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'Mitting Should Be Uncovering A Path To The Truth. Instead, He Is An Obstacle'

The public inquiry into political undercover policing is in crisis before it's properly begun. More than seven years since officer Mark Kennedy was unmasked by suspicious activists he'd infiltrated, we now know that around 150 undercover officers have been deployed since the Special Demonstration Squad was founded in 1968. The overwhelming majority of exposed officers had sexual relationships with women they spied on, a practice the Met now condemns as 'an abuse of police power and a violation of human rights'.

Announced by then-Home Secretary Theresa May in 2015, the Undercover Policing Inquiry has proceeded at a glacial pace due to police intransigence. The release of officers' cover names is the essential prerequisite to the inquiry. When a name is published, those who were spied on know which of their comrades was a cop and can come forward with details of what they did undercover. Only 29 spycops have been exposed so far, of which the Inquiry has only acknowledged 17.

There was disquiet last year when the Inquiry's Chair, Lord Pitchford, retired for health reasons and was replaced by Sir John Mitting. Mitting's background is in the secret courts of the Investigatory Powers Tribunal, which has heard thousands of cases but only ruled against the government once. Mitting's membership of the men-only Garrick Club alarmed those who see institutional sexism as the core of the spycops scandal. Nonetheless, Mitting has made a special case of the women deceived into relationships by spycops. He says they are entitled to know the real and cover names of the officer who abused them. He effectively dismisses victims of other abuses. There are numerous forms of spycops' misconduct. Many were involved in court cases under their false identity, breaching lawyer-client confidentiality, committing perjury and orchestrating miscarriages of justice. Many committed identity theft, burglary, assault and other crimes.

Mitting has started making rulings on anonymity for undercover officers. He is granting a degree of anonymity to almost all officers on human rights grounds – the possibility of a breach of the officer's Article 8 right to a private life. This is shocking, given that the Met have already conceded the officers breached their victims' Article 8 rights, as well as Article 3 (freedom from torture, inhuman or degrading treatment). Mitting seems blind to the fact that officers might be applying for anonymity because they have something to hide. He is taking most of their claims of peril, or of simply wanting to avoid publicity, at face value and acting as if that should be the paramount concern. No other criminals get to withhold the truth because it would upset their family to see them named. It is an insult to victims who will never get answers because their abusers fear embarrassment.

With a number of officers, Mitting is aping the Met's stonewalling tactic of 'neither confirm nor deny'. Not only will we be denied any information about the officers, but we won't even be told why we can't know. The issue came to a head at last month's preliminary hearing of the Inquiry. The drama centred on an officer known as HN58, who was the head of the Special Demonstration Squad when it was spying on Stephen Lawrence's family during the 1998 Macpherson inquiry, five years after the teenager's murder. As with most spycops managers, HN58 had previously been an undercover officer himself. As he was so morally bankrupt when a manager, it stands to reason that he would have acted unethically whilst undercover. Mitting coyly told the hearing that HN58 was nothing to worry about. He had to be pressed on his reasons for saying this, and eventually made it plain: 'We have had examples of undercover male officers who have gone through more than one long-term permanent relationship, sometimes simultaneously. There are also officers who have reached a ripe old age who are still married to the same woman that they were married to as a very young man. The experience of life tells one that the latter person is less likely to have engaged in extra-marital affairs than the former.'

The court was awash with confusion and amazement. Had we really heard that right? Mitting thinks if an officer is still married to the person they were with before deployment then he can safely assume they are incapable of having had sexual relationships with women they spied on, and indeed any other form of serious misconduct. Mitting says that, on this basis, he will deny victims the chance to examine any evidence about those officers.

The spycops scandal began with the exposure of Mark Kennedy in 2010. The Met have reached settlements with four different women Kennedy had significant long-term relationships with, and activists say there were a number of others he had more brief sexual encounters with. He had been married for nine years before his deployment in 2003, and remained married until the public revelations let his family know the truth about him. Had it been some other officer exposed instead, Kennedy would now be in HN58's position of asking for anonymity and being granted it because Mitting feels that, due to his enduring marriage, Kennedy cannot have committed his slew of sexual abuses, nor been instrumental in 49 wrongful convictions.

Mitting was clearly unsettled by the vocal response to his reasoning and said: 'I may be old-fashioned.' That doesn't begin to cover it. There has never been a time without men having extramarital affairs and lying about it. And that's before we consider the special abilities of these particular men. What's to stop trained manipulators and abusers using their skills on their wives as well as their targets? With such a ridiculous declaration, the last dribble of hope for the Inquiry dried up. There is clearly no way Mitting can carry on at the helm if it is to have any hope of fulfilling its purpose. Without people at the top who understand the concerns of victims, these processes can only ever betray those they exist to serve.

