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### I Had My Baby In Prison, So I Know How Jails Are Risking Mothers' Lives

Anonymous: I have never felt so alone. To the staff, you are just another face, another number – and they don't think about your baby I was 16 weeks pregnant when I was sent to prison. When I arrived with my maternity notes in hand, I was left locked in a small room with 16 other women. I complained to the guard that I felt sick. Her response was: "Get used to it." I proceeded to be sick all over myself. I was made to share a cell. My "pad mate" was a smoker, so I was locked in for 18-20 hours a day, breathing in second-hand smoke, knowing my daughter was breathing it too.

While I was in prison I heard of four women who had had their babies in their cells because they weren't believed when they said they were in labour – and were only assessed by untrained staff. You listen to the stories. You see it yourself. You're petrified that this will happen to you. There is no support from most prison staff: you're just another face, another number, and they don't think about your unborn baby. They don't get that. You don't get extra food or fresh fruit and veg for your growing child, even though you're meant to be entitled to it. The staff either don't know or they don't care enough to make sure you get it. You just get a pint of full-fat milk.

I developed SPD (symphysis pubis dysfunction) while pregnant, which causes pelvic pain, so I desperately needed an extra pillow when lying down. But only one pillow is regulation, and the staff didn't know if they were allowed to let me have another one (they were). And that's just a minuscule thing – I had lots of huge questions swirling in my head. For example, who could be present when I had the baby? When would I be taken to hospital? Would I be allowed to have photos of my first precious moments with my baby? Could my family visit? These were things prison staff should have known the answers to. Instead, I just got conflicting replies. For instance, one person said family could take photos – but then another said only someone from the prison could take them.

I applied for a place on a mother and baby unit (MBU), where I would be able to keep my baby with me after she had been born. It wasn't a given that I'd get a place, and the application process is a lengthy and complicated one. You need to get support from social services and all professional parties involved in your case. It's incredibly stressful. But I was "lucky" – I got a place because of my mental health needs, and it was confirmed much earlier than in most cases: many women don't know if they will be able to keep their baby with them right up until their due date, or even during labour.

When I finally made it on to the unit, I was allowed to have items for my child brought in. You get to know the staff there and you feel more at ease. I went into labour – spontaneous rupture – and was sent to the hospital in a taxi with two members of staff. I had no contractions. I had a traumatic birth, I haemorrhaged badly, needing surgery and a transfusion. No one helped me afterwards. I had no one to hold the baby for me so I could get some sleep, with different guards there night and day watching me. I could barely move. I thought, I'm not running anywhere – I just need sleep.

I had never felt so alone and so scared. I stayed in hospital for seven days, and I was desperate to get back to the MBU. The staff there supported me. But that's not to say it was easy, by any means. The MBU is hard – you're forced to go to "work" at eight weeks postpartum, leaving your baby in the care of the nursery. That's especially hard when you are breastfeeding. You can complain and say it's not natural, but the response from all members of staff is the same: "If you don't like it, hand your baby out and get back to the wings."

The attitudes and training of staff need to change. Yes, we are prisoners, but we are also pregnant women. Our children are not subject to the rules and regulations. Extra food, particularly fruit and vegetables, should be made available to all pregnant and breastfeeding women. Staff should be fully trained on how to deal with emergency labour situations. No one but a midwife or a doctor should be making decisions on whether you are in active labour.

### "Deeply Inadequate" Prison Procedures Contributed to Death of Jessica Whitchurch

The inquest into the self-inflicted death of Jessica (Jess) Whitchurch in HMP Eastwood Park has concluded, with the jury returning a damning conclusion identifying multiple failures that contributed to her death following a fatal ligature on 18 May 2016. She died in hospital two days later on 20 May. Jess was one of 12 self-inflicted deaths in women's prisons in 2016, the highest number on record.

Jess was 31 years old and from Nailsea near Bristol. She was from a close-knit family who described her as "the most caring person we have been lucky enough to know", a fun and optimistic person who loved life but struggled with her demons. Jess had a history of mental ill health and addiction as well as repeated self-harm and suicidality. She was openly bullied whilst in HMP Eastwood Park. The jury found that this bullying by other prisoners – described by a mental health worker in the prison as a "campaign" against Jess which was "viciously undermining" of her – had exacerbated her inherent vulnerability. Bullying in her unit was also a concern in relation to another death in 2016.

Contrary to mandatory national guidance there was no healthcare involvement in the prison suicide and self-harm (ACCT) procedures, under which Jess had to be managed repeatedly during her sentence. This, an expert witness told the court, "significantly compromised" the management of Jess' risk to herself. At around 12.19 on 18 May 2016, Jess was found in a state of distress with ligatures around her neck in her cell. Prison staff decided to re-open ACCT procedures and put Jess on twice hourly observations over the lunchtime period. The jury heard deeply troubling evidence about bullying directed at Jess over that period, including goading by other prisoners to ligature herself again.

The Coroner's expert told the jury that the last check on Jess when she was alive had been "inadequate" and that she should have been subject to continuous observation until her condition stabilised. Less than two hours after the first ligatures that day, at 13.28, Jess was found unconscious with ligatures around her neck. Her heart had stopped and she could not be saved. She died in hospital two days later. Jess was an organ donor and her family are immensely proud that after her death Jess donated her kidneys.

In relation to the ACCT being re-opened after the 12.19 ligature incident the jury concluded that "It is our strong view that this process was deeply inadequate". They also found that the following contributed to Jess' death: A failure by prison officers to adequate communicate with each other and with healthcare staff after the 12.19 ligature incident; An "insufficient observational effort by prison officers during Jessica's final hour in her cell"; Bullying and goading at the time of the fatal ligaturing which "went unchallenged" by staff; Organisational failings in prison service staffing.

Emma Gardiner, Jess' sister said: "After a painful two and a half year wait and seven days of extremely distressing evidence the jury has finally confirmed what we have known all along, that Jess' care in the hours before her death was inadequate and that her death was avoidable. All we can hope now is that lessons can be learnt so that the lives of other vulnerable women can be spared, and no family has to suffer as we have. We would like to thank the jury for their hard work and careful consideration of the evidence."

Selen Cavcav, caseworker at INQUEST said: "A jury member at this inquest asked the pertinent question: 'Given her presentation, should Jessica have been incarcerated in prison at all?' This critical conclusion clearly answers that. This country criminalises women for their own suffering, imprisoning them in places that cannot possibly end the cycle of harm or keep them safe. Jess died in the year which saw the highest number of deaths in women's prisons on record. Preventable deaths like hers continue, yet the current action from the government is insufficient. What is urgently needed is focused work across health, social care and justice departments to dismantle failing women's prisons and invest in specialist services for women in the community."

### Iran: Lawyer Faces 74 Lashes for Questioning Detainee's Death

An Iranian lawyer who raised questions about the death in custody of a young client has himself been sentenced to three years in prison - with 74 lashes. According to pressure group the Center for Human Rights in Iran, Mohammad Najafi has been sentenced for 'disturbing the state' and 'publishing falsehoods' after advocating for a young client who died in police detention. Najafi began his sentence in the western city of Arak on 28 October. In January 2018, he had told media outlets about the case of Vahid Heydari, 22. He had suggested that the authorities were trying to cover up the real reason for Heydari's death by claiming he had committed suicide. Officially the judiciary are responsible for ensuring the safety and well being of detainees held in state custody but no one has been investigated or held responsible for the death. Instead Judge Ghasem Abdollahi of the Appeals Court in Markazi Province upheld the three-year prison sentences and 74 lashes for Najafi and activists Ali Bagheri and Abbas Safari. 'I have been a lawyer and writer for years and during this time I have been repeatedly charged and acquitted,' Najafi said in May this year. 'The authorities themselves have told me that they are trying to grind me into oblivion.' Najafi's lawyer has filed a complaint with the Iranian Supreme Court. The New York-based Center for Human Rights in Iran describes itself as an independent, nonpartisan and nonprofit organization working to protect and promote human rights in Iran. The group has also raised new concerns about imprisoned defence lawyer Nasrin Sotoudeh, saying she has been barred from receiving visits from her children and other family members in Tehran's Evin Prison. 'First the Iranian authorities imprisoned Sotoudeh for defending human rights and now they're harassing her in jail by taking away the few rights she has left, including visits with her children,' said Hadi Ghaemi, executive director.

### Prison Inmates Engaged in Fighting California's Deadly Ever Wildfire Paid $1 an Hour

Andrew Buncombe, Independent: Around 200 prisoners are involved in the fight against the Camp Fire, that has so far claimed 77 lives and destroyed the community of Paradise in northern California. Around 1,000 people have been listed as missing by emergency teams, although the list is not considered fixed. Meanwhile, as many as 3,700 inmates are among the estimated 9,000 firefighters currently tackling various blazes throughout the state. Approximately 2,600 of those are 'fire line qualified'inmates. "An inmate must volunteer for the fire camp programme; no one is involuntarily assigned to work in a fire camp," Alexandra Powell, a spokesperson for the California Department of Corrections and Rehabilitation (CDCR), told The Independent. Volunteers are screened on a case-by-case basis and must have "minimum custody" status, or the lowest classification for inmates based on their sustained good behaviour in prison, their conforming to rules within the prison and participation in rehabilitative programming, she said. She said volunteers must must have five years or less remaining on their sentence to be considered



Reports suggest the use of inmate labour to tackle wildfires saves the state as much as $100m (£77.8m) a year, and that the so-called Conservation Camp Programme, has made prisoners available since the 1940s. Yet, campaigners say their involvement is not without problems. At least six inmates are believed to have died fighting fires since 1983 and the prisoners do not receive the same legal protections as other firefighters, the activists said. "Most prisoners want to work, and jobs for prisoners can be a very positive thing. A job can provide an escape from the crushing monotony of prison life – a chance to do something productive, earn a little money, and maybe even learn some skills that are useful in and of themselves and useful when reentering society," said David Fathi, director of the national prison project at the American Civil Liberties Union (ACLU). He added: "That said, given the vast power inequality between prisoners and their employers, there is also a persistent and real potential for exploitation and abuse.

"Prisoners are excluded from the legal protections enjoyed by all other workers. They're not allowed to unionise. They're not covered by minimum wage laws, and the paltry wages they do earn can be seized by the prison." Ms Powell, of the CDCR, said inmate firefighters receive wildland firefighting training from California Department of Forestry and Fire Protection (CAL Fire), and would obtain the same amount of training as a seasonal firefighter. "It is important to note that through rehabilitation, and programmes like the fire camp programme, inmates learn useful skills that can help them on the outside," she added.

### IPP Prisoners Opportunities to Progress Towards Release

Hilary Benn: To ask the Secretary of State for Justice, what progress he has made on the review of sentences for public protection; and how many cases have been reviewed to date.

Rory Stewart: Whilst HMPPS is focused on giving all IPP prisoners opportunities to progress towards release, public protection is our priority. According to management information held by HM Prison and Probation Service (HMPPS), over 1,300 case reviews of prisoners serving a sentence of imprisonment for public protection (IPP) have been completed to date. These are psychology-led reviews designed to help post-tariff IPP prisoners, who have had at least two previous unsuccessful parole reviews and who have never been to open conditions or been released into the community. For this particular cohort, as of August this year, 131 such prisoners have subsequently achieved release, with a further 252 achieving a move to open conditions. More generally, HMPPS have been working to improve the management and progression of IPP prisoners for some time, which is evident in the increasing number of overall releases we have seen in recent years: 576 in 2016 and 616 last year.

### Review of Court of Appeal to Correct 'Technical Glitches'

*Jon Robins, 'The Justice Gap':* The government's law reform body looks set to review criminal appeals although it is unclear whether any review will satisfy the court's critics. Speaking at the Criminal Appeal Lawyers Association earlier in the month, Professor David Omerod, the Law Commissioner for criminal law, said that the group was 'keen' to turn its attentions to the Court of Appeal.

Last year the Law Commission shortlisted a review of the Court of Appeal's grounds for allowing appeals as a potential project. This followed a decision by the government to reject the recommendations of a 2015 House of Commons' justice select committee investigation into the Criminal Cases Review Commission. The MPs then urged the CCRC to be 'less cautious' and refer more cases back to the Court of Appeal. 'If a bolder approach leads to five more failed appeals but one additional miscarriage being corrected, then that is of clear benefit,' they said.

In September 2015, the then Lord Chancellor Michael Gove ruled out acting upon the MPs' recommendation following the written assurance of a former Lord Chief Justice. Gove took the view that there was not 'sufficient evidence' that the court's approach had 'a deleterious effect on those who have suffered miscarriages of justice'. It is now understood that the focus of any review by the Law Commission is likely to correct 'technical glitches': for example, to clarify the court's powers to allow it to impose sentences to ensure serious offenders can be supervised for longer in the community on release to protect the public; and to correct the period of disqualification for drink drivers serving time in prison.

The Law Commission would also look at reforms to cut down on unnecessary court hearings to save money and improve efficiency. To that end, the Law Commission would consider consolidating appeal rights and allowing the court to focus its resources on those cases which matter the most.

In the Law Commission's 13 programme for reform published at the end of last year, a review of the court was described as a 'potential' project. That specifically addressed concerns raised by the 2015 justice committee and the role of the Criminal Cases Review Commission 'and the continuing appropriateness of the arguably over restrictive "reasonable possibility" test' under the Criminal Appeal Act 1995. Albeit those concerns were framed in the context of dealing with the increasing work load of the Court. 'The CCRC serves an important function but is arguably struggling to fully realise its role in the appeals system given recent and numerous criticisms of decisions taken and cases referred to the Court of Appeal under the 1995 Act. The growing workload of the Court of Appeal… and the CCRC is also of concern, although the interests of access to a fair remedy must take precedence.'

**Secret Court Overturns Home Office Decisions to Deprive Two Men of British Citizenship**

Duncan Lewis, Solicitors: Both E3 and N3 are British by birth and have Bangladeshi heritage. In June 2017, E3 was deprived of his citizenship after visiting Bangladesh to be present at the birth of his daughter. In October 2017, N3 was deprived of his citizenship after leaving the UK to go to Turkey for business for a few weeks. Both men were deprived of their citizenship on national security grounds days before they were due to return to the UK. They suddenly found themselves stranded in foreign countries without any source of income or support.

The Commission heard expert evidence from both sides and ultimately found that Bangladeshi citizenship law required both men to have formally applied to retain their Bangladeshi citizenship upon reaching the age of 21, and by failing to do so, they had allowed their citizenship to lapse. Since they did not possess Bangladeshi citizenship on the date of the British citizenship deprivation orders, the effect was to render them stateless. As such, the decisions were unlawful and both appeals were allowed.

The implications of the judgment are significant: 1. The UK can no longer deprive UK nationals, who are British by birth but of Bangladeshi origin, of their citizenship where they are over the age of 21 and where they have never applied to retain their Bangladeshi citizenship. To do so would render them stateless and would be unlawful. 2. Citizens who fall within this category who have already had their citizenship revoked can appeal the decisions or reopen their cases on the basis that they have been rendered stateless.

Solicitor for the Appellants, Fahad Ansari, commented: "While we welcome the decision of the Commission, it is of deep concern that there appears to be an ongoing practice of the Secretary of State to deliberately wait until individuals leave the UK before depriving them of their citizenship. If the Secretary of State had evidence that my clients were involved in criminal activity, he should have passed that information to the police and the Crown Prosecution



Service to put them on trial before they left the UK. Instead, he deprived them of their citizenship on national security grounds during their absence. The Secretary of State's practice of depriving individuals of their citizenship while they are abroad without any form of due process is nothing less than a return to the medieval penalties of banishment and exile."

**Nedim Yasar: Reformed Gangster Shot Dead After Book Launch**

BBC News: A former Danish gang leader who produced a memoir detailing how he left a life of crime has been fatally shot just a day before his book's release. Nedim Yasar, 31, was targeted as he left a book launch on Monday 19th November 2018, in the Danish capital, Copenhagen. The gunman fled the scene on foot, police said. Yasar was taken to hospital but died of his injuries. His memoir, entitled Roots, was published on Tuesday. He had reported that he was the victim of an attempted assault last year.

In the incident on Monday, which was reported shortly after 19:30 local time (18:30 GMT), a suspect dressed in dark clothing fired "at least two shots" at Yasar, the Copenhagen Police Department said in a statement. An investigation is under way and police are "seeking witnesses" to shed light on the matter, the statement added.

Yasar, who was born in Turkey and arrived in Denmark at the age of four, had led the Copenhagen-based criminal gang Los Guerreros - a notorious gang with links to the drugs trade, according to police. He quit the gang in 2012 to join an exit programme after he discovered that he was going to be a father, Danish news agency Ritzau reported. He then became a mentor for young people and made a name for himself with a show on local radio station Radio24syv. Following news of Yasar's death on Tuesday, the station tweeted an image of its office building with the Danish flag at half mast in tribute, along with a message that reads: "Farewell Nedim Yasar, and thanks for everything."

**Litigants In Person – An Inherent Problem With the Justice System**

Matthew Richardson, barrister at Coram chambers considers the fundamental problem with re-shaping our justice system around a huge increase in litigants in person, caused by the removal of legal aid provision from most cases

There is an inherent problem at the heart of the justice system of England and Wales. It comes as a direct result of cuts to legal aid provision, in the form of a huge increase in the number of litigants in person. This article sets out to consider the fundamental flaw in a system that is increasingly built on the expectation that just and fair outcomes can still be achieved to an acceptable level when a significant portion of litigants do not have the benefit of a lawyer.

For the record, what this article is not is an evidence-based analysis of the measurable impact that the post-LASPO rise in litigants in person (LiPs) has had, for example on rates of conviction in the criminal courts or rates of child arrangements orders in the family courts. For one thing, the glaring absence of proper statistics from the government makes the task of writing such an article virtually impossible. For another, as will be shown below, there is a problem of such a vital nature that showing it does not rely upon statistics and gathered evidence.

The problem is building a system of justice that relies upon people representing themselves overlooks the inherent fact that it punishes people who are less able to litigate, rather than whose case is less deserving. This is not how a fair system should operate. A case should be decided on the basis of the relative merits of each side's evidence and argument.

(And make no mistake: our system's rules include specific provisions that LiPs cannot use the

absence of a lawyer as an argument that the case they present should be analysed differently. This must be right: simplifying the system to remove inefficiency and irrelevance, thus making it easier for litigants in person to engage with, is one thing but doing so past a certain point is to reduce the system's integrity. This is why the system cannot permit the fact of not having a lawyer to be part of the reasoning behind a final outcome – the laws are the laws and the rules are the rules, and to have a system that demands less of some parties than of others is to have a system that is not fair.)

Clarity of thought and subtlety of understanding are not by any means universal and the reason people need lawyers is that often the justice and fairness in a situation are difficult to identify and difficult to explain. A system of laws to govern a nation of millions will always be complex and therefore so will navigating it in difficult disputes. Such navigation requires expertise.

A lot of people have not been taught how to think well. Errors and bias in thinking are common. Human brains are flawed machines, highly prone to error. A cruel irony is that among the flaws is an inability to realise the mistakes we tend to make. Clear, logical, evidence-based thinking is a skill that requires training and practice. Therein lies the problem with creating a situation where vast swathes of people are forced to represent themselves. Whilst some exceptional LiPs will have the skills needed to present their case to a high-enough standard, across a large enough set of people (for example the 64,000 people, or 64% of the total number, who brought private family cases acting as LiPs in 2016-17) an unacceptably large majority of those people will simply lack the ability to identify their best evidence or their best arguments let alone present them effectively.

There is a vital difference between having a good case and finding and presenting that case. The fairness in a dispute can only be identified by the court if the court is able to clearly perceive the different sides. If a party is inherently less able to find the crucial evidence and connect it to the relevant law, then that party is inherently less able to present their case in the best way.

The justice system does not, and cannot, care about things that aren't presented to the court. In court it's not about what's true in real life, it's about what's true on the evidence. As Lord Neuberger, the former President of the Supreme Court, said in 2017: "I have no doubt but that the legal team can make a real, often a crucial, difference to the outcome of a case, in identifying the issues, the points to be taken, the evidence to be called and the authorities to be read. In the 1983 House of Lords Air Canada case in 1983, Lord Wilberforce said this: 'There is no higher or additional duty to ascertain some independent truth. It often happens, from the imperfection of evidence, or the withholding of it, sometimes by the party in whose favour it would tell if presented, that an adjudication has to be made which is not, and is known not to be, the whole truth of the matter: yet if the decision has been in accordance with the available evidence and the law, justice will have been fairly done.'"

A lawyer's job is to find and present the best case they can. And there is a reason why it's a job in the first place – this is a difficult matter of specialism and expertise, and one that requires resources (such as those offered by law firms and barristers' chambers). LiPs will never get close to being able to compete. Therefore, ultimately, in most situations, a LiP will be disadvantaged in all but the most straightforward cases compared with someone represented by a trained and competent lawyer. With a system populated by large numbers of LiPs, it is inevitable that strong cases and good arguments will go unheard.

If we want our system to produce outcomes based on who has the clearest evidence and the strongest arguments then we need to provide everyone with the ability to present them. Our system no longer does so. Ours is now a system where those with more money to pay for lawyers are more likely than ever before to win cases. If lawyers' primary concerns are winning their clients' cases then perhaps this is of minor concern because the more often a lawyer comes up against a LiP the



more often they are likely to secure the outcome their client wants. However, if we care most about our system being one that produces fair and just results then this is a major problem.

The government has decimated legal aid provision and now appears intent on simply adjusting the administration of the system to make it easier for LiPs to use. This is simply not good enough. We don't think about simplifying the medical system so people can diagnose and treat themselves, why are we treating the justice system differently?

If anyone could do the job of a lawyer, there would be no need for the expansive and exacting set of rules and regulations governing how solicitors and barristers deliver their services. Ours is a regulated profession for a reason – it is both important and complicated – and if cases weren't difficult to argue then we wouldn't need judges to decide them.

Ultimately, one is brought back to the question of why we have legal aid at all. The answer is to provide access to justice. We provide lawyers to those who cannot or should not be expected to pay for them because it is more important that all people have access to fair outcomes than it is that some people will have to pay tax to enable them.

Giving access to the litigation process and to a courtroom is not the same thing as giving access to justice if the playing field is inherently uneven, which it is for most litigants in person.

**Scotland: Number of Prisoners on Home Release Drops Following Introduction of Stricter Rules**

Scottish Legal News: The number of inmates released from prisons on a home release tag has dropped by 75 per cent following the introduction of rules brought in after a man committed murder while on the run. New rules governing home detention curfews were outlined in October after the killing of Paisley man Craig McClelland. Chief executive of the Scottish Prison Service (SPS), Colin McConnell, told Holyrood that the new rules had cut the number of prisoners granted home release from 30 per week to seven. James Wright was unlawfully at large, having breached his home release curfew five months earlier, when he murdered Mr McClelland.

Following a review of the scheme in the wake of that case, Justice Secretary Humza Yousaf has announced "additional safeguards", among them extra exclusions preventing prisoners being considered for home detention curfew. There is now a presumption against releasing people who have been involved in acts of violence. Mr McConnell said: "In terms of the situation now, there is a considerable restriction and presumption against the grant of HDC, which has resulted in, since these new measures were introduced, approaching a 75 per cent reduction. "Where at one time we may well have been between 25 and 30 grants of HDC per week, we're now down to seven." He also said prison governors should "take a broad look at someone's offending history".

He said: "I think if there's any indication that certainly if somebody has used a weapon or an implement against another person, but any sort of indication of meaningful serious violence, almost no matter how far back that is, my encouragement to governors is to be cautious. "The presumption would be, with somebody with a back-story like that, I would be reluctant to grant them HDC. And that's the guidance I'm giving to governors."

In response to the question whether this could hold back prisoner rehabilitation, he said: "I think, over time, if we have a mature discussion about that in the light of experience, it might well be that a different consideration might well emerge. But I think that will be based on experience and mature discussion. "It might well be that the view forms that my approach and SPS's approach currently is far too narrow, too conservative - with a small c - in that sense. "But at the moment I think our approach is reasonable, and probably necessary, in order that we can establish some confidence going forward in the HDC decision-making process."

**Peers Criticise Growing Use Of 'Henry Viii' Powers By Successive Governments**

In a report the House of Lords Constitution Committee criticised the seeking of broad delegated powers that permit the determination as well as the implementation of policy, and in particular the use of such powers to create criminal offences and establish public bodies.

The report concludes that: Delegated powers are necessary: "they allow Parliament to focus on the important policy frameworks and decisions and leave the detail of implementation to secondary legislation". Broad or vague powers, sought by the Government for convenience or flexibility, are unacceptable: "The Government must provide a full and compelling justification for all delegated powers and it is for Parliament to decide whether that justification is acceptable." Henry VIII powers, which permit changes to primary legislation to be made through secondary legislation, "are a departure from constitutional principle".

Secondary legislation has been used inappropriately to give effect to significant policy decisions. Scrutiny of statutory instruments is an essential part of Parliament's work, and the Government must take more account of parliamentarians' concerns when deficiencies are identified. "If it does not do so, in exceptional circumstances Parliament should use its powers to block such instruments and require the Government to think again."

Chair of the Committee Baroness Taylor of Bolton said: "We are very concerned about the increasing use of broad delegated powers by successive Governments. Delegated powers should not be sought purely for the convenience of the Government, especially where it is hard for Parliament to assess how they might be used. "Parliament has rarely rejected secondary legislation, and this remains the right approach. However, such restraint may not be sustained if the Government persists in the inappropriate use of delegated powers. We remind the Government that defeat on a statutory instrument need not be considered momentous or fatal. The Government can always lay a revised instrument the following day to respond to Parliament's scrutiny and correct deficiencies."

**"Madam Moneybags"' Legal Bid for Review of Conviction for Brothel Keeping 'Time-Barred'**

Scottish Legal News: A woman found guilty of running a brothel and escort business in Edinburgh who claimed she suffered a "miscarriage of justice" has failed in a legal challenge against a decision of the Scottish Criminal Cases Review Commission (SCCRC) to reject an application to refer her case to the High Court of Justiciary for an appeal. Margaret Paterson, dubbed "Madam Moneybags" following her conviction in 2013 of a number of offences relating to aiding prostitution, claimed that the decision not to refer her case was "procedurally unfair" because the SCCRC had taken into account two letters from the Crown Office on its policy on prostitution which she had not seen. However, a judge in the Court of Session refused the petition for judicial review because the petitioner failed to raise the proceedings within the statutory three-month time limit.

'Crown Office policy' - Lady Clark of Calton heard that the petitioner, who was sentenced to five years' imprisonment following her trial in 2013, had sought leave to appeal against her conviction and sentence, but having been granted leave to appeal against sentence only her appeal was ultimately refused. In December 2014 the petitioner made an application to the respondent and alleged that she had suffered a miscarriage of justice, on the basis of alleged "defective representation, prejudicial pre-trial publicity and judicial misdirection". After investigation and further procedure, the respondent issued a decision and statement of reasons dated September 2015 and a decision and supplementary statement of reasons dated 31 May 2016, explaining that it had "finally decided" not refer the case.



Following an application for review by the petitioner dated 19 December 2016, in which her solicitor raised the issue of the "Crown Office policy" not to prosecute individuals operating licensed saunas as brothels, the respondent issued a further decision and statement of reasons dated 27 January 2017, which concluded not to make a reference to the High Court in respect of all the grounds raised. The petitioner then lodged the petition for judicial review on 25 April 2017 seeking reduction of the respondent's decision dated 27 January 2017 and an order requiring the respondent to reconsider its decision. The basis of the challenge was that the respondent had decided not to make a reference after taking into account the two letters from Crown Office, which had not been seen by the petitioner. The letters explained that in the 1980s there was a local authority licensing scheme in place whereby prosecution for keeping brothels would not take place in certain circumstances, and the petitioner claimed that this "policy" led to the Crown ceasing prosecutions against 11 others accused of similar offences.

However, in its statement of reasons the respondent explained that the ground of review was "the same, or substantially the same, as one of the grounds submitted by the applicant's solicitors to the commission in the course of its previous review" and that there was no good reason for disagreeing with that outcome, as the 1980s scheme was not relevant to the applicant's case since her convictions did not relate to any premises licensed by the local authority.

'Not a Miscarriage of Justice' - Having been granted permission for her judicial review to proceed, the issue for the court was whether the petitioner had made her application to the court before the end of the period of three months beginning with the date on which the grounds giving rise to the application first arose, as set out in section 27(1)(a) of the Court of Session Act 1988; and/or whether in the circumstances it was equitable to extend the three-month period under section 27A(1)(b). On behalf of the petitioner it was submitted that the December 2016 application amounted to a "fresh application" and the petitioner was not simply asking the respondent to remake an earlier decision, because "new information" had become available that the "non-prosecution policy" was wider than that described by the respondent in its statement of reasons dated May 2016.

In that event the three-month time limit ran from 1 February 2017 - the date of notification to the petitioner of the decision and statement of reasons dated 27 January 2017 - meaning the petition, having been lodged on 25 April 2017, was "not prima facie time barred". In relation to extending the time bar, counsel accepted that there was a public interest in the finality of criminal proceedings, but submitted there was also important considerations in relation to the "interests of justice" if an individual accused was convicted in a "miscarriage of justice", such as in the case of the petitioner, who had been prosecuted in circumstances where the Crown did not disclose potentially relevant information about a relevant prosecution policy.

However, the principal submission for the respondent was that the application by the petitioner for judicial review was "time barred". The grounds of review were to the effect that the decision was procedurally unfair because it was based on material from the Crown Office letters that had not been seen by the petitioner, but it was plain from the decision and reasons dated 27 May 2016 that it would have been open to the petitioner to raise an action of judicial review from that date. It was argued that the time limit started to run from 27 May, or, at the latest, 22 August 2016 when the respondent refused a request by the petitioner to provide a copy of the Crown letters about the prosecution policy, but the petition was not lodged until 25 April 2017. Counsel for the respondent submitted that, if the court did not accept the time bar plea, it was not equitable in all the circumstances to extend the three-month period due to the general public interest in the efficiency of administration; the length of delay; the lack of any fault by the respondent for delay;

the availability of legal representation and assistance to the petitioner and the information available to the petitioner on which to raise a judicial review petition timeously.

'Not equitable to extend time limit' - In a written opinion refusing the petition, Lady Clark said: "My starting point is a consideration of the terms of section 27A(1)(a) of the 1988 Act. In my opinion the statutory wording is perfectly plain. It is necessary to identify 'the date on which the grounds giving rise to the application first arise'. In some cases this identification might cause some difficulty but not in this case. I consider that the grounds underpinning the petition relate to the decision by the respondent to reach a decision based on material not seen in full by the petitioner. The petitioner claimed that this was procedurally unfair and contrary to natural justice. It is clear from the factual history, which I have summarised, that the petitioner was informed that the respondent relied on the Crown Office letters as partially disclosed in its decision and supplementary statement of reasons dated 31 May 2016. I consider that it was open to the petitioner thereafter to make a timeous challenge by way of judicial review on the grounds which underpin the present petition. The petitioner failed to do so and the present judicial review was not brought within the time limits specified in section 27A(1)(a) of the 1988 Act."

In considering the arguments in relation to the extension of the time limit under section 27A(1)(b), the judge observed that the expectation of counsel for the petitioner appeared to be that if the full terms of the Crown Office letters could be obtained, somehow this would assist her case. Lady Clark added: "This expectation seemed to be based on a rather unrealistic hope standing the terms of the prosecution policy which had been disclosed. I take into account that there have been months of delay before raising the present petition and in my opinion no good reason has been advanced to justify such a delay. Having considered all the factors prayed in aid by counsel for both parties, I am not persuaded that it is equitable to extend the period of three months selected by the legislature for reasons of good governance and public policy."

**Avagyan v. Armenia Not Allowed to Question Forensic Witness Violation of Article 6**

The applicant, Khosrov Avagyan, is an Armenian national who was born in 1946 and lives in Yerevan. The case concerned the applicant's complaint that he had not been able to examine forensic experts in court although their evidence had played a key role in his conviction for murder. The charges arose from the fact that he had inherited an apartment from an elderly lady who had died in January 2007. The initial autopsy found that the lady and her sister, who died at the same time, had suffered from hypothermia. In June the ladies' niece complained that the apartment had actually been left to her in an earlier will and the authorities began an investigation. They ordered post-mortem forensic examinations, which found that both sisters had died of phosphorous poisoning. Mr Avagyan was charged with fraud and two counts of murder for gain in September 2007 and placed in detention. At his subsequent trial he asked for the experts who had delivered the conflicting autopsy reports to be summoned but the courts repeatedly rejected that request. He was found guilty on two counts of aggravated murder for gain and sentenced to life imprisonment in October 2008. His appeals were all dismissed. Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, Mr Avagyan complained that he had not been given the opportunity to examine the experts in order to challenge the credibility of their opinions, which had been decisive in securing his conviction. Violation of Article 6 §§ 1 and 3 (d) Just satisfaction: 900 euros (EUR) for non-pecuniary damage.



**Eleven Inmates of Grevena Prison Ill-Treated During Search of Their Cells In 2013**

In Chamber judgment in the case of Konstantinopoulos and Others v. Greece (no. 2) (application no. 29543/15) the European Court of Human Rights held, unanimously, that there had been: The case concerned inmates of Grevena Prison who had complained of ill-treatment inflicted on them by members of a special police anti-terrorist unit during a surprise search of their cells in April 2013. a violation of the substantive and procedural limbs of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as regards eleven of the applicants, and no violation of the substantive and procedural limbs of Article 3 as regards ten of the applicants. The Court found in particular that the injuries found on eleven of the applicants had occurred during the April 2013 search and that they had attained the requisite threshold of severity to fall foul of Article 3. The Court also ruled that the acts in question had constituted ill-treatment rather than torture. The Court noted failings on the part of the Greek authorities during the investigation into the allegations of ill-treatment, considering that the latter had not been thorough, prompt or independent.

Principal facts: The 22 applicants are Greek, Albanian and Bulgarian nationals who are detained in Grevena Prison (Greece). On 13 April 2013 a surprise search was carried out of cells in Grevena Prison on the basis of information pointing to a possible prison break or mutiny. The search was conducted in the presence of a public prosecutor by prison staff, assisted by police officers belonging to the IIEKAM" (a special anti-terrorist unit). After the search 28 prisoners were examined by the prison doctor, who noted bruises and traces of dermatitis, but was unable to determine their cause.

A few days later, a number of prisoners lodged a complaint with the public prosecutor's office of Grevena Criminal Court, alleging, in particular, that the EKAM officers had made excessive use of Tasers against 31 prisoners, had struck them and verbally abused them and had forced them to crawl on their hands and knees to the prison sports hall, strip naked and stand facing the wall for some time. A preliminary investigation was conducted, reaching the conclusion that no disciplinary offence had been committed. The police chief shelved the case. In November 2014 the public prosecutor with the criminal court decided that there was insufficient circumstantial evidence to bring criminal proceedings. The following month, the prosecutor with the court of appeal decided to drop the case.

Decision of the Court - Article 3 (prohibition of torture and inhuman or degrading treatment)
1. JI / - treatment inflicted on eleven applicants (substantive limb)

The Court noted that the EKAM police unit had not been suddenly called in to deal with any spontaneous prison mutiny. Their intervention had been ordered and organised by the prison authorities and the public prosecutor's office. The applicants had therefore not been injured during a random operation which might have given rise to unexpected developments triggering an impromptu reaction from the police, but during an operation which had been planned and sufficiently prepared for in terms of risk assessment. The Government attempted to justify the use of force with arguments relating to general security in the prison. Drawing on the findings of the prosecutor who had conducted the investigation, the Government submitted that the EKAM unit had been warned by the prison authorities that most of the prisoners were armed with improvised knives, that some prisoners had thrown objects at the EKAM officers, kicked over tables and attempted to occupy the corridor running along the cells in order to take control of the area outside the cells and confront the police. However, the Court noted that the same report pointed out that the prisoners had gone into their cells and that the cell doors had been immediately closed. Subsequently, the doors had been opened

one by one and the EKAM officers had entered the cells in order to prevent any attempt at resistance by the prisoners or attacks with the aforementioned improvised weapons. The Court deduced that the whole EKAM team and the prison staff should have searched just one cell and its three occupants. Even supposing the latter had refused to comply, the Court considered that the security of the prison and the need to check on three prisoners who might have thrown objects and kicked over tables had necessitated the use possibly of truncheons, but certainly not of Tasers. However, the forensic doctor's report had specified that some of the applicants had injuries which could have been caused by Tasers. Furthermore, during the administrative inquiry, one of the police officers questioned had stated that when the prisoners had reacted aggressively by throwing objects and kicking over tables, the police officers had used their Tasers. The Court therefore considered that the injuries noted on eleven of the applicants (in the forensic doctor's report) had occurred during the search of 13 April 2013, and that they attained the requisite threshold of severity to fall foul of Article 3. It also held that those applicants had sustained ill-treatment and not been tortured. There had therefore been a violation of Article 3 in respect of eleven applicants.

2. Lack of an effective investigation as regards eleven applicants (procedural limb)

The Court voiced doubts about the impartiality of the prison doctor, who had been a prisoner himself and who, after examining the applicants at the end of the cell search, had claimed that he was unable to determine the cause of the bruises and traces of dermatitis. The Court also noted that the senior police officer and the public prosecutor had not intensified their investigation despite all the contradictory statements emerging about the use of Tasers. It further observed that the authorities had not acceded to the request submitted by the applicants' representatives for a copy of the audio and video recording of the prison on the day of the search. Moreover, the authorities had failed in their obligation to conduct a thorough and prompt investigation: some twenty months had elapsed between the time of the applicants' complaint and the authorities' decision to discontinue the case.

The Court also considered that there had been no independent inquiry into the allegations of ill-treatment: the inquiry had been assigned to a prosecutor attached to Grevena Criminal Court, even though the prosecutors of that court were also the prosecutors responsible for supervising Grevena Prison, one of whom had, furthermore, been present during the cell search of 13 April 2013. As regards the action for damages provided for in Article 105 of the Civil Code, the Court noted that that provision only applied to cases of damage caused by unlawful acts by State bodies in the exercise of public authority. In the instant case, however, the administrative inquiry had detected no unlawful act or omission on the part of the police. Therefore, an action based on Article 105 would have had no real chance of succeeding. In that connection, the Court pointed out that the obligation imposed by Article 3 on a State to conduct an investigation geared to identifying and punishing persons responsible for ill-treatment would be illusory if, in the context of a complaint lodged under that article, the applicant were required to exhaust a remedy which could only lead to an award of damages.

The Court therefore noted shortcomings on the part of the Greek authorities in the investigation conducted into the allegations of ill-treatment, and held that that investigation had not been thorough, prompt or independent. There had therefore been a violation of the substantive limb of Article 3 (investigation) in respect of eleven applicants. The Court held that Greece was to pay each of the eleven applicants, whose names were specified in the judgment, 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,500, jointly, in respect of costs and expenses.



## New Sentencing Code to Help Prevent Unlawful Sentences Being Handed Out

A new Sentencing Code will reduce the number of unlawful sentences being handed out and save £250 million over ten years, the Law Commission has announced today. When they sentence offenders, judges have to contend with more than 1,300 pages of law filled with outdated and inaccessible language. This law is contained in over 65 different Acts of Parliament, and has no coherent structure. This makes it difficult for judges to identify and apply the law they need, which can slow the process of sentencing and lead to mistakes. The Commission is recommending that anyone convicted from now on should be sentenced under a simplified and modern Sentencing Code. This would mean that judges would no longer need to search back through layers of old law. This would decrease the number of unlawful sentences handed out, avoid unnecessary appeals and reduce delays in sentencing.

The Need For Reform: Last year, 1.19 million sentences were handed out to offenders in England and Wales. However, the unnecessary complexity of sentencing legislation has led to a disproportionate number of errors and unlawful sentences being imposed. For example, one study found that over a third of sentences (36%) considered by the Court of Appeal involved an unlawful sentence.

The outdated language and need for judges to examine historic versions of sentencing procedure law also gives rise to inefficient court procedures. Combined with other pressures on the criminal justice system, this contributes to significant delays in justice for victims and offenders. On average, it takes 53 days in a magistrates' court and 200 days in the Crown Court from charge to the end of the trial process. These problems damage public confidence in sentencing but also result in delays, an unnecessary number of appeals, and waste millions in public money.

## HMP Manchester – Less Safe and Respectful - Marked Deterioration

HMP Manchester, a local jail with a small number of high-security prisoners, was found by inspectors to have become less safe and respectful, and deteriorated in its provision of training and education, over four years. 39 Recommendations from the last inspection had not been achieved.

Peter Clarke, HM Chief Inspector of Prisons, said that in 2014 the prison had been assessed as reasonably good across all four of HM Inspectorate of Prisons' 'healthy prison tests.' In June and July 2018, only its rehabilitation and release work had remained reasonably good. It was now assessed as 'not sufficiently good' for safety, respect and purposeful activity, in what Mr Clarke described as a "disappointing inspection". He warned the prison against complacency in its view of its own performance.

Levels of violence were significant, had increased since the last inspection and were now comparable to similar prisons. In the six months to the inspection there had been 177 assaults, 45 of them on staff, a threefold increase since 2014. Use of force by staff was also increasing and was now also comparable to levels in similar prisons. The quality of scrutiny had not, however, kept pace with the increase. Two-thirds of prisoners said they had felt unsafe during their time at Manchester, and a third felt unsafe at the time of the inspection. Nearly two-thirds indicated that they had been victimised by other prisoners and over half felt victimised by staff.

Inspectors noted good, if new, work to tackle poor behaviours at the jail, though the prison was urged to address its weakness in "consideration of the influence on violence of poor living conditions, the attitude of staff and illicit drug use." The prison had a significant drugs problem. Some 71% of prisoners said staff treated them with respect and a similar number said they knew a member of staff they could turn to if they had a problem. Inspectors saw "considerable staff enthusiasm" on a wing dedicated to the reintegration of difficult and challenging individuals

and, generally, there were many positive interactions between staff and prisoners.

However, Mr Clarke added: "Work towards the creation of a rehabilitative culture, an aim of the prison, was slow. There was evidence, including prisoners' perceptions of victimisation by staff, that pointed to a small but influential number of operational staff who were disengaged and impeding the positive aims of the prison. The need to encourage and support the positive contribution that staff should be able to make was of sufficient importance, in our view, to make it the subject of one of our main recommendations." The report noted that this group "demonstrated little respect for prisoners and sometimes fellow staff." Inspectors found too many prisoners, some 40%, locked up during the working day, despite the provision of sufficient activity places for all. Public protection work, however, in a prison with many high-risk prisoners, was generally good and release planning was reasonable in addressing most needs.

Overall, Mr Clarke said: "HMP Manchester is a complex prison with a very important role in protecting the public. The prison seemed to be adequately resourced and we were told that the prison had been improving of late. Local managers had a stated commitment to ensuring the basics were right, although if we had an overarching criticism it would be that, in fact, the basics were not always well attended to. The prison had to guard against complacency and in many respects 'up its game'."

### HMP Send – Need to Address Deterioration in Education, Work and Training

HMP Send, a closed training prison for women, including many high-risk offenders, was found by inspectors to have kept up high standards of safety, respectful treatment and rehabilitation and release planning. The Surrey jail had, however, undergone a disappointing deterioration in its provision of 'purposeful activity' – education, work and training. 8 recommendations from the last inspection had not been achieved and Inspectors made 36 new recommendations.

Overall, Peter Clarke, HM Chief Inspector of Prisons, described Send as an "excellent" prison dealing with a "highly complex population" of up to 282 often high-risk offenders. Three-quarters of those held at the time of the inspection in June 2018 were serving over four years and 67 were serving indeterminate sentences, including life. A substantial number, although not all, lived on one of three therapeutic or specialist facilities which "sought to address the needs of women as part of a structured personality disorder pathway." In 2014, inspectors assessed Send as 'good' in all four healthy prison tests, the highest assessment. Only purposeful activity dropped, to 'not sufficiently good', in 2018.

Send remained was a very safe prison, with very little violence. Though the HMIP survey raised some concerns about issues of bullying and victimisation, inspectors found the prison's response to such behaviour had improved. Recorded self-harm had almost doubled but it remained much lower than comparable prisons. Force was rarely used and the prison, commendably, was able to operate without the need for a segregation unit. Living conditions were clean and decent and most women reported very positively about many aspects of daily living. Relationships between staff and women were excellent and, Mr Clarke said, "were at the heart of the prison's success." Work to promote equality had improved and was generally very good, although more could have been done to support some groups, notably younger women and foreign nationals. The management of resettlement was strong and offender management was at the heart of a prisoner's experience.

Inspectors' principal concern, Mr Clarke said, related to purposeful activity. Most women had more than 10 hours out of their cells and inspectors found very few locked up during the working day. "That said, the management of learning and skills was not robust and quality improvement lacked challenge. The range of education on offer was good but opportunities in work and vocational training were more limited." Allocations to activity needed improvement and employer engagement was insufficient. Attendance and retention in education and vocational training were mixed and in some vocation and work settings women were insufficiently productive.

Overall, though, Mr Clarke said: "HMP Send was an excellent prison run by a very effective governor and caring staff. The women at the prison were treated with decency and care, being kept safe and treated with respect. The prison provided services for some very difficult and potentially dangerous women, yet did so with confidence and competence. There was work to do to improve education, vocational training and work, so we have left the prison with a few recommendations which we hope will assist in this process."

### Peers Criticise Growing Use of 'Henry Viii' Powers by Successive Governments

In a report the House of Lords Constitution Committee criticised the seeking of broad delegated powers that permit the determination as well as the implementation of policy, and in particular the use of such powers to create criminal offences and establish public bodies. The report concludes that: Delegated powers are necessary: "they allow Parliament to focus on the important policy frameworks and decisions and leave the detail of implementation to secondary legislation". Broad or vague powers, sought by the Government for convenience or flexibility, are unacceptable: "The Government must provide a full and compelling justification for all delegated powers and it is for Parliament to decide whether that justification is acceptable." Henry VIII powers, which permit changes to primary legislation to be made through secondary legislation, "are a departure from constitutional principle". Secondary legislation has been used inappropriately to give effect to significant policy decisions. Scrutiny of statutory instruments is an essential part of Parliament's work, and the Government must take more account of parliamentarians' concerns when deficiencies are identified. "If it does not do so, in exceptional circumstances Parliament should use its powers to block such instruments and require the Government to think again." Chair of the Committee Baroness Taylor of Bolton said: "We are very concerned about the increasing use of broad delegated powers by successive Governments. Delegated powers should not be sought purely for the convenience of the Government, especially where it is hard for Parliament to assess how they might be used. "Parliament has rarely rejected secondary legislation, and this remains the right approach. However, such restraint may not be sustained if the Government persists in the inappropriate use of delegated powers. We remind the Government that defeat on a statutory instrument need not be considered momentous or fatal. The Government can always lay a revised instrument the following day to respond to Parliament's scrutiny and correct deficiencies."

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.