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Supreme Court Holds That Smoking Ban Cannot be Enforced in Prisons

UKSC Blog: Is the Crown is bound by the prohibition of smoking in most enclosed public places and workplaces, contained in Chapter 1 of Part 1 of the Health Act 2006? This was the question asked of the Supreme Court by a prisoner serving an indeterminate sentence at HMP Wymott. As Lady Hale noted in the judgment: this issue affects all premises occupied by the Crown, including central Government departments, and that it is important to determine whether the ban can be properly enforced in these places. The answer the court gave is 'no', as this provision does not bind the Crown, of which HMP Wymott is an institution.

Factual background: The appellant is a prisoner serving an indeterminate sentence at HMP Wymott. He is a non-smoker who has a number of health problems exacerbated by tobacco smoke, including hypertension and coronary heart disease. He complained that despite the smoking ban he was regularly exposed to second-hand tobacco smoke in the common parts of the prison. In September 2013 the appellant requested that all prisoners have the NHS Smoke-Free Compliance line (SFCL) added to the prison phone system. This line allows members of the public to report when the smoking ban has been breached. The appellant also wrote a pre-action letter to the Secretary of State explaining that he would commence Judicial Review if necessary. In January 2014 the prison granted him access to the SFCL on his individual phone account but not for other inmates. The Secretary of State responded to the appellant's letter and told him that the smoking ban did not apply to the Crown, so did not affect the prison. The appellant issued proceedings in March 2014 challenging the Secretary of State's refusal to provide confidential and anonymous access to the SFCL for all prisoners. He was successful in the High Court before Singh J, who held that the ban did bind the Crown and accordingly quashed the Secretary of State's decision. The Secretary of State then appealed to the Court of Appeal who reversed the High Court decision, holding that the Act did not bind the Crown. The appellant then appealed to the Supreme Court.

The smoking ban came into force on 1 July 2007 after the Health Act 2006 was passed on 18 July 2006. It provides under s 2(1) as follows: Smoke-free premises. (1) Premises are smoke-free if they are open to the public. But unless the premises also fall within subsection two, they are smoke-free only when open to the public. (2) Premises are smoke-free if they are used as a place of work – (a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or (b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present). They are smoke-free all the time.

Under s 3(1) of the Act it is provided that "appropriate national authority" (the Secretary of State in England and the National Assembly in Wales) may enact regulations exempting specified premises or areas within in them from being smoke free. s 3(2) provides that descriptions of premises which may fall under s 3(1) include in particular "any premises where a person has a home… (including hotels, care homes and prisons and other places where people may be detained. In discussions prior to the bill being passed Her Majesty's Prison Service appear to have taken the view that prisons would fall under the ban and a Prison Service Instruction.

Background case law:The key issue in this case was whether Statutes bind the Crown. The principle is that a statutory provision does not bind the Crown except by express words or necessary implication. The two key cases are Province of Bombay v Municipal Corporation of the City of Bombay [1947] AC 58 and Lord Advocate v Dumbarton District Council [1990] 2 AC 580. In the latter case Lord Keith concluded at 604 that: "Accordingly it is preferable, in my view, to stick to the simple rule that the Crown is not bound by any statutory provision unless there can somehow be gathered from the terms of the relevant Act an intention to that effect. The Crown can be bound only by express words or necessary implication. The modern authorities do not, in my opinion, require that any gloss should be placed upon that formulation of the principle." A more recent case discussed was R (Revenue and Customs Commissioners) v Liverpool Coroners' Court [2014] EWHC 1586 (Admin); [2015] QB 481, in which the High Court held that the investigatory powers under the Coroners Act 2009, sch 5 were binding on the Crown because they were intended to enable coroners to conduct effective investigations into deaths for which the Crown might bear responsibility, as required by the ECHR, art 2. The legislative purpose of the Act would be "wholly frustrated" if the Crown were not bound.

The decision: Philip Havers QC for the appellant argued that the Supreme Court should either (1) revisit the rule that the Crown is not bound; (2) modify the rule; or (3) apply the existing rule in such a way that the smoking ban binds the Crown.

Lady Hale giving the only substantive judgment, held that s 2 of the Act did not bind the Crown. The Court refused to revisit or modify the rule that statutes do not bind the Crown as it was so well established that many statutes had been drafted and passed on the basis that it applied. Lady Hale stated that: "The question is whether, in the light of the words used, their context and the purpose of the legislation, Parliament must have meant the Crown to be bound." She clarified the rule at paragraphs 36-37 of the judgment as follows: The rule did not mean that the Crown was immune from prosecution, but that the court needed to consider the intention of legislation when determining if the Crown was bound. Despite there being a clear public benefit to the Crown being bound by the smoking ban, the test was a question of interpretation and not overall good; The purpose of statute did not need to be wholly frustrated, a "very important purpose" may be sufficient; and The court would consider whether the Crown is likely to take some voluntary action to achieve the purpose of the statute.

