to the documents. He said the Forum was not trying to advance the open justice principle, but was “simply trying to obtain documentation for deployment in other litigation”. Litigation expert Michael Fenn of Pinsent Masons, the law firm behind Out-Law, said: “The decision will be welcomed by parties who want to litigate their disputes, but are concerned about the confidentiality of their commercially sensitive information and the risks of information being released to the public as a result of court proceedings. “An aspiration to use documents in other litigation will not, in itself, be considered a good reason for providing access to a non-party. As was noted by the court, prospective litigants are expected to use established disclosure procedures, including making third party disclosure application requests, rather than circumvent the disclosure rules by obtaining access to documents referred to in other proceedings. However, it remains the case that certain court documents, such as statements of case, written submissions, witness evidence and expert reports will usually be made available to non-parties, and that particular groups, such as the media, will often be well placed to demonstrate a good reason for seeking more general access to the documents held by the court. Those concerned about confidentiality should therefore continue to take advice on ways of protecting their confidential information during litigation, such as by establishing a confidentiality club or ring, or by using less-public methods of dispute resolution such as arbitration or mediation,” Fenn said.

Transnational Repression in an Age of Globalization

Freedom House: “Transnational repression” is a term used to describe how countries silence their exiles and diasporas abroad. It encompasses a spectrum of tactics, from assassinations, to renditions, to spyware, to intimidation of exiles’ family members who have stayed behind. As a transnational phenomenon, it is inseparable from broader trends of globalization. States employ the tactics of transnational repression within patterns of international mobility and finance, through legal institutions that regulate migration and citizenship, and via digital technologies that enable instantaneous and constant communication across borders.

This means that transnational repression is also embedded in “global authoritarianism”: the adaptation of authoritarian states to global capitalism and the existing international order following the shock of the end of the Cold War. Unlike during the Cold War, modern authoritarianism does not seek to shield itself from the international order but to integrate with it and rebuild it from the inside. One of the purposes of this integration for states that explicitly sabotage demands for accountability and transparency from their citizens within their borders is to impose authoritarian controls upon them beyond their borders. Through transnational repression, authoritarian states seek to maintain control over diasporas and exiles, migrants, international students, and others, extending the sphere of authoritarian governance beyond their sovereign boundaries.

Serving Prisoners Supported by MOJUK: 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, Hyrone Hart, 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.

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MOJUK: Newsletter ‘Inside Out’ No 805 (05/08/2020) - Cost £1

Hollie Robinson Review of Tariff - Jailed Age 16 Now 26

1. On the 8th February 2011, in the Crown Court at Mold, the Applicant was ordered to be detained during Her Majesty's Pleasure, with a minimum term of 18 years, less 209 days spent on remand, for the murder of her father Antoni Robinson on the 7th July 2010. She now applies for a review and reduction in her tariff pursuant to the decision of the House of Lords in R (Smith) v Secretary of State for the Home Department [2005] UKHL 51.

2. The reason for such reviews was expressed by Lord Phillips of Worth Maltravers CJ in the same case in the Court of Appeal [2004] EWCA Civ 99 at [74] as follows: "The requirements of the welfare of the offender must be taken into account when deciding for how long a young person sentenced to detention during Her Majesty's pleasure should remain in custody. Those requirements will change, depending upon the development of that young person while in custody. Accordingly, even if a provisional tariff is set to reflect the elements of punishment and deterrence, the position of the offender must be kept under a review in case the requirements of his welfare justify release before the provisional tariff period has expired."

3. There are three possible grounds on which a tariff may be reduced: 1. The prisoner has made exceptional progress during the sentence, resulting in a significant alteration in maturity and attitude since the commission of the offence; 2. There is a risk to the prisoner's continued development that cannot be significantly mitigated or reduced in the custodial environment; 3. There is a new matter which calls into question the basis of the original decision to set the tariff at a particular level.

4. So far as exceptional progress is concerned, the "Criteria for Reduction of Tariff in respect of HMP Detainees", produced by the National Offender Management Service on behalf of the Secretary of State, say that it may be indicative of exceptional progress if a prisoner demonstrates: 1. "An exemplary work and disciplinary record in prison; 2. Genuine remorse and accepted an appropriate level of responsibility for the part played in the offence; 3. The ability to build and maintain successful relationships with fellow prisoners and prison staff; 4. Successful engagement in work (including offending behaviour/offencerelated courses)."

5. The document says that, ideally, there should be evidence of these factors being sustained over a lengthy period and in more than one prison, and that it is not to be assumed that the presence of one or all of these factors will be conclusive of exceptional progress having been made in any individual case. Whether the necessary progress has been made will be a matter to be determined taking into account the specific factors in each case. In addition, "To reach the threshold of exceptional progress there would also need to be some extra element to show that the detainee had assumed responsibility and shown himself to be trustworthy when given such responsibility. Such characteristics may well be demonstrated by the detainee having done good works for the benefit of others." Examples given are acting as a Listener, helping disabled people, raising money for charity and helping to deter young people from crime. Ideally, it is said, there would need to be evidence of sustained involvement in more than one prison over a lengthy period. In the final analysis, of course, I have to make my own assessment based on all the material I have been provided with and decide whether progress can properly be described as "exceptional".

6. The Applicant and a number of co-accused were convicted of murdering Mr Robinson in the course of an attempt to steal the contents of a safe in his house at night. He died as a

result of stab wounds he sustained. It was not suggested that the Applicant had been armed with a knife but the Judge was satisfied that she intended or foresaw that Mr Robinson would be killed if he should wake up in the course of the burglary. The Applicant was 16 years old at the time of the offence, having been born on 22nd February 1994.

7. I have been provided with statements from family members as to the impact of Mr Robinson's death.

8. So far as I am aware, there was no pre-sentence report. The Applicant had not come before the Courts on any previous occasion.

9. Her appeal against sentence was dismissed on the 12th May 2011. Her renewed application for permission to appeal against conviction was refused on the 22nd October 2014.

10. The Applicant arrived at HMP Styal on the 24th February 2012. I have seen notes of a Sentence Planning and Review Meeting from HMP Styal on the 11 th June 2013. Since coming to Styal, she had been employed mainly in the stores which was a trusted position. It was said that on the whole, she displayed a positive standard of behaviour and was an enhanced prisoner. Entries on her prison record in early 2014 complimented her on her standard of work.

11. She completed a Thinking Skills programme at HMP Styal in June 2014. She was described as engaged, motivated and a supportive member of the group. She had made progress in managing her emotions, developing positive relationships and understanding risk factors in offending.

12. In a Tariff Assessment Report, dated 10th February 2020, it is indicated that the Applicant's level of maturity has increased significantly over the previous 12 months. It is suggested that she is progressing well in custody and is involved in many prosocial activities which contribute positively to her sentence plan. She had completed the Personal Employability Achievement and Reflection for Leaming course. She was attending a Flourish programme on a weekly basis in which she undertook offencerelated work. However, whilst she had demonstrated positive and steady progress in custody, her progress was not assessed as being exceptional. Some progress is of course to be expected from any young person who matures in years whilst in custody.

13. A further Tariff Assessment Report, dated 13th February 2020, records the Applicant's account of the original offence. She says that she observed a co-defendant with a knife but did not think that it would be used to cause harm. She accepted that there was the potential for conflict to occur and that her actions contributed to the death, although she did not think that she should have been convicted of murder. She demonstrated remorse and empathy. She had completed a Sycamore Tree Victim Awareness programme in July 2019. Feedback from the programme indicated that she had been helped by it. She was currently completing a programme about behaviour change and wellbeing skills. It was noted that she had incurred three adjudications whilst in custody, one in 2012, one in 2013 and one in 2019 for being verbally abusive to an officer. She had taken opportunities for development via employment, and through vocational and educational courses. She expressed willingness to continue engaging with her sentence plan. She was working in the Bistro and had been offered a keyworker role. She had not yet had the opportunity to engage with a more intensive intervention to reduce her risk of re-offending. Although she continued to make positive progress, it was not assessed as being exceptional or beyond expectations.

14. In an OASyS assessment, dated 4th March 2020, it is said that the Applicant has completed qualifications and training in English, Mathematics, Peer Mentoring and Hairdressing Level 1 and 2. She had obtained the Duke of Edinburgh Bronze Award. She had recently applied to complete an Open University course in Psychology and is awaiting the outcome. Enquiries were being made about her suitability to take part in a CARE programme - this involves work in respect of choices, actions, relationships and emotions for prisoners with a history of violence.

Cumbria force, BAME people were 6.8 times more likely to be fined than white people, as the Guardian revealed last week. But he pointed out that in half the forces of England and Wales, including Cumbria, fewer than 40 than fines were issued to BAME people.

Hewitt said: “It hard to draw striking conclusions form such small numbers. For a number of forces, continued focus on crime and violence could affect their disparity rate as areas of that have been a focus of police activity are also areas with a higher concentration of black, Asian and minority ethnic people, which also increases the possibility of officers identifying and dealing with breaches during those deployments. In communities or groups with lower trust in police, attempts to encourage before enforcing may be less successful.” The figures come as the police across England and Wales face an inquiry by the Independent Office for Police Conduct to establish whether they racially discriminate against ethnic minorities in their use of force and stop and search.

Several key indicators show police powers in England and Wales are used disproportionately against BAME communities. Stop and search is nine times more likely to be used against black people, and Taser stun gun use almost eight times more likely. Katrina Ffrench, chief executive of the charity StopWatch, which campaigns for fair and accountable policing, said: “It is saddening to know that even in a global pandemic young black males are subjected to such over-policing and viewed with so much suspicion.”

High Court Provides Clarity on Third-Party Access to Court Documents

Out-Law News: The English High Court has refused to give access to court documents on the basis that doing so would not advance the principles of open justice. The decision helps clarify how an earlier UK Supreme Court decision in the same case will be applied in practice. The judge said a third party wishing to gain access to documents referred to during a trial needs to demonstrate that the granting of access will actually advance the principles of open justice by enabling others to better understand the proceedings. The judgment is the latest stage in a dispute between campaigners at the Asbestos Victims Support Groups Forum, represented by Graham Dring, and asbestos manufacturer Cape Intermediate Holdings. The campaigners had obtained an order in 2017 granting them access to a significant volume of material generated during a dispute between Cape and insurers of companies which had been held liable for their employees' exposure to asbestos dust.

The decision will be welcomed by parties who want to litigate their disputes but are concerned about the confidentiality of their commercially sensitive information. In 2018, the Court of Appeal set aside that order, limiting the Forum's access to the ‘records of the court’ provided for in rule 5.4C of the Civil Procedure Rules (CPR), which gives the court the power to grant access to documents from court records to non-parties to the case, and certain other documents, focusing on those which the judge has read or been asked to read.

Both Dring and Cape appealed the Court of Appeal’s decision, arguing that the order granted was too narrow and too broad respectively. The Supreme Court technically dismissed both appeals, ordering the Court of Appeal’s order to stand. The result was that Dring remained able to access statements of case, written submissions, witness statements and expert reports, but that its application for additional documents was referred back to the trial judge. The trial judge would have to decide, based on his inherent jurisdiction to allow access to other documents placed before the court and referred to at trial, as explained by the Supreme Court, whether Cape should be required to provide copies of any such additional documents to Dring.

Ruling on that question, Mr Justice Picken said the campaigners should not have access

Hospital Order Not a Conviction for Purpose of Foreign Criminal Definition

The technical point, or ratio, of MZ (Hospital order: whether a 'foreign criminal') [2020] UKUT 225 (IAC) is that a hospital order under section 5(1)(b) of the Criminal Procedure (Insanity) Act 1964 is not a criminal conviction for the purposes of the definition of a 'foreign criminal' under Part V of the 2002 Act. Given that the sentencing judge explicitly said "This is not a conviction" it seems …surprising*… that officials at the Home Office tried to argue the point. On the facts, the appellant won his case: I find that it is apparent from the judge's findings that there exist very significant obstacles to the integration in Pakistan of this young appellant, who has resided in the United Kingdom for many years, who suffers from a serious schizoaffective disorder the management of which requires continuous treatment and monitoring and who has nobody in Pakistan able or willing to assist him. The official headnote: An individual sentenced to a hospital order following a finding under section 5 (1) (b) of the Criminal Procedure (Insanity) Act 1964 that he 'is under a disability and that he did the act or made the omission charged against him' is neither subject to section 117C of the 2002 Act (as amended) nor to paragraphs A398-399 of the Immigration Rules. He is excluded from the statutory provisions by section 117D(3)(a) and from the Immigration Rules concerning deportation. [Note: The difference between OLO and Andell to which the judge refers at paras [10] to [13] is now resolved in SC (paras A398-339D: 'foreign criminal': procedure) Albania [2020] UKUT 187 (IAC).] The note at the end there does not actually feature in the determination. Neither the judge at the FTT nor UTJ Lane were made aware of the SC case, which had already resolved an earlier …tension… in tribunal jurisprudence. *Not that surprising now I think about it! Colin Yeo!

Police in England and Wales 'twice As Likely' to Fine Young BAME Men During Lockdown

Matthew Weaver, Guardian: Police were twice as likely to fine young black and Asian men under the lockdown rules than their white counterparts, according to new figures that underline concerns about racial bias in policing. Analysis of fixed-penalty notices issued under the coronavirus regulations by National Police Chiefs' Council (NPCC) found that black, Asian and minority ethnic people (BAME) were 1.6 times more likely to be fined than white people. But for young black and Asian men the difference was even more pronounced. Young men aged between 18 and 34 from BAME groups were over-represented by around twice the rate of young white men, the study found.

The NPCC found 17,039 fines were issued between 27 March and 25 May, which represents only three fines per 10,000 people. But the rate for black people was 4.6 per 10,000 and for Asian people it was 4.7. NPCC chair, Martin Hewitt, admitted that the figures raised alarms and that individual forces should consider how they tackle racial bias. He said: "While it is a complex picture, it is a concern to see disparity between white and black, Asian or ethnic minority people. Each force will be looking at this carefully to assess and mitigate any risk of bias – conscious or unconscious – and to minimise disproportionate impact wherever possible. He said the analysis would inform an NPCC action plan on inclusion and race equality in policing.

"After the killing of George Floyd, there has been a real look internally at the progress that we have made in terms of policing relationships with the black community and the inclusivity of policing. We have done a lot, but we haven't done enough and it hasn't gone fast enough. We are in the process of working through what will be a significant new plan of action in terms of how we deal with issues of inclusivity within the service. The findings of this analysis will be further considered as part of that work." But Hewitt urged caution over interpreting local racial disparity in the figures because so few cases were involved. He admitted in the mainly rural

15. Solicitors acting on the Applicant's behalf have put in written representations. They submit that there have been significant changes in her maturity since the offence; that she has made exceptional progress; and that the present tariff period would delay her transfer to open conditions and could have a detrimental effect on her welfare. They point to the responsibility which she now accepts for the crime and to the fact that she has worked hard to address risk factors and underlying issues. She has attended a number of courses and programmes and they say that her attitude to the offence appears to have matured considerably. She is an enhanced prisoner who has held trusted positions. In 2017, she was asked to visit a young offender who was struggling and the Applicant provided support to her. She has been awarded nine Certificates of Appreciation in recognition of her help and support for other prisoners. She has worked hard to gain qualifications to improve her prospects of employment on release. It is submitted that the period of time that she will need to serve before moving to open conditions could result in her being further institutionalised, given that she entered custody at a young age.

16. The Applicant has submitted a well-written and helpful letter of her own. She explains that she was immature at the time of the offence. She has done numerous courses in custody to mature as best she can. She accepts responsibility for the part she played and expresses regret for what happened. She had completed educational and offending behaviour programmes which she had found helpful. She had had numerous jobs within custody which had given her a sense of responsibility and trust. She was a regular helper on family days. She had helped with a Macmillan charity coffee morning and had completed a health representative course. She also mentions the young prisoner who she had supported.

17. The Applicant has been in custody since the age of 16. She is now 26. For the vast majority of that time she has been well-behaved. She has three adjudications. Two of them are a long time ago. She is an enhanced prisoner with a good employment record who has worked in trusted positions. She has attended courses and programmes to address her risk of offending. She has expressed remorse for her crime and acknowledges her involvement. She appears to engage well with staff and fellow prisoners. On any view, there have been improvements in her attitude and maturity and she is to be commended for this. It will be of value to her in her progress through the prison system. I do not think that there are risks to her development in custody which cannot be reduced or mitigated. Ventures such as the CARE programme and the Open University degree represent examples of possible opportunities for future development. As regards her progress, in my judgment it is best described at this stage as steady and positive but I do not think it can yet be described as exceptional. That is a high standard and the Applicant needs to go further before she could be said to have met the test. She has done well to establish a firm platform on which to build in the future. She needs to maintain this but also to demonstrate behaviour on a sustained basis which goes beyond the usual progress to be expected of someone in her position in order to meet the test of exceptional progress. If she can do that, she will be able to request a further review but at present, I cannot recommend a reduction.

Children In Detention May Face Covid-19 Restrictions Until 2022

Harriet Grant, Guardian: The Ministry of Justice has said that new rules that allow youth detention facilities to hold children in solitary confinement for up to 22 hours a day to prevent the spread of Covid-19 could remain in place for two years despite lockdown measures being relaxed for the rest of the UK. Lawyers have told the Guardian that time out of cells and access to education are still being severely curtailed in many facilities across the country. "The recent announcement by the MoJ that these restrictions could go on in some form until next year or even further is very concerning," said Jude Lanchin of Bindmans solicitors.

Lanchin told the Guardian that one of her clients, a 16-year-old held in a secure training centre, was being severely affected by having to spend every day alone in his cell. “My client is on remand and has not even been convicted of an offence. It has been extremely difficult to work with him on the case and I was only able to see him recently on video-link for the first time after months of detention,” she said. “He has told me the hours in his cell mean ‘things go round and round in my head’. As a ‘looked-after’ child in care, he already had issues of concern and has now become depressed, anxious and agitated.”

Penal reform and children’s charities say that there is already evidence that the regulations are impacting on the human rights of young people in detention, with many still on very restricted regimes, even as the UK emerges from lockdown. Laura Janes is the legal director of the Howard League for Penal Reform. She said: “It has been moving to speak to children over the past week who are really excited about face-to-face education starting up again. But my team is aware of a number of children in young offender institutions and secure training centres who last week were still in solitary confinement most days, spending 22 hours a day in their cells.” She said the charity has been receiving reports from young people who say their mental health is suffering as a result, describing their situation as “stressful”, “awful” and “depressing”.

In March as the UK went into lockdown, severe restrictions were placed on young people in detention to stop the spread of Covid-19. Young people aged between 12 and 17 were put into what amounted to full solitary confinement in their cells, alone, for up to 23.5 hours a day. Almost all education and therapeutic services stopped. In secure training centres, children’s right to 14 hours out of their cell was changed to 1.5 hours. The practice was introduced in March but was translated into official policy over the next few months, most recently for secure training centres in early July, with an end date of March 2022.

The MoJ said there had been some easing of restrictions but that the legislation was needed to ensure that any new outbreaks could be swiftly contained. Last week Lucy Frazer, the minister for prisons, addressed the justice committee and defended the ongoing power to restrict time out of cells. She said: “Our aim is to open up as much as possible. We want to ensure that we have the legal framework [for a restricted regime] in case we have regional outbreaks or another national outbreak.”

Sir Bob Neill, chair of the justice committee, pressed Frazer on why the powers are set to last for longer than other Covid-19 regulations across the UK. Speaking to the Guardian after the committee hearing, he said: “It’s just too long. These are exceptional measures for specific circumstances. You don’t want institutional inertia to see the powers used too much and we’ve seen that happen too often in prisons, it’s a very easy thing to happen with the pressures they face.”

Penal reform and children’s charities argue that the new rules in youth detention are part of a wider stripping back of hard-won children’s rights during the Covid-19 pandemic that campaigners have described as “deregulation on steroids”. In April the Guardian reported that the decision to relax 10 key sets of regulations severely weakened rights for children in care. The changes included the removal of the requirement for a social worker to visit – or even telephone – a child in care every six weeks, reducing it to “as soon as is reasonably practicable”.

The requirement for a six-monthly review of a child’s care has been similarly relaxed, and adoption and fostering panels which allow for independent scrutiny have become optional. These changes are currently being challenged in the high court by Article 39, a charity campaigning for the rights of children in institutional settings, which is asking the court to reinstate legal protections for children in care. The case will be heard on 27 and 28 July.

Prisons: Challenges of an Ageing Inmate Population

A new report by the Justice Select Committee set out the challenges of managing an ageing inmate population in prisons in England and Wales. The Committee collected evidence in written and oral form from a wide range of government ministers, senior officials, charities and other stakeholders to inform the reports. The inquiry into the ageing prison population was undertaken because the number of prisoners over the age of 60 has risen between 2002 and 2020 from 1,511 to 5,176 – an increase of more than 240%. The increase has been driven mainly by more men being prosecuted for sexual offences and by longer sentences across a range of offences, meaning more people grow old in prison.

A large proportion of older prisoners have distinct health and social care needs. Prisoners tend to have worse health than the wider community – 85 % of prisoners over the age of 60 have some form of major illness. Many of these prisoners – who are mainly men – suffer from problems accessing locations or services within prisons. Many of the prisons in England and Wales, especially those dating from the Victorian era, were not designed to accommodate people with accessibility needs. In many establishments there are locations with a lack of step-free access, wheelchair-accessible cells or grab rails. Older prisoners also need more social care than their younger peers. Local authorities in whose area prisons are situated have a duty to provide social care – for example, mobility assessments or help with different types of disability. But Her Majesty’s Inspectorate of Prisons and the Care Quality Commission said in a 2018 report that the provision of social care services in prisons was subject to a ‘postcode lottery’, with the care needs of some prisoners going unmet in a number of establishments.

More broadly, Her Majesty’s Chief Inspector of Prisons, Peter Clarke, told this inquiry that there was a lack of strategic planning for the provision and coordination of social care in prisons. Mr Clarke noted a ‘disjoint’ between Ministry of Justice plans to reconfigure the prison estate and the role of local authorities as prison social care providers. He told the Committee: “If resettlement prisons should in the future be configured to meet social care needs, because those are the prisons from which older prisoners are likely to be released, that is not joined up in any way, as far as I can see, with the responsibilities of local authorities to deliver social care in their particular geographic area. Of course, local authorities have no remit or ability at all to influence the physical conditions in prisons on which so much of the effective delivery of social care depends.”

For all of the above reasons the Justice Committee is calling on the Ministry of Justice to establish a national strategy for older prisoners, so their needs are met consistently across the prison estate in England and Wales. The government told the Committee in its written submission for the report that it was “not yet persuaded that categorisation of prisoners by age is necessarily helpful given the wide range of needs, abilities and requirements that will be included in the older prisoner cohort.” However, the Prisons Minister, Lucy Frazer, did indicate that the Ministry of Justice’s position on a national strategy had shifted when she told the Committee: “[It] is something we need to seriously think about. I am in favour of having an over-arching strategy, particularly on things like accommodation. We have an opportunity now to build 10,000 additional places, which is going to include a number of new prisons. This is a good opportunity to think about how we configure that accommodation, particularly having in mind that we have an older cohort.” Her Majesty’s Prison and Probation Service has produced a ‘Model for Operational Delivery’ for older prisoners. But the Committee does not think this is enough. The Chair of the Justice Committee, Sir Bob Neill, said: “The Model for Operational Delivery is not a strategy. It sets out ways older prisoners’ needs can be met, but its provisions are optional for prison governors. We need an overarching national strategy, pulling together health and social care, with timelines and accountabilities to ensure it is delivered”.

Clearer Guidelines Issued For Sentencing Offenders With Mental Health Disorders

Guardian: Clearer guidelines have been published for courts sentencing offenders who have schizophrenia, depression or other mental disorders. The Sentencing Council, an independent body which works to make sentencing rules more consistent, has issued guidance to judges and magistrates in England and Wales which will come into force from 1 October. The advice will also cover cases where a defendant at the time of the offence and/or at the time of sentencing has post-traumatic stress disorder, developmental conditions such as autism and learning disabilities and neurological impairments such as some brain injuries or dementia. Such cases are increasingly common in the courts but no formal guidance previously existed, according to the council. It said: - The impairment or disorder should always be considered by the court, and how this could affect the offender's ability to understand and participate in proceedings, but will not necessarily have an impact on sentencing. - Factors the courts should consider include whether culpability is reduced if the defendant was suffering from an impairment at the time of the offence but only if there is "sufficient evidence" of a connection between the disorder and the crimes. - For serious offences, the court must consider the need to protect the public. Sentencing Council member Judge Rosa Dean said the guidelines would "make sure that courts have the relevant information when sentencing offenders with mental disorders to make sure their rights and needs are balanced with protecting the public, and the right of victims and families to feel safe".

Consultation on Scotland's Hate Crime and Public Order Bill Has Closed.

In summary, the Bill: Adds age as a possible basis for hate speech. Enables ministers to use regulation to add to the list of possible 'victims' of hate crime. There are already suggestions that misogyny will be added. The definition of hate crime is extended to include 'aggravation of offences by prejudice'. Creates a new crime of 'stirring up hatred' against any of the groups which the Bill protects. Updates and amalgamates existing hate crime law. Abolishes the offence of blasphemy. In addition, a new offence of misogynistic harassment is being considered. The Bill was created following Lord Bracadale's independent review of hate crime law. Official figures show that hate crime is on the rise in Scotland and the Bill seeks to address this.

However, the Bill has caused considerable concern. Many have suggested that the Bill unduly restricts freedom of speech. The President of the Law Society of Scotland, Amanda Millar, said she had "significant reservations" and indicated that "views expressed or even an actor's performance" could result in a criminal conviction. Groups ranging from the Catholic Church to the National Secular Society have also spoken against the plans. The Scottish Newspaper Society expressed reservations. Some have claimed that JK Rowling, who recently tweeted her views about transgender rights/ feminism, could be imprisoned for 7 years under the Bill. Opponents also point to the experience of Threatening Behaviour at Football and Threatening Communications Act 2012, which sought to target football hooliganism. The Act was later repealed due to concerns about freedom of speech and its ineffectiveness.

James Kelly, Labour's justice spokesman, has pointed out that the Bill would not require 'intention' in order for criminality to be found. He suggested that religious views could be negatively affected by the proposals. In response, the Scottish government points out that the Bill makes clear that criticising religious beliefs or practices does not, in itself, constitute a criminal offence. Ministers have also emphasised that the draft legislation seeks to protect minorities and oppressed groups.

Carolyne Willow, director of Article 39, said: " The overnight legal changes diluting duties to provide education and activities were clearly made in the interests of the companies rather than children, and there's no justification at all for an expiry date of March 2022." Article 39 has joined experts from across the field of youth justice in signing a letter to the Guardian calling for an urgent easing up of the restrictions in youth detention.

Referring to the recent announcement on secure training centres, an MoJ spokesperson said: "This change simply provides the legal basis for the measures we've had to put in place to protect children and staff in secure training centres from coronavirus. Most children are currently able to spend around six hours out of their rooms each day."

HMPS and Prison Offiecers Continue "Avoidable" Extreme Lock-Up For YOIs

Inspectors from HM Inspectorate of Prisons were concerned that most children in two young offender institutions (YOIs) were still locked up for most of the day after four months of COVID-19 restrictions. They found that local management attempts at HYOI Feltham A and HMYOI Werrington to reintroduce education classes were blocked by the prison service and national staff associations. Peter Clarke, HM Chief Inspector of Prisons, said both YOIs had taken swift action in late March, when COVID-19 restrictions were first introduced. "Managers had communicated well with both staff and children and it was positive that formal consultation groups had been reinstated at both sites."

However, the report noted: "Children at both sites told us they initially understood and largely accepted the need for the restrictions, but after 15 weeks of being locked up for more than 22 hours a day some were understandably frustrated about the slow progress in implementing activity, particularly as they saw restrictions easing in the community." Children spent most of their day sleeping, watching TV or playing computer games. Mr Clarke said: "As was the case when we last visited (three different) YOIs in April, our main concern during these visits was the extremely limited amount of time out of cell for all children. The primary cause of this was the decision to stop face-to-face education. As a consequence, nearly all children had been locked up for more than 22 hours every day since the start of the restrictions, which had been imposed some 15 weeks before our visit. This was both disproportionate and avoidable. The Government's guidance is that children who are deemed vulnerable should continue to attend education. Children held in custody meet this definition, meaning education should have continued once the required safety measures had been put in place. Governors at both sites wanted to provide education and had, months before our visits, prepared plans that would have enabled it to be delivered. These plans were stopped by HMPPS and national staff associations."

Mr Clarke added that the lack of face-to-face education in YOIs run by the Youth Custody Service, part of the prison service and Ministry of Justice, was in "stark contrast" to the provision at other establishments holding children, delivered by other providers. After an initial suspension to put health and safety measures in place, every YOI, secure training centre and secure children's home managed by private or local authority providers has been able to deliver face-to-face education throughout the pandemic." At Feltham and Werrington, managers and staff were aware of the potentially negative impact of children spending so much time alone in their cells and the effects of such a restricted regime. Managers had been creative, within the substantial constraints placed on them, seconding prison staff to increase the youth work provision and introducing limited opportunities for children to eat communally (at Feltham). Enhanced welfare checks were carried out by a range of agencies at both sites. The YOIs appeared calm and well ordered, and recorded self-harm had reduced since the start of the pandemic."

The suspension of visits by family and friends impacted many children at Feltham and Werrington. The rollout of Purple Visits (a secure video calling service) to both establishments in June was positive and managers were working to improve take up and establish ways to use spare capacity. Additional phone credit and letters were also given to children at both sites. Both establishments worked hard to ensure that all children had accommodation on release and were met at the gate by a suitable adult. However, inspectors were concerned to see that in two cases at Feltham difficulties in finding someone to take a child home delayed their release. In the most serious case a lack of engagement by a local authority led to a child being held overnight in custody, despite being bailed.

Overall, Mr Clarke said: “This report outlines positive work by local governors and their staff who acted quickly to keep children safe, delivered a consistent regime and implemented additional safeguards when needed for the children in their care. However, progress in implementing activity has been far too slow nationally. HM Prison and Probation Service (HMPPS) national guidance has taken little account of the specific needs of children, and this has resulted in children at Feltham A and Werrington being locked up for 22 hours a day for nearly four months.”

MI6 Apologises for Asking Court Staff To Withhold Evidence From Judges

MI6 has been forced to apologise to the Investigatory Powers Tribunal after two of its officers asked court staff to return documents relating to MI6’s use of agents and not show them to judges. The tribunal suggested MI6’s actions were “inappropriate interference”. The revelation emerged in an ongoing legal case considering what crimes intelligence informants are allowed to commit, after it was revealed that MI5 maintains a secret policy under which agents can be “authorised” to commit offences. The case was brought by Reprieve, the Pat Finucane Centre, Privacy International, and the Committee on the Administration of Justice.

At a hearing, the tribunal concluded: “It was recognised that the direct communication that took place was inappropriate, an apology was given, and it was clearly recognised that nothing like this should happen in the future… and that something serious had gone wrong.” It declined to investigate further or seek additional disclosure from MI6. MI6 sought to prevent the court from seeing secret inspection reports of the Investigatory Powers Commissioner, believed to detail MI6’s use of agents overseas. These were handed over to the tribunal by the commissioner. The MI6 officers told tribunal staff that documents “should not have been provided” to them, and asked for the material to be returned to the agency and withheld from judges. After this attempt was discovered, the tribunal told MI6 it was “inappropriate for your staff to seek to intervene in ongoing legal proceedings in the way that they sought to do.” A senior MI6 official was forced to apologise “for any misunderstanding” for the “approach” made to the tribunal, claiming that they had only sought “to understand better the nature of SIS information apparently referenced” in documents provided to it.

Maya Foa, Reprieve's director, said: "Britain's security services play a crucial role in keeping this country safe, but they do not get to decide what evidence a court should see. MI6 was right to apologise." Daniel Holder of CAJ and Paul O’Connor of the Pat Finucane Centre, said: “There has long been a long concerning history in Northern Ireland of the intelligence services considering themselves not bound by the law and above and beyond its reach. Such practices are incompatible with the principles of a democratic society and go to the heart of this case. Its therefore particularly alarming that MI6 sought to interfere with the tribunal in this way.” Ilia Siatitsa, legal officer and programme director, Privacy International, said: "Such an interference with judicial proceedings has absolutely no place in any mature democracy. In another PI case before the same tribunal in 2017, it was revealed that GCHQ had also made advances of similar nature to the Commissioner. It is troubling the Agencies have not yet learned these basic principles.”

English Judges Rule Lying About Fertility to Sexual Partner is Not Rape

Ben Quinn, Guardian: A convicted rapist could make a bid for early release after winning an appeal in which judges ruled that lying to a sexual partner about being infertile is not rape. Jason Lawrance, a serial sexual attacker who is serving a number of life sentences, was found guilty last July of raping a woman twice after lying to her about having had a vasectomy. But the convictions for raping the woman – who became pregnant and had an abortion – were quashed on Thursday by appeal court judges who said they were unsafe.

Lawrance’s solicitor, Shaun Draycott, said: “There was real concern that the upholding of the convictions recorded at Nottingham crown court [last July] would have had the potential to criminalise large sections of an otherwise law-abiding population, both male and female. The ruling provides clarity on the important issue of whether one person’s consent to a sexual act can be negated by another person’s dishonesty.” Lawrance’s legal team did not appeal against his other convictions but Draycott said they would have to consider whether the ruling could potentially impact on the tariffs that relate to his life sentence.

The self-employed builder contacted thousands of women on the dating app Match.com and attacked a dozen women between 2009 and 2014. Lawrance, from Liphook in Hampshire, was convicted in 2016 of raping five women and of sexually assaulting and attempting to rape two others. Jailing him for life, a judge described him as “devious, manipulative and highly dangerous to women”. Lawrance, originally from Leicestershire, went on trial again last July accused of raping and sexually assaulting six more women. One of these was the woman he deceived about having had a vasectomy. They had consensual sex but he sent her a text the day after sleeping with her, saying: “I have a confession. I’m still fertile. Sorry.”

Under the Sexual Offences Act 2003, a person commits rape if the other “does not consent to the penetration” or they “do not reasonably believe” the person consents. Katie Russell, a spokesperson for Rape Crisis England and Wales, said the act was clear that an individual must have both capacity and freedom in order to make a choice about whether to consent to a sexual act. “This means they mustn’t be constrained in any way in their decision-making. The law recognises too that consent can be conditional, ie someone might consent to sex with but not without contraception.” In the case of Lawrance, she said his lie “led to significant, likely traumatic physical and emotional consequences for the complainant. We must better recognise and understand the meaning of genuine consent in our society, not only for the sake of criminal justice for sexual violence and abuse survivors, but also to reduce and prevent sexual offences and promote healthier, more respectful attitudes to sex in general,” she said.

In their ruling on Thursday, the court of appeal judges said: “In terms of section 74 of the 2003 act, the complainant [the woman] was not deprived by the appellant’s [Lawrance’s] lie of the freedom to choose whether to have the sexual intercourse which occurred.” They considered other cases, including Julian Assange’s extradition case – in which a judgment said that sex without a condom would be an offence in Britain if the other person had agreed to intercourse only on the condition of one being used – and another known as R(F) involving a woman who consented to sex with her husband on condition that he withdrew before ejaculating. Unlike the woman in Assange, or in R(F), the complainant agreed to sexual intercourse with the appellant without imposing any physical restrictions,” said the ruling by the lord chief justice for England and Wales, Lord Burnett of Maldon, along with Mrs Justice Cutts and Mrs Justice Tipples. “She agreed both to penetration of her vagina and to ejaculation without the protection of a condom.” They added: “The deception was one which related not to the physical performance of the sexual act but to risks or consequences associated with it.”