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When does 'Deprivation' Become Depravation?

Deprivation: Damaging lack of material benefits considered basic necessities in a society.

Depravation: Act of corrupting someone, or causing them to become bad or depraved.

Jack Harrison, Transparency Project: At the beginning of this year, I wrote a short post which tried to explain the increasingly troublesome area of Deprivation of Liberty in an accessible way. It is, in effect, the power of the High Court under its ancient powers of protection to authorise that a child may be deprived of their liberty in a way that would otherwise be against the law. Applications for authorisation of this kind have increased in number in the past few years. One of the biggest reasons for this is that there is simply not sufficient secure accommodation provision, to ensure that the most vulnerable children needing the highest level of support and supervision can be protected in a safe and regulated environment, which is either secure accommodation or Tier IV provision, which is the detention of a child with a serious mental illness, and severe needs, on medical grounds.

The result of living with an inadequately resourced and funded child protection system is that demand outstrips supply of such places by a considerable degree. But each figure on the demand chart is a vulnerable child, with severe and immediate needs, who requires the protection of those able to provide it. Alternative solutions are therefore found: placements are cobbled together and packages of support and supervision are sourced and bought in at great expense from units that charge thousands of pounds per week to the local authorities vying for their services. This provision is not approved by OFSTED or regulated, and so, absent the authorisation of the High Court, to detain and supervise a child in this setting would be a breach of the child's human rights under Article 5 ECHR. In short, local authorities cannot come up with stop gap solutions to protect the most vulnerable children without the permission of the Court.

An independent court and judicial system is one of the most important safeguards against tyranny and the arbitrary exercise of state power. Therefore, once a provision has been identified and suitable supervision is compiled, it is up to a High Court Judge to determine whether the arrangement required to keep the child safe is: 1. As a matter of fact, amounting to a deprivation of the child's liberty, and 2. In the child's best interests. In my January post, I highlighted some of the more recent judicial posts in which despair at the present situation has been articulated. Sir James Munby referred to the lack of appropriate placements for vulnerable children as "disgraceful and utterly shaming". With no other options, judges are often forced to choose between the lesser of two evils – an impossible choice. This is all background to the decision of Wigan MBC v Y et al [2021] EWHC 1982 (Fam), published yesterday.

What is the Case About? This case is about Y. Y is a 12-year-old boy. There is currently a care application before the court which was brought because Y is said to have suffered years of physical and emotional harm in the care of his father. The local authority currently shares parental responsibility for Y on an interim basis. Y has very complex needs, including potentially ADHD and autistic spectrum disorder. He has a diagnosis of epilepsy. Y's behaviour has become increasingly unmanageable, and he has posed a risk to himself. He had to be provided with segregated learning by his school because of his heightened state. He posed a risk to those who he interacted with, including the public. In early 2021, Y began to tell his school that he wished to end his life. He acted on this by placing a seatbelt around his neck. When the GP came to visit him at home, she saw Y waving two knives and had to call the police. In early July 2021, Y was taken into local authority foster care and placed in a residential unit. Y's self harming behaviour continued and, two days into his stay in the residential unit, he tried to hurt himself with a screwdriver and hang himself with a phone charger cable. When attended to by medical staff, he was blue in the face. He fought against the life saving help he was being given. He was restrained and admitted to a children's ward, where he has remained.

However: On 4 July 2021, at 3pm, Y absconded from the ward following a further incident in which he had become aggressive and combative with staff. Y was recovered to the ward by police, social workers and security staff. He was returned to the ward in handcuffs. Upon removal of the handcuffs, Y crawled under the hospital bed and attempted to bring the bed mechanism down on himself. He was pulled out from under the bed by police and restrained on a mattress situated on the floor. The handcuffs were re-applied by the police at this point. Following this, Y had several incidents of holding his breath. As a result of this, Y had to be chemically restrained and was given rapid effect tranquilisers. Y was assessed by doctors as not presenting with mental illness. The clinical lead for the Child and Adolescent Mental Health Services assessed Y as needed a care setting with regular and experienced care staff, skilled in meeting the needs of children with difficulties like Y. The problem is, such a placement was not available and could not be found. The hospital used its powers under the Mental Health Act 1983 to detain and restrain Y, as Y's presentation further deteriorated and he tried, amongst other things, to self-harm by banging his head against a mental pole. Y further tried to assault ward staff which required police intervention and further restraint. He spat and hit out at the staff until further chemical restraint took effect.

An Assessment was Undertaken by the Clinical Staff: During the course of their exchange Y stated that he wanted to sleep on the streets and did not want to go home as he wished to kill his father and himself. Y informed the AMPH (approved mental health professional – usually a specialist social worker) that when he self-harms it is with the intention of killing himself. When asked if he wanted to see or speak to his father Y became agitated and began to place objects in his mouth. Thereafter, Y became highly agitated, managed to kick the door of the ward open and attempted to abscond. Y became aggressive to staff and attempted to damage property. He was restrained by security staff. Once back on the ward Y became highly aggressive again and the police were called. The police officers were required to restrain Y and he was given a dose of rapid tranquiliser. Y made further attempt to harm himself at a later point by putting a carrier bag over his head and wrapping it tight. He was restrained for his own safety and passed out. When he came round he started banging his head against a wall and again attempted to kick down the ward to the door. Y attempted to punch the security staff and spat at them.

The outcome of the assessment was that Y was not detainable under the Mental Health Act 1983 and the tier IV provision that might have been offered was not required. Y's issues were trauma based. It was recommended that Y be discharged into a therapeutic placement as hospital was not the right place for him to be. This recommendation was made over a week ago. Y's presence of the ward was causing problems for others too. He was a risk to staff and other children. So disruptive is Y's presence that surgeries have been cancelled and children have been moved to other hospitals within the Northwest. And so Y remains in hospital. He is in a sectioned off area. He cannot have shorts with a draw string, so he has to wear scrubs. The ward doors are shut and all moveable objects have been cleared. There is no door on his shower, meaning he has no privacy. He is being given daily chemical sedation. He has no socialisation whatso-

ever. He has 5:1 supervision, meaning he has five members of staff 'on' him at all times. Even in this setting, Y has filled a sink with water and tried to drown himself. He has tried to suffocate himself with a pillow, meaning he has to sleep on a mat without a pillow. He has injured his arm but will not allow staff to treat the wound, which has become infected. He remains on the ward feeling caged, scared and a catastrophic risk to himself. In spite of all of this, as the judge points out, there is no appropriate placement available to give Y the help he requires. This caused the local authority to invite the Court to authorise the status quo – with Y remaining in hospital on the paediatric ward – pending a more suitable option being identified.

What Did The Judge Say? He Said No. Why? The job of the court as I have said above is two fold. First, to decide whether what is being proposed amounts to a deprivation of liberty. The question is does it meet the acid test of continuous supervision and control. If not, authorisation is not needed. If so, the court asks itself whether the arrangements proposed are in the child's best interests. If so, permission is given. If not, permission is refused. In this case, the judge, MacDonald J, did not consider that it was in Y's best interests to remain on the paediatric ward, even though there is no alternative placement for him. The judge found that the placement was so unsuitable – and at times grossly humiliating, with the removal of shower doors etc – that it would be 'obscene' for the Court to use its powers to authorise such a placement. No positives could be identified for Y, and he remains in a treatment setting which is not required, being restrained and restricted on a reactive basis in a setting that will never be able to meet his needs. It is one thing to say that a placement will do but is sub-optimal, it is quite another to say that a placement is completely unsuitable and obscene. The judge made clear that just because there is no alternative does not mean that the one remaining option is in a child's best interests. As the judge said: "In this case, I consider that the current arrangements for Y are so inappropriate that they constitute a clear and continuing breach of his Art 5 rights. Within this context, the fact there is no alternative cannot by itself justify the continuation of those arrangements. All the evidence in this case points to the current placement being manifestly harmful to Y."

What Happens, Then, to Y? The local authority must find a suitable placement for Y. It is no longer authorised to keep Y on the paediatric ward. This is the role of the local authority; they are required by law to safeguard and promote Y's welfare and protect his human rights. It is a matter now for the other arms of the state to do just that. One of the pillars of transparency is that courts express their decisions in ways that are easy to follow. This is vital for public confidence in the justice system, so everybody can understand the reasons why decisions are made, and that they have been made in accordance with the law. This decision is a commendably plainly written judgment. Its impact is clear. No confusion can come from this paragraph:

"Judgments given by a court should be sober and measured. Superlatives should be avoided. It is likewise prudent that a judge carefully police a judgment for the presence of adjectives. However, and as the hearing proved, in this case it is simply not possible to convey the appropriate sense of alarm without recourse to such language. In this case, having observed that in his thirty years at the Bar he had never been in a position of having to ask a court to authorise a regime for a child "as shameful as this one is", Mr Martin conceded on behalf of the local authority that, boiled down to its essence, his submission was simply that the court must today prefer the lesser of two acknowledged evils, the hospital ward or the street, in circumstances where there is currently no alternative placement. But that is not a solution that can be countenanced in a civilised society. The test laid down by the law is not which is the lesser of two evils but what is in the child's best interests having regard to the child's welfare as the paramount consideration. The parens patriae inherent jurisdiction of the court is protective in nature. As I have observed above, it would border on the obscene to use a protective jurisdiction to continue Y' current bleak and dangerous situation simply because those with responsibility for making proper provision for vulnerable children in this jurisdiction have failed to discharge that responsibility."

This decision brings to the fore, as the judge observed, the acute lack of proper provision and resources available for children like Y. The effect of this is not just to make Y's life an utterly miserable experience, but it has been to affect children not involved in the court system whose surgeries have been moved, and health staff who have been expected by reason of there being no alternative to put themselves at considerable additional risk to keep Y safe. As the judge observed: "Within this context, the adverse impact of the lack of appropriate provision that the courts have to wrestle with week in and week out in cases of this nature is now also impacting on the health and welfare of children and families who have no involvement with the court system."

If you have time, please do read the decision. It is characteristically accessible and leaves nothing unsaid. The experience of Y is ultimately a political problem. It is a matter for those we elect to decide how best to share the pie, informed by the values and priorities it considers important. I cannot remember having read a more despairing or sadder judgment. It is a shocking indictment on the world we live in that with the addition of 'acht' to Y's initial, there is a bounty of funding available. The grim reality is that Y is just the latest victim of a system starved of cash and unable to fulfil its primary purpose of keeping children safe.

Prison: Support for Neurodivergent People 'Patchy' and 'Inconsistent',

Elliot Tyler, Justice Gap: Half of people entering prison could have some form of neurodivergent condition including autism, brain injury and learning difficulties which impacts their ability to engage, according to a new report by three criminal justice inspectorates which highlights 'serious gaps' in support. In the foreword to the new report, Charlie Taylor, HM Chief Inspector of Prisons, Justin Russell, HM Chief Inspector of Probation and Sir Thomas Winsor, HM Chief Inspector of Constabulary and Fire & Rescue Services call provision 'patchy, inconsistent and uncoordinated' and argue that 'too little is being done to understand and meet the needs of individuals'. 'We were struck by the number of times the word "difficult" was used in evidence, most commonly in relation to perceptions of the behaviour of neurodivergent people,' the report says. 'It would perhaps be more useful to reflect on how "difficult" the CJS is for people with neurodivergent needs, and what could be done to change this.'

The review, commissioned by the Lord Chancellor, Robert Buckland after the Equality and Human Rights Commission found that the system was failing many disabled people, concluded there was 'no guarantee that a neurodivergent person coming into contact with the criminal justice system will have their needs identified, let alone met, at any stage of the process'. At every step in the criminal justice system, the inspectors found failures to share relevant information, with 'consistently low levels' of staff awareness on neurodiversity. 'I have worked for Probation for almost 20 years and do not recall ever having received any training about working with neurodiversity,' it was said by one respondent. The inspectors found that the effectiveness of custody risk assessments varied, with an officer's experience with neurodiversity being a factor in the outcome. 'I'd tried to tell the police about my condition but they weren't interested,' said one prisoner, who was interviewed for the report. Those with neurodivergent needs can be seen as 'difficult' by officers, the report noted, but 'it would perhaps be more useful to reflect on how difficult the justice system is for those with neurodivergent needs'.

The report also found that young people from black and minority ethnic backgrounds

were less likely to be identified with learning difficulties on reception to prison. Estimates suggest that neurodiverse conditions are three times more common in the criminal justice system than in the general population. A criminal defence solicitor, who responded to the review's call for evidence, said: 'There is widespread ignorance in the court system amongst legal professionals including lawyers, judges and magistrates.' A co-ordinated and cross-government approach to improve outcomes for neurodivergent people within the criminal justice is needed, according to the report, and its recommendations include the development of neurodiversity awareness programmes for staff, the creation of a screening tool and an information sharing protocol, and low-cost changes to create neurodiversity-friendly environments.

In September 2020, a report found that almost four out of 10 adult suspects in police custody had a mental disorder, but the need for an appropriate adult to be present was recorded in only 6.2% of custody interviews and in voluntary interviews the rate was even lower at 3.5%. There were also calls to end remote legal advice for vulnerable suspects in police stations. According to the report, about 5–7% of those referred to liaison and diversion services have an autistic spectrum condition. 'Within prisons the prevalence of autistic 'traits' or 'indicators' could be around three times as high (16% and 19% respectively),' it says. 'Around a quarter of prisoners are thought to meet the ADHD diagnostic criteria.' One brain injury charity (Headway) reckons that 'around half the prison population have suffered a traumatic brain injury'. The chief inspectors make six recommendations including designing a 'common screening tool for universal use within the criminal justice system' backed by an information-sharing protocol specifying how information should be appropriately shared between agencies to allow for adjustments and support.

Too Many Women Sent to Prison on Short Sentences for Non-Violent Offences

Prison Trust: Most women are sent to prison for non-violent offences and serve sentences of 12 months or less, a new briefing by the Prison Reform Trust reveals. 72% of women who entered prison under sentence in 2020 have committed a non-violent offence. Furthermore, 70% of prison sentences given to women were for less than 12 months. A series of inquiries and reports over the last 20 years, as well as the government's own 'female offender strategy', have all concluded that prison is rarely a necessary, appropriate or proportionate response to women who get caught up in the criminal justice system. Despite this, the government has recently announced plans to build an additional 500 prison places in the women's estate. This is in direct contradiction to a key commitment of the female offender strategy to reduce the female prison population. The briefing provides a concise and informative explanation of the need to focus on reducing the imprisonment of women in England and Wales. It contains statistics on the number of women imprisoned, the characteristics of women in prison and the drivers to their offending, as well as information about community-based services and solutions.

Other key facts highlighted in the briefing include: 1) Women were sent to prison on 5,011 occasions in 2020—either on remand or to serve a sentence. 2) Levels of self-harm in the women's estate reached record levels in 2020. There were 11,988 incidents of self-harm compared to 7,670 in 2016. Women made up 22% of all self-harm incidents in 2020, despite making up only 4% of the prison population. 3) Women serving a sentence of less than 12 months accounted for almost half of recalls in 2020. 4) The use of community sentences has dropped by two-thirds since 2010. Women, who make up only 4% of the total prison population, are easily overlooked in policy, planning, and investment in the services that help them to take responsibility and turn their lives around. A recent PRT analysis of progress made by the government in implementing the female offender strategy since it was published in 2018 found that it had fully implemented less than half (31) of 65 commitments.

Peter Dawson, Director of the Prison Reform Trust, will be giving evidence to the Justice

Committee today as part of its inquiry into women in prison. Commenting on the launch of the briefing, he said: "The evidence highlighted in our briefing could not be clearer—good, reliably funded community provision works better than prison, costs less, and keeps families together. Yet the government seems wedded to a costly policy of expanding the women's prison population in direct contradiction of the evidence and its own female offenders' strategy. We need investment in a national network of women's centres, not new prison places."

Imprisonment for Public Protection Sentences

As of 31 March 2021, there were 1,784 prisoners serving the IPP sentence in custody who have never been released. As of the same date, there were 632 prisoners serving the IPP sentence in custody who had been recalled more than once, whilst there were 2243 offenders serving the IPP sentence in the community who have been released and not been recalled. As of 8 July, 18 applications have been received from offenders requesting termination of their IPP licence. From September this year, officials will refer automatically to the Parole Board the case of every offender serving the IPP sentence who has become eligible to apply for termination of his/her IPP licence. Notes for all figures: These figures have been drawn from the Public Protection Unit Database and Prison-NOMIS held by Her Majesty's Prison and Probation Service. As with any large-scale recording systems, the figures are subject to possible errors with data migration and processing.Support for Families of Those Serving Indeterminate Sentences

HM Prison and Probation Service (HMPPS) has published a guide to assist families and significant others who have a loved one serving an indeterminate sentence, such as a Life or IPP sentence. The guide builds on the joint Prison Reform Trust and University of Southampton report, 'A Helping Hand: Supporting Families in the Resettlement of People Serving IPPs', written by Dr Harry Annison and Christina Straub, which we published in 2019. The report recommended that HMPPS should "develop appropriate information materials for families that explain the systems, processes and responsibilities related to the IPP sentence." The guide goes some way to meeting that recommendation, and aims to improve understanding of key stages during the sentence; suggests ways to support progression; and where to find more information and support.

HMPPS Introduction 1) We recognise that you, as a family member or significant other, can play a vital supportive role in the rehabilitation and resettlement of those serving indeterminate sentences, like a life sentence or a sentence of Imprisonment for Public Protection (IPP). To support you in doing so, we have created this guide to help explain some of the key processes that affect indeterminate sentenced prisoners (ISPs). This guide will also signpost you to where you can find more information about certain process or topics, where possible. 2) . We also recognise that having a relative or significant other in prison can be very difficult, and that this could be made all the more difficult if you are struggling to find out about how the system works and what it means for your relative or significant other. We hope that the information and links within this guide are helpful. 3) . The aim of this guide is to give you the following: • A basic overview of indeterminate sentences; • An understanding of what life is like in prison for an adult serving an indeterminate sentence1; • An understanding of how sentence planning works, and of the initiatives and work people in prison may need to complete to help with their progression; • An overview of the Generic Parole Process, the Tariff Expired Removal Scheme (applicable to Foreign Nationals ISPs), and the Parole Reconsideration Mechanism; and • An overview of the different processes that can affect people serving indeterminate sentences, following release in the community on licence. 5). It is important to note that, while this guide

provides details and explanations of processes that affect those serving indeterminate sentences, each person's journey is unique to them. 6). To find out specific details of your or relative significant other's case, please contact them or their legal representative directly. With your relative or significant other's permission, you can also liaise with their Prison Offender Manager (POM) or Community Offender Manager (COM) to discuss their case.

Drill Music as Bad Character Evidence Used Against Young Blacks

Sasha Wass, Lyndon Harris: The past decade has seen the emergence of 'drill music' content increasingly used by the prosecution in criminal trials involving young, black, male defendants accused of gang-related offences. The drill genre, which is seen as a breakaway from hip hop and rap music, originated in Chicago in 2012 and was swiftly embraced in the UK, in South London in particular. Drill music is defined by its subject matter, embracing the use of drugs and weapons as part of the narrative of everyday urban street life. The development and increased availability of music and video production technology has enabled amateur drill artists to produce and disseminate their work, posting material on a variety of social media platforms. Such material is freely accessible to police and prosecutors when investigating criminal offences.

Police forces have for some time routinely interrogated the mobile phones of those accused of crime in order to establish association or motive. However, it has now become commonplace for police in cases of gang-related crime to extract drill music videos found on the electronic devices of those under investigation to prove bad character. When relied on by the prosecution, the argument advanced in support of its admission is that where a suspect accused of murder (for example) is found in possession of music videos which glorify the use of guns, knives, or drugs, this could amount to cogent evidence supportive of guilt.

Discussion: How, then, does the law permit the admission of drill music in the prosecution of gang-related crime? As with any evidence, for a drill track to be properly placed before a jury, it must be both relevant and admissible to the offence charged. Let us consider the case where a suspect is accused of murder committed against a background of gang membership and drug dealing. In this example, drill music videos are found by the police on the suspect's mobile phone. The content of the video, and any involvement by the suspect in the video, will be critical to the question of relevance.

In the first example, the suspect in question appears in person performing in the drill music clip, delivering lyrics which refer to the killing in question and his knowledge of details of the case. In the second example, the suspect again appears in the drill music clip, delivering lyrics which describe the use of drugs, guns or violence in the first person. However, in this example, there is no direct link with the murder in question. In the third example, the suspect does not appear in the clip. The lyrics which glamorise the use of drugs, guns and violence are delivered by a third party not connected to the case in any way.

In example one, the prosecution need not engage the bad character provisions of the Criminal Justice Act 2003 as the drill material will be admissible by virtue of section 98 of that Act. That is to say the content of the drill material "has to do with the alleged facts of the offence with which the defendant is charged or is evidence of misconduct in connection with the investigation or prosecution of that offence." In example one, the suspect himself is narrating information about the offence and may include material that only someone involved in the offence would be privy to. It would be challenging to argue that the material in question is not relevant or admissible.

In example two, the drill music video is further removed from the facts of the offence but there nevertheless exists a link between the suspect and the type of offence in question. The prosecution

might try to avail itself of section 98 and, depending on the circumstances of the case, a judge might well rule that section 98 was engaged. However, the argument for ruling the drill evidence to be inadmissible would be considerably stronger than in example one. The fact that a suspect embraces a genre of music which is menacing in its content is far from necessarily "to do with the offence charged."

It is example three above which has proved the most controversial. There can be no proper argument that a drill video with contents related to drugs and killings "has to do with the alleged facts of the offence." The material may relate to a type of offence similar to that charged, but that would be insufficient to engage section 98. In such circumstances, the prosecution would need to avail itself of the bad character provisions of the 2003 Act. Admissibility would be dependent on the material satisfying one of the gateways of section 101. The most likely gateways relied on would be either section 101(1)(c) "that it is important explanatory evidence"; or 101(1)(d) "that the material is relevant to an important matter in issue between the defendant and the prosecution." Section 101(1)(d) permits what is often referred to in shorthand as propensity evidence. The prosecution argues that a defendant listening to music about the stabbing of rival gang members, unrelated to the case, is more likely to involve himself in gang-related violence. Such an argument may offend against racial stereotyping and often fails to understand the social backdrop to life in urban estates. The same is not routinely said, for example, of those who watch violent films, or play violent video games.

Applications to adduce the content of drill music videos feature disproportionately in criminal trials involving young, black, male defendants. A legitimate concern arises in relation to the proper application of the general principles of the law of evidence regarding the use to which drill music is put. Drill music is essentially a genre embraced by those who are expressing the difficulties of being excluded from parts of modern society. Historically, the attraction of contemporary music to the young has always been its ability to shock others. Difficult though it is to believe now, Cliff Richard in his heyday was once banned from had having one of his singles broadcast on the radio. More recently, the punk movement was seen as dangerous and subversive in the late 1970s. Drill music is a logical extension of a music genre whose appeal is its shocking content. That is very different from assuming that those who enjoy the music are themselves advocating the use of drugs, guns and violence. Whether the possession of the track constitutes reprehensible conduct on the part of the defendant is perhaps a point that is occasionally overlooked in such applications. Further, taking the content of the material literally may be both simplistic and unfair. There is, however, a growing body of academic work on this topic. Most recently, at the CBA Assize Seminar on 14 May 2021, Dr Abenaa Owusu-Bempah (Assistant Professor of Law, LSE, University of London) presented "The Irrelevance of Rap", drawing upon her academic research and analysis of 30 criminal cases in which rap music was sought to be relied upon by the prosecution. The video of her presentation is available here. In her Assize presentation, Dr Owusu-Bempah made reference to academic work that suggests that rap music cannot be "taken at face value" (see e.g. Dennis, 2007). Dr Eithne Quinn (University of Manchester), who has acted as an expert witness providing evidence related to rap music, shares concerns regarding such evidence being adduced absent the proper context or being used (deliberately or otherwise) to bolster an otherwise weak case.

Dr Owusu-Bempah also made reference to the recent case of R v Soloman [2019] EWCA Crim 1356 (a case in which the title of a rap track was held to be relevant to the defendant's state of mind). The court held that although it was relevant it was perhaps of limited weight, commenting that "…the lyrics of songs that people choose to record on their phones will often or perhaps typically have no connection to the factual reality of their own lives." The court went on to state: "…

lyrics of a song do not necessarily or perhaps commonly bear a connection with actual real life events." The guidance from the Court of Appeal (Criminal Division) is that a nuanced approach to such evidence ought to be taken. The Court in Soloman found that the judge had erred in not directing the jury on the issue of taking the lyrics literally, but ultimately held that this did not render the conviction unsafe. Gang involvement and gang culture can be a topic in respect of which expert evidence may provide assistance to a jury. The context and interpretation of rap music lyrics often requires an understanding of matters which are outside the scope of a juror's day-to-day experience. This should not be overlooked either by the prosecution or the defence.

Conclusion: Applications to adduce bad character evidence will inevitably be fact specific. In respect of drill music evidence, it is suggested that the following points merit consideration whether one is instructed by the defence or the prosecution. Firstly, a proper interrogation of the material and its context must be undertaken. Whether the content is readily understandable or whether it requires analysis by an expert will depend on the material in question. Secondly, the basis for the admission of the material must be clearly articulated and understood; propensity may be the 'obvious' basis for the prosecution to rely upon, but the more tenuous the link between the drill track and the defendant and the offence in question, the more difficult it will be to satisfy the court that the evidence meets the requisite threshold. If it is not propensity that is being relied on, then what is the important matter in issue to which the evidence is relevant? Thirdly, it is critically important to avoid inadvertent reliance upon stereotypes and in particular eliding drill music with criminal activity. While involvement with drill music may provide some evidence relevant to criminal activity, it will not do so automatically, and caution should be exercised when considering an application to adduce such material. This continues to be an area in which the law is developing its understanding. Lawyers and judges need to understand the context of drill music and its origins. For a defendant to show an interest in or perform music which describes the culture of urban life and its challenges must never of itself be mistaken for admissible evidence that a defendant is guilty of committing an offence. Such an approach has the capacity to unfairly disadvantage young black defendants. It is only by educating and training those involved in dealing with such material that this unfairness can be avoided.

Law Society Sounds Warning Against Judicial Review Bill

Haroon Siddique, Gurdian: The judicial review bill, published on Wednesday 21st July 2021, should "Ring Alarm Bells" for people attempting to seek remedy against the state in court, the Law Society has said. Details of the bill, released before full publication, which follows government rhetoric about overreach by the judiciary, prompted accusations that it would restrict the ability of individuals, including some of the most marginalised in society, to challenge the decision-making processes of public bodies. While the Ministry of Justice abandoned arguably its most controversial proposal – to increase use of ouster clauses, which ringfence government decisions beyond the reach of the courts – it has limited the scope of judicial review in another way, which raised fears it may provide a template for future restrictions.

The bill ends the practice where parties in immigration and asylum cases who have been refused permission to appeal by both the first-tier and upper tribunal can bring a judicial review case in the high court, known as Cart judicial reviews. Stephanie Boyce, president of the Law Society, which represents individuals in England and Wales, said: "There is a great deal here that should ring alarm bells for people who come up against the might of the state. "The MoJ suggests the bill may set a precedent for government to give itself the power to remove certain types of cases from the

scope of judicial review, which would effectively spawn a new breed of ouster clause. There are rare, exceptional circumstances when it is appropriate for the state to circumvent the courts, and only with strong justification. Parliament will need to think very carefully about the potential impact of any such proposals on the rule of law." The MoJ claimed that research showed Cart judicial reviews had a success rate of only about 3% compared with a 40%-50% success rate for all other cases, costing the taxpayer more than £300,000 a year. But the source of the figures is unclear. The government-commissioned review into judicial review used a figure of 0.22% in Cart cases, only for the Office for Statistics Regulation to say that the figure could not be right and was "overly simplistic". Some experts have suggested a figure closer to 7%. Charlie Whelton, Liberty's policy and campaigns officer, said: "It appears that based on faulty statistical reasoning, this bill proposes to remove a vital safeguard that protects marginalised people, especially migrants, from mistakes being made by public bodies which could have a catastrophic impact on their lives."

The MoJ said another feature of the bill would allow judges to determine a government's action unlawful, without invalidating any prior actions. It said this could help claimants but Boyce suggested it could mean they derived no benefit from a successful challenge. While interested parties await more detail, the shadow justice secretary, David Lammy, said it was "unhinged that the MoJ is wasting resources on attacking a vital process that works well while the courts system is on the brink of collapse". Derek Sweeting QC, chair of the Bar Council, said it was positive the government appeared to have "backed away from some of the more extensive changes" but stressed the system was working effectively. The lord chancellor, Robert Buckland QC, said: "The government has pledged to ensure that the courts are not open to abuse and delay. Today we are delivering on that commitment. We are giving judges the powers they need to ensure the government is held to account, while tackling those who seek to frustrate the court process."

Tory MPs Suspended for Trying to Influence Judge in Elphicke Case

Aubrey Allegretti, Guardian: Several Conservative MPs were temporarily suspended from the Commons and told to apologise after being found to have tried to influence a judge presiding over the trial of a former colleague for sexual assault. The one-day ban from parliament was handed down by the standards committee to backbenchers Sir Roger Gale, Theresa Villiers and Natalie Elphicke – the then partner of Charlie Elphicke, who was given two years in prison after being found guilty of three counts of sexual assault. Two other Tory MPs – Adam Holloway and Bob Stewart – were ordered to make a statement apologising for their behaviour in the chamber, with all five found to have threatened to undermine public trust in the independence of the judicial system.

The politicians sent a letter to senior judges in November 2020 before a hearing on the release of pre-sentencing character references for Charlie Elphicke. They used parliamentary-headed and taxpayer-funded Commons stationery to write to Dame Kathryn Thirwall, the senior presiding judge for England and Wales, and Dame Victoria Sharp, the president of the Queen's Bench Division, also copying in Justice Whipple, who had heard the trial of Elphicke and was due to decide on the application to release the character references. The MPs wrote to "express concern" about the hearing, arguing a decision to disclose the references would be a "radical change to judicial practice" that "could have the chilling effect and harm the criminal justice system".

After they received a response the following day from the office of the lord chief justice of England and Wales saying the intervention was "improper" and disregarded the "separation of powers" between politicians and the judiciary, the five MPs wrote back on 22 November insisting they had not meant to "challenge your authority". In a report published on Wednesday 21st July 2021, the

standards committee said the letters had been disregarded but the MPs had still sought to influence the outcome of the hearing and "risked giving the impression that elected politicians can bring influence to bear on the judiciary, out of public view and in a way not open to others". It added: "Such egregious behaviour is corrosive to the rule of law and, if allowed to continue unchecked, could undermine public trust in the independence of judges." The greater sanction of suspension was only imposed on some MPs because they either had "substantial legal experience" or were still refusing to acknowledge they had done anything wrong, with the committee saying "they "should have known better". It concluded the politicians had breached the MPs' code of conduct, which says they should not damage the reputation and integrity of the Commons or those elected to it.

Villiers said she was "very sorry" and admitted the correspondence "was not appropriately drafted and it was wrong of us to send it". Natalie Elphicke apologised and said she had been wrong to question whether a different judge should have heard the application to release the character references. Gale, Holloway and Stewart gave a joint response, denying having tried to "influence the court of a live case" and saying they had only been trying to block the references being released to the press, given they contained "confidential and private information". They argued they had in fact "enhanced the reputation of the house for taking proportionate, timely and appropriate action under difficult, sensitive and pressing circumstances" and added they saw "no case" for being forced to apologise.

Criminalisation of Children in Residential Care

Data collected by the Department for Education (DfE) show that, while the number of children being placed in children's homes continues to rise, the number being criminalised is falling significantly. Progress made since midway through the last decade means that children in residential care are now three times less likely to be criminalised. In the year ending March 2014, 15 per cent of children in children's homes received a caution or conviction; in the year ending March 2020, this proportion was reduced to 5 per cent. The Howard League began its campaign after publishing research showing that children in children's homes were more likely to be criminalised than other children, including those in other types of care placement. In the years since, the charity has worked with police forces, Ofsted, the DfE, and some children's homes and local authorities to address the issue. There is still more work to do, however. Although the number of convictions and cautions has been reduced significantly, it remains the case that children in children's homes are more likely to be criminalised than other children. Academic research has shown that each contact a child has with the criminal justice system drags them deeper into it, leading to more crime. The Howard League is working to keep as many children as possible out of the system in the first place.

Watchdog Finds: Prisoners 'Forced to Defecate in Buckets' During Pandemic

Prisoners have been left feeling "helpless and without hope" by the confinement measures used to avert infection during the coronavirus pandemic, Her Majesty's Chief Inspector of Prisons has said. While jails largely succeeded in keeping Covid outbreaks at bay, Charlie Taylor's annual report concluded, this was achieved "at significant cost" to the welfare of prisoners – most of whom have spent the pandemic locked in their cells for all but 90 minutes per day. It found that the pandemic exacerbated "unacceptable conditions", which left some prisoners without access to a toilet or sink during the night, forced to wait to use communal facilities one at a time. The report stated: "Prisoners waited for hours to be let out, often resorting to urinating or defecating in buckets or bags in their cells." In his first annual report to parliament since his appointment in November, Mr Taylor warned that longstanding failures within the prison system had been "exacerbated" by the slow pace at which prisons re-established education, training and rehabilitation programmes.

Omagh Bomb: 'Real Prospect' Attack Could Have Been Prevented

Its is plausible that there was a real prospect the 1998 Omagh bombing could have been prevented, a high court judge has ruled Mr Justice Mark Horner also called for an investigation on both sides of the Irish border. He made the ruling at Belfast High Court in a case taken by brought by Michael Gallagher, whose son Aiden was one of the victims, The 29 victims of the Real IRA attack included a woman pregnant with twins. It was the biggest single atrocity in the history of the Troubles in Northern Ireland. No one has ever been convicted of carrying out the attack.

The legal case began in 2013 and concluded two years ago, but the judgement has only now been delivered, today Friday 23rd July 2021. The Lord chief justice's office has blamed the delay on the assessment of "sensitive" documents. The legal action, followed a decision by the government to reject the need for a public inquiry eight years ago. It said there had been multiple investigations, including those involving the Police Ombudsman. Central to Mr Gallagher's case were claims that intelligence from British security agents, MI5 and RUC officers could have been drawn together to prevent the bombing. There were national security issues around the hearing of evidence, which delayed matters, but it concluded in July 2019.

Mr Justice Horner concluded: *I am satisfied that certain grounds when considered separately or together give rise to plausible allegations that there was a real prospect of preventing the Omagh bombing. These Grounds involve, inter alia, the consideration of terrorist activity on both sides of the border by prominent dissident terrorist republicans leading up to the Omagh bomb. I am therefore satisfied that the threshold under Article 2 ECHR to require the investigation of those allegations has been reached. Any investigation will necessarily involve the scrutiny of both OPEN and CLOSED material obtained on both sides of the border. It is not within my power to order any type of investigation to take place in the Republic of Ireland but there is a real advantage in an Article 2 compliant investigation proceeding in the Republic of Ireland simultaneously with one in Northern Ireland. Any investigation will have to look specifically at the issue of whether a more proactive campaign of disruption, especially if co ordinated north and south of the border, had a real prospect of preventing the Omagh bombing, and whether, without the benefit of hindsight, the potential advantages of taking a much more aggressive approach towards the suspected terrorists outweighed the potential disadvantages inherent in such an approach.*

I am not going to order a public inquiry to look at the arguable grounds of preventability. I do not intend to be prescriptive. However, it is for the government(s) to hold an investigation that is Article 2 compliant and which can receive both Open and Closed materials [on the grounds as will be set out in the judgment]".

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