The court agreed that there were some strong arguments that indicated that Parliament intended the smoking ban to apply to the Crown. For example, it was not made clear prior to the ban coming into force that it would not apply to Government buildings. However, there are significant differences between the enforcement of the smoking ban and the voluntary ban of smoking in Government buildings. However, with "considerable reluctance", the appeal was dismissed.

When deciding whether the smoking ban binds the Crown the court found the following to be determinative: The Act does not say the smoking ban binds the Crown, as it could easily have done; Other similar statutes expressly state to what extent they apply to the Crown; Another part of the Act, relating to the supervision of management and use of controlled drugs, does refer expressly to binding the Crown; An identical provision to bind the Crown is made in the statute enacting the Scottish equivalent smoking ban, which can into force before the Health Act 2006; and Although it would be desirable for the Crown to be bound by the smoking ban the effect of the legislation can be recognised by voluntary action by the government.

Conclusion: Although this decision has broadly followed the past test the court did ask the Government to consider revisiting Crown Immunity. The restatement of the test has meant that the requirement that an Act bind the Crown only when the purpose of the Act would be wholly frustrated has been modified. This should make it easier to argue that the Crown is bound by Acts of Parliament. This will particularly apply in cases where no specific provision is made for the Crown and the Act weighs in favour of the Crown being bound.

Child Spies' Must Have An Appropriate Adult Present At Meetings

Jamie Grierson, Guardian: Children being used as informants must have an appropriate adult present in meetings with the authorities, revised official guidance says. A revised code of practice for use of covert human intelligence sources (CHIS), published on Wednesday by the Home Office, states that a parent, guardian, personal contact or professional such as a social worker should be present at meetings between sources aged under 16 and the police, intelligences services or other public authorities. The requirement did not feature in an earlier version of the code, published in 2014. Its inclusion follows intense scrutiny of the practice of using child spies, after peers discovered powers covering the practice in obscure secondary legislation. "Public authorities must ensure that an appropriate adult is present at any meetings with a CHIS under 16 years of age," the code states. "The appropriate adult should normally be the parent or guardian of the CHIS, unless they are unavailable or there are specific reasons for excluding them, such as their involvement in the matters being reported upon, or where the CHIS provides a clear reason for their unsuitability. "In these circumstances another suitably qualified person should act as appropriate adult, eg someone who has personal links to the CHIS or who has professional qualifications that enable them to carry out the role (such as a social worker)." The code retains a passage prohibiting the use of CHIS sources under 16 being used to give information on their parents or legal guardians. The requirement for an appropriate adult to be present in meetings with CHIS juveniles was included in the Regulation of Investigatory Powers Act under an amendment in 2000. However, it was not included in the published code of practice until now. This month parliament's joint committee on human rights was asked to investigate the use of juvenile sources by the police and security services. The committee's clerk confirmed that the chair of the Lords secondary legislation scrutiny committee, Lord Trefgarne, had referred the issue to the committee and it would be considered "in due course". The committee is not due to meet again until September, but the Guardian understands it is likely to find time on its already full agenda to look at the issue. David Davis, the former Brexit secretary, Diane Abbott, the shadow home secretary, and a number of human rights groups have criticised the practice of using juvenile covert sources. Juvenile CHIS could be used in operations as mundane as trading standards investigations into retailers selling cigarettes to underage customers. But in a response to the Lords, the Home Office said authorities also used child spies in investigations into suspected terrorism, gang crime and child sexual exploitation.

Met Police Deny Looser Background Checks Put People In Danger

Patrick Greenfield, Guardian: The Metropolitan police have rejected claims that the force put children and vulnerable adults in danger by reportedly relaxing its vetting system for thousands of people. Up to 20,000 members of the public have been issued with disclosure and barring service (DBS) certificates without full security checks after senior Scotland Yard officers decided to relax the process in 2016 amid criticism over delays, according to leaked documents. The Met temporarily dropped checks on police intelligence databases and opted to solely use information on the police national computer system, which only contains records about reprimands, warnings, criminal convictions and cautions, according to documents seen by the Sunday Times. At the time, the force was heavily criticised by the government for delays in background checks, which meant thousands of would-be NHS workers, carers and teachers could not work.

