the documentary form will suit the story better. This is an intriguing story and truly unique. The lead character is simply unbelievable, and we are delighted to have the exclusive co-operation of Giovanni, his family, his long-term assistant and his personal lawyer to tell the story." [Release Date: Spring 2022. The production team have already filmed in Italy, the UK, Belgrade, and Spain and conducted prison interviews with Giovanni Di Stefano. The project is based upon a forthcoming biography which is due to be released in conjunction with the release of the documentary project in 2022.

HMP Belmarsh - Levels of Violence Rise - Disproportionate Use of Force on Black/Younger Prisoners

Extracts: Report on an unannounced inspection of HMP Belmarsh: Although the prison felt generally well-ordered and calm, levels of violence had risen since our last inspection despite COVID-19 restrictions limiting the time most prisoners were out of their cells. While the prison collected data on violence and use of force, it was not being used to support the development of an effective strategy for reducing violence. It was concerning that there had been no violence reduction meeting for more than a year.

The underuse of data was something of a theme of this inspection – leaders did not have an adequate plan to consider outcomes for different groups such as the disproportionate use of force on black and younger prisoners, and neither data nor consultation were used to understand and address these or other disparities. While the prison's self-assessment report (SAR) suggested violence had reduced because there were fewer incidents, in reality, with fewer prisoners in the jail, rates were actually increasing.

The prison had not paid sufficient attention to the growing levels of self-harm and there was not enough oversight or care taken of prisoners at risk of suicide. Urgent action needed to be taken in this area to make sure that these prisoners were kept safe. The governor had a strong vision for the future of the prison, but for this to be realised she will need to strengthen her senior team and make sure that there is more rigorous oversight of some of the key areas – such as care for the most vulnerable prisoners, effective safety strategies and a better understanding of disparities between different groups – and use data to understand the challenges, set targets and measure progress.

Scotland: New Guideline Encourages Rehabilitation Over Prison for Young People

Scottish Legal News: A new sentencing guideline requires courts to have regard to rehabilitation as a primary consideration in sentencing young people, in recognition of their greater capacity for change. Following extensive research and consultation, the council submitted the 'Sentencing young people' guideline to the High Court for approval in September. The Lord Justice General, Lord Carloway; Lord Woolman and Lord Pentland approved the guideline which will come into effect for all courts in Scotland from Wednesday 26 January 2022. It will apply to the sentencing of those who are under the age of 25 at the date of their plea of guilty or when a finding of guilt is made against them.

Lady Dorrian, Lord Justice Clerk and chair of the council, said: "The guideline explains in a clear and accessible way why a young person should be sentenced differently from a fully mature adult, with rehabilitation as a primary consideration. Its approval by the High Court today is a significant milestone which will help to increase understanding and awareness of this complex and challenging area and, by setting out the various matters which should be taken into account when sentencing a young person, will be of assistance to sentencers and practitioners alike. It also marks the end of the first phase of the council's work. Since the council was established in 2015, our focus has been on completing a suite of three general guidelines which will set out a high-level framework for sen-

tencing in Scotland. The sentencing young people guideline is the final part of that framework and its approval allows us to turn our full attention to guidelines on specific offences. The council is grateful to all those who have contributed to the development of this guideline, from members of the judiciary and others who engaged with us in the early stages of our research and evidence-gathering, to the individuals and organisations who responded to the public consultation."

The sentencing young people guideline is intended to be read alongside the first two of the council's guidelines approved by the High Court, 'Principles and purposes of sentencing' and 'The sentencing process'. Together, these guidelines will apply to all offences in all courts in Scotland, supporting consistency in sentencing and improving public understanding of how sentencing decisions are made. The council will soon publish its third business plan, setting out its proposed work programme for the period 2021-24. It will also provide an update on the work currently being carried out by the council, in particular the development of guidelines in respect of death by driving offences and sexual offences involving rape, sexual assault and indecent images of children.