For the Stephen Lawrence inquiry, Sir William Macpherson had a panel of advisors. The Hillsborough Independent Panel went further, dispensing with the judge-led format and thereby succeeding where the Taylor inquiry had failed. Mitting seems unable to grasp that the Undercover Policing Inquiry exists to expose police wrongdoing. It can't go on like this. Under him, it is starting to feel a lot like the deceived women's gruelling civil cases where police used the most contorted reasoning to avoid accountability. The Inquiry is straying far from its remit. Mitting should be uncovering a path to the truth. Instead, he is an obstacle.

Prisoners Linked to Gangs Face Being Moved to Tougher Jails

Alan Travis, Guardian: More than 6,000 prisoners believed to have links to organised crime gangs face being moved to tougher jails under proposals to be unveiled by the justice secretary, David Gauke. The plans to recategorise prisoners into higher-security prisons based on their continuing risk of criminality in jail, rather than their original sentence, are to be outlined in Gauke's first speech on tackling the prisons crisis in England and Wales.

The government is spending £14m on tackling organised criminal gangs in prisons, including on creating a serious organised crime unit within the Prison Service. Prison governors have said organised crime gangs have gained a substantial foothold in jails and in some instances have greater authority and control than staff. Mitch Albutt, national officer of the Prison Governors Association (PGA), recently described how organised crime gangs had built a lucrative trade in psychoactive

drugs inside jails based on coercion, beatings and violence that could turn substances worth £200 on the street into £2,000 profits in prison. “This pervasive environment of threats and violence exposes individuals’ vulnerabilities, resulting in increased levels of self-harm, suicide and requests for segregation or transfer,” Albutt wrote in the latest PGA newsletter.

Gauke will announce an initiative to crack down on these serious organised criminal gangs that operate outside and increasingly inside prisons. The prison service estimates that more than 6,500 of the 86,000-strong prison population have links to organised crime gangs. “We are taking action to bolster our defences at the prison gate and going after the organised criminal gangs,” Gauke will say. “I want them to know that as a result of the action we are taking, they have no place to hide. Through our covert and intelligence-led operations, we will track them down.”

The justice secretary will disclose that criminal gangs not only use drones to fly illicit drugs into prisons but can direct them to specific cell windows and have even resorted to coating children’s paintings in psychoactive substances. He will say: “The criminal networks and supply chains have got larger and more complex. And new technologies have empowered gangs to be more sophisticated and brazen about the way drugs are smuggled in. From the conventional to the cunning, by design or by device, through fear or intimidation, these criminal gangs will stop at nothing to maintain their access to such a lucrative market. We will remove their influence from our prisons so that they can become places of hope not despair, of aspiration not assaults, because my approach is a practical one, based on what works and what’s right.”

The current system of categorising prisoners by their sentence length determines whether they serve the majority of their time inside a range of security regimes, from a category-A high-security prison to a category-D open jail. A decision to give a higher security rating to prisoners based on their activities inside jail represents a major change in prison rules. The new prisons minister, Rory Stewart, recently called for an effort to clean up filthy jails and tackle drugs, saying his priorities were “windows, searches and walls”. The PGA has said the level of budget cuts faced by the prison service without any reduction in the prison population has had an impact on stability, decency and safety inside jails.

Eulogy for Carillion? By Keith Rose – HMP Swaleside

Back in the last century in days of yore, individual prisons were largely autonomous in local services. The concept of outsourcing was yet to rise from the 7th circle of hell and companies like Carillion, Serco and G4S were merely a gleam in Lucifer's eye. Each prison had a works department carrying out routine maintenance which was carried out by prisoners under supervision of usually civilian tradesmen. Prison grounds were kept immaculate by garden parties, plumbing by a works plumber accompanied by one or more prisoner assistants, even the works Electrician had a prisoner apprentice learning the trade as he helped out.

Local traders supplied supplementary services like washing machine repair with each prison's governor and security departments selecting specialist services from the surrounding area. Prisoner's canteen purchase requirements were fulfilled by a couple of prison officers in each establishment purchasing items local cash & carries or wholesalers. Prisoners were served weekly either from a central canteen shop or a wing-based facility. Some prisons, including dispersals, even operated-a coin based- rnethod of payment known as 'Silver'. Each of these local prison shops were operated to return a small profit.