The use of police intelligence in background checks was mandated under the DBS system following the murders of the 10-year-old schoolfriends Holly Wells and Jessica Chapman in 2002, who were killed by Ian Huntley, a caretaker at a secondary school in Soham, Cambridgeshire. Huntley had no convictions for sexual offences before he was appointed, but had previously been reported to police on six occasions over sexual assaults or sexual relationships with underage girls. Police checks failed to unearth his past, prompting reforms in the national vetting system for people working with children and vulnerable adults. The Met confirmed that some cases were closed based on a risk assessment under "very strict guidelines", but denied that the force's decision to reportedly relax its background check system had put the vulnerable at risk. Scotland Yard said: "The Met rejects the suggestion that cases were improperly closed placing the most vulnerable in danger. Safeguarding is, and will always be, of paramount importance to the Met. "In June 2016, the Met confirmed that there were over 81,000 outstanding cases with an average waiting time of 59 days. This presented risk to the most vulnerable, in that employment of key workers could be significantly delayed. "Alternatively, an unsuitable employee could take up employment before local police checks were completed. The cause of the problem was acknowledged as a significant increase in demand for the Met disclosure service, as well as the recruitment and retention of staff.The Met added that a sample of the closed cases had been reassessed and found that police intelligence would not have been used in these cases.

Files Shed Light on Alleged Efforts to Hide 1970s Police Corruption

Duncan Campbell and Rob Evans, Guardian: Documents retained by a senior detective involved in one of Britain's biggest police corruption inquiries have shed light on how efforts were allegedly made to prevent the true scale of wrongdoing from coming to light. The family of the late DCS Steve Whitby says he kept papers from the Countryman investigation as evidence of how he and his colleagues were thwarted by senior police officers and the then director of public prosecutions (DPP). His daughter, Lynne Kerley, who has passed the documents to the Guardian, said: "He felt peeved that individuals were allowed to go scot-free. I did not want it to go to the tip without something being being said or done."

Whitby was a leading member of Operation Countryman, which ran from 1978 until 1982. It investigated allegations against 84members of the Metropolitan police and 29 officers from the City of London police who were accused of taking bribes, planting evidence, conspiring with bank robbers and improperly facilitating bail. The operation resulted in just two successful prosecutions, to the frustration and anger of the investigators who had been recruited from Dorset constabulary. Whitby's papers cast light on the alleged police corruption of that time and the efforts apparently made by leading figures in the criminal justice system to suppress its exposure. Other previously secret documents highlight how successful attempts were made to force the Countryman team to pretend the Met had cooperated fully with them.

The Dorset officers were nicknamed the "Swedey", a pun on the Flying Squad's "Sweeney" nickname, and they were well aware that they were regarded by the Met and City officers as naive, rural plods. They even designed a squad tie – Kerley still has her father's – featuring a country mouse giving a V-sign to a hovering eagle, the Flying Squad's symbol. At the end of the investigation, Arthur Hambleton, the Dorset chief constable, said he was "absolutely staggered" by the extent of institutional corruption. He suggested that the then DPP, Sir Thomas Hetherington, who died in 2007, and the high command at Scotland Yard had been highly obstructive. "We felt the director's office was never really with us," he said after the collapse of the operation.

The operation was prompted by a growing number of corruption allegations, as the Whitby papers show. On 25 July 1979, Whitby told Leonard Burt, an assistant chief constable and the operational head of Countryman: "The information we now have clearly shows that corrupt police officers have permitted criminals who are guilty of serious offences, ie armed robbery, to be

released and not prosecuted." There were two key figures at the heart of the investigation: Alf Sheppard, a bank robber who was prepared to be wired up to get evidence against corrupt officers, and DCI Phil Cuthbert, a City of London officer and leading Freemason who was one of the two men later jailed. Three major robberies were at the centre of the investigation: the £175,000 robbery of the Daily Express payroll in 1976; the £520,000 Williams & Glyn's bank robbery the following year; and, most seriously, the 1978 Daily Mirror payroll robbery in which a security guard, Antonio Castro, was shot dead and £200,000 was stolen.

At the start of the operation, Whitby interviewed Cuthbert, who "explained that he first became involved in corrupt deals during his secondment to the regional crime squad. He said that it was a way of life and involved deals, informants, money and recovered property. Any reluctance to participate resulted in the officer leaving the squad." On 8 November 1979, Whitby reported that Sheppard had agreed to cooperate. "The question must also be asked: 'Will these men be prepared to sacrifice their friendly policeman?' At this time there is every indication that, providing the criminals are sure they will not be prosecuted, they will give the necessary evidence."

By the following year, however, tensions were becoming apparent. On 18 February 1980, the DPP protested against Cuthbert's arrest and decided that his department would offer no evidence against him. According to a report on 21 October 1980, Cuthbert had said "he was not going to be the patsy if things went wrong and he would put Mr Moore [Commander Hugh Moore of City of London police] in it as well". He claimed Moore had received £20,000 for allowing bail during the Express investigation. Moore, who died in 1993, denied the claim and Cuthbert said at his trial that he had been drunk when he made the accusation. Whitby's papers suggest Sheppard was prepared to pay up to £20,000 to officers to help him and other criminals get bail.