Government no Longer Keeping Proper Track Of 70,000 Immigration Offenders

Migration Watch: The Home Office has given up on keeping proper track of 70,000 immigration offenders, while it also failed to ensure sufficient data was collected from those required to report in-person to the authorities, including potentially dangerous foreign criminals. That is one of the takeaways from a damning report by the Independent Chief Inspector of Borders and Immigration (ICIBI) after it examined procedures at Becket House Immigration Reporting Centre in central London. The ICIBI added that 'the majority of individuals currently required to report are those whom the Home Office considers present the greatest potential risk of causing harm to UK society, often foreign national offenders with previous convictions in the UK'. Inspectors said that the government had stopped requiring the vast bulk of 82,000 immigration offenders to report in-person to the Home Office or Police Stations following the onset of the pandemic in March 2020. As a result, the total reporting populationhas fallen dramatically from 82,000 (pre-pandemic) to 11,500 in August 2021 when inspectors visited Becket House in Southwark, London.

The ICIBI says 'telephone contact has been maintained for individuals not required to report in person'. However, telephone contact is clearly not an adequate replacement to requiring in-person reporting since it provides no clear proof of a person's whereabouts or status. The report does not state how many of the reporting population are in telephone contact. Many of those who are meant to stay in contact via telephone are likely to have been provided with mobile phones at taxpayer expense. This happens, for instance, for all of those who enter immigration detention, and for all of those entering the UK after crossing the Channel in small boats who claim asylum.

Another finding by the ICIBI was that even when people did report in person, 'Inspectors observed very little evidence of the recording of data and information…. overall, the general proactive collection of information from the reportees was minimal' and that there were 'perfunctory and inadequate interactions with staff' and a 'lack of proactive questioning and recording of a significant change in a reportee's personal circumstances'. The consequences of such failures could be very serious given the potential risk to the public of re-offending by serious non-UK criminals who are living amongst the community - a risk that the ICIBI has alluded to in previous reports. Another previous ICIBI report showed that 55,000 of the more than 80,000 reporting population in late 2016 had disappeared, adding worryingly that there was 'little evidence that effective action was being taken to locate the vast bulk of absconders'.

The ICIBI's new report suggests little has improved since this finding was published, and

also quoted one member of Home Office staff as saying that measures introduced from 2018 to 'automate' the system of reporting (and to cut costs) had led to less details being collected. The Government responded to the latest report by accepting the ICIBI's recommendation that 'the Home Office should revisit the purpose and scope of a reporting event to ensure information is proactively and routinely collected and recorded'. The Home Office added: "We accept that the behaviours witnessed at the counter were not entirely in line with our internal processes and we will take steps to educate and remind staff of the correct procedures on new addresses and the need to be aware of behaviours displayed by those reporting when protecting the safeguarding and vulnerabilities of those we deal with within the centres."

No Evidence' That Longer Prison Sentences Will Deter Terrorists

Lizzie Dearden, Independent: There is "no evidence" that jailing terrorists for longer will deter them from planning terror attacks, a watchdog has warned. Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, said it was unlikely that extremists plotting to kill multiple victims would be swayed by the prospect of a new 14-year minimum term. The change is among measures in the Counter-Terrorism and Sentencing Act, which came into force in April. Responding to a Sentencing Council consultation on how to implement the new law, Mr Hall objected to proposed guidelines stating that courts must "not undermine the intention of parliament and the deterrent purpose of the provisions". He wrote: "There is no evidence that the serious terrorism sentence provisions have a deterrent purpose and given the cohort of offenders in question - terrorist offenders who have risked multiple deaths - it is highly unlikely that they will be deterred by the prospect of a statutory minimum term of 14 years. "It is much more likely that the provisions have an incapacitative purpose, by ensuring that offenders are held in prison for longer."

The Sentencing Council's proposed guidance, which remains under consultation, says judges can only justify not imposing the minimum term in "exceptional circumstances". It adds: "The circumstances must truly be exceptional. It is important that courts do not undermine the intention of parliament and the deterrent purpose of the provisions by too readily accepting exceptional circumstances." Mr Hall is currently undertaking a review of terror offences committed inside British prisons, amid concerns over networking and radicalisation behind bars. A string of terror attacks and plots have been committed by released prisoners, and the government drew up the Counter-Terrorism and Sentencing Act after the February 2020 Streatham stabbing. Last week, a coroner found that more people could be killed in terror attacks if the way authorities manage extremist prisoners is not changed.