Then in 1994 a newspaper, the Sun, renowned for its factual and truthful stories, just like Boris and Trump, printed a story about Parkhurst prisoners ordering luxury items like Lobsters from the prison canteen and prison officers being humiliated by being forced to shop for

these exotic items to fulfil prisoner demands. The then Home Secretary, Michael Howard, never one to miss a sound bite opportunity, seized on the entirely fictional story and declared that prison officers should never again be so embarrassed and steps would be taken to remedy the situation. So, began the long slippery slope into the farce of prison outsourcing and the cost to the public purse of the policy.

Outsourcing was claimed to provide significant savings and improvements in service and efficiency in delivering necessary prison services. Prison canteen services were outsourced to companies like Aramark, an American company whom, on the date of its appointment, was the U.S.'s biggest junk bond company, insolvent to the tune of a billion dollars. (Sound familiar?) First to go in dispersal prisons were Garden parties, for it is far more economic to employ an outsourced team of workers on salaries in excess of £20,000 than a small group of low category prisoners on around £10 per week. Each of the prison work parties followed, dissolved usually with an excuse of security and companies like Carillion fell over themselves in order to obtain the lucrative contracts. No longer could a governor deal with maintenance on a local level, now repairs and improvements were dealt with centrally, such as Carillion's Planet FM with the contractor deciding when, or if, repairs would be carried out.

Carillion's centralized system functioned perfectly. 'Here at HMP Swaleside the gymnasium showers have only been waiting for 3 years for refurbishment. ‘Golf’ wings heating has not worked since last November and its exercise yard has only had raw sewage flowing into it on two occasions in the last month. When combined with poor television reception, tripping electrics, nonfunctioning washing machines, HMP Swaleside provides a good example of how beneficial outsourcing is. Other prisons have enjoyed the same level of service. On C wing at ·HMP Whitemoor there stands an exercise 'Stepper' which has been in need of repair for around 5 years. For the past 2 years it has borne a notice stating; 'Do not use, awaiting repair'. Repaired yet? Probably Not! Other wings enjoyed a similar level of service. When this particular outsource contractor was pressed to carry out repairs, a service engineer carefully affixed barcodes to each item requiring repair, but were actual repairs carried out? No! Duh!

Not to be outdone by a sub-contractor, Carillion submitted invoices for work they had yet to carry out. Fraud? Not if you have the right set of dodgy accountants who describe it as 'forward invoicing'. Invoicing for work not carried out? I seem to recall the names of Serco and G4S being linked to a scandal of fake invoices for tagging. Is this the same Serco whose Chief Executive was recently complaining on the BBC that Serco were not making enough money from government contracts? On the 24th February the Sun reported that women held at Serco's Yarl's Wood immigration removal centre were on hunger strike protesting about conditions.

Moving on to G4S, currently operating 5 prisons, 2 immigration detention centres and one secure training facility. On the 15th February, Leigh Day solicitors launched an action against the government Cabinet Office in an attempt to force it to designate G4S as a 'High Risk' strategic supplier in the wake of a number of catastrophic failings. Leigh Day's instructing client, BID charity director Celia Clarke said: "Time and time again G4S's conduct in its management of government contracts has been found wanting. The mounting list of scandals must be seen as systematic failings by the government, not one-off incidents".

Returning to our dearly departed Carillion, directors of the company claimed, to government Select Committee members that it was not until December 2017 that they knew that their company was in serious trouble. Perhaps they should have asked their former Finance Director, Richard Adam, why he dumped shares worth £776,000 in March and May 2017?

On the 26th February 2018 the 'I' newspaper reported fresh information which had been forwarded to the 'Work & Pensions and Business Select Committees giving details of the share transactions of Carillion's former Finance Director. Richard Adam retired at the end of December 2016. On the 1st March 2017, he sold his entire existing shareholding for £534,000, including performance awards for 2013-2015 which vested on his retirement. Mr Adam then sold his long-term incentive plan awards for 2014 on the 8th May 2017, the day they vested for £242,000. In other words, Mr Adam dumped all his shares in Carillion at the first possible moment he could.

In spite of profit warnings, share dumping by their former Finance Director, tumbling share prices, in September 2017 Carillion were awarded a multi-billion pound government contract for the QS2 London to Birmingham rail link by a helpful Transport Minister, Chris Grayling.

Chris Grayling has been equally helpful to a couple of billionaires playing train sets with full size trains on the East Coast Main Line. When bosses of Virgin and Stagecoach complained they could make no money from their government contract, our Chris helpfully cancelled the contract.

Carillion went bust in January 2018, owing around half a billion pounds to small companies & sub-contractors. Their pension fund deficit is more than a billion pounds, Richard Adam regarded funding Carillion's pension scheme as a "waste of money" according to the Select Committees above.

Outsourcing of government services. What a wonderful idea, but only if you're the bosses of an outsourcing company, not if you're expecting a service from them, not if you're relying on your pensions from them. Deficit? What deficit? The public will pick up the tab.