On 19 November 1981, Whitby reported on discussions with the DPP's office about granting limited immunity for the criminals who cooperated. He observed: "The decision not to permit any form of limited immunity, as previously given, is beyond comprehension. It can only guarantee that critical evidence concerning corrupt police officers will not be obtainable." In memos in 1982, Whitby wrote that Cuthbert, who was awaiting trial, initially appeared to seek help from Dorset police, but within weeks retracted the request. This suggested Cuthbert had been offered a deal by others whereby, if he did not implicate anyone else, he would be looked after at the end of his sentence. Whitby, who died in 1999, wrote: "He made it clear that he would serve his sentence, does not want parole and will not assist Countryman."

Home Office documents held in the National Archives underline the level of frustration felt by the Countryman officers. One document refers to Burt and his team being "in a very depressed state. They felt that unless they were able to offer the immunities which the DPP had not, up till now, been disposed to grant, their inquiry would not succeed … Mr Burt and his team are more than ever convinced of the gravity and scale of corruption among [redacted] and are talking of payments of up to £1m having been received by corrupt police officers on a systematic basis". Another document noted that Hambleton was "incensed that the home secretary and the attorney general had publicly stated in parliament that there had been no obstruction to his enquiries. In his view he had no doubt at all he had been obstructed and indeed this had been admitted to him by [senior Met officers]". A book, Operation Countryman by the former Flying Squad officer Dick Kirby, was published this year. Kirby was highly critical of the "inept and inexperienced country policemen" but also of Moore. He suggested that Moore warned Cuthbert of the impending inquiry, "championed the cause of officers who were thought to be crooked, denigrated those who were straight" and was "found to be less than truthful". The full story may have to wait until

2067, when all of the Home Office papers are due to be released.

The Idiots Who Say Money Can't Buy Happiness Don't Know Where To Shop!

Barbara Rich: Plenty of fish, too little caviar - Burki v. Seventy Thirty Ltd. A recent High Court judgment offers a vivid glimpse into the real-life world of "Wry Society", a regular feature in the Financial Times How to Spend Itmagazine, which holds a mirror up to its readership by satirising the tastes and foibles of High Net Worth Individuals in pursuit of expensively "curated" lifestyles.

The judge, HHJ Richard Parkes QC, opened his judgment with this paragraph: Gertrude Stein quipped that whoever said money can't buy happiness didn't know where to shop. This case is about a woman looking for romantic happiness who says she was tricked into shopping in the wrong place, paying a large sum to a dating agency which, she says, made promises but failed to produce the goods.

The woman looking for romantic happiness was Tereza Burki, a divorcee with three children, who, in late 2014, at the age of 43, paid a fee of £12,600 (a concession to her on the standard fee of £18,000) for 12 months' active membership of Seventy Thirty Ltd ("70/30"), a dating agency which described itself as an "Exclusive Matchmaking and Elite Introduction Agency", offering a "quintessential, world-class matchmaking service to a sophisticated and particular clientele". Its services were "interactive and personalised", with its founder and proprietor, Susie Ambrose, describing it in a post-trial statement reported in the media, as "a niche, exclusive agency, not a mainstream, mass-market online dating service. We are not going to have thousands of members because there simply aren't thousands of single, wealthy, high-calibre prospects out there".

As the court's decision shows, however, it is one thing to differentiate your dating service from "Plenty of Fish" (a free online dating website), but another to give the impression that there is more caviar available for your clients than is really the case. Ms Burki spent some time considering whether or not to join 70/30 after her first approach to the agency in 2013. As the judge said, "her requirements were not modest". What she wanted in a partner was a 'sophisticated gentleman', ideally employed in the finance industry. It was important to her that her partner should lead a 'wealthy lifestyle', and that he should be 'open to travelling internationally'. For that reason, it would also have been appealing to her that he should have 'multiple residences'. Above all, the most important characteristic that she looked for in a prospective partner was a preparedness to have more children. She had always wanted four.

In the course of a number of meetings with 70/30 staff, including its then managing director, Lemarc Thomas, before signing up for membership, Ms Burki was shown profiles of men who were said to meet her criteria and be actively seeking a romantic partner like her. For example, one whom she found attractive "was pictured perched on the bonnet of an expensive car in front of what appeared to be a substantial house" and she was told that his profile fitted her criteria. But Ms Burki was disappointed in 70/30's service once she had joined, although she was sent potential matches from its membership database. She ended her membership within a few months of activating it, complaining that she was not able to meet any men matching the representations made to her by agency staff before she joined, and anxious that time was running out for her to have another child. After requesting and being refused a refund of her membership fee, Ms Burki eventually, and successfully, sued 70/30 for misrepresentation and deceit.