Judge Mark Lucraft QC said the 2019 Fishmongers' Hall attack, where a released terror offender murdered two people at a rehabilitation event, raised "matters of concern" about procedures in jails, probation services and policing "In my opinion, there are risks that future deaths could occur unless action is taken to address those matters," said an official report. The Act changed the law to mean those found guilty of the most serious terror offences would be jailed for a minimum of 14 years, and monitored for up to 25 years after their release under new "serious terrorism sentence". It also increased the maximum penalty from 10 to 14 years' imprisonment for several terror offences, and gave judges the power to increase the sentence for any crime punishable by more than two years in prison by finding a "terrorist connection".

An impact assessment previously published by the government said that while longer sentences could give terrorists more opportunity to engage in deradicalisation programmes, there "is a risk of offenders radicalising others during their stays in custody". A document written jointly

by the Ministry of Justice and Home Office said there was “limited evidence of the impact of longer prison terms on reoffending”. It added: “It is possible that the introduction of the 14-year minimum custodial term for the most serious and dangerous terrorist offenders (along with the longer licence period and more intense supervision during this period) will act as a deterrent to possible terrorist offenders. “However, there is no evidence available for this cohort to support this.”

The home secretary and other government ministers have hailed the law as a way of protecting the public against terrorism. Priti Patel said tougher penalties for terrorists would “keep the public safe”. In May, she told the House of Commons: “The government will do whatever it takes to protect the public, and that also applies to our national security. This year, we implemented the largest shake-up of terrorist sentencing and monitoring in decades. “The Counter-Terrorism and Sentencing Act 2021 gives the courts, the police, the probation service and the security services greater powers to protect the public.” Some opposition politicians questioned the law, with shadow justice secretary David Lammy said evidence suggested that some terrorists may have been “made worse” by their time in prison. “There is little use increasing sentences for terrorists if we are to release them just a few years later, still committed to their hateful ideology, still determined to wreak havoc,” he told MPs during a debate on the bill.

Update: Police Murders of Gervaise McKerr, Eugene Toman and Sean Burns

Madden & Finucane Solicitors: 39 years ago – 11 November 1982 – three unarmed men were shot dead near Lurgan by members of an elite, SAS trained, firearms unit of the RUC. 109 rounds were fired at a car killing its owner Gervaise McKerr (31), Eugene Toman (21) and Sean Burns (21). In 1984, three RUC officers were acquitted of Eugene Toman’s murder and re-instated back into the RUC. John Stalker, Deputy Chief Constable of Greater Manchester Police, investigated the deaths but was controversially removed from his post shortly before finishing his investigation. His findings have never been made public. Sir Jack Hermon, Chief Constable of the RUC, steadfastly refused to disclose John Stalker’s report to the Coroner for Craigavon, who subsequently abandoned the inquests into the deaths.

In 2007, Madden & Finucane brought a successful legal challenge to the House of Lords in London on behalf of the families of Martin McCaughey and Dessie Grew, who were shot dead by the SAS in Co Armagh in 1990. This resulted in the obligations on the Chief Constable to make disclosure of All relevant documents to Coroners being finally and unequivocally defined. On the same year the families of Gervaise McKerr, Eugene Toman and Sean Burns made an application to the Coroner to re-open the inquests into the deaths of their loved ones. After 14 years of countless preliminary hearings, the PSNI has yet to provide full disclosure to the Coroner and a date for the inquest has yet to be fixed.

Self-Harm in Women’s Prisons at Record High

Inside Time: The rate of self-harm incidents in women’s prisons has risen again to a new record high, according to the latest quarterly figures from the Ministry of Justice. In the 12 months to June there were 3,808 incidents of self-harm per 1,000 female prisoners, equivalent to each women self-harming an average of 3.8 times. The rate was 16 per cent higher than in the previous 12-month period. The rate of self-harm incidents in men’s prisons was far lower, at 546 per 1,000 prisoners, marking a decline of 13 per cent from the previous year’s figure.

In the same set of safer custody statistics, the Ministry of Justice reported 81 apparently

self-inflicted deaths among men and women in prison in the 12 months to September, compared with 72 in the previous 12-month period, marking a 13 per cent year-on-year increase. Government ministers and Prison Service chiefs have put the trends in self-harm rates down to the different impact on men and women of the Covid lockdowns, when most prisoners have been confined to their cells for much of the day. Officials have claimed that some men find life in custody less stressful when their mixing with other prisoners is limited, as it reduces the opportunities for bullying and violence. By contrast, women are perceived to suffer from the lack of opportunity to provide one another with mutual support.