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Unannounced Inspection: Military Corrective Training Centre (MCTC) in Colchester

[One regime for the general prison population, another for sentenced armed service personal]

The Military Corrective Training Centre (MCTC) in Colchester is the only secure training centre for the armed services. The MCTC has had very good inspections in recent times, and this inspection proved to be no exception. Basically, the MCTC was a safe, decent and purposeful establishment. The experienced team of inspectors could not recall ever having been to a more respectful institution. Based on the shared military values of staff and detainees, the centre exuded an extraordinarily strong ethos where the care and rehabilitation of the detainees was the unequivocal and overriding objective.

The programme of activities available to the detainees was tailored to whether they were going to return to their units and pursue their military careers or return to civilian life following discharge. In either case, the quality of what was available was high. It was interesting to be told that detainees who had been held in the MCTC frequently returned to their units with better military skills and physically fitter than when they entered the centre, and often achieved promotion. A good range of accredited qualifications was available for those who were returning to civilian life. There was an issue with the leadership and management of learning, skills and work. A senior education and training officer had been recruited and needed to start as soon as possible.

In amongst all the very positive findings during this inspection, there was one potentially serious deficiency that was beyond the control of the centre. This related to the lack of post-release supervision or statutory engagement from the public authorities responsible for the public protection arrangements for higher-risk violent or sex offenders. This arose because of a statutory anomaly that does not include the military in the arrangements that apply to non-military offenders on release. This meant that the few offenders being released into the community who presented a high risk of harm to others were being released without proper supervision or risk-management.

It was refreshing for HM Inspectorate of Prisons to inspect a training centre where drugs and violence were virtually unknown, and where the culture was incredibly positive, forward-looking and not at all punitive. It was also notable that, since the last inspection in 2014, our previous recommendations had clearly been taken seriously, with the vast majority being fully implemented. Inspectors made 23 recommendations. 5 recommendations from the last inspection had not been achieved.

MI5 Agents Can Commit Crime in UK, Government Reveals

Jamie Grierson, Guardian: MI5 agents are allowed to carry out criminal activity in the UK, the government has acknowledged for the first time. The prime minister was on Thursday forced to publish the text of a direction to the Investigatory Powers Commissioner's Office, the spying watchdog, on governing "security service participation in criminality". It instructs the IPCO to oversee the participation of MI5 agents in criminal activity, which was previously conducted by the now-defunct office of the Intelligence Services Commissioner, under a secret order referred to as the "third direction". However, guidance about when British spies can commit crimes, and how far they can go, remains confidential. The commissioner, Lord Justice Sir Adrian Fulford, said: "I welcome the government's decision to make public my oversight of this sensitive area of work."

The order was published after a legal battle by the human rights groups Reprieve and Privacy International. Maya Foa, the director of Reprieve, said: "After a seven-month legal battle the prime minister has finally been forced to publish her secret order but we are a long way from having transparency. The public and parliament are still being denied the guidance that says when British spies can commit criminal offences and how far they can go. Authorised criminality is the most intrusive power a state can wield. Theresa May must publish this guidance without delay."

Millie Graham Wood, a solicitor at Privacy International, said there was no justification why the secret direction was not published earlier. "Had we not sought to challenge the government over the failure to publish this direction, together with Reprieve, it is questionable whether it would have ever been brought to light," she said. "It is wrong in principle for there to be entire areas of intelligence oversight and potentially of intelligence activity, about which the public knows nothing at all." The MI5 website says agents are "one of the most significant information gathering assets we have", adding "intelligence from our agents is critical to keeping the UK safe". It also states: "Public views of what MI5 agents do are often based on fiction and not always accurate. There are many misunderstandings about what our agents do, as we cannot say much about those who help us, given our commitment to protect their identity."

CCRC Refers the Conviction of A to the Crown Court

The Criminal Cases Review Commission has referred the malicious communications conviction of A to the Crown Court. Mr A was convicted at magistrates court in 2014 of sending a communication conveying false information with the intent to cause distress, contrary to section 1 (1)(a) of the Malicious Communications Act 1988, ("MCA 1988"). He was sentenced to four months' imprisonment. Mr A appealed against his conviction but lost his appeal and applied to the CCRC. Having considered the case in detail, the CCRC has decided to refer Mr A's case to the Crown Court because it considers that there is a real possibility that his conviction will not be upheld. The referral is based on a new legal argument, not previously raised, that A's action of posting a blog on the internet did not amount to "sending… to another person" as required by section 1 of the Malicious Communications Act 1988. Mr A was not legally represented in his application to the Commission.

Former Prisoner Receives Six-Figure Settlement After Life-Changing Misdiagnosis

A former prisoner has received substantial compensation from West Hertfordshire Hospitals NHS Trust following the settlement of his claim alleging medical negligence against one of their consultant surgeons. Known as 'Mr J' to protect his anonymity, was an inmate at HMP The Mount, in Hertfordshire, when he started to suffer from painful piles, as well as other symptoms including bleeding, fainting, vomiting and significant loss of body weight. Due to his symptoms, Mr J was taken from the prison to a local hospital, Watford General, for investigation. He had a blood test and the results came back abnormal. However, despite the other symptoms and the abnormal results, the consultant surgeon who saw Mr J at hospital diagnosed him as suffering from piles and discharged him back to prison with pain-relief medication. Following his return to prison, Mr J's condition continued to deteriorate, and, in addition to his other symptoms, he became unable to walk without severe pain. He was eventually taken back Watford General Hospital nine days after he was first seen and subsequently discharged.

These further investigations showed that Mr J was in all probability suffering from Crohn's Disease, and that he was suffering from a toxic megacolon and a perforated rectum. These are complications associated with the disease and can result in severe and life-threatening infection. As a result, he underwent surgery to remove his colon and divert his bodily waste through an opening his in stomach and into a colostomy bag, which he will now need to use for the rest of his life. Mr J brought a claim for compensation against the NHS trust alleging the care provided to him by the consultant surgeon he had initially seen at the hospital was negligent in that he failed to diagnose and treat his presentation of inflammatory bowel disease. The claim also detailed that if Mr J had been correctly diagnosed when he first presented at the hospital he could have been treated medically rather than surgically.

Following the commencement of proceedings, the NHS trust agreed to settle Mr J's medical negligence claim and pay him compensation in respect of the injuries he suffered. The settlement was for a six figure sum. Benjamin Burrows, who leads the Prison Law Team at law firm Leigh Day and acted for Mr J in his claim, said: "Prisoners are entitled to the same standard of medical care as any other member of society. However, time and again, this standard is not achieved, either because they cannot get access to a doctor or when they do their complaints are dismissed. Unfortunately, Mr J's case is an example of this, and the consequences have been life-changing." Mr J was represented by Benjamin Burrows, a solicitor at Leigh Day, and by Alasdair Henderson, a barrister at One Crown Office Row.

Prison Accommodation: Nigeria

Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): On 9 January 2014, the United Kingdom signed a compulsory prisoner transfer agreement with Nigeria. As part of this agreement, eligible prisoners serving criminal sentences in Nigeria and the UK can be returned to complete their sentences in their respective countries. In support of this, and to help improve the capacity of the Nigerian prison service, the Government have agreed to build a UN compliant 112 bed wing in Kiri Kiri Prison, Lagos. Tenders have been placed and a supplier identified to conduct the building work, alongside project support and monitoring and evaluation, bringing the total cost to £695,525. This project is funded from the CSSF (conflict, stability and security fund) migration returns fund. The provision of this assistance is in line with the Government's security and stability objectives in West Africa. FCO officials carry out regular reviews of our programmes in Nigeria to ensure funding is directed only to approved recipients.

Dimitar Mitev v. Bulgaria - Forced Confession - Violation of Article 6

The applicant, Dimitar Mitev, is a Bulgarian national who was born in 1972 and is currently detained at Varna Prison (Bulgaria). The case concerned his allegation that the criminal proceedings against him for murder had been unfair. In February 2008 Mr Mitev was convicted of a theft and the murder of his parents' 75-year-old neighbour. He was sentenced to life imprisonment. The trial court relied, among other things, on a confession he had made during his informal questioning with two police officers when he was arrested in June 2006. His conviction and sentence were then upheld on appeal and, ultimately, in a final judgment of November 2008 by the Supreme Court of Cassation. Throughout the trial and subsequent proceedings, Mr Mitev denied the offences of which he stood accused and contested the testimony given by the two police officers, arguing that he had only confessed because the officers had beaten him. However, the courts allowed the officers' testimony, finding it credible and that it had been assessed in the light of other evidence. Relying in substance on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) of the European Convention on Human Rights, Mr Mitev alleged that his conviction had been based on a confession he had made to the police immediately after his arrest, under duress and without the assistance of a lawyer. Violation of Article 6 §§ 1 and 3 (c) Just satisfaction: 3,000 euros (EUR) (costs and expenses)

Women "Groomed, Pimped And Trafficked" Not Required To Disclose Prostitution Convictions

The High Court ruled on 2nd March 2018 that three women forced into prostitution as teenagers will no longer have to disclose related convictions to potential employers. The claimants challenged the criminal record disclosure scheme which required them to reveal details of multiple decades-old convictions for 'loitering or soliciting' for the purposes of prostitution. The women had been groomed, coerced or forced into sex work, two of them when they were children. They were required to divulge their convictions under the regime of the DBS (Disclosure and Barring Service) governed by Part V of the Police Act 1997. DBS checks (previously CRB checks) are made when an applicant seeks certain paid or voluntary work involving children or vulnerable adults. While the claimants weren't strictly barred from such jobs, they had to inform would-be employers of their historical convictions. They said this placed them at an unfair disadvantage, caused embarrassment and put them off applying in the first place. They argued that this interference with their private and working lives was unjustified by the scheme's aims and unlawful. The Court agreed.

