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MOJUK: Newsletter 'Inside Out' No 867 (06/10/2021) - Cost £1

Call for Evidence - Enquiry Into Imprisonment for Public Protection (IPP) Sentences

The Justice Committee onTuesday 21st September, launched an inquiry into indeterminate sentences of Imprisonment for Public Protection (IPP). "The sentence was abolished in 2012 following heavy criticism; the coalition government at the time called the sentence "not defensible". However, there are still more than 1,700 people in prison today serving an IPP sentence without a release date. Some 96% of those have completed their minimum term, known as their tariff. Over 500 people have been held in prison for over 10 years longer than the tariff they were given.

Designed to ensure that the most dangerous offenders stayed in custody for as long as they posed a risk to society, the IPP sentence was given out in far greater numbers than intended and for less serious offences. The large number of people with short tariffs put a strain on the prison and parole system, with problems reported of accessing rehabilitation courses required by the Parole Board for release. The majority of IPP prisoners in custody today were given a tariff of 4 years or less. Of those with a tariff of 2 years or less, 77% have been held in prison for over 10 years longer. Concerns have been raised about the detrimental psychological impact of serving a sentence without a release date.

Former Supreme Court Justice Lord Brown of Eaton-Under-Heywood described the sentence as the "single greatest stain on our criminal justice system" in the Prison Reform Trust's December 2020 report and Lord Blunkett, who introduced IPPs in 2005, told BBC Radio 4's World at One that the number of people still in prison "weighs heavily" on him.

The amount of people being recalled to prison under the terms of IPP has risen significantly in the last 5 years. Once released, those serving an IPP sentence are subject to an indefinite licence and can be recalled for breaches of their licence conditions, some as minor as missed appointments. People with IPP sentences can apply to have their licence terminated 10 years after their initial release.

The Committee's new inquiry will explore the possible legislative and policy options available to the Government to reduce the number of IPP prisoners. It is seeking evidence on the experiences of IPP prisoners and the current barriers preventing release. It will also investigate how IPP sentences are managed in the community, the reasons for recall as well as the support available for prisoners.

Sentences of Imprisonment for Public Protection (IPP) are indeterminate – that is, they have no fixed end date. They were designed to ensure that dangerous violent and sexual offenders stayed in custody for as long as they presented a risk to society. IPP sentences were introduced in the Criminal Justice Act 2003 and came into effect in 2005.

An IPP sentence has three parts: a mandatory period in prison (known as the "tariff"), followed by indefinite detention until the Parole Board determines that the person has reduced their risk enough to be safely released (generally by rehabilitative activities), followed by a life licence in the community from which they may be recalled to prison if they breach their licence or reoffend. Ten years after their initial release, IPP prisoners can apply to have their licence terminated.

IPP sentences were abolished in 2012 following heavy criticism of the structure of the sentences, and the systems surrounding their implementation and operation. At the time of abolition, the coalition government said the system was "not defensible".[1] However, the change was not retrospective and did not apply to existing IPP prisoners.

As of 30 June 2021, there were 1,722 IPP prisoners. 96% of them have served time in prison beyond their tariff. IPP sentences have effectively been replaced by Extended Determinate sentences. Under those, and unlike under IPPs, people are released automatically at the end of their custodial term. The aim of this inquiry is to examine the continued existence of IPP sentences and to identify possible legislative and policy solutions.

Terms of reference: What options are available to reduce the size of the IPP prison population? What are the advantages and disadvantages of the different options? What are the current barriers preventing release? What measures would need to be taken to overcome these barriers, and what would be the operational and resource implications for HMPPS? What would be the options and implications of backdating the change to IPP legislation? What is the experience of people on IPP sentences in prison? What additional mental health challenges do people serving IPP sentences face because of the nature of their indeterminate sentence? How is release and resettlement planned and managed for IPP prisoners given their unpredictable release date? How are people on IPP sentences managed within the community once released? What are the main reasons why people serving IPP sentences are recalled? Once recalled what support is given to prepare them for re-release?

Please send submissions of no more than 3,000 words through the online portal by close of play Tuesday 26 October 2021. We would welcome early submissions.

Briefing paper: Sentences of Imprisonment for Public Protection
https://researchbriefings.files.parliament.uk/documents/SN06086/SN06086.pdf

Source for this briefing: UK Parliament, Justice Commitee
https://committees.parliament.uk/call-for-evidence/588/

Uploading your evidence. must: be less than 25MB be a single Word, ODT or RTF document contain no logos. https://committees.parliament.uk/submission/#/evidence/588/preamble

Burglars/Drug Dealers to Have Criminal Records Wiped Clean

Charles Hymas, Telegraph: Thousands of burglars, fraudsters and drug dealers are to have their criminal records wiped clean under government plans to help them find work. Criminals who have served jail sentences of more than four years will no longer have to tell employers about their past crimes as part of the Ministry of Justice's rehabilitation plans. At present, anyone jailed for more than four years is required by law to tell prospective employers about their criminal past. Recruiters are also entitled to carry out criminal records checks on them.

However, the crimes will become "spent" seven years after they complete their sentence under the new plans in the Government's police, crime, sentencing and courts Bill. This means their past offences will no longer have to be automatically disclosed to employers. It will cover not only those jailed after the Bill becomes law but all former offenders including those who have not been convicted of any crime in the seven years since they completed their sentence and time on licence.

Quicker 'Spent' Convictions - As soon as they reach the seven-year mark, they will see all their convictions become "spent." It means most businesses will not be able to check their criminal records as their offences will be classed as spent. Only employers recruiting for jobs involving children or vulnerable people will be told of the criminal records. Violent, sexual and terrorist offences will remain exempt, with those jailed for such crimes for more than four years having to declare their criminal records for the rest of their life. Ministers say the changes will remove a "disproportionate barrier" to employment that prevents ex-offenders from moving on with their lives. "For example, someone handed a five-year sentence for theft 30 years ago still has to

disclose their crime despite never reoffending," said an MoJ spokesman. They believe 11 years clear of crime is an appropriate time limit. It is part of a series of changes under which jail sentences of less than a year will become spent after 12 months without reoffending and convictions of one to four years will no longer be disclosed after four crime-free years.

Call to Overlook Employees' 'Past Mistakes' - On average fewer than one in five (17 per cent) of former offenders are in P45 employment a year after release and more than half of employers say they would not consider hiring someone with a criminal record. The Government is also backing a campaign by Business in the Community under which employers agree that they will not ask a recruit about previous offences until they have completed their interviews. More than 150 employers have backed the "Ban the Box" campaign, publicly committing to judge candidates on the basis of their skills and suitability for a role, rather than their past mistakes. Victoria Atkins, the prisons minister, told The Telegraph: "For those who have served their time and turned their backs on crime for good, these changes will help them into work while keeping checks in place for the most dangerous offenders."

Lawyers for Bloody Sunday Victims Claim PPS Approach 'Fundamentally Flawed'

Madden &Finucane: A Bloody Sunday evidence-gathering process allegedly operated to protect and exonerate British soldiers responsible for killing civilians in Northern Ireland, the North's High Court heard on Monday 20th September 2021. Lawyers for some of those shot dead in Derry in 1972 claimed the Public Prosecution Service (PPS) ignored those aims in deciding not to prosecute army veterans for murder. Senior judges were told the PPS approach was legally and fundamentally flawed. Thirteen people were killed when members of the Parachute Regiment opened fire on civil rights demonstrators in the city. Another of those wounded died later. Relatives of seven of the victims are now challenging decisions not to pursue criminal cases against five of the paratroopers involved.

The families of five other Bloody Sunday victims are also seeking to judicially review the PPS for not charging ex-paratroopers with their murders. Those proceedings relate to the deaths of Jackie Duddy (17), Michael Kelly (17), John Young (17), Michael McDaid (20) and 41-year-old father-of-six Bernard McGuigan. Opening proceedings on behalf of some of the bereaved relatives, Karen Quinlivan QC stressed that the legal issues also impacted on others killed on the day. She told the court soldiers who entered the Bogside on January 30th, 1972 fired more than 100 live rounds at unarmed civil rights marchers within 10 minutes. "Some of those civilians were shot whilst running or crawling away, some were making gestures of surrender, and some were selflessly going to the assistance of others who had been shot," counsel said. All were unarmed. None were doing anything which justified the firing of live rounds. The barrister set out how, in the immediate aftermath, the British army labelled the deceased and wounded as gunmen and bombers. That lie persisted for decades, the court heard, and was perpetuated by the 1972 Widgery Tribunal into the events on Bloody Sunday. It took until 2010, when the Saville Inquiry published its report, to establish the innocence of all those who were shot.

The challenge centres on a dispute about whether the PPS was right to conclude the 1972 statements would be ruled inadmissible in any criminal trial. Ms Quinlivan claimed that in all of the accounts the relevant soldiers admit to opening fire in Derry on Bloody Sunday at locations where civilians were killed or injured. Some describe their shots striking individuals at those locations, according to the families' case. It was also contended that other evidence from civilians and military personnel provided a further basis for prosecuting the soldiers.

With the RMP actions described as unfair to the victims and next of kin, the challenge centred on an alleged failure by the prosecuting authorities to recognise the aim at the time. "The applicants' broad complaint is that the 1972 evidence-gathering process was intentionally designed and operated so as to secure the exculpation of soldiers responsible for killing civilians in Northern Ireland, rather than to secure evidence," Ms Quinlivan submitted. "The PPS approach is fundamentally flawed because they scrutinise the 1972 statement-taking process without any regard for the context in which that process occurred. They fail to have regard to the fact that the process was a fundamentally flawed process, designed to protect soldiers and to ensure that soldiers responsible for civilian deaths were not subject to the rule of law." She added: "The PPS failure to analyse the statement-taking process through that prism means that their approach to this exercise has been fundamentally flawed from the outset as they have ignored/disregarded the relevant context."

Prisoner Aged 18 Gave Birth in HMP Bronzefield Cell Alone at Night

Her calls for help went unanswered, the Prisons and Probation Ombudsman has found in a critical report. The baby was dead when officers at HMP Bronzefield, run by private contractor Sodexo, discovered what had happened on their rounds the following morning. The young mother, Ms A, had woken in the early hours to find she had delivered the baby, and bit through the umbilical cord to free the child. She put the placenta in the waste bin in her cell and used her cell bell to let officers know what had happened, but no one responded. A call the previous evening asking for a nurse had gone unheeded. The birth happened in September 2019 and the ombudsman, Sue McAllister, published her report of her investigation on Monday 20th September 2021. She found: Healthcare in Bronzefield was not what Ms A could have expected in the community: Information sharing within prison and health agencies was poor: No one responsible for Ms A had a full history of her pregnancy and none of the record systems spoke to each other: The midwives' approach to her care was inflexible, unimaginative and insufficiently trauma-informed: Maternity services at Bronzefield were outdated and inadequate: The response to Ms A's request for a nurse was completely inadequate: An ambulance was not called promptly: There was no paediatric or neo natal emergency equipment in the prison and no staff were trained in neo natal resuscitation: The report into the birth at the prison says a pathologist was unable to establish if the baby was born alive or was stillborn. The mother was in prison for the first time on a charge of robbery and was regarded as vulnerable, sad, angry and very scared. Her engagement with midwives at Ashford St Peter's NHS Trust was minimal. However, her admission to a midwife that she would kill herself if her baby were to be taken from her was not taken seriously. Suicide and self-harm monitoring procedures were not implemented and extended clinical observations did not take place as planned. Leigh Day human rights lawyer Maya Grantham, who acts for prisoners in healthcare claims, said: "The Prisons and Probation Ombudsman's recent report on a young woman who gave birth in her cell without medical assistance, and of the death of her baby, is extremely concerning and raises important questions. The standard of healthcare in prison must be equivalent to the community, and therefore must be fit to meet the needs and vulnerabilities of individual patients. That was not the case for this young woman. Repeated alarm bells about the standard of healthcare in prisons have continued to fall upon deaf ears and, if more is not done, we will continue to see avoidable tragedies like this. Mrs A was not provided with bereavement support – but the prison guards who failed to get her medical assistance were offered counselling

30 Civil Claims Against Freddie Scappaticci Will Not be Stayed

Mr Justice Horner, sitting in the High Court in Belfast on Thursday 23rd September 2021, decided not to stay the civil claims arising out of historic wrongs allegedly committed by Frederick Scappaticci ("FS") pending the outcome of the investigation conducted by Operation Kenova and any related criminal proceedings. He found that a stay of the civil claims was not consistent with either Article 6 of the European Convention on Human Rights ("ECHR") which sets out the entitlement to a fair and public hearing within a reasonable time or with the overriding objective of the Rules of the Court of Judicature (Northern Ireland 1980 ("the Rules") to enable the court to deal justly and fairly with each case. The overriding objective means, inter alia, ensuring that any case is dealt with expeditiously and fairly. Given the delay to date of the civil claims, the likely further delay and the effect of same, Mr Justice Horner stated it was imperative that some progress be made in all of the civil claims and he set out the way forward, directing, inter alia, that a case management hearing be fixed in the week commencing 11 October 2021 and that, in the interim, parties should try and reach agreement on how to progress the claims.

Introduction: All the plaintiffs have brought proceedings seeking civil compensation for personal injuries, loss and damage which they each claim to have suffered as a consequence of the acts of FS, a prominent and important member of the Provisional IRA (and who was known, it is claimed, as Stakeknife) acting, it is alleged, as a double agent of the Chief Constable of the Police Service of Northern Ireland or the RUC ("PSNI") or the Ministry of Defence ("MOD"). These civil proceedings have been stalled because of an inquiry known as Operation Kenova which is being carried out by Jon Boutcher ("JB"), the former Chief Constable of Bedfordshire. JB's task is to investigate the actions of FS and his relationship with the security forces in respect of a number of heinous crimes committed in the 1980s and 1990s in Northern Ireland. According to JB, Operation Kenova has concentrated on three types of interconnected cases in which, it is alleged, Stakeknife had some involvement: (i) Provisional IRA murders and abductions and related attempts and conspiracies; (ii) State misconduct, collusion or conspiracy to pervert the course of justice connected with matters falling within (i); and (iii) perjury, perverting the course of justice in a public office connected with events in 2003-2007.

The only application pursued before the court was an application for the civil proceedings to be stayed pending the outcome of any investigation relating to Operation Kenova and any related criminal proceedings. If the civil proceedings were stayed, Mr Justice Horner said that the question for the court would be how they could be progressed in accordance with the overriding objective to do justice? He stated that any consideration of the issues had to be seen against a background where the offences under consideration took place primarily between 1986 and 1994, some 27 - 35 years ago. Therefore, memories inevitably were fading, some of those involved in the litigation or those who will be important witnesses have died and some were not in good health. Further substantial delay would affect both the nature of the witness testimonies available to the court and the quality of such testimony.

Background to the Application: Operation Kenova is an independent investigation into the alleged criminal activities of FS. FS maintains his innocence and denies both that he has been guilty of any wrongdoing and/or that he has acted on behalf of any State Agencies and/or that he is Stakeknife. Some appreciation of the scale of Operation Kenova can be obtained from the fact that, to date, there has been substantial capital investment in staff and facilities and a huge amount of paperwork has been generated. A previous application for the stay of the civil claims arising out of Stakeknife's conduct and collusion was made in 2017. However, no

judgment was given. The application was renewed again in 2020 but then the COVID pandemic struck, considerably restricting the progress of Operation Kenova.

Operation Kenova does not want disclosure being given in the civil claims while it continues to gather evidence, make enquiries and carry out investigations. The concern is that the disclosure of such materials in the context of the civil claims would "radically undermine the effectiveness of our investigation." It is claimed that collecting materials would be immensely time consuming and would prejudice the prospects of co-operation from victims, witnesses and families. Also, the disclosure of Operation Kenova's inherited and further official materials could, when taken in conjunction with other knowledge, place certain persons who informed or who co-operated with the authorities at risk. Therefore, JB objects to disclosure in the civil claims and he wants the stay of all civil proceedings in place until Operation Kenova has completed its investigations and published its report. Mr Justice Horner said he was satisfied there was bound to be further substantial delay before a line in the sand was drawn under Operation Kenova, never mind the criminal prosecutions which were likely to result and such further anticipated delay had to be seen in the context of the years of delay preceding it. The court noted the realistic assessment made by the Special Advocate for Hodgins that, if a stay of the civil proceedings was granted, it would be late 2023 before it would be possible to lift the stay.

The court referred to the Government's proposals in a Command Paper entitled "Addressing the Legacy of Northern Ireland's Past" ("the Command Paper") to put an end to criminal and civil cases arising out of the Troubles and it noted the expectation that there would be legislation to implement this before the end of Autumn. Mr Justice Horner considered it would be wrong for him to anticipate legislation that had not yet been enacted and, indeed, may never be enacted. Therefore, he expressed the intention to proceed with his judgment in accordance with the requirements of Article 6 of the ECHR and the overriding objective in the Rules and not to be swayed by the possible changes that may or may not be introduced as a consequence of the Command Paper's publication. He added that if new legislation was enacted, fresh consideration should be given to what was the appropriate way to proceed in the light of such a change of circumstances introduced by the new legislation.

Issues in Dispute: The core issue was whether the civil actions should be stayed pending the investigation conducted by Operation Kenova and any related criminal proceedings. Allied to the core issue was the important matter of disclosure in relation to the issues in dispute in the civil claims if they were permitted to continue to trial. Mr Justice Horner stated that if the actions were stayed there would be no disclosure. He referred to a possible alternative to a complete stay of the civil proceedings being agreement that there should be a stay but permitting staged disclosure and/or restricted disclosure in the interim. He added that, alternatively, the court could refuse to order a stay but only permit staged and/or restricted disclosure to take place in the interim.

Legal Principles: The overriding objective of the Rules is to enable the court to deal justly and fairly with each case - this means, inter alia, ensuring that any case is dealt with expeditiously and fairly (Order 1 Rule 1A). Article 6 of the ECHR provides that "in the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time" (Article 6(1) and R(McAuley) v Coventry Crown Court [2012] 1 WLR 2766).

Delay has to be avoided at the various separate stages of litigation (Bhandari v United Kingdom (App 42341/04)) especially when there are allegations of unlawful conduct by public officials (Kaloc v France (App No.33951/96)). This, also, assists in maintaining public confidence in the rule of law and in banishing any hint of collusion by the State in unlawful acts (Re Jordan

[2014] NIQB 11). The public has a right to know what actually happened in cases such as these (Al-Nashiri v Poland [2015] 60 EHRR 16). Mr Justice Horner stated it was the task of the court to take an objective view of all the respective interests and to try and fairly balance those interests. If the civil trials did not proceed until after the criminal trials concluded, he found that serious and irreparable delay was inevitable with the likelihood of the evidence in the civil trials being compromised, and in some cases, fatally compromised. He stated that it was likely that, at least, some of the plaintiffs' prospects of a fair and just trial would be irreparably damaged even if the civil proceedings were only delayed until after Operation Kenova finally reported.

The court has an inherent jurisdiction and a statutory jurisdiction under section 86(3) of the Judicature Act (NI) 1978 to stay both civil and criminal proceedings. The court can hear concurrent criminal and civil cases which deal with the same subject matter. The right to receive disclosure of documents is not an absolute right and a balance has to be struck between the various rights and interests of the parties and the public interest. There have to be safeguards as discovery of documents involves a serious invasion of privacy and confidentiality which can be justified only insofar as it is absolutely necessary for the achievement of justice between the parties. This is done by controlling the documents which are required to be disclosed, the conditions upon which the inspection is to be made and copies taken, and the persons by whom inspection may be made (Davies (Joy Rosalie) v Eli Lilly & Co (No.1) [1987] 1 WLR 428 (CA)).

Disclosure of documents is not a fundamental right in the way that the principles of open justice and natural justice require the proceedings to take place and judgments to be given in public and that the parties know and can respond to the case against them and can call and cross-examine those witnesses (Al Rawi v Security Services [2011] UKSC 34). In civil proceedings questions as to public interest immunity usually arise in discovery where, even if documents are strictly speaking relevant, the court can exercise considerable control over whether to require the documents to be delivered up for inspection to another party in the proceedings. While the obligation to make discovery is a wide one, that general obligation is subject to the important proviso in Order 24 Rule 8 that the court should refuse to make an order for discovery if it is not necessary either for disposing fairly of the cause or matter or for saving costs (R v Chief Constable of West Midlands Police ex parte Wylie [1995] 1 AC 274 (HL)).

Closed Material Procedure ("CMP") can be used in cases where the disclosure of information or evidence would be contrary to the public interest. Mr Justice Horner stated that, in a CMP, "sensitive" information which would be withheld from the plaintiffs and FS can be considered at a closed hearing where they would not be present but they would be represented by Special Advocates (Judicial Review Principles and Procedure by Auburn, Moffett and Sharland). A CMP can be used to help overcome any problem that might arise from disclosure of material which might prejudice any criminal trial. In a CMP, an individual must have "the possibility to effectively challenge the allegations" which are being made against him (A v UK [2009] 49 EHRR 29). The courts can and have approached discovery on a staged basis if that is in the interests of justice (Baldock v Addison [1995] 1 WLR 158) where the court would be guided by the overriding objective, namely to achieve a just and fair trial.

The Parties' Arguments: Operation Kenova is concerned, inter alia, that the co-operation and engagement of victims and witnesses will be fatally compromised if the civil proceedings go on and full disclosure is made of documents and papers obtained from the inquiry. Therefore, it wants the civil proceedings stayed until it has reported and the criminal process has been exhausted. The PSNI and MOD, supported by the PPS want the civil proceedings stayed as their position is that progress of the civil claims will risk imperilling the criminal prosecutions and there cannot be incremental disclosure because of the need to consider all matters together, given their inter-related nature.

FS's counsel and his Special Advocates submit: (a) they should not be required to go into CLOSED on some claims when there are further linked claims which can be brought because this would prejudice the ability of the court to maintain a fair process and might have undesirable consequences from the perspective of national security; (b) ring fencing of documents was wholly objectionable and inimical to the fairness of the proceedings; and (c) FS is clearly at risk given the claims against him and the court should not proceed by way of any "pragmatic" solution which prioritises speed and expediency over justice and security. The plaintiffs' representatives recognise the risks in pursuing the civil claims against the background of impending prosecution and propose to guard against these risks by the establishment of a CMP process and the disclosure of the inherited material into CLOSED which, it is claimed, would, facilitate discussion among counsel and the possibility of applications in respect of material in CLOSED and for the Special Advocates to consider the potential for disclosure into OPEN.

The Way Forward: Mr Justice Horner agreed that there was no detriment free route open to the court and each proposed solution carried risks and dangers. The court had to try and balance these to achieve an overall just and fair result for the different proceedings, both criminal and civil. He did not consider a "do nothing approach" to be consistent with the overriding objective of achieving justice and fairness. He stated that a complete stay of the civil proceedings would be a total abnegation of justice for those litigants who do not survive what is likely to be the considerable delay of proceedings recommenced after the criminal trials are concluded. It would, also, be unfair and unjust to those that survive because a substantial delay will have significantly compromised the evidence available to the court and it was likely to make it increasingly difficult for the court to reach a just and fair decision. Mr Justice Horner said that, realistically, the conclusion of Operation Kenova and the publication of its findings should not be expected any time soon and the conclusions of the resulting criminal trials would probably be years hence. He added that there were risks involved in proceeding with the civil claims in a limited way, but those risks could be managed by the use of a CMP.

He was of the view that the suggestions for progressing the claims as put forward by the Special Advocates for Hodgins and Hegarty provided a framework for progress. He agreed with the Special Advocates that the use of CMP and ring-fencing, effectively, precluded any prejudice to Operation Kenova because the material being considered in the CMP would not be placed in the public domain either at or prior to the in-depth consideration of the material by the court. If required, there would be a further stage, once it was known that material should be disclosed into OPEN. Mr Justice Horner stated that the threat of CLOSED material being leaked cannot be a good reason not to have a CMP - rather, it highlighted the need for eternal vigilance. He then proceeded to