IPP Kills - Prisoner's Four Year Term Became 16 Year 'life Sentence'

Joe Thomas, Liverpool Echo: Raymond Wilkinson was locked up for robbery in 2005 but further offences in prison led to him being given an indefinite sentence that he was never released from. He died of natural causes in January - eight months before an inquiry into the type of sentence that kept him behind bars was announced by the Government. Wilkinson, 50, died in January 2021 after being taken from Walton jail to hospital following a number of health issues. The following month a coroner ruled he died as a result of multi-organ failure caused by a twisted bowel and bands of scar tissue. Aspiration pneumonia also contributed to his death. The inmate died a prisoner after being handed an Imprisonment for Public Protection (IPP) sentence in 2006 - just a year after he was initially locked up for robbery. Wilkinson, who had links to the Birmingham area, was made the subject of the IPP after committing arson while in prison. The type of sentence - which has since been abolished - meant he was locked up indefinitely and so did not have a release date. It had a minimum tariff of two years but, with Wilkinson only able to secure his release with parole board approval, that two years had become a dozen when, in May 2018, he received a further three year sentence for another arson committed while in jail.

That sentence came after his move to Walton, officially known as HMP Liverpool, in March 2017, a report into his death by the Prisons and Probation Ombudsman said. IPP sentences were abolished in 2012 after being declared "not defensible" by the then coalition Government. But those already the subject of them remained under the same provisions. More than 1,700 prisoners are still thought to be locked up with no release date and more than 500 people have - like Wilkinson - been held in prison for more than 10 years beyond the tariff they were initially given. Concerns over their plight led to the government's Justice Committee announcing an inquiry into IPP sentences in September. Chair of the Justice Committee, Sir Robert Neill MP, said: It has been almost a decade since the last IPP sentence was handed down. Despite this there are still over 1,700 people in prison who do not know when they will be released. "The large numbers of people being recalled to prison under IPP suggests there is no end in sight to the problems created by this flawed sentence. "Our inquiry hopes to understand the problems caused by the continued existence of these sentences as well as to explore possible solutions that Government can bring about."

Prisoners Win Parole ‘Reconsideration’ Appeals

Inside Time: A new right to challenge Parole Board decisions has helped dozens of prisoners to gain release or progression. When the “reconsideration mechanism” was launched in July 2019, after controversy over the granting of parole to a serial rapist, the Government said the system would “provide reassurance to victims that if a Parole Board decision appears flawed, it can be challenged and looked at again”. However, the right to appeal goes both ways. While the Justice Secretary can object on behalf of victims to a prisoner being granted release, a prisoner can also object to a parole “knockback”.

Figures for the first two years of the system in operation have shown that prisoners are using it more than the Government, and are having more successes. According to figures from the Parole Board, from the introduction of the reconsideration mechanism in July 2019 up to the end of March 2021, prisoners challenged decisions on 306 occasions and were successful in overturning them on 51 occasions. By contrast, the Justice Secretary challenged 27 decisions and was successful six times. For both types of challenge, the success rate was around 20 per cent.

Under the new system, Parole Board decisions which could be subject to review have "provisional" status for 21 days while both sides decide whether to appeal. Objections can be lodged on the grounds that the decision was "irrational" or "procedurally unfair". If an objection is lodged, it takes the Parole Board an average of 14 days to decide whether to uphold its original decision or to consider the case afresh. According to the Parole Board's annual report for 2020/21, the Board took decisions to release 4,289 prisoners during the 12-month period, whilst it decided that 11,437 should remain in prison – a success rate of around one in four, which was similar to that seen in previous years. Among those released, 0.54 per cent went on to commit a serious further offence – also a similar rate to that seen in previous years.