The Facts: The Court's factual summary is a sad read. The first claimant ("C1") was forced into prostitution when she was only 14 and under a care order. Her first conviction was for soliciting at the age of 16, and the last was eight years later, in 1998. The second claimant, Fiona Broadfoot, waived her right to anonymity and is an active campaigner against sexual exploitation. She was 15 years old when coerced into sex work, and her convictions date between around 1984 and 1988. The third claimant ("C3") was groomed into prostitution aged 18 and first convicted aged 21. Her last offence was in 1992.

Lord Justice Holroyde and Mrs Justice Nicola Davies both contributed to the judgment, which noted at the outset that C1 and Ms Broadfoot were themselves victims of crime; they were underage when procured to have sexual intercourse with others. Having considered their evidence, the Court also had "no difficulty in accepting that all three claimants have, even as adults, been victims in many other ways". The Court noted that "greatly to their credit", the women escaped prostitution many years ago. Nonetheless, they did so with considerable criminal records – over 100 offences between them. While the penalties were comparatively minor, in most cases being fines, their effect resonated throughout their lives. Ms

Broadfoot, in an interview with BuzzFeed News last August, spoke of the "humiliating" effects of her convictions: I couldn't get on a university degree, a social work degree, I couldn't get into child development at college. They said I could get on to the course but I wouldn't be able to find a placement because of my criminal record. I've been discriminated against in my workplace – I wouldn't even apply for some jobs. I wanted to be on the PTA at my son's school and I had to tell the headteacher, it was really embarrassing.

The Legal Background: The claimants' convictions were under Section 1 of the Street Offences Act 1959: 'Loitering or soliciting for purposes of prostitution.' At the time, the common law restricted the offence to women. The law was amended to include men, but evidence showed that in the decade following amendment, 95% of those convicted or cautioned were female. This is relevant because – as we will see – the claimants argued that the disclosure scheme amounted to unlawful sex discrimination. The Rehabilitation of Offenders Act 1974 introduced the concept of convictions (and later cautions) becoming 'spent' after a specified period. After that time passed, a person wouldn't have to disclose convictions. However, the 1974 Act is subject to 'exceptions orders' made by the Secretary of State for Justice. Under the 1975 exceptions order, people applying to work with vulnerable adults and in children and family services still had to disclose otherwise 'spent' convictions. Similar provisions in the Police Act 1997 also require disclose of otherwise "spent" convictions in certain cases.

The scheme described above was considered by the Supreme Court in R (T) v Chief Constable of Greater Manchester Police [2015] AC 49 ("T"). Those claimants had cautions or warnings for very minor offences at a young age, and challenged the lawfulness of the scheme which continued to require their disclosure. They argued that it unlawfully interfered with their right to a private and family life, as protected by Article 8 of the European Convention on Human Rights ("ECHR"). As summarised at para 37 of the judgment in this case, the Supreme Court in T agreed, holding that: the statutory provisions were not in accordance with the law because they contained no safeguards against arbitrary interferences with Article 8 rights. It was further held that, although it was necessary to check that persons wishing to work with children or vulnerable adults did not present an unacceptable risk to them, the disclosures required by Part V of PA 1997 were not based on any rational assessment of risk and so failed the test of being necessary in a democratic society. The scheme changed in 2013 to remedy the defects identified in T. Amendments provided that even in relation to work with vulnerable groups, certain listed spent convictions not resulting in imprisonment don't have to be disclosed. To benefit from this exception, a person must have "not been convicted of any other offence at any time". In short, only those with single convictions could resist disclosure. The claimants in this case, however, were all caught by what the Court called the "multiple conviction rule."

The multiple conviction rule was considered by the Court of Appeal in R (on the application of P and others) v Secretary of State for the Home Department [2017] EWCA Civ 321 ("P"). Sir Brian Leveson, with whom the other Lord Justices agreed, held that the defect identified in T had not been remedied, see para 44: The multiple conviction rule is indiscriminate in that it applies without consideration of any of the features identified by Lord Reed [in T]. If an individual has been convicted of more than one offence, the rule will apply automatically irrespective of the nature of the offence, the disposal in the case, the time which has elapsed since the offence took place or the relevance of the data to the employment sought. Therefore, in my view, Lord Reed would conclude that it is not 'in accordance with the law', unless there is a mechanism for independent review. There is a pending appeal to the Supreme Court in the case of P, to be heard later in 2018 alongside a Northern Irish case dealing with similar provisions.

The Court's Decision: The claimants argued that the scheme described above is unlawful as it stands. They advanced seven grounds of challenge initially, later abandoning one. The disclosure scheme violates Article 8 (Ground 1). The claim succeeded on this ground only. The Court noted that it was bound by P to conclude that the statutory scheme was "not in accordance with the law, because the multiple conviction rule operates in the indiscriminate, and hence arbitrary, manner summarised at paragraph 44 of P". Further, the Court held at para 56: We would have reached the same conclusion even if not bound by P, in particular because the facts of this case vividly illustrate the fact that the multiple conviction rule operates in circumstances in which any link between the past offending, and the assessment of present risk in a particular employment, is either non-existent or at best extremely tenuous.

The disclosure scheme as it stands interferes with the claimants' Article 8 rights arbitrarily, bearing "no, or very little, relationship to the aim of safeguarding children and vulnerable adults" (para 58). In fact, the Court found that scheme may work against that safeguarding aim. First, it could exclude people like them from working with and helping vulnerable people; their experiences, drawn from "a school of very hard knocks", might be an asset and not a detriment in some professions, and secondly, because an inability to enter certain work may cause vulnerable people to remain in prostitution when they wish to leave (para 59).

The Court found that it was not sufficient justification that an employer could decide whether or not the disclosed convictions render the applicant unsuitable, that was not information employers should, or needed to, know in the first place. The Court also recognised that the claimants had not only suffered an employment disadvantage, that they had also been embarrassed and stigmatised by the requirement to release very personal information, whether or not they were eventually taken on as an employee.

However, it is not for the Court to change the law – that task is left to the legislature: 62. In our view, it should be and is possible for Parliament to devise a scheme which more fairly balances the public interest with the rights of an individual applicant for employment in relevant areas of work. It may be that only broad lines can be drawn to act by way of filter before the employer is left to assess the risk. But that is not a good reason for adopting the blanket approach which the present schemes adopt in widely-differing circumstances. As was said in P, it is not for the court to devise a scheme. Ground 2 repeated in large part ground 1, but added that there was no evidence that convictions for soliciting could be an indicator of present risk to vulnerable people. Considering the decision on ground 1, ground 2 was 'otiose' and therefore failed, but the Court commented that there was nothing inherently unlawful about minor offending giving rise to disclosure obligations.

The Disclosure Scheme Unlawfully Discriminates Against Women (Ground 3). The claimants relied on Article 14 ECHR alongside Article 8. Article 14 must be combined with another right, and provides that the other convention rights must be protected in a way which does not discriminate on the grounds of, amongst other things, gender The Court accepted that Article 14 was engaged, and that a "disproportionately high percentage of women commit the offence of soliciting" and have multiple convictions for that offence, and that significantly more women than men apply for jobs which DBS checks are required. However, prostitution-related offences were not to be "viewed in isolation" – in general, men commit more crimes than women. Both genders are affected by the multiple conviction rule, in fact, it affects more men than women. There is a sound justification for the general operation of the rule and so far as gender discrimination is concerned, the scheme is a proportionate means of achieving legitimate aims.

Forced Labour And Trafficking (Ground 4). The claimants argued that the disclosure scheme violates Article 4 ECHR, which prohibits slavery and forced labour, and an EU Directive on preventing trafficking, which requires among other things that member states do not penalise trafficked people (2011/36/EU). They submitted that the scheme penalises victims of trafficking and violates the right to anonymity for victims of trafficking. However, the Court held that disclosing a 'soliciting' offence does not of itself indicate that the offender was a victim of trafficking, and that the claimants' submission untenably stretched the meaning of "penalty".

Retention Of Convictions Data (Ground 5). This ground alleged that the recording and/or retention of information concerning prostitution-related convictions and cautions, regardless of whether it is disclosed, violated Article 4 and/or Article 8 and/or Article 14 (with Article 8) ECHR. The court rejected this, holding that there was only very limited interference with individual rights when a state retains but does not disclose records, which was plainly justified in the public interest.

The Criminalisation Of Women In Prostitution Is Itself Unlawful (Ground 7)

The claimants' most ambitious ground effectively argued that criminalising women in prostitution amounts to unlawful gender discrimination. They argued that the criminalisation of conduct within the scope of s.1 of the Street Offences Act 1959 (soliciting and loitering) overwhelmingly affects women. They form the vast majority of those convicted of the offence and are, they argued, disproportionately and unlawfully prejudiced by the provision. The claimants relied on numerous international instruments, including a UN Committee on the Elimination of Discrimination Against Women ("CEDAW") recommendation endorsing the repeal of legislation criminalising women in prostitution. The Court dealt with this ground shortly – describing it as a "very bold submission [with…] no arguable basis" and noting that "the claimants' case based on gender discrimination – on which the ground depends – has failed. Not all who commit offences of soliciting have been coerced or trafficked." (para 124)

The author respectfully disagrees that this ground depended on the Court's conclusions on ground 3, or on the question of trafficking or forced labour (ground 4). Both of those arguments sought to impugn the disclosure scheme. This broader ground apparently did not address itself to that scheme at all, but directly to the criminal offence at the heart of the case. That offence does disproportionately affect women, and the Court had already accepted that Article 14 was engaged. Notwithstanding that, there was force in the Defendant's arguments that the ground sought a remedy not open to the claimants: they were convicted under a previous version of the offence, not the one they were now challenging. In determining this ground, the Court focused on the limits of its constitutional role and found that the claimants had not shown requisite "very compelling reasons" for interfering with the Parliament's role in the creation and regulation of crimes (see the speeches of Lord Bingham and Lord Mance R v Jones [2006] UKHL 16). Permission was refused: It is for Parliament to determine the ambit of the criminal law (para 125).

What's Next? The claimants have stated in the press that they will seek permission to appeal the 'broader points' of whether the scheme discriminates against women, or is contrary to the state's duties to trafficked women. The Court has made it clear, in respect of ground one, that the disclosure scheme is unlawful as it stands. It is for Parliament to make the next move. Both sides will keenly be awaiting the decision in the pending Supreme Court appeal in the case of P, and the UK Human Rights Blog will keep its readers up to date with any developments in this interesting area.

Ni High Court: Arlene Foster's Decision to Defer Paper on Legacy Inquests Unlawful

A woman whose husband died over 30 years ago and has not had an Article 2 ECHR compliant investigation into his death has successfully argued that the decision of former First Minister, Arlene Foster, not to permit a paper on legacy inquests to go before the Executive Committee was unlawful. Directing that NI departments and the Secretary of State must reconsider the provision of additional funding for legacy inquests, Justice Paul Girvan stated that Arlene Foster had erroneously took into account the absence of an overall agreed package to deal with legacy issues. Justice Girvan held that there was an obligation on State authorities to ensure that the Coroners Service could effectively comply with Article 2 irrespective of whether an overall package was agreed.

Brigid Hughes' husband, Anthony Hughes, died in 1987 when innocently caught in the cross-fire between soldiers and police officers and the IRA at Loughgall RUC station. The Court heard that no Article 2 compliant investigation into his death has been held; and in 2015, the Advocate General ordered a fresh inquest which is yet to take place. Ms Hughes challenged the ongoing failure of the Executive Office, the Executive Committee, the Department of Justice, the Minister of Justice, and the Secretary of State for Northern Ireland to put in place adequate funding to prevent further delays to the holding of legacy inquests relating to deaths during "the Troubles". Ms Hughes contended that the failure to provide adequate funding "caused inexcusable delay to the listing and completion of numerous inquests, including the inquest into her husband's death". Ms Hughes submitted that the former First Minister, Arlene Foster, "unlawfully prevented the tabling and discussion of a paper put forward by the MoJ which attempted to advance the securing of additional funding for the coronial system to assist it in progressing the legacy inquests and reducing systemic delays". Rule 3 of the Coroners (Practice and Procedure) Rules (NI) 1963 provides that "every inquest shall be held as soon as practicable after the Coroner has been notified of the death".

Article 2 ECHR and the common law require that inquests are conducted with reasonable expedition and efficiency. Re McCaughey & Anor [2011] UKSC 20 extended the effect of Article 2 so that if the UK authorities decided to hold an inquest into a death which occurred before the commencement of the Human Rights Act 1998, there is an obligation to ensure that it complies with Article 2 obligations so far as possible under domestic law. Justice Girvan stated that the effect of "…the unchallenged decisions of the Attorney General and the Advocate General to direct legacy inquests" was that inquests should comply with these procedural requirements.Justice Girvan added that this included "the duty to carry out the inquests as soon as practicable and with reasonable expedition", and that the unchallenged decisions "inevitably led to a need for resources to be made available if the State is to comply with its obligations to have timely inquests."

Hostages: Sally Challen, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.