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'Hooded Men' Appeal Rejected by ECtHR

BBC News: ECtHR has rejected an appeal by the Irish government against the ruling that the UK did not torture the so-called 'Hooded Men'. The group claimed they were subjected to torture by the Army in 1971. The Irish government was appealing the court's ruling from March. In 1978, the ECtHRheld that the UK had carried out inhuman and degrading treatment, but fell short of defining this as torture. In 2014, the Irish government said it would ask the Court to revise the 1978 judgement.

The 14 hooded men released a statement stating: "This judgement is disappointing, we had hoped the Grand Chamber of the European Union would have corrected this injustice in that forum, for the sake of the integrity of the court and survivors of torture all over the world. "We are supposed to be living in an era where human rights litigation is victim-centred. It is disappointing that the decision reached by the Grand Chamber was taken without first affording the men an opportunity to address the court in their capacity as directly affected persons." The hooded men allege they were subjected to state-sanctioned torture. They said they were forced to listen to constant loud static noise; deprived of sleep, food and water; forced to stand in a stress position and beaten if they fell. They also said they were hooded and thrown to the ground from helicopters - despite being at near ground level, they had been told they were hundreds of feet in the air.

On Tuesday,11/09/2018 the ECHR found the Irish government had failed to demonstrate the existence of new facts which would influence its original judgement. The revision of the request was dismissed by six votes to one by the European court's Grand Chamber. It ruled: "The original judgment had stated that the difference between "torture" and "inhuman and degrading" treatment depended on the intensity of suffering, which in turn depended on a number of elements. "It was not clear that the one element of long-term psychiatric suffering would have swayed the court into a finding of torture."

Amnesty International described Tuesday's decision as a "bitter blow". Grainne Teggart, the organisation's Northern Ireland campaigns manager, said: "Today's decision is a bitter blow for the men and their families. The European Court has failed to let the Grand Chamber consider Ireland's request to right a historic wrong. "When Amnesty visited the detainees in 1971, we found clear evidence of torture. Our assessment has not changed in the years since and today's decision does not change this. The torture of these men was approved at the highest level of government. Justice is long overdue. We need an independent and effective investigation in line with the UK's international human rights obligations. Those responsible for sanctioning and carrying out torture, at all levels, must be held accountable and, where possible, prosecuted."

Continuing campaign: Darragh Makin, solicitor for the hooded men, said they still maintain that techniques used on them were torture. "The campaign for justice for The hooded men is not over," he insisted. "They now eagerly await the judgment by the CoA in Belfast in which the Chief Constable of the PSNI appealed a decision that requires the identification and prosecution of those individuals whom perpetrated and authorised the techniques are held accountable." Francis McGuigan, one of the hooded men said: "Whilst today is yet another setback, it is by no means the end. We have already received a legal ruling confirming our treatment was torture. It is disappointing that the ECtHR missed an opportunity to correct such an unjust ruling, however we now eagerly await the CoA decision, and seeing those responsible held accountable."

Drug Dealers' Sentences Cut Over 'Double Counting' of Serious Crime Aggravation

Scottish Legal News: Two drug dealers who were jailed after pleading guilty to being concerned in the supply of cocaine and heroin with a street value of more than £100,000 have each had their prison sentences reduced by a year following an appeal. Mark Simpson and Lee Wallace were sentenced to eight-and-a-half and six-and-a-half years' imprisonment respectively – 12 months of which were attributable to the fact that the offences were aggravated by connections with "serious organised crime" – for their involvement in what the trial judge described as a "significant drugs operation". But the High Court of Justiciary Appeal Court ruled that the judge's decision to increase the sentences imposed by a year to reflect the aggravations amounted to "double counting" and therefore substituted sentences of seven-and-a-half and five-and-a-half years.

'Excessive sentence': Lord Menzies and Lord Turnbull heard that the appellants appeared for trial at the High Court of Justiciary at Aberdeen in November 2017 along with two co-accused, when both appellants pled guilty to two charges of contraventions of section 4(3)(b) of the Misuse of Drugs Act 1971, aggravated by connections with serious organised crime in terms of section 29 of the Criminal Justice and Licensing (Scotland) Act 2010. Their pleas of guilty, and other pleas of not guilty, were accepted by the Crown and thereafter, having obtained criminal justice social work reports on 30 January 2018 the trial judge sentenced the two appellants for their roles as controller and distributor in a "sophisticated and coordinated operation involving a network of suppliers" over a seven-week period.

However, the appellants appealed against the sentences imposed, arguing that the increase of one year to reflect the aggravation was "erroneous and excessive". It was submitted that the circumstances which gave rise to the aggravation were the same circumstances which constituted the crimes, as the offences "inherently involved organised criminal activity of a serious nature". The trial judge's justification for the additional penalty relied on circumstances already used to justify the selection of the sentence imposed for the substantive offences, meaning there was an element of "double counting".

Although section 29 of the 2010 Act required the sentencing judge to take into account the aggravation, it also recognised that there may be circumstances where it is "inappropriate" to impose a separate or increased penalty. It was submitted that since the nature of the offence itself constituted, for the purposes of the 2010 Act, serious organised crime, it was argued that the decision to increase the sentence due to the aggravation amounted to an "error of law".

'Double counting': Allowing the appeal, the judges observed that most, if not all cases of being concerned in the supply of a class A drug will be offences aggravated by a connection with serious organised crime, but where the relevant factors have been taken into account when setting the sentence for the substantive offence there is "no requirement" to increase the sentence because of the aggravation.

Delivering the opinion of the court, Lord Menzies said: "It is clear from his careful report to us that the trial judge took into account all of these factors when determining what sentence should be imposed on each of the appellants for the substantive offences to which they had pled guilty, namely seven-and-a-half years in respect of Mark Simpson and five-and-a-half years in respect of Lee Wallace.

"No issue is taken in either of these appeals with those sentences, nor with the exercise of assessment which the trial judge carried out in regard to them. However, with regard to each of these appellants the trial judge then went on to increase that sentence by one year due to the aggravation. We

observe that, while section 29(5) requires the court to state that the offence was aggravated by a connection with serious organised crime, and record the conviction in a way that shows that the offence was so aggravated, and take the aggravation into account in determining the appropriate sentence, there is no requirement that the sentence must be increased because of the aggravation. The factors to which the trial judge referred [in his report] are factors which had already been taken into account (quite properly) in the setting of the sentences for the substantive offences before aggravation. We do not consider that they can properly be used again to justify the imposition of a further one year's imprisonment in respect of the aggravations."

He added: "There are many crimes and offences which do not, of themselves, necessarily involve a connection with serious organised crime. For example, murders, assaults, threats, abductions, certain firearms offences, and many other criminal activities may occur without a connection with serious organised crime. In such cases, it seems to us very possible that an aggravation in terms of section 29 of the 2010 Act may appropriately result in a longer sentence than that which the court would have imposed if the offence were not so aggravated. We do not suggest that this will necessarily or always result, but it may do so. However, when the same features that are taken into account when setting the sentence for a substantive offence are also taken into account in considering whether to impose a different sentence to reflect the aggravation, it may be more difficult to justify imposing a longer sentence to reflect the aggravation." In the present two appeals," the court concluded, "it does not appear to us that there were any additional factors taken into account in relation to the aggravations which had not properly been taken into account in determining the sentences for the substantive offences. We consider that this does indeed amount to an element of 'double counting'. For these reasons, we shall quash that part of each sentence (amounting to imprisonment for one year) relating to the section 29 aggravation. We shall therefore substitute a sentence of seven years six months imprisonment from 20 November 2017 for Mark Simpson, and five years six months imprisonment from 20 November 2017 for Lee Wallace."

Some Aspects of UK Surveillance Regimes Violate Convention on Human Rights

The case of Big Brother Watch and Others v. the United Kingdom (applications nos. 58170/13, 62322/14 and 24960/15) concerned complaints by journalists and rights organisations about three different surveillance regimes: (1) the bulk interception of communications; (2) intelligence sharing with foreign governments; and (3) the obtaining of communications data from communications service providers.

Both the bulk interception regime and the regime for obtaining communications data from communications service providers have a statutory basis in the Regulation of Investigatory Powers Act 2000. The Investigatory Powers Act 2016, when it comes fully into force, will make significant changes to both regimes. In considering the applicants' complaints, the Court had regard to the law in force at the date of its examination. As the provisions of the IPA which will amend the regimes for the bulk interception of communications and the obtaining of communications data from communications service providers were not in force at that time, the Court did not consider them in its assessment.

In today's Chamber judgment 13/09/2018, the European Court of Human Rights held, by five votes to two, that: the bulk interception regime violated Article 8 of the European Convention on Human Rights (right to respect for private and family life/communications) as there was insufficient oversight both of the selection of Internet bearers for interception and the filtering, search and selection of intercepted communications for examination, and the

safeguards governing the selection of "related communications data" for examination were inadequate. In reaching this conclusion, the Court found that the operation of a bulk interception regime did not in and of itself violate the Convention, but noted that such a regime had to respect criteria set down in its case-law.

The Court also held, by six votes to one, that: the regime for obtaining communications data from communications service providers violated Article 8 as it was not in accordance with the law; and that both the bulk interception regime and the regime for obtaining communications data from communications service providers violated Article 10 of the Convention as there were insufficient safeguards in respect of confidential journalistic material. It further found that the regime for sharing intelligence with foreign governments did not violate either Article 8 or Article 10. The Court unanimously rejected complaints made by the third set of applicants under Article 6 (right to a fair trial), about the domestic procedure for challenging secret surveillance measures, and under Article 14 (prohibition of discrimination).

The three joined applications are Big Brother Watch and Others v. the United Kingdom (no. 58170/13); Bureau of Investigative Journalism and Alice Ross v. the United Kingdom (no. 62322/14); and 10 Human Rights Organisations and Others v. the United Kingdom (no. 24960/15). The 16 applicants are organisations and individuals who are either journalists or are active in campaigning on civil liberties issues. The applications were lodged after Edward Snowden, a former US National Security Agency (NSA) contractor, revealed the existence of surveillance and intelligence sharing programmes operated by the intelligence services of the United States and the United Kingdom. The applicants believed that the nature of their activities meant that their electronic communications and/or communications data were likely to have been intercepted or obtained by the UK intelligence services.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life and correspondence), the applicants complained about the regimes for the bulk interception of communications, intelligence sharing and for the acquisition of data from communications service providers. The second and third applications also raised complaints under Article 10 (freedom of expression) related to their work, respectively, as journalists and non-governmental organisations. The third application relied in addition on Article 6 (right to a fair trial), in relation to the domestic procedure for challenging surveillance measures, and on Article 14 (prohibition of discrimination), combined with Articles 8 and 10, alleging the regime for the bulk interception of communications discriminated against people outside the United Kingdom, whose communications were more likely to be intercepted and, if intercepted, selected for examination.

Admissibility: The Court first considered whether the first and second set of applicants had exhausted domestic remedies, part of the process of admissibility, as they had not raised their complaints with the Investigatory Powers Tribunal, a special body charged with examining allegations of wrongful interference with communications by the security services. It found that while the IPT has shown itself to be an effective remedy which applicants had to use, at the time these two sets of applicants lodged their applications with this Court there existed special circumstances absolving them from that requirement and they could not be faulted for relying on the Court's 2010 judgment in Kennedv v. the United Kingdom as authority for the proposition that the IPT was not an effective remedy for a complaint about the general Convention compliance of a surveillance regime.

Interception process under section 8(4) of RIPA: The Court noted that the bulk intercep-

tion of communications was regulated by section 8(4) of the Regulation of Investigatory Powers Act (RIPA) 2000. Operating a bulk interception scheme was not per se in violation of the Convention and Governments had wide discretion (IIa wide margin of appreciation") in deciding what kind of surveillance scheme was necessary to protect national security. However, the operation of such systems had to meet six basic requirements, as set out in Weber and Saravia v. Germanv. The Court rejected a request by the applicants to update the Weber requirements, which they had said was necessary owing to advances in technology.

The Court then noted that there were four stages of an operation under section 8(4): the interception of communications being transmitted across selected Internet bearers; the using of selectors to filter and discard - in near real time - those intercepted communications that had little or no intelligence value; the application of searches to the remaining intercepted communications; and the examination of some or all of the retained material by an analyst.

While the Court was satisfied that the intelligence services of the United Kingdom take their Convention obligations seriously and are not abusing their powers, it found that there was inadequate independent oversight of the selection and search processes involved in the operation, in particular when it came to selecting the Internet bearers for interception and choosing the selectors and search criteria used to filter and select intercepted communications for examination. Furthermore, there were no real safeguards applicable to the selection of related communications data for examination, even though this data could reveal a great deal about a person's habits and contacts.

Such failings meant section 8(4) did not meet the "quality of law" requirement of the Convention and could not keep any interference to that which was "necessary in a democratic society". There had therefore been a violation of Article 8 of the Convention.

Acquisition of data from communications service providers under Chapter 11 of RIPA The Court noted that the second set of applicants had complained that Chapter 11 of RIPA allowed a wide range of public bodies to request access to communications data from communications companies in various ill-defined circumstances. It first rejected a Government argument that the applicants' application was inadmissible, finding that as investigative journalists their communications could have been targeted by the procedures in question. It then went on to focus on the Convention concept that any interference with rights had to be "in accordance with the law". It noted that European Union law required that any regime allowing access to data held by communications service providers had to be limited to the purpose of combating "serious crime", and that access be subject to prior review by a court or independent administrative body. As the EU legal order is integrated into that of the UK and has primacy where there is a conflict with domestic law, the Government had conceded in a recent domestic case that a very similar scheme introduced by the Investigatory Powers Act 2016 was incompatible with fundamental rights in EU law because it did not include these safeguards. Following this concession, the High Court ordered the Government to amend the relevant provisions of the Act. The Court therefore found that as the Chapter 11 regime also lacked these safeguards, it was not in accordance with domestic law as interpreted by the domestic authorities in light of EU law. As such, there had been a violation of Article 8.

Intelligence sharing procedures: The Court found that the procedure for requesting either the interception or the conveyance of intercept material from foreign intelligence agencies was set out with sufficient clarity in the domestic law and relevant code of practice. In particular, material from foreign agencies could only be searched if all the requirements for searching

material obtained by the UK security services were fulfilled. The Court further observed that there was no evidence of any significant shortcomings in the application and operation of the regime, or indeed evidence of any abuse. The intelligence sharing regime therefore did not violate Article 8.

Article 10: The Court declared complaints by the third set of applicants under this provision to be inadmissible but found a violation of the rights of the second set of applicants, who had complained that the bulk surveillance regimes under section 8(4) and Chapter 11 of RIPA did not provide sufficient protection for journalistic sources or confidential journalistic material.

In respect of the bulk interception regime, the Court expressed particular concern about the absence of any published safeguards relating both to the circumstances in which confidential journalistic material could be selected intentionally for examination, and to the protection of confidentiality where it had been selected, either intentionally or otherwise, for examination. In view of the potential chilling effect that any perceived interference with the confidentiality of journalists' communications and, in particular, their sources might have on the freedom of the press, the Court found that the bulk interception regime was also in violation of Article 10.

When it came to requests for data from communications service providers under Chapter 11, the Court noted that the relevant safeguards only applied when the purpose of such a request was to uncover the identity of a journalist's source. They did not apply in every case where there was a request for a journalist's communications data, or where collateral intrusion was likely. In addition, there were no special provisions restricting access to the purpose of combating "serious crime". As a consequence, the Court also found a violation of Article 10 in respect of the Chapter 11 regime.

Article 6: The third set of applicants complained that the IPT lacked independence and impartiality. However, the Court noted that the IPT had extensive power to consider complaints concerning wrongful interference with communications, and those extensive powers had been employed in the applicants' case to ensure the fairness of the proceedings. Most notably, the IPT had access to open and closed material and it had appointed Counsel to the Tribunal to make submissions on behalf of the applicants in the closed proceedings. Furthermore, the Court accepted that in order to ensure the efficacy of the secret surveillance regime, which was an important tool in the fight against terrorism and serious crime, the restrictions on the applicants' procedural rights had been both necessary and proportionate and had not impaired the essence of their Article 6 rights. Overall, the applicants' complaint was manifestly ill-founded and had to be rejected.

Other Articles: The third set of applicants complained under Article 14, in conjunction with Articles 8 and 10, that those outside the United Kingdom were disproportionately likely to have their communications intercepted as the law only provided additional safeguards to people known to be in Britain. The Court rejected this complaint as manifestly ill-founded. The applicants had not substantiated their argument that people outside the UK were more likely to have their communications intercepted. In addition, any possible difference in treatment was not due to nationality but to geographic location, and was justified.

Just satisfaction (Article 41) The applicants did not claim any award in respect of pecuniary or non-pecuniary damage and the Court saw no reason to make one. However, it made partial awards in respect of the costs and expenses claimed by the applicants in the first and second of the joined cases. The applicants in the third joined case made no claim for costs and expenses.

Miscarriage of Justice Body's Funding Cuts Criticised as Workload Grows

Owen Bowcott, Guardian: Government funding of the Criminal Cases Review Commission (CCRC), the last hope for people battling miscarriages of justice, has come under attack as the number applications rises steeply. The new justice minister Edward Argar has defended the long-term decline in the agency's budget on the grounds that it is "sufficiently funded for the work that it does". But the shadow justice secretary, Richard Burgon, has said growing caseloads and falling budgets are having a severe impact on the commission's work. The Ministry of Justice's budget has been cut by 40% since 2010, the largest loss of any Whitehall department.

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A CCRC spokesman said: "It has always been our position that we will not compromise on the quality of our casework and we have always sought to make savings by improving both the efficiency and the effectiveness of our processes without affecting detrimentally the efficacy of our investigations. "Decisions about whether or not a particular case requires us to carry out this forensic work or to instruct that expert are always based on the potential evidential value of that work and not on questions of cost."

Suzanne Gower, the managing director of the Centre for Criminal Appeals, a legal charity, said: "It simply isn't credible to suggest that the cuts to the CCRC's budget coupled with the significant increase in workload will not have had a seriously detrimental effect on the quality and scope of CCRC investigations, ultimately leading to innocent people and their families being denied justice." An MoJ spokesperson said: "The Criminal Cases Review Commission has the resources to carry out its valuable work effectively." A government review of its efficiency and governance is due to be published this autumn.

CPS to Take No Action Against Police Over Death of Leon Briggs

The mother of a vulnerable man who died after being restrained by police has spoken of her devastation after learning that officers will face no criminal charges. The police watchdog passed a file to the Crown Prosecution Service (CPS) in March 2016 concerning two Bedfordshire police constables, three sergeants and a member of police staff, suggesting they may have committed crimes over the death of Leon Briggs in 2013. In January prosecutors said no action would be taken against one of the officers, and they have now confirmed that the other five people will also face no charges.

"I am devastated that, after almost five long years, I am no closer to finding out what happened to Leon or to getting some accountability for his death," said Margaret Briggs on Wednesday. In a statement released by her lawyers, she said: "My son was struggling with his mental health, that struggle should not have resulted in his death at the hands of Bedfordshire police. My one hope is that the inquest into Leon's death can start as soon as possible. I am desperate for some answers and, hopefully, in time some closure."

Briggs died in hospital on 4 November 2013. He had been arrested in Luton under the Mental Health Act after people expressed concern about his welfare.

The Independent Police Complaints Commission, since renamed the Independent Office for Police Conduct, investigated and asked prosecutors to consider whether or not manslaughter and misconduct charges should be brought. On Wednesday, a CPS spokeswoman said it "will not be taking any further action in this case", adding: "We have now examined the evidence against the remaining individuals and the force itself and concluded our test for bringing a prosecution is not met."

Margaret Briggs' lawyer, Jocelyn Cockburn of the firm Hodge Jones and Allen, said: "No mother should have to wait five years to find out what led to the death of her son. In order for her to have had any confidence in the investigation, it needed to be open and transparent, which this was not. However, that is exactly what the inquest process must achieve. I hope that the coroner will now resume the inquest into Leon's death allowing a public examination of the facts."

Anti-Racism and Progressive Values by Frances Webber

Below we reproduce the speech given by human rights lawyer Frances Webber to the meeting 'Confronting Racism in the UK: a return to collective principles', organised by the Monitoring Group at Conway Hall on 6 September.

I very much welcome the opportunity to speak here today, because there has been a long history of progressive anti-racist, anti-imperial struggle in this country – in which, it goes without saying, Jewish organisations and people have played a very full role, with their (our) long experience of fighting anti-Semitism woven into the struggle.

The way that the media and politicians are discussing issues of racism today divorces anti-racism from the progressive fight based on the expansion of justice among all oppressed groups, and in doing so, makes a mockery of that history and the principles we fought for.

In a small way, I have been connected to that history, through my involvement since the late 1960s, not just with the Institute of Race Relations (IRR) and through my work as a lawyer, but with legal defence campaigns, such as the Bradford 12 defence campaign and the Southall 342; with refugee and migrant organisations such as the Commission for Filipino Migrant Workers and the Refugee Forum; in Women in Black, a group of Jewish women protesting the killings of Palestinian children; Women Against Racism and Fascism – and as a proud member of the CARF collective.

How we Built Unity in the Fight Against Racism

It took thirty years to convince the establishment that racism was not a matter of individual prejudice or xenophobia, but an issue of structural and institutional racism. As is by now well known, the acknowledgement finally came with the Macpherson inquiry into the death of Stephen Lawrence and the Met police investigation of it, but many, many campaigns against racist violence and deaths in police custody preceded that. In all those campaigns we strove to build unity in the fight against racism. But in doing so we accepted that not everyone's experience of racism was the same – colour, class, gender, sexuality, religion mark you out in different ways as more vulnerable to racism. So Sivanandan's saying that there were two racisms, 'the racism that discriminates, and the racism that kills' was a very important organising principle.

In the 1980s and '90s, in the face of refugee movements and the 'Fortress Europe' policies designed to keep them out of Europe, the experience of refugees and exiles became more central to the anti-racist movement. They were the most vulnerable communities, not only rightless and precarious, prey to politicians playing the race card, but also with no common language and only the commonality of their experience to unite them An understanding of the experience

of refugees and exiles has been vital to the anti-racist movement, and the Palestinian refugee issue is one of the burning issues of our times. Perhaps no more so than now.

Manipulating Issues of Anti-Racism

In our fight, politicians from mainstream political parties, with a few notable exceptions, have seldom allied themselves with what used to be the progressive cause of anti racism. For the most part, politicians only joined us when causes were 'winnable'. The Labour party has not been sympathetic to the anti-racist cause – quite the reverse, from its Commonwealth Immigrants Act of 1968, which removed settlement rights from UK citizens from Asia, to New Labour which sowed the seeds of the 'hostile environment' by cracking down on asylum seekers, building more immigration prisons, and overseeing more deportations. New Labour's anti-terrorism provisions established in effect a separate criminal justice system for Muslims based on suspicion and risk, rather than guilt, and its punitive criminal justice legislation further criminalised young Black people – even while the Macpherson inquiry acknowledged institutional racism in the police.

What we face today is a media circus, where politicians are manipulating issues of anti-racism, speaking out as though they were anti-racists, when over the years they have been responsible for the structures and the laws that now imprison, demonise and stigmatise BAME communities.

Lessons Ignored, Struggle Debased

The debate over the IHRA definition in the media and within the political establishment completely ignores the lessons from the struggle against racism. And that is what the IRR sought to draw attention to in its evidence to the Chakrabarti inquiry – the debasing of the anti-racist progressive struggle. Ironically, it was Macpherson's definition of a racist incident as one perceived as racist by the victim – a definition which sought to address and remedy the institutional racism of police who refused to take racist violence seriously, which has compounded the confusion. Of course Macpherson meant that the perception of the victim was the starting point of any investigation into a crime. What he did not mean was to allow anyone who claimed the status of victim, to define a crime and to refuse all investigation, insisting that as victim, they have the last word. That is not justice. Racism impacts on different communities at different times in different ways. But anti-racism, the fight against injustice, cannot be differential, exclusive or sectional. It must be inclusive, opening people out to others' oppression. Above all, it cannot create further injustice.

Samaritans Sends Former Prisoners Back Inside to Help Prevent Suicide

A new Samaritans initiative, run by former prisoners to help new prisoners cope better with life inside, is aiming to reduce suicide and self-harm. The sessions, which have been piloted in two London prisons, have been developed by Samaritans and Her Majesty's Prison and Probation Service (HMPPS), with funding from the Ministry of Justice. The trainers, who have all served prison sentences themselves, helped those newly arrived develop skills to manage any difficult thoughts and feelings. The risk of suicide is higher when prisoners enter or move prisons and, in general, prisoners are at ten times more risk of taking their own lives than people on the outside.

Steve, who ran weekly sessions at HMP Wandsworth, said: "As trainers we all have experience of prison, which really helps give the course credibility among the prisoners. We wanted to create a safe space for them to be able to talk about their feelings and learn to manage them better, to help them cope in prison." Simon, who was trained by Samaritans to deliver the sessions at Wormwood Scrubs, said: "We were able to teach people positive coping strategies and give them back some control over their emotions. I could see how some

prisoners were starting believe that they would make it through even the longest of sentences." Alan, who also ran sessions in Wandsworth, said they had wider benefits too: "These workshops are not just about people helping themselves, they are also about prisoners supporting each other. They could play a part in changing the culture in prison so that people feel able to ask for help and encourage the people around them to get support if they need it."

One participant in the pilot project said: "The session has made a difference to me. I do think about it a lot. It's helped me understand myself more and others more. I've remembered a lot of what we were taught." When asked how useful the sessions were, 86% of prisoners said they were useful or very useful. Prison's minister Rory Stewart said: "We know the early days in prison are some of the hardest. I am grateful to Samaritans for their sensitive support for vulnerable prisoners, which is a valuable contribution to our wider efforts to make prisons places of safety and reform." Samaritans and HMPPS will work together to share learning from the project and to build on the success of the initiative at a time when suicide and self-harm in prisons are a major concern.

Prison Service Needs to Review its Approach to Transgender Prisoners

Transgender prisoners – those, mostly men, who assert a gender identity at odds with their birth sex – pose a challenge for prison managers. Prisons, after all, are social institutions grounded in the gender binary: that one is either male or female. Transgender prisoners challenge such a binary. The current Prison Rules state that male and female prisoners should be kept separate from each other. This is not a British idiosyncrasy. The United Nations Standard Minimum Rules for the Treatment of Prisoners state that 'Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate'.

It does not need spelling out why keeping male and female prisoners in separate accommodation should be one of the minimum expectations for the treatment of prisoners. This important principle has, though, been somewhat eroded by attempts to accommodate those prisoners who assert a gender identity at odds with their birth sex.

The current Prison Service Instruction on transgender prisoners highlights a legal judgement from 2009 that stated that a male-bodied prisoner who had a gender recognition certificate as a female 'had to be transferred to the female estate even though one of her index offences was attempted rape of a woman'. This judgement forms the basis of the current prison service approach. The Instruction also gives senior managers discretion to transfer prisoners who do not have a gender recognition certificate to the estate of their asserted gender identity. It concerns me greatly that we appear to have reached a position where male-bodied prisoners can gain transfer to a women's prison on the basis of assertions about their gender identity. While some transgender prisoners will no doubt sincerely hold beliefs about their gender identity, the system is obviously open to abuse.

So what is to be done? First, it is reasonable for those who express a gender identity at odds with their birth sex to feel that their feelings will be respected. I myself do not feel in a position to pronounce on whether or not 'transwomen are women', as the current mantra would put it. As a man, I also feel uncomfortable about telling women what a woman is. But it is not necessary to take a position on this question to acknowledge that, for whatever reason – and these will be numerous – certain people have beliefs about their gender that differ from their birth sex.

Second, it is important that prisoners who express a gender identity at odds with their birth sex are be held in safe conditions while in prison.

Third, women's prisons should be women-only spaces. By this, I mean we should reaffirm, in line with national and international standards, that they are institutions that hold, exclusively, girls and women whose birth sex is female. There are numerous reasons why this should be the case. Highly vulnerable, often traumatised, prisoners are the rule, not the exception, in women's prisons. Many have faced male sexual violence and exploitation. Consider what it must be like for women who have experienced male violence to have males imprisoned alongside them.

There are other concerns too. The Chief Executive of the Howard League, Frances Crook, told last weekend's Sunday Times that she had 'personally witnessed female prisoners visibly "intimidated" by a male-bodied trans inmate in their midst. "The trans prisoner was dominating the space and the women were round the edges," she said.' While male prisoners asserting a female gender identity should not be sent to women's prisons, the Prison Service needs to give serious thought to transgender wings or other facilities where they can live out their identity in a more comfortable environment than is likely to be the case in a conventional male prison. When it comes to the proper management of prisons, it is important that the welfare and safety needs of all prisoners are taken into account.

My concern about the current approach is that it is appears to privilege the subjective feelings of particular, largely male, prisoners, at the expense of the needs of those prisoners, largely women, who will have to live with the decisions imposed upon them. Not unreasonably, many feel that the needs and interests of female prisoners are being ignored or devalued. The question of how to manage the particular challenges of transgender prisoners is emotive. Strong feelings, sometimes badly expressed, are much in evidence. If we are to find a workable, and fair, solution, it is going to require calm, considered and respectful discussion.

By Richard Garside, Centre for Crime and Justice Studies

HMYOI Deerbolt - Use of Force by Staff Needs More Governance

Inspectors were concerned that violence had risen in the prison – in which three-quarters of the young men were under 21 – since 2014, but violence was lower than in similar jails. Mr Clarke said the jail needed to pay more attention to the governance of use of force by staff. A total of 16% of prisoners reported that they had acquired a drug habit in Deerbolt and this, Mr Clarke said, underlined the importance for the jail of understanding and addressing the issue of drugs. Purposeful activity had declined from reasonably good in 2014 to not sufficiently good in April 2018. It was disappointing, Mr Clarke said, to find that some 35% of men were locked in their cells during the working day, “which was simply not good enough for a training prison. In addition to this, some 33% told us that they were out of their cells for less than two hours per day which, given the age of the population, was unsatisfactory.” Work to prepare prisoners for release had also declined to ‘not sufficiently good.’ Body-worn video cameras were not consistently used, and footage was not reviewed as often as it should be. Where force had been used, there were too many missing staff reports. Documentary and video evidence reviewed during the inspection did not always show that de-escalation techniques had been used appropriately. The presence and use of illicit drugs in the prison was becoming an increasing problem, 16% of prisoners told us that they had acquired a drug habit since being in Deerbolt. In 2017 nearly 180 prisoners were released from Deerbolt, which is not a designated resettlement prison. Despite efforts by the prison, too few men were moved to other prisons where they could take up resettlement opportunities or undertake work to address their offending behaviour prior to their release. It was also of concern that there were a small number of sex offenders placed at Deerbolt, which could not provide appropriate support for this group. 19 recommendations from the last inspection had not been achieved. Inspectors made 52 recommendations.

HMP Bedford: PrisonWatchdog Issues 'Urgent Notice'

HM Chief Inspector of Prisons Peter Clarke has questioned whether the Prison Service’s ‘special measures’ will be sufficient to address serious problems at HMP Bedford after inspectors found very high violence and inexperienced staff struggling to maintain control. Mr Clarke urged the Secretary of State for Justice, David Gauke, to intervene in Bedford prison after a visit in which inspectors feared that “there could all too easily be a complete breakdown in order and discipline.” Bedford, a small local prison with a high turnover of prisoners staying for short periods, suffered a major outbreak of violence in November 2016. A large number of prisoners were subsequently removed but by May 2018 HM Prison and Probation Service (HMPPS) concluded that Bedford was making insufficient progress against an internal Performance Improvement Plan. The prison was placed in special measures by HMPPS, generating a number of action plans. After the inspection at Bedford, which finished on 6 September, the Chief Inspector has invoked the Urgent Notification (UN) Protocol, which enables him to bring significant problems in a jail publicly to the attention of the Justice Secretary, who must respond in 28 days. In a letter to Mr Gauke, published today, along with the feedback given to the governor at the end of the inspection, Mr Clarke wrote: “The clear view of the Inspectorate is that immediate and decisive intervention is needed at HMP Bedford to avert further decline and an even more dangerous lack of control than is currently the case.” The UN letter describes a “continual and unchecked decline in standards” in Bedford over the last nine years, with evidence from the inspection showing: Very high violence. The rate of assaults had risen significantly since the last inspection (in 2016) and Bedford was second only to HMP Birmingham. Assaults on staff were now at the highest rate in the country. A lack of control. Inspectors saw prisoners refusing to comply with directions from staff, without sanction or effective challenge. Some 77% of available officers had less than one year’s service and “there was a corresponding lack of experience at all levels.” Drugs. One prisoner in five said they had acquired a drug habit since entering the jail, and the smell of cannabis and other drugs being smoked pervaded some of the wings. Poor living conditions. Bedford was overcrowded. There was a huge backlog of general repairs. Towels and sheets were only being changed every four weeks and despite efforts to deal with the problem the prison was still infested with rats and cockroaches. Little purposeful activity. The prison lacked a culture of work or learning. Even though there were sufficient activity places for every prisoner, at least on a part-time basis, few chose to attend. Mr Clarke wrote to Mr Gauke: “It is of great concern that for nine years the prison has been on a path of seemingly inexorable decline. Repeated inspection findings clearly show that this has been the case. For much of that time there was a marked inconsistency in the leadership of the prison, with frequent changes of governor. The present governor has now been in post for over a year, and that is welcome. The question for me is whether she and her team, clearly determined as they are to improve the prison, have the capability and capacity to do so… My judgement is that placing the prison in ‘special measures’ does not, in itself, give assurance that the serious issues… will be adequately addressed.”

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