Ecuador: 68 Inmates Killed and 25 Injured in Latest Prison Massacre

Dan Collyns, Guardian, Deaths at Litoral penitentiary were part of wave of prison violence that has claimed more than 280 lives. At least 68 prisoners have been killed and 25 injured in a jail in the city of Guayaquil in Ecuador after bloodletting between rival gangs broke out on Friday night, the attorney general's office said on Saturday. The latest massacre occurred in the Litoral penitentiary, the same jail where at least 119 inmates lost their lives a little more than a month before in the country's deadliest ever prison riot. It is the latest bloodshed in a wave of prison violence in Ecuador this year which pushes the death toll to more than 280 inmates. The scale and savagery of the violence between rival drug trafficking gangs vying for control of prisons has stunned the country. The latest carnage was no exception. Videos on social media purportedly posted by inmates overnight showed victims being beaten and burned alive in a prison courtyard. Other videos showed detainees begging for help to stop the violence as shots and explosions rang out in the background. The Guardian could not independently verify the origin of the videos. The outbreak was triggered by a power vacuum after a gang leader's release, according to Pablo Arosemena, the governor of Guayas province where Guayaquil is located. "Other cell blocks with other groups wanted to subdue them, get inside and have a total massacre," he said in a press conference on Saturday.

Ecuador's president, Guillermo Lasso, took to Twitter on Saturday to lambast judges. He accused them of restricting the state's ability to combat the violence by limiting a 60-day state of emergency in the prison system – declared at the end of September – which aimed to free funding and allow heightened controls with military assistance. "The state's fundamental duty is to guarantee the life of citizens, without discrimination. It is a fundamental human right," Lasso tweeted. "Unfortunately, today that job has been made impossible by judicial decisions which impose exaggerated restrictions on the coordination between the state security forces to defend life. They do not allow us to defend life," he said. Lasso, a 65-year-old former banker, said the state needed the "constitutional tools to protect the population, retake order in the prisons and fight against the mafias that profit from the chaos".

Col Mario Pazmiño, the former director of Ecuador's military intelligence, said the latest violence demonstrated that the government was unable to "combat the threat which has spiralled out of control long ago". Men imprisoned at the Guayaquil prison hold banners reading 'We want peace,' and 'Peace, no to violence' after the riots erupted there. Ecuador's president declares state of emergency over drug trafficking. The violence spiked when local criminal gangs started working for the rival Mexican Sinaloa and Jalisco New Generation drug cartels, he added. "The level of corruption is so high that the prison staff and officers are totally corrupted and the prisoners run the jail," Pazmiño added. "It is total chaos." The situation was worsened by an "inoperative justice system" which meant many prisoners were jailed before sentencing, Pazmiño said, leading to overcrowding and the mixing of highly dangerous criminals with prisoners jailed for alleged theft or drug use. A total of 11 people were found hanged in the same prison in October. The authorities have said they may have been suicides. Police operations since the state of emergency was declared – especially in the Litoral penitentiary – have uncovered stashes of guns, grenades, knives, munitions, mobile phones and drugs.

Rehabilitation and Retribution: In re JR123's Application

Anurag Deb, UK Human Rights Blog: What happens when someone is convicted of a criminal offence and is given a custodial sentence? Sometimes, the individual will serve at least part of their sentence in prison and the remainder on licence. But, what happens after they've served the totality of their sentence? Some convictions can, after a certain period of time, become "spent". This means that anyone convicted of such offences is treated as never having been convicted of such offences. The Rehabilitation of Offenders (Northern Ireland) Order 1978 calls these people "rehabilitated persons". However, the 1978 Order contains a large number of exceptions, so that some convictions can never become spent. JR123's application for judicial review in the Northern Ireland High Court concerned one of these exceptions: sentences longer than 30 months. Readers of this blog may be familiar with the changes in disclosure duties for criminal convictions which came about as a result of the cases of Gallagher, P, G & W v Home Secretary [2019] UKSC 3 (see Samuel March's post on this topic). JR123 looks at another aspect of the framework of rehabilitation: the ability to be rehabilitated in law at all.

The Facts: JR123 had been convicted of possession of a petrol bomb, arson, burglary and theft in 1980. Having been given multiple custodial sentences, he had been released from custody in 1982 and had served the remainder of his sentences on license. In the years which followed, JR123 had no further involvement with the criminal justice system. However, given the exceptions in the 1978 Order, his convictions could never be spent and thus he could never be rehabilitated. This was problematic on multiple fronts, particularly his employment prospects and personal life. Many things which we take for granted, for example applying for insurance, obtaining a mortgage, renting properties, and so on, become considerably difficult when having to disclose convictions which are almost 40 years old ([14]). Mr Justice Colton observed of JR123: "He finds the process of repeatedly having to disclose the convictions to be oppressive and shaming" ([6]).