The judgment explores the history of Ms Burki's (and two other women's) dealings with 70/30, and 70/30's working practices and the composition of its database in great detail. The database contained three categories of individuals: current paying members, former members whose contracts had expired but who were still available to be matched, and individuals who had been approached by 70/30 and were willing to be added to the database to be matched, although

they had not signed up as active paying members. Although it was an issue at the heart of the case, the actual number of active paying members on the database at any given time was remarkably unclear. The judge was critical of the evidence of the figures put forward by 70/30, and of the evidence of its founder, Ms Ambrose, generally, describing his impression of her as "a person who is not interested in detail and is prone to making broad statements in an imperious manner that brooks no contradiction". Far from the pleaded Defence figure of 1,500 current active members, or even the 800 put forward in evidence, the judge concluded that there were only about 200, i.e. a maximum of around 100 active male members, at the time of Ms Burki's membership. Commitment by a prospective partner to an active paying membership was a significant factor for Ms Burki, and she said that she would not have joined 70/30 if she had understood the inclusion of the third category on the database. The judge agreed with her that this was not clear in 70/30's contractual terms and conditions, even though she admitted that she had not read them—" As she charmingly and no doubt correctly put it, 'In matters of the heart one is not rational'."

The judge observed that: Had Mr Thomas explained to Ms Burki that the database included active members, former members who still wished to be matched, and people who had been headhunted and had agreed to be put on the database in the hope of finding a suitable partner, she would have had little cause for complaint. The judge ruled that in the course of meetings before Ms Burki signed up for membership, Mr Thomas—who chose not to give evidence at the trial, an attitude the judge found "astonishing"—must have known that he was giving a false impression of the number of wealthy male members who were actively engaged in 70/30's matchmaking services. That was the deceit, not, as one commentator has described it, "promising to find her a partner to fulfil her requirements". As the judge said, "a membership of 100 active men cannot by any stretch of the imagination be described as a substantial number." 70/30 was ordered to refund Ms Burki's membership fee of £12,600 and to pay her a further £500—less than she had hoped to recover—for distress, upset, disappointment and frustration.

In its turn, 70/30 sued Ms Burki for libel and malicious falsehood in two online reviews, one on Google and one on yelp.co.uk, which she had written, and which remained published online for about four months. As the judge said, accessing such reviews is "a commonplace of modern online activity". In both reviews Ms Burki gave 70/30 only one star for its services and added strongly critical comments, which the judge said were "unarguably defamatory", and which in both cases met the legal threshold of causing or being likely to cause serious harm to 70/30's reputation, which, as 70/30 is a company, requires causing or being likely to cause serious financial loss. The decision illustrates that this is a fairly low threshold for a small company—the likelihood of loss of even one client and his fees would have been serious to a company the size of 70/30. Ms Burki pleaded in her defence that both her reviews were true and/or her honest opinion. Many people have expressed surprise that Ms Burki could win her claim for deceit but still be liable for accusing 70/30 of being fraudulent. But the court held that her expressed opinion in her Google review that 70/30 was a 'scam' was based on facts which were untrue. Its business was not fundamentally dishonest or fraudulent, but entirely genuine. The case illustrates how easy it is for careless words to lead to liability—Ms Burki was ordered to pay damages of £5,000 to 70/30 for this. However, the judge ruled that the "more measured" Yelp review was based on factual allegations which were substantially true. He rejected 70/30's claims of malicious falsehood in relation to both reviews, accepting that Ms Burki wrote her reviews "in the belief (partly erroneous though it was) that her complaints were well-founded, and not with the motive of doing injury to 70/30, but rather out of a sense of honest anger at the way that she felt she had been treated."

The overall outcome was that Ms Burki was awarded £13,100 damages, of which £12,600 was no more than repayment of her original subscription to 70/30, on her claim, and 70/30 was awarded £5,000 on its claim, leaving Ms Burki with a net £8,100 from the litigation. No costs judgment has (yet) been published, but the costs incurred by each side must be many, many multiples of the amounts in dispute in either claim and will represent its most significant financial consequence. Observers not personally or professionally involved with the case may never find out the level of these costs, or how the burden of them ultimately falls, and cannot make any reliable guess either, without knowing whether any compromise proposals which might affect a costs decision were made by either side. Although dating agencies may have significant numbers of dissatisfied customers (Citizens Advice Bureaux were reported as having dealt with 300 complaints in 2017), few can afford to take the risk of High Court litigation on this scale.

It is striking to contrast the exhaustively thorough 271 paragraph High Court judgment, following a week-long hearing[2] in Ms Burki's case, with the summary way a rather similar case was dealt with in New South Wales in 2004[3]. In that case, a Mr Galletti, who "wanted to meet a woman who was single, a non-smoker, slim and without children", had paid AUD 770 to a dating agency, which had told him that it had specific numbers of women in two named towns in New South Wales (Dubbo and Mudgee) that he could meet if he joined it. The agency then appears to have provided him with profiles of women, including a number who "were ruled out because some had children, some were not slim and some did not want to go out with him". He was then told that he would have to pay a further fee if he wished to meet someone. The Consumer, Trading and Tenancy Tribunal of New South Wales held a hearing within a month of Mr Galletti's application being filed. The hearing must have taken a relatively short time, as Mr Galletti attended it by telephone. The judgment consists of twelve terse paragraphs, each one sentence long, and including one: "The majority of the women in Mudgee and Dubbo did not meet the criteria required by the applicant", which, read alone, no doubt casts the female population of Dubbo and Mudgee in an unfair light, and concluding with a finding that the conduct of the agency was misleading and deceptive and ordering repayment of Mr Galletti's AUD 770 membership fee.

Cases like this make for diverting reading. Partly because they "let daylight in on magic" and expose in pedantic lawyerliness what lies beneath the packaging and selling of happiness to consumers. And partly because they prompt a mixture of flinching from sharing their experience and a touch of sympathy for people who are willing to expose their emotional disappointment in shopping for happiness to the public gaze through litigation. Many online comments have been harshly judgmental of Ms Burki's hopes and expectations.

45 years ago, in Jarvis v. Swans Tours, the CoA decided that Mr Jarvis, a local authority solicitor who holidayed alone, should be compensated for his disappointing skiing "house party in Mörlialp" package booked with Swans Tours. In my mind, this has become a classic passage of prose description of holiday disappointment, as comforting in its own way to reread in the light of even slightly similar experiences as is Dickens's comic account of the disastrous amateur performance of Mr Wopsle's Hamlet in Great Expectations, after coming home from a disappointing evening at the theatre.

In Jarvis, Lord Denning memorably described the gap between promise and reality. Swans brochure said: "House Party Centre with a special resident host. Mörlialp is a most wonderful little resort on a sunny plateau. Up there you will find yourself in the midst of beautiful alpine scenery, which in winter becomes a wonderland of sun, snow and ice, with a wide variety of fine ski-runs, a skating rink and exhilarating toboggan run. Why did we choose the Hotel Krone … mainly and most of all because of the 'Gemütlichkeit' and friendly welcome you will receive from Herr and Frau Weibel. The Hotel Krone has its own Alphütte Bar which will be open

several evenings a week. No doubt you will be in for a great time when you book this house party holiday … Mr Weibel, the charming owner, speaks English."

The reality was that: [Mr Jarvis] was a man of about 35 and he expected to be one of a house party of some 30 or so people. Instead, he found there were only 13 during the first week. In the second week, there was no house party at all. He was the only person there. Mr Weibel could not speak English. So there was Mr Jarvis, in the second week, in this hotel with no house party at all, and no one could speak English, except himself. He was very disappointed, too, with the skiing. It was some distance away at Giswil. There were no ordinary length skis. There were only mini-skis, about 3 ft. long. So he did not get his ski-ing as he wanted to. In the second week he did get some longer skis for a couple of days, but then, because of the boots, his feet got rubbed and he could not continue even with the long skis. So his ski-ing holiday, from his point of view, was pretty well ruined.

There were many other matters, too. They appear trivial when they are set down in writing, but I have no doubt they loomed large in Mr Jarvis's mind when coupled with the other disappointments. He did not have the nice Swiss cakes which he was hoping for. The only cakes for tea were potato crisps and little dry nut cakes. The yodeler evening consisted of one man from the locality who came in his working clothes for a little while and sang four or five songs very quickly. The "Alphütte Bar" was an unoccupied annexe which was only open one evening." Poor Mr Jarvis with his Gemütlichkeitfrei sojourn of mini-skis and little dry nut cakes. At least, 45 years ago, he was not at risk of damages for libelling Swans Tours in an internet review posted in a moment of "honest anger" at the way he had been treated. [1] A woman whom it is difficult, if not impossible, to imagine engaging an agency to search for a high net worth individual to fulfil her dreams

What Does the John Worboys Case Have to do With the Separation of Powers?

Cathryn Evans, Rights Info: The separation of powers is one of the most important safeguards for our democracy. But the serial-rapist John Worboys' case has lead to questions about whether the separation of powers is really being protected. The separation of powers is the principle that, in order to prevent any single part of the government becoming too powerful, there should be a clear separation between its three arms – the executive (government), the legislature (parliament) and the judicial (judges and the legal system). So, how does the separation of powers work and why has the government been accused of getting it wrong?

If one person or one arm of the state has too much power, it means that they may be able to abuse their powers and override other areas of government. In a democracy, the powers of the state are shared and split into three separate branches, each with different responsibilities. Each branch of the state can act as a check on the others, ensuring that no one area of the state becomes too powerful. Judicial independence is a vital part of the separation of powers. Judges must be impartial and not subject to any external pressures. This is to ensure that anyone who appears before them can be confident that their case will be decided fairly and in accordance with the law.

But Judges Aren't Above The Law, Right? In 1701, the Act of Settlement introduced judicial independence to England and Wales. Prior to that, many judges had been removed from office by a king or queen displeased at their rulings. Charles II (1660–1685) dismissed 11 judges in the final 11 years of his reign, while his brother James II (1685–1688) dismissed 13 judges in four years, including four in one day! This does not mean that judges are above the law. Lord Chief Justice or Lord Chancellor may refer a judge to a body called the Judicial Complaints Investigations Office if they have behaved badly or committed a criminal offence. If they have, then they can be removed from office.

The John Worboys Case Earlier in 2018, the Parole Board decided to release a serial sex-attacker, John Worboys, causing a huge public outcry. A legal challenge resulted in a High Court ruling that the decision to release Worboys should be quashed and a fresh determination made. The Parole Board – created in 1968 – is an independent body that carries out risk assessments on prisoners to determine whether they can be safely released into the community. Assessors focus solely on whether a prisoner applying for release represents a significant risk to the public. They are supplied with a dossier of information on the prisoner and also take evidence at an oral hearing. The Parole Board has the status of a court, and so should be subject to the same rules and principles.

As a consequence of the Parole Board's handling of the Worboys case, the Justice Minister David Gauke ordered its Chair, Nick Hardwick, to resign – judging his position to be 'untenable'. Soon afterwards, Paul Wakenshaw, a prisoner whose case was soon to go before the Parole Board, applied to the courts for a judicial review, arguing that this decision violated the principle of the separation of powers. A judicial review is where a judge reviews the lawfulness of a decision or action made by a public body. Wakenshaw's case argued that it was constitutionally wrong for the Justice Secretary to drive out the head of a judicial body without following a proper procedure to determine whether the removal was justified.

This government intervention suggested that the Parole Board was not as independent as a genuine court – despite being considered one under the law. In August 2018, permission for a judicial review was given. The judge, Mr Justice Mostyn, was highly critical of the government's action, agreeing that there appeared to be a lack of independence within the Parole Board – because of the influence government ministers wielded. The judge stated that David Gauke's actions breached the principle of judicial independence enshrined in the Act of Settlement 1701. The judge also criticised the government for not acting on the findings of an earlier case which held that the Parole Board appointments process failed to meet the test for independence.

What Happens Now? The judge has paused the judicial review for three months to enable the Justice Minister to act on his finding that the Parole Board lacks independence. If he fails to act – or acts in a way which still fails to uphold the separation of powers – the judicial review will be allowed to go ahead. If a judicial review goes ahead and finds that the government has abused its powers, the judge has a number of remedies at his disposal. He could issue an injunction forcing the Parole Board to take – or not take – certain actions. He could also make a declaration that the government is acting unlawfully. While such a declaration cannot force the government to act, it would be highly embarrassing – something that the Minister will probably want to avoid. So, it's likely that changes will take place to the Parole Board before the end of the year, ensuring that its independence and the separation of powers are protected.

Squalid Prisons Are Just the Start. The Entire Justice System is in Meltdown

Polly Toynbee, Guardian: From the police to legal aid to the courts, savage cuts mean a nightmare is unfolding largely out of public view.Austerity's most savage cut is barely visible. Ambulances stacked up outside overflowing A&E departments make news because that could affect you or yours, any day. Pot holes in the road draw motorist and cyclist wrath, as do missed bin collections. But the near collapse of the entire criminal justice system can happen right under our noses, and none but judges, lawyers, the Crown Prosecution Service (CPS) and prison staff know anything about it.

Prisons did top the news on Monday 20/08/2018, when the horrifying inspection report on HMP Birmingham forced the government to take it back from G4S. Blood, vomit, cockroaches, rats, the air thick with the drug spice, staff hiding, in fear of violent prisoners: here was a scene of hell and

squalor that should knock the “prison works” nonsense out of the most ardent lock-’em-up MP. One shock inspection report after another has thudded on to ministers’ desks, many among the 102 state-run as well the 14 privately run jails, revealing a prison estate in crisis. Under all previous governments, journalists could regularly visit any prison with due notice – and prison governors would speak out about problems. Now they are frightened into silence. I was allowed to film a whole Panorama programme in the most disturbed and violent part of Holloway prison, known as the “muppet wing”, in the Tory 1980s, when authorities were still open about prison problems. No longer.

What are MPs doing, prattling away about 'sovereignty' when injustice is done daily by a legal system in meltdown? In 2010 the shutters came down and it’s virtually impossible for journalists to visit prisons, except for a rare manicured walk-about with a minister. Why not? Because what the media would see would be too disgusting. Because desperate staff might say too much. Because the worst are too out of control. But where scrutiny by the press is denied, as it is now in benefit offices and anywhere else the effects of austerity are on display, this government bars access to public services as never before in my professional lifetime.

Secrecy suggests shame. The prisons minister, Rory Stewart, a semi-amateur politician, earns growls from colleagues for promising to resign if there’s no improvement by next year. He could start by opening the gates of his filthy estate to us of the filthy fourth estate. Prisons returning to Newgate conditions are just the most extreme fallout from the disintegrating justice system, from inadequate policing to a crumbling CPS, malfunctioning magistrate and crown courts and vanished legal aid. The tottering edifice is only kept going by the superhuman goodwill of the dwindling numbers operating it. Who else sees it, beyond frequent-flyer criminals? The public – victims, witnesses and jurors – may only touch it once in a lifetime: then they find delays, adjournments and collapsed cases deeply distressing.

The MoJ is suffering the deepest cuts of any department – 40% to be sliced away before 2020. The Treasury knows this is a secret world, hidden from public eyes, as courts are removed ever further from the local community, an integral part no longer. On the last day of term, when the government scuttles out bad news in written statements, the MoJ slid out an announcement that 7 more courts to be shut &sold off. On top of the 258 that have closed and been sold off in England & Wales since 2010. In the great sale of public property – hospitals, schools, police stations, courts and more – the Treasury demands that capital raised be sucked into the running costs of remaining services, regardless of how a growing population will need this valuable land, gone forever.

Courts are so packed that clerks book in as many as seven extra cases, summoning lawyers, witnesses, victims and defendants from afar to wait all day, hoping a case collapses and they can be slotted in. If not, they are all summoned on another date to lose another day off work; child care rearranged, carers rebooked. Cases are often adjourned several times over or collapse altogether from bungled evidence collection. An over-stretched CPS after 25% cuts and a shrunken police force means evidence goes uncollected or is not disclosed to the defence, so the case goes under, setting free violent criminals and domestic abusers out of sheer incompetence. Political pieties promise to “put the victim first” – but victims are often left bereft and endangered by failed cases, after travelling miles several times over. A 2017 government report showed some 50% of cases are not prepared for hearings after the CPS lost a third of its workforce.

The great 1945 government is celebrated for its welfare state of pensions, benefits and the NHS. But less remembered is how its legal aid brought equal access to justice. No longer. In 2012 legal aid entitlement was removed from family, housing, immigration, debt and employment, leaving the poorest and weakest unable to claim their rights. Those trying to represent themselves take hours of expensive court time, where a lawyer representing them would cut to the chase. Defendants are granted longer sentences and less bail by magistrates when left to defend themselves: 15% of those remanded in prison, often for long periods, are found not guilty.

The unfolding calamity in our criminal justice system is best told in The Secret Barrister: Stories of the Law and How It’s Broken. This angry yet forensic analysis from first arrest to prison is a gripping front-line view by an anonymous, lowly criminal barrister. Read and rage at evidence that “every day the provably guilty walk free”, while the hapless needlessly end up in jail.

All 650 MPs were sent a copy, crowdfunded by young legal aid lawyers. A ComRes survey of MPs’ summer reading finds it to be the third most popular beach-list book, a matching tale of woe to follow Tim Shipman’s account of the Brexit fiasco and Anthony Beevor’s history of the battle of Arnhem. But will they read it, or is it just listed by their spads, while they devour the latest Jack Reacher? If they do, all 650 should return in September boiling with indignation. What have they been doing, prattling away about “sovereignty” and the supremacy of our laws over European courts, when gross injustice is done here daily by a legal system in meltdown, as reported by the Public Accounts Committee? Two-thirds of crown court cases are delayed or collapse, leaving 55% of witnesses saying they would never do it again. When criminal barristers went on strike recently against 40% pay cuts leaving them often with less than the living wage after travel costs and waiting time, the government said: “Any action to disrupt the courts is unacceptable.” But they are the deliberate disrupters of a legal system that is the basis of democracy.

Bring Back our Pebbles or go to Jail

A man has been forced to drive hundreds of miles back to a local beach after being threatened with prosecution – for stealing pebbles. The incident occurred at Cornish beauty spot Crackington Haven, where beach pebble theft has led to the parish council installing warning signs informing beachgoers that the practice is unlawful.

Loss of Senior Managers Led to UK’s Prison Crisis

Hundreds of senior staff and management have left the Prison Service in the past five years without being replaced, new figures reveal, which has led to “dangerous” flaws in the system, according to campaigners. The exodus of crucial experienced staff has coincided with record levels of assaults, suicides and self-harm in jails in England and Wales and forced the government to take action to increase prison officer numbers after almost a decade of cuts. 40 senior prison managers have left in the past five years but only two have joined – one of whom quit less than a year later. There were 205 outgoing managers compared with 23 incoming, while only a single replacement was hired in place of 295 custodial managers.

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, Robert Knapp, 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.