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Why Are the Courts Sending Mentally Ill People to Prison?

Jon Robins, Justice Gap: In October last year Milton Keynes County Court sent a woman with a long history of self-harming and overdosing straight from a psychiatric hospital to prison for six months. Shockingly, she had not committed a crime and never even been to prison; instead, she was in breach of what is known as an anti-social behaviour injunction and, as a result, was imprisoned for contempt of court. The judge described her difficult life in the following bleak terms: 'You were a looked-after child from aged four due to your mother's own mental health difficulties and you were placed in various care homes and foster care placements between four and 14 years. Whilst in a children's home you were the subject of sexual assault, including gang rape by older males. As an adult you had a short marriage during which you suffered sexual and domestic abuse.'

Anti-social behaviour injunction – or ASBIs – were introduced alongside the civil injunction to prevent nuisance and annoyance (IPNA) by the Anti-Social Behaviour Crime and Policing Act 2014 which replaced that more familiar acronym, the ASBO. The purpose of the legislation was to transfer work relating to anti-social behaviour from the criminal to the civil courts. 'Most people would not believe that a court would order a woman to be taken directly from a psychiatric ward to a prison, when she's committed no crime,' comments Rona Epstein, honorary research fellow at Coventry University. 'This horrifying case illustrates the inhumanity of the ASBI laws. This must change.'

Breaching an injunction is not a criminal offence but the court may issue a fine or, as in the case above, impose an immediate term of imprisonment of up to two years for contempt of court. The problematic nature of the post 2014 regime has been highlighted in a new campaign headed by Epstein: Is it a crime to be poor? Epstein points out that none of the usual protections available under the criminal law – a pre-sentence report, for example – are available in these civil court hearings. Despite the risk of imprisonment, representation under the legal aid scheme is highly unlikely.

So what had the woman done? She had breached ASBI by failing to engage with her community health team, refusing to allow her housing trust landlord into her home; and, when the police finally secured access, directed a stream of obscene and racist abuse towards her housing trust officer, the police as well as RSPCA officers who had taken her dog and three cats over concerns that they were being neglected.

Rona Epstein has looked at 145 contempt of court cases since 2019 in 38 different county courts between 2019 and 2022. 'Many of these concerned people who appeared to be particularly vulnerable,' she says. Eighty-one immediate imprisonments were ordered and 64 suspended, and three fines imposed ranging from £120 to £250. The largest group of 44 cases concerned nuisance to neighbours (noise, bad language, and threats); 32 cases involved individuals found to be in prohibited areas; a dozen cases related to drug dealing or possession; and six to begging and sleeping rough. There were 46 cases of immediate committal between March 2020 and March 2021 – in other words, in the middle of a pandemic and when one might have expected the courts to be making an effort to divert people from prison. Towards the beginning of lockdown, a man who had fed pigeons on his balcony was committed to 15 weeks.

In 2020 the judicial watchdog body the Civil Justice Council reported that the ASBI regime was 'unsatisfactory' and could be 'legitimately viewed as failing' the government's aims as stated in 2014. It made a series of recommendations including 'an urgent request' for the Home Office and the courts to collect meaningful data on the use of injunctions; widening the scope of the NHS Liaison and Diversion service; widening the legal aid scheme to ensure that no-one faces the imprisonment without access to a lawyer; and introducing sentencing guidelines for the judiciary on anti-social behaviour cases.

The CJC report cited one case (Festival Housing v Baker) concerning an unrepresented respondent described variously as 'vulnerable', 'fragile individual', and 'frankly, a pathetic individual who has not been able to stop herself'. The woman had been given a three-month immediate custodial sentence for breaching an injunction preventing begging. Five months later she was back in court – she had been asking for 50p on two separate occasions from local authority 'street rangers'. The judge had noted the 'trivial' and non-aggressive nature of her behaviour but nonetheless saw fit to send her to prison for six months.

The CJC was 'very concerned to note that a vulnerable and "pathetic" individual' was subjected to custodial sentences on two occasions with six months of each other, without seeing a lawyers', totalling nine months behind bars. 'Equivalent sentences are normally reserved for serious criminality,' it noted. As it noted, there appeared to be not a single attempt made 'to tackle the underlying cause of the behaviour'. 'Unsurprisingly, given that the respondent was unrepresented, there was no appeal,' the CJC added.

So what's the solution? 'These ASBI laws should in my view be repealed,' says Epstein. 'They appear to be used on occasions to punish extremely vulnerable people who are mentally ill, suffering from addictions, poor and disadvantaged in multiple ways. Prison is being used instead of repairs to the welfare net which is supposed to be there to support those most in need. This is not the way a civilised society should conduct itself.'

Application by Rosaleen Dalton for Judicial Review (AP) (Northern Ireland)

Sean Eugene Dalton was killed in a bomb explosion at 38 Kildrum Gardens on 31 August 1988 after he went to check on his neighbour who lived at that address. The IRA subsequently took responsibility for the bomb. A police investigation was opened into the event. It did not result in any individual being charged or convicted of an offence connected to the deaths. An inquest was held into Dalton's death on 7 December 1989. The coroner found that Dalton died from injuries. There was little further investigation from the police after this. In February 2005, one of Dalton's sons lodged a complaint with the office of the Police Ombudsman for Northern Ireland regarding the police's behaviour in the context of events leading to his father's death and the subsequent investigation. The Ombudsman investigated and produced a report on its findings on 10 July 2013. It concluded that a number of the complaints were substantiated and made certain criticisms of the way in which the police's investigation had been carried out. Following the completion of the report, a request was sent to the Attorney General on 25 July 2013 asking her to exercise her discretion pursuant to section 14 of the Act to direct a fresh inquest into Dalton's death in view of the Ombudsman's conclusions. The Attorney General refused the request on 2 October 2014.

Dalton's daughters challenged the decision by way of judicial review. The application was refused on 28 March 2017. However, the Court of Appeal allowed the appeal against the first instance determination on 4 May 2020. The Attorney General now applies for PTA to the Supreme Court. The issue is: Whether the procedural obligation to investigate pursuant to Article 2 of the European Convention on Human Rights applies to the State in respect of Mr Dalton's death.

New Data Shows 2021 Had Highest Number of Deaths in Prison Ever Recorded

INQUEST: The Ministry of Justice has released the latest statistics on deaths and self-harm in prison in England and Wales. This time last year INQUEST predicted that, in the midst of a second wave of Covid-19, the worst was yet to come. Sadly, the government did not act and we were proven right. In the 12 months to December 2021 there were a total of 371 deaths of people in prison, representing the highest annual number of deaths ever recorded, with more than one death a day. This is despite recent reductions in the prison population. There were 4.7 deaths per 1,000 prisoners, also representing the highest ever rate of deaths.

Of these deaths: 250 deaths were classed as 'natural causes', though INQUEST casework and monitoring shows many of these deaths are premature and far from 'natural'. This is a 13% increase from the previous 12 months. 86 deaths were self-inflicted, an increase of 28% from the previous 12 months. 34 deaths were recorded as 'other', of which 4 were 'non-natural' and 30 await classification. There was one homicide. Of these, six of the deaths were in women's prisons, three of which were 'natural cause' and three await classification. Younger people were most likely to die self-inflicted deaths in prison, and 69% of all deaths of people aged between 18 and 39 were self-inflicted deaths in 2021. The statistics published also include data on ethnicity, however it offers inadequate information and analysis.

The longer-term data shows that, even without accounting for Covid-19 related deaths, this year and the past five years have seen the highest ever numbers and rates of deaths in prison. Since the pandemic began in March 2020 to 31 December 2021, this report notes that 177 people in prison died within 28 days of a positive Covid-19 test. With INQUEST's own data we estimate that 98 of these deaths were in 2021. INQUEST's casework and monitoring also shows the highest number of self-inflicted and non-'natural' deaths took place in HMP Wandsworth and HMP Altcourse.

Deborah Coles, Director of INQUEST, said: "This time last year we said: we fear the worst is yet to come. Sadly, we were right. Despite what could have been learned from the first wave of the pandemic, the Government allowed yet more people to die in prison. But the pandemic alone cannot explain away this record level of deaths. These statistics represent the serious consequences of highly restrictive regimes on people's mental and physical health. They also reflect the continuation of a harmful and dangerous prison system, and criminal justice policies which use prison as the response to social problems. In the short-term urgent action is needed to ensure people in prison have access to healthcare and adequate support. In the long term, we need a dramatic reduction of the prison population and more investment in radical community alternatives. The Government's latest White Paper on prisons continues to ignore the evidence and favour building more prison places and allowing these needless deaths and harms."

Ministry of Justice (MoJ) has Backlog of 7,000 Subject Access Requests

*Inside Time:*The Ministry of Justice has been reprimanded and warned that it may face a hefty fine for failing to provide prisoners with their personal data. The threat came from the Information Commissioner's Office (ICO), which enforces the law on access to data, after it emerged that the MoJ is sitting on a backlog of more than 7,000 requests for personal information, some dating back to 2018.

Any member of the public who wants to see what data is held on them by any public body is entitled to submit a Subject Access Request (SAR). A copy of details on that person's file – except for details withheld for security reasons – should be provided within a month. Prisoners frequently apply to the MoJ for details of their prison record, some of which is held on paper rather than electronically. Such requests are handled by the MoJ's Branston Registry, in Staffordshire.

The ICO this month issued the MoJ with an Enforcement Notice warning that it must

clear its backlog of requests by the end of 2022 or face a fine of up to £17.5 million. It is the second time the MoJ has faced such a finding. In 2017 it was issued with an Enforcement Notice, and complied with its findings. However, in 2019, the ICO began to investigate reports of fresh delays and another build-up of overdue requests. It found that the backlog grew during the Covid-19 pandemic, when the MoJ suspended the provision of SAR responses to "offenders". By August 2021 there were 7,753 "overdue SARs", putting the ministry in breach of the Data Protection Act and the General Data Protection Regulation.

The ICO said: "The substantial number of SARs which remain outstanding and which are out of time for compliance is a cause of significant concern for the Commissioner. These concerns demonstrate that the controller [the MoJ] is currently failing to adhere to its obligations in respect of the information rights of the data subjects for whom it processes data. Previous meetings and correspondence between the controller and Commissioner have proven largely ineffective in reducing the number of outstanding subject access requests."

Any fine levied on the MoJ would be paid to the Treasury. Individuals who have suffered harm as a result of delays in disclosing their personal data would not be compensated, but may have grounds to sue the MoJ. In some cases, making an SAR is the only way a prisoner can discover whether inaccurate information has been recorded on their record – potentially affecting their conditions of custody or even delaying their release. If an SAR exposes inaccurate information, the person it relates to can seek to have the record corrected.

Women's Groups Seek End to UK Courts' Powers to Jail People For Own Protection

Aamna Mohdin, Guardian: A coalition of women's rights organisations has called on the UK government to abolish a law that gives courts the power to send people to prison for their own protection, as part of a 10-point plan to tackle inequalities in the criminal justice system. On the fifth anniversary of the Lammy Review, leading women's rights groups have derided the "lack of progress" in tackling persistent inequalities experienced by black, Asian, minority ethnic and migrant women in the criminal justice system. The coalition says more must be done to tackle the 'double disadvantage' of gender inequality and racism that BAME women face in the criminal justice system. These women faced the "double disadvantage" of gender inequality and racism when they encountered the criminal justice system, which prevented them getting the support they needed and left them at risk of reoffending.

The coalition of organisations, including Hibiscus, Muslim Women in Prison, the Zahid Mubarek Trust, Agenda, Criminal Justice Alliance and Women in Prison, presented the government with the action plan. As well as abolishing the law that gives courts the power to send people to prison for their own protection, the coalition demands practical changes to training, recruitment and external scrutiny. It also calls on the Ministry of Justice (MoJ) to analyse and publish data on racial disparities in women's contact with the criminal justice system.

In 2018, the government published the Female Offender Strategy, which made a public commitment to tackle racial disparity, but the coalition argues it does not go far enough to meet the needs of BAME and migrant women. Amina, 27, who served a prison sentence, said: "My faith is really important to me and it's the one thing that got me through my prison sentence but from what I saw the officers had no understanding of what being a Muslim means. "They only know the negative picture the media paints. For the first three months of my sentence, I had to pray on a towel because nobody gave me a prayer mat even though officers saw me pray on the towel. Another one of the girls had to fight my corner and get me one." Ivory, 35, a woman

supported by Hibiscus, an organisation working with BAME and migrant women at the intersection of the immigration and criminal justice, said: "In prison there is a lot of discrimination and racism against black and Asian women because of how we look and the colour of our skin. The way staff address white people is different, and I suffered bullying because of this. "This is an important issue that needs to be urgently looked into and changed."

Marchu Girma, the chief executive of Hibiscus, said: "Currently there are unacceptable levels of inequalities in the criminal justice system, that result in many black, Asian, minoritised and migrant women suffering. I am certain these inequalities are not mountains that cannot be moved." Indy Cross, the chief executive of Agenda, an alliance for women and girls at risk, said: "It's a national shame that the criminal justice system consistently fails so many black, Asian, minoritised, and migrant women. The double disadvantage of structural racism and gender inequality in the criminal justice system must be tackled."

Watchdog Criticises Government Over Female Offender Strategy

Inside Time: A public spending watchdog has criticised the Government for failing to follow through on plans to keep women out of prison. The National Audit Office (NAO) said that since the Female Offender Strategy was published in 2018 the government had made "limited progress" towards its goals – "because it has not prioritised investment in this work". The strategy, which was welcomed at the time of its publication by charities supporting women in prison, set out goals to reduce the number of women entering the criminal justice system and increase the proportion of female offenders who are managed in the community. It was published with more than 50 commitments including the creation of residential women's centres as an alternative to prison.

However, at the time of publication, the Ministry of Justice decided not to set targets for the main objectives, such as the number of women in prison, because the outcomes would depend on court decisions which were outside the Government's control. According to the NAO report, published on Jan 19, "Without clearly setting out the scale of its ambitions, the Ministry could not estimate what funding would be required to deliver the programme, or what savings the programme might achieve." Funding made available to achieve the strategy's objectives in its first three years was less than half of the minimum £40 million that officials in charge of the work estimated would be needed. No residential women's centres have yet been opened. Last year the Ministry of Justice announced that it would build 500 additional women's prison places at an estimated cost of £150 million.

Gareth Davies, head of the NAO, said: "The Ministry of Justice has not made the female offender strategy a priority. The strategy is intended to improve outcomes for women, but a lack of clear goals makes it hard to evaluate progress. Even in the areas where it focused attention, such as developing community options for women, delivery has been disappointing. The Ministry of Justice must clarify its aspirations and priorities for women, and match these to clear actions and funding, to improve how the criminal justice system treats women."

Kate Paradine, chief executive of the charity Women in Prison, claimed the Government was "failing to follow its own evidence and strategy which acknowledges most women in prison should not be there". Peter Dawson, director of the Prison Reform Trust said: "Inexcusably, the government never set itself any deadlines or targets to deliver a policy on reducing offending by women. So, it's hardly surprising that the National Audit Office now confirms what others have been saying for the last three years—that thousands of vulnerable women, and the general public, continue to be failed."

A Ministry of Justice spokesperson said: "We launched the female offenders strategy in 2018 with the aim of steering women away from crime and since then the number of women

entering the criminal justice system has fallen by 30%. We are investing tens of millions of pounds over the next three years into community services like women's centres, drug rehabilitation and accommodation support so that fewer women end up in prison."

Overrepresentation of Black Children' in Youth Justice System

Noah Robinson, Justice Gap: New data on the youth justice system has shown a 'categorical fail[ure] on every count to halt the overrepresentation of Black children', according to the Youth Justice Board (YJB). The publication examines the youth justice system in England and Wales between April 2020 and March 2021. Although Black children make up only four percent of the 10-17 year old population, they represent 29 percent of the youth custody population: an increase from 18 percent in the last 10 years. First time offenders from a Black background have also increased over the last 10 years, rising from 10 percent to 18 percent. This is similarly reflected in sentencing, where the number of Black children has increased by five percent over the past ten years, from seven percent to 12 percent.

The figures show that there is a 'shocking' disparity in the representation of Black children in the youth justice system. 'We are still disproportionately failing to give Black children the support they need to live crime-free lives', commented chair of the YJB Keith Fraser. 'It was clear before, but these figures are a sobering reminder of the work we collectively need to do to address disproportionality, find and use alternatives to remand and to keep children out of the justice system'. Data on stop and search for the 10-17 year old population was available for the first time. The data shows that Black children were more likely to be stopped than other ethnicities, making up 18% of cases where ethnicity was known. It also shows that 81% of stop and searches, across all ethnicities, resulted in no further action.

74% of children remanded in custody did not subsequently receive a custody sentence: the highest level on record. Of these outcomes, half resulted in acquittal. The report suggests that this increase is likely driven by the decreases in the volume of immediate custody sentences and non-custodial sentences which 'artificially inflates[s]' the proportion of acquittals. Fraser commented that it demonstrates children are being brought into the system 'unnecessarily and experiencing the trauma and stigma that brings'. The report shows the continuing impact of court closures, pauses to jury trials and subsequent backlogs in the periods of restrictions during the COVID-19 pandemic. The current average time from first listing to completion stands at 72 days. On average, this time was between 31 days and 44 days when examining data from the last 10 years.

Almost all Trans Women Prisoners Now in Male Jails

Inside Time: The overwhelming majority of transgender women prisoners are now held in male prisons, the Government has disclosed. In response to an MP's question, Prisons Minister Victoria Atkins told Parliament that as of last March, there were 146 trans women – people who identify as female, but are legally and biologically male – in prison in England and Wales. Of these, "fewer than five" (meaning between one and four) were held in women's prisons, and the rest in men's prisons. The figure marks a transformation from the situation in 2019, when – according to details which emerged in a High Court case last year – there were 163 transgender prisoners, of whom 34 were trans women being held in women's prisons. In that year, the rules were tightened to make it more difficult for trans prisoners to get to a prison of their new gender, after concerns were raised about women's safety. The figures include only people who are legally and biologically male, but identify as female. People who have legally changed gender, with a Gender Recognition Certificate (GRC), are counted separately and normally housed in a prison

of their new gender. It has previously been reported that there are 23 prisoners with GRCs. Further details disclosed by Atkins showed that among the trans women without GRCs detained in men's prisons, 87 – or around 60 per cent – had a conviction for at least one sexual offence.

Outlining current Government policy on the allocation of trans prisoners in a House of Lords debate earlier this month, Justice Minister Lord Wolfson of Tredegar explained: "Transgender prisoners are initially allocated to a prison matching their legal gender … For most transgender prisoners, this is the same as their sex registered at birth. Most transgender prisoners then remain in a prison matching their sex as registered at birth. Transgender prisoners who have not changed their gender by obtaining a gender recognition certificate are held in a prison opposite to their sex registered at birth only where that is judged appropriate by a multidisciplinary complex case board, which considers all relevant factors. Transgender prisoners who have changed their legal gender can still be moved to a prison matching their sex as registered at birth where a case board judges that to be necessary to manage risk."

The minister added: "Our current approach is robust and over 90 per cent of transgender women in prison are held in the men's prison estate" – an approximation which is confirmed by the latest more precise figures. Addressing the argument on women's safety, Lord Wolfson said: "Prior to the strengthening of our approach in 2019, there were a small number of sexual assaults committed by transgender women in the women's estate. However, we learned the lessons of that and since 2019 there have been no such assaults." Scottish prisons, like those in England and Wales, decide on the allocation of trans prisoners on a case-by-case basis – but with a very different outcome. It has been reported that there are 12 trans women without GRCs in Scottish women's prisons, more than the total in English women's prisons, with the result that one in 20 residents in Scottish women's prisons are biologically male.

Making Child Remand a last Resort

Transform Justice: The Police, Crime Sentencing and Courts Bill proposes legislation which will increase the prison population and criminalise more people. But it contains some gems. Perhaps the most progressive measure is one to make it more difficult to remand children. Most under 18s year olds who plead not guilty are given bail pending their trial or sentence. They may be subject to restrictions such as curfews or having to spend 25 hours a week supervised by YOT workers or teachers. But they are not innocent behind bars.

Thousands of children are though imprisoned every year while awaiting trial or sentence. 41% of all children currently in custody are on remand. A very high proportion will not be imprisoned on sentence, which is of course a good thing, but also a bad thing. If the right sentence for them is non-custodial, why were they imprisoned while waiting for their trial?

A new report from the government looks at the use of remand for children. It's slightly perplexing in its rationale. When introducing new legal measures to make it harder to remand children, the government said "the aim is to ensure that remand to youth detention accommodation is used only when necessary. If successful, this could lead to a reduction in youth custody places… A reduction in the use of custodial remand overall would reduce exposure to the custodial environment and avoid detrimental disruption to children's lives, which can be criminogenic, and therefore provide long-term benefits". The implication is that remand for children is over-used and needs curbing.

But the new government review argues that remand for children is used totally appropriately, while at the same time putting forward good suggestions as to how to use it more appropriately. Maybe the change of ministers since the report was drafted has prompted this change? The review points out the total numbers remanded in the last ten years have reduced. But then youth crime and

total numbers in custody have also reduced. The proportion of the child custody population on remand has risen steadily in the same period and other indicators suggest over-use. Perhaps the strongest is the proportion of children on remand who get acquitted or receive a non-custodial sentence. The latest statistics reveal that three quarters of all children remanded do not go on to receive a custodial sentence – this rises to 86% for cases which are entirely dealt with in the magistrates'/youth court. The criteria for remand are different to those for sentencing but, as the review points out, all judges should be using the legal "no real prospect" test for child remand. If there is no real prospect of the child being imprisoned on sentence, they should only in exceptional circumstances be remanded. The "no real prospect" test is clearly not working in reality.

The new remand legislation requires judges to give reasons for their use of remand. Hopefully guidance will suggest they explain how their decision meets the "no real prospect" test in each individual case. That may encourage magistrates and district judges to challenge the prosecution a bit more. While the review says "Interviewees felt that CPS prosecutors generally had a good background in youth work and do generally understand the remand process and youth legislative framework" it also cites the CPS Inspectorate finding "that 47.3% of MG3 forms completed by CPS failed to address remand and bail, limiting the assistance given to the court on these decisions". The latter finding rather undermines the views of interviewees and suggests that prosecution practice is having a negative effect on remand decisions.

A couple of other factors also suggest child remand is being used inappropriately. There are many short remands (22% of all youth custodial remand episodes last for 7 days or less), which suggests that prison is used as a holding pen while a bail package is being sorted out. Better a short remand than a long remand, but defence and the youth offending team should be trying to present a bail package on the child's first court appearance to avoid any custodial remand. The report makes some good suggestions as to how to improve practice, but perhaps doesn't put enough emphasis on police action. There is strong anecdotal evidence that any child remanded (detained after charge) by the police is particularly likely to be remanded by the court, partly because police remand suggests a child is "risky" and because police remanded children have to be seen in court as soon as possible, which puts sometimes intolerable time pressure on YOTs to produce a bail package.

The final indicator of over-use of child remand is evidence on the crimes remanded children are accused of. Y/e March 2021, 20% of the offences for which children were remanded were neither violent nor sexual. They included domestic burglary (7%), drugs (4%) and breach of statutory order (2%). That one in five children imprisoned on remand were not accused of a violent or sexual offence suggests that its not always a last resort. And the classification of violent offences masks huge differences. Shouting threats to a nurse counts as a violent offence, as does possession of a pair of scissors – important alleged crimes but maybe not worthy of imprisonment on remand.

Perhaps the most concerning of the statistics is not about over-use overall, but about over-use for specific groups. 4% of 15-17 year olds are black, but 34% of all children remanded are black. 60% of children in custody on remand are from minoritized communities. The report suggests some district judges and magistrates point the finger at YOTs for this disparity "we were told that courts typically follow YOT recommendations and it was suggested by some magistrates and district judges that black children, particularly boys, are perhaps unconsciously not championed by practitioners". This a bold claim. Surely its more likely that unconscious bias is present throughout the system? There are really important suggestions for improvement in this report. But putting heads in the sand and saying there isn't really a problem will not prompt positive change. It would be great if everybody involved in child remand acknowledged that it is too often not a last resort and that everybody can help reduce its over-use.

Application of Officer W80 v Office for Police Conduct and Others

W80, an armed police officer, shot Jermaine Baker dead in a police operation. Mr Baker was involved in a plot to snatch two individuals from custody. The police had intelligence that the plotters would be in possession of firearms. W80's account was that during the intervention, Mr Baker's hands moved quickly up to a shoulder bag on his chest, and fearing for his life and those of his colleagues, W80 fired one shot. No firearm was found in the bag, but an imitation firearm was in the rear of the car.

Following an investigation by the IOPC's predecessor, the Independent Police Complaints Commission (the "IPCC"), the IPCC concluded that W80's belief that he was in imminent danger was honestly held, but unreasonable, and that W80 therefore had a case to answer for gross misconduct on the basis of the civil law test that any mistake of fact could only be relied upon if it was a reasonable mistake to have made. It sent the report and its recommendation to the Metropolitan Police Service (the "MPS"), as the appropriate authority for misconduct proceedings against W80. The view of the MPS was that the IPCC had been incorrect as a matter of law in applying the civil law test (which looks to whether an honest but mistaken belief is reasonable) as opposed to the criminal law test of self-defence (which looks to whether the belief is honestly held). After the MPS indicated that it would not follow the IOPC's recommendation to bring misconduct proceedings against W80, the IOPC directed the MPS to do so. It is that decision which is challenged in this judicial review.

The issue is: In the context of police misconduct proceedings, is it open to a reasonable disciplinary panel to make a finding of misconduct if an officer's honest, but mistaken, belief that his life was threatened was found to be unreasonable.

Re-writing Nortern Ireland Troubles: the UK Government's New Plan

Anne Cadwallader,Pat Finucane Centre :Boris Johnson's government wants to commission an 'official history' of the Troubles in Northern Ireland. Yet it is itself censoring numerous files showing British army complicity in the deaths of civilians, depriving bereaved families of access to the truth. Jaws have dropped across Ireland at the British government's intention to commission an official history of The Troubles. Those that have perhaps dropped fastest and furthest belong to the Livingstone and Whitters families. In April 1981, Elizabeth Livingstone's youngest sister, Julie, aged 14, was shot dead walking home in Lenadoon, West Belfast. A soldier from the Royal Regiment of Wales had fired a plastic bullet gun from inside a Saracen armoured vehicle. Julie died a day later from head injuries. Sixteen days before, Paul Whitters, aged 15, was shot with a plastic bullet in his native Derry. He had such catastrophic brain injuries that his parents were forced to make the heartbreaking decision, ten days after he was shot, to switch off his life support in a Belfast hospital.

Both families discovered, decades after their bereavement, that the British government had decided not to declassify the official records on the circumstances of their deaths. The file on Julie Livingstone's death was closed in 2014 and remains so until 2064. Both her parents are already dead but, by 2064, all her 12 brothers and sisters will have died also. In 2011, the official file on Paul Whitters' killing was closed until 2059. Since then, half of it has been opened but 93 pages remain closed. "What possible implications for British national security can there be in the killing of a 15-year-old child in Derry over forty years ago?" asks his uncle, Tony Brown.

Secret Because it's Secret: In a development worthy of Alice in Wonderland, it seems to the Whitters family that half the file is officially "secret" and the reason for keeping it "secret" must also remain "secret". "The circular stupidity of this argument has left us speechless. This is about my son who was shot at almost point-blank range at 15 years of age and about the cruel death of Julie

Livingstone. They were just children", says Helen Whitters. She points out that neither family expects the names of those responsible to be released, freeing London from any data protection, health and safety or human rights obligations. The only possible remaining cause, they believe, is the notional one of national security. While these families, and hundreds of others, are waiting for the truth, London announced it intends to commission historians to write an official account of the conflict. The Daily Telegraph last week revealed the plans were drawn up in response to fears that "IRA supporters are rewriting history". The narrative would focus on the role of the British government and army. One might be forgiven for recalling what Winston Churchill once memorably wrote that it would be "better" to leave the past to history "especially as I propose to write that history".

'Get Stuffed' - Colin Harvey, professor of human rights at Queens University Belfast, said this week: "The British were protagonists in the conflict …participants. And it seems like for the current British government, the truth hurts: they don't like what's emerging about the role of the British state". More succinct was Diarmaid Ferriter, professor of modern Irish history at University College, Dublin. Asked on BBC Northern Ireland's "The View" programme whether he would accept an invitation, if asked to participate, he replied "I think I'd say get stuffed". The Belfast Telegraph reports that amongst the historians being considered is Lord Bew, a sponsor of the Henry Jackson Society and inspiration behind the ill-fated Boston College oral history project. Bew is also a former political advisor to the erstwhile leader of the Ulster Unionist Party, David, now Baron, Trimble.

Meanwhile, the files on Paul Whitters and Julie Livingstone are among dozens of others closed to researchers and historians. Some, most bizarrely, have been opened and then closed again, despite being widely publicised – while others have been opened, closed and then re-opened. One example is File CJ 4/1647 (January 1976-July 1977) containing documents detailing complaints of brutality against the British army and the then Northern Irish police, the RUC. It has been closed to public access until 2064 – restricting the right of those who alleged brutality at the time to discover what was being said about them. Another file is CJ 4/2841 (1976-1979) which details meetings and contacts between the British government and the largest loyalist paramilitary gang, the Ulster Defence Association. This was originally closed until 2052 on both health and safety grounds and because it contains personal information.

Closed for 100 years - When Margaret Urwin, of the Justice for the Forgotten group, made a freedom of information request, hoping to get the file opened, her request was rejected and the date of closure was increased from 72 to 100 years. Such requests are adjudicated by a supposedly independent watchdog at the National Archives. Its members are appointed by the Culture Secretary and include a former deputy head of MI5. They rubber stamp on average 99% of government censorship decisions. It is worth stating that files such as these can, and often are, lawfully redacted under data protection rules where publishing a name might put someone at risk – but these are at least files known to exist.

In a different category are those whose very existence the British government has sought to conceal. Journalists such as Ian Cobain have written extensively about the Foreign Office unlawfully hoarding more than a million files of historic documents. Those files are kept at a secret archive in a high-security government communications centre in Buckinghamshire, north of London, where they occupy mile after mile of shelving. Most of the papers are many decades old – some were created in the 19th century – and document British foreign relations throughout two world wars, the Cold War, withdrawal from empire and entry into the Common Market. They have been kept from public view in breach of the Public Records Act that requires all government documents to become public once they are 20 years old unless the department has received permission from the Lord Chancellor to hold them for longer.

'What Have They Got To Hide?' Meanwhile, families like the Whitters and Livingstones are left to ponder why information on the deaths of their children are being withheld for decades. "I felt we had done everything we could for Julie after three inquests had ruled she was a completely innocent victim", said Elizabeth Livingstone of her younger sister. "But when I found out about the hidden file, it brought all the pain back. Everyone who knew Julie will be dead by the time it is released. Your mind runs rampant. Why are they doing this? What have they got to hide?" The Whitters family, likewise, has no idea why 93 pages of their file will be closed until 2084. "I've written to 22 different Secretaries of State for Northern Ireland asking for information", says Tony Brown, the dead boy's uncle, a retired principal social worker. "when I found out about the hidden file, it brought all the pain back." "We have known the name of the RUC man who shot Paul, the name of the inspector who gave the order to fire and his superior since the inquest. That does not appear to have contaminated national security over the last forty years. "Nothing will ever hurt us as much as Paul's death but we are left bewildered by how the killing of a child forty years ago could impinge on national security. We cannot think of any other reason for withholding it."

The dead boy's mother, Helen, tells of how – the Christmas after Paul's death – a police officer arrived at her door "handed us a bloodied bag of clothes, smirked and left". That, she says, was the entirety of the RUC's engagement with the family over the years. "In a society which lays claim to democratic ideals of equality and transparency of government, denying families information on the deaths of their loved-ones makes a mockery of such notions", Helen said. The Harvard professor and author of three books on Northern Ireland, J. Bowyer Bell, after a lifetime studying British politics, wrote: "A great deal of care, trouble, intimidation and influence has been expended to keep British secrets secret … Money, force, loyalty, greed, disinformation, the law, patriotism, fear …And if in the end nothing works, then firm denial, regardless of the evidence". The leopard does not appear to have changed its spots.

Disproportionate Sentencing of BAME Women

Jon Robins, Justice Gap: Double Disadvantage' of Gender Inequality and Racism: Calls will be made to end disproportionate custodial sentencing of marginalised BAME women from a coalition of experts to tackle 'persistent racism and gender inequality' in the criminal justice system. Five years on from David Lammy's review into race and the criminal justice system, campaigning groups comprising Agenda, Women in Prison, Hibiscus, Muslim Women in Prison, Zahid Mubarek Trust, Criminal Justice Alliance and Women in Prison will launch a 10-point action plan calling for reforms to 'stamp out systemic biases' and publish data on racial disparities in women's contact with the criminal justice system.

'Too-often ignored, women face the "double disadvantage" of gender inequality and racism when they encounter the criminal justice system,' the coalition argues. 'This stops them from getting the support they need both within the system and when they try to rebuild their lives outside, leaving them at risk of reoffending.' The groups call on the government to ensure use of diversion and out of court disposals and 'end the use of disproportionate custodial sentencing and remands' for BAME and migrant women; train criminal justice staff on culture, ethnicity, race, faith, gender and anti-racism; and recruit Black, Asian, minoritised and migrant women with lived experience of the CJS to become peer mentors.

'Currently there are unacceptable levels of inequalities in the criminal justice system, that result in many Black, Asian, minoritised and migrant women suffering,' commented Marchu Girma, chief exec of Hibiscus which works with Black, minoritised and migrant women. 'I am certain these inequalities are not mountains that cannot be moved.' Indy Cross, CEO of Agenda, a group representing women and girls at risk, said it was 'a national shame' that the justice system consistently fails so many women. 'The double disadvantage of structural racism and gender inequality in the criminal justice system must be tackled.'

The coalition points to evidence that Black, Asian, minoritised, and migrant women were more likely to face harsher treatment across the justice system. Almost nine out of 10 women (85%) that Hibiscus work with have experienced gender-based violence. Most women in prison are serving serving short sentences for non-violent offences. 'Many face further abuse and vulnerability as they experience the "ripple effects" of criminal justice involvement like worsening mental health, isolation, and poverty,' the coalition says. 'These experiences can be compounded by racism, prejudice and discrimination. Structural racism and socioeconomic inequalities intersect with gender inequality and disproportionately places them at risk of experiencing further disadvantage.' According to the Ministry of Justice's statistics quoted in the report, women from BAME backgrounds are twice as likely to be arrested in comparison to white women. Despite 'extreme levels of need', they face limited access to specialist support and were 'simply left to deal with their entrenched experiences of trauma alone'.

Ivory, a woman with experience of the criminal justice system and supported by Hibiscus, spoke about the 'discrimination and racism against Black and Asian women because of how we look and the colour of our skin'. 'The way staff address white people is different, and I suffered bullying because of this,' she said.

Northern Ireland Prisons: 'Solitary Confinement' Breaking UN Standards

Some Northern Ireland prisoners are being held in what amounts to "solitary confinement" in breach of international standards, a report has found. CCTV recordings over a five-day period showed 20 inmates at Maghaberry Prison near Lisburn did not leave their cells. The report by Criminal Justice Inspection (CJI) raised "significant concerns about the treatment of prisoners". The Prison Service said parts of the report make for difficult reading. The report was commissioned by Justice Minister Naomi Long and looked at care and supervision units within Northern Ireland's three prison sites at Maghaberry, Hydebank Wood and Magilligan. Among prisoners, the units are known as "the block". They normally hold about 2% of Northern Ireland's jail population at a given time. Some prisoners have severe mental health disorders and, the report said, it was "questionable if prison is the most appropriate place for them".

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