The law of rehabilitation in Northern Ireland has not kept pace with legal reform in England and Wales and in Scotland. In England and Wales, reforms in 2012 expanded the rehabilitation regime and shortened the rehabilitation periods. Similar legal reform took place in Scotland, bringing its rehabilitation regime broadly in line with the England and Wales reforms. The Police, Crime, Sentencing and Courts Bill currently in the House of Lords would reform the England and Wales framework further, providing for certain sentences of over 4 years to be eligible for rehabilitation. Meanwhile, the 1978 Order largely follows the rehabilitation regime as originally enacted.

JR123 challenged the 1978 Order as being in breach of his right to private and family life under Article 8 of the European Convention on Human Rights (ECHR). Asserting a right to privacy over a criminal conviction obtained after a public trial might seem counter-intuitive, but Colton J was able to point to a wealth of case law to justify such an assertion. The one authority that addresses this point directly is R(L) v Metropolitan Police [2009] UKSC 3, where Lord Hope succinctly observed that, as publicly available information about a person's notoriety "recedes into the past, it becomes part of the person's private life which must be respected" (L, [27]).

With the engagement of Article 8 established, the next question was whether the 1978 Order interfered with it. JR123's counsel, Hugh Southey QC described the effect of the 1978 Order in powerful words: A regime which condemned people to suffer, like an albatross which they could never shake off, permanent adverse consequences of ancient wrongdoing notwithstanding completion of the ostensible punishment (if any) and irrespective of its continuing significance ([27]). Colton J readily found that the 1978 Order interfered with JR123's Article 8 rights ([28]).

This left the final question: whether the interference was proportionate. Here, matters became more complicated because of three key decisions: R(F) v Home Secretary [2010] UKSC 17, Gaughran v United Kingdom [2020] ECHR 14 and Gallagher which was mentioned at the start. The difference between F and Gaughran on the one hand and Gallagher on the other is important. In the first two cases, blanket requirements (in F, notification requirements for sexual offences with certain sentences and in Gaughran, the indefinite retention of DNA, fingerprints and photographs) were disproportionate. In Gallagher, by contrast, a blanket requirement to disclose spent convictions in certain kinds of employment was held to be proportionate. JR123 relied on the first two decisions, while the Department of Justice relied on the third decision.

Colton J followed the reasoning in F and Gaughran while distinguishing Gallagher because the factual circumstances in Gallagher (certain kinds of employment involving contact with children) were far removed from JR123, for whom the 1978 Order caught matters well beyond sensitive employment in its sweep (as explored earlier) ([83]-[87]). Ultimately, Colton J considered that an "administrative review" system could be established, so that people such as JR123 could seek to have their convictions deemed spent and thus not subject to general disclosure ([98]). In the event, Colton J concluded that the 1978 Order was "arbitrary both in substance and effect" ([99]), invoking Lord Kerr's sole dissent in Gallagher, that a blanket disclosure requirement, however nuanced or narrowly applied, was nevertheless disproportionate. Those who are familiar with these authorities may remember that Lord Kerr's was also the sole dissent in Gaughran at the UK Supreme Court – and he was ultimately proved right at the Court of Human Rights in Strasbourg. Article 6(1) of the 1978 Order was thus declared incompatible with Article 8 of the ECHR.

Discussion: Shame is a large part of living with the inability to be rehabilitated. A 2017 report published by the Centre for Youth and Criminal Justice looks at shame in detail: both in its effects on those who have gone through the criminal justice system and in the systems which reinforce shame. The stigma brought on by offending, reinforced by shaming offenders once they attempt to return to society, is rooted in retribution rather than rehabilitation. The inability to leave one's past offending behind (no matter the context of the offending) reinforces "society's retributive desire to punish those who transgress the moral order and so reaffirm the position of those who uphold it", creating a divisive and exclusionary society, "eroding the social capital of those involved in offending and severely constraining their opportunities for desistance and successful community re-integration".

The 2017 report is a powerful reminder that, after a person completes their sentence, society and by consequence the law, has a choice in how we treat such a person. A regime cannot be called "rehabilitative" if it excludes entire groups from being rehabilitated indiscriminately. And the effects of not being rehabilitated can be drastic, affecting everything from professional interests and employment to personal relationships, mental health and recidivism tendencies. It is important to note that the reforms in rehabilitation made in Great Britain thus far would do nothing to help JR123 – only the Police, Crime, Sentencing and Courts Bill would. However, Colton J's judgment marks an important first step. Moreover, with the Department of Justice expecting to ready draft legislation to reform the regime in the very near future, Northern Ireland may finally have a regime that is rehabilitative in substance and not merely in form.

Family of Trevor Smith Speak Out as Inquest Finds West Mids Police Shooting Was 'Lawful Killing'

Trevor Alton Smith, a 52 year old Black man, was fatally shot by police officers on 15 March 2019. He had been experiencing mental ill health. An inquest has today concluded finding his death was a 'lawful killing', with no criticism of the operation. The family are now raising serious concerns about the findings. Trevor was a much loved father of two whose family describe him as a very bright, talented, creative individual who was full of charisma. He was a caring, kind, generous spirit whose heart belonged to his family. Trevor experienced depression following the sudden death of his father, two years before his own. He had been under the care of Birmingham and Solihull Mental Health Trust services. Trevor's mental health background was known to West Midlands Police, but not communicated prior to the operation.

The incident occurred in Trevor's bedroom in Lee Bank, Birmingham during an intelligence-led operation by West Midlands Police Firearms Unit. The family acknowledge that there were grounds to seek Trevor's arrest, but are concerned about the enactment of the operation at every level. At around 5am on 15 March 2019, police officers opened the front door of Trevor's flat. He was in bed and was repeatedly told to show both his hands. Police said he was not compliant, as one hand remained behind the duvet. Officers told the inquest they tried to gain compliance. Body worn camera footage showed their attempts at engaging, which included swearing at Trevor and telling him to "stop being a plonker". Eventually, Trevor discarded the duvet and appeared to move his hand. The officer involved reported that he believed when Trevor moved his hand he had a 'black object' which could have been a handgun. As a result, the officer made the decision to discharge his weapon.

Despite the extensive specialist training of the firearms officer, the gunshot was significantly off target. It initially missed Trevor, travelling downwards. It ricocheted off the bedframe, turned up, and hit him in the chest. This caused the fatal injuries. There were then delays in an ambulance arriving, and issues with the police defibrillator. Trevor was declared dead at the scene. An imitation firearm was recovered at the property. The inquest heard that there was consideration of 'less lethal' weapons, such as the use of Taser, but these options were not deemed viable. The jury found the fatal gunshot was fired in 'self-defence' by the officer. After the incident, in identifying himself as the principal officer responsible for the shooting, the officer said of Trevor, "he is cream-crackers".

In their evidence the family were particularly concerned and dismayed that firearms officers, who were granted anonymity for the inquest, consistently stated that - even with the benefit of hindsight and the loss of Trevor's life - they would not have changed their approach. Senior coroner Louise Hunt raised two issues arising from the evidence of the inquest, which she is considering making a report to prevent future deaths on. Firstly, that there was "no clear process to ensure officers are aware of updates to key information" from the Multi Agency Risk Assessment Conference (MARAC). Secondly, with regard to the CPR co-ordinator and the "lack of clear guidance and process in allocating a member of the team to co-ordinate resuscitation".

In a joint statement, Trevor's family said: "While acknowledging that within the parameters of the law, a ruling of 'lawful killing' is appropriate, we do not feel that the judgement exonerates West Midlands Police Firearms Operations Unit. We are very disappointed that the jury found no opportunity to be critical of any aspect the police operation. We have serious concerns about the operation including police conduct and use of inappropriate language, poor negotiating skills, decision-making, and leadership. The highly trained, experienced officer who fired the fatal shot stated that he flinched, resulting in a downward trajectory, ricocheting upwards off the bed frame, changing direction and causing the fatal injuries to Trevor. This wayward shot is most disconcerting. Our primary hope from the outset was for the inquest to provide answers as to what happened on the morning of 15 March 2019. Instead it has raised serious questions about how the police engage with people with mental ill health, as was the case for Trevor. We leave the inquest dissatisfied with responses that the West Midlands Police had no other option but to shoot and kill Trevor. Further, we remain unconvinced that the West Midlands Police are sufficiently competent to effectively engage with people with mental ill health or that any tangible lessons have been learnt for future engagement with individuals from this most vulnerable group of our community. We ask questions, we ask for answers, we ask for change and reform, so that another life may not be lost at the hands of WMP, and another family not need to suffer and grieve."

Errol Robinson of McGrath and Co Solicitors, who represent the family, said: "The police still have not learnt how to deal with people who are mentally ill or display such signs. Until this is addressed, deaths like Trevor Smith's at the hands of the police will continue to occur. This is most disturbing. Lucy McKay, spokesperson for the charity INQUEST, said: "This inquest heard seriously concerning evidence about the way in which Trevor was dealt with. West Midlands police have a history of fatal shootings, including just months before Trevor's death. Their actions ultimately led to the premature death of a Black man with mental ill health. While that may be lawful, we cannot agree with the jury that no one was at fault. We must see urgent changes in the planning of firearms operations and de-escalation to prevent future deaths."

Judicial Misconduct Findings Should be 'More Detailed', But No Public Hearings

Sam Tobin, Law Gazette: Published findings of judicial misconduct will be 'more detailed', according to proposals put forward by the lord chancellor and the lord chief justice – but the public will not be allowed to attend hearings as that could 'undermine' confidence in the disciplinary system. In a consultation document published today, Dominic Raab and Lord Burnett recommend that disciplinary statements issued by the Judicial Conduct Investigations Office (JCIO) should include more information about the circumstances in which the misconduct occurred, the individual judge's response to the allegations and any aggravating and mitigating factors considered by the lord chancellor and lord chief justice.

Raab and Burnett said the current disciplinary system, established in 2013, has 'stood the test of time well', but added that 'in a small proportion of cases, investigations take too long'. 'While it would be wrong to describe the system as closed, we recognise that more could be done to aid public understanding of disciplinary decisions,' they added. However, a senior judge-led working group which considered whether judicial disciplinary hearings should be held in public concluded that 'while public hearings could help to promote transparency, the arguments against holding disciplinary panel hearings in public outweigh any potential benefits'.

As disciplinary panels only make recommendations to the lord chancellor and lord chief justice in a written – unpublished – report, the panels are different from other disciplinary panels which means 'public hearings would have less value in terms of insight into the decision-making', the consultation says. 'The personal involvement of the lord chancellor and lord chief justice, whose joint decisions are published, provides validation of the process, which we believe carries considerable weight, lessening the need to open the process to the public,' it adds. Raab and Burnett also recommend the adoption of three categories of seriousness – 'minor, serious or gross' – for findings of misconduct and the introduction of a period of suspension as 'an available sanction in any case of misconduct which falls just short of warranting removal from office'. An expedited procedure should be available for lower-level cases with agreed facts, they suggest, together with an express right for judges to ask for their case to be heard in person and to be allowed to be accompanied to disciplinary hearings by a judicial colleague 'for moral support'.

Conditions for Imprisoned Children in HMYOI Cookham Wood Deteriorate

Report on an Unannounced Inspection of HMYOI Cookham Wood: When we last fully inspected Cookham Wood in 2019, we were concerned to find that outcomes for children were not sufficiently good against any of our four tests of a healthy institution. At this inspection we found they had not improved and had in fact worsened in our purposeful activity test, where outcomes were now poor. For an institution providing services to children this inability to address failings was completely unacceptable. Admittedly the restrictions imposed by the pandemic had not helped, but it was hard to understand why the institution had not been more ambitious in, for example, providing a better regime, perhaps adopting an approach that mirrored more closely that adopted for children in the community or at other YOIs. As it was, we found parts of the prison where more than half of children were locked in cell during the school day and typically spent as little as four hours a day out of cell, and just two hours at weekends.

We found low morale among staff, low standards, low expectations and a lack of energy and creativity that could engage and motivate children to use their time at Cookham Wood usefully, despite holding only half the young people it was resourced to hold. The response to difficulties found between children was invariably limited to keeping them apart, placing further restrictions on the regime. Leaders needed to find ways to move beyond this reactive and limiting approach, starting with energetic and motivational engagement with children, as well as the clear demarcation and enforcement of standards. Staff needed clarity about what was expected of them and leaders needed to show greater rigour in ensuring policies were understood and delivered. Poor practice and behaviour needed to be challenged consistently, and staff needed to make sure basic standards were maintained. At the time of our inspection there were just 87 boys in residence, 40 were Black or Black British - 6 Asian or Asian British - White 26 (includes 1 Irish 1 Roma, 5 others) - Mixed 7 - Other ethnic group 3 - Not stated 5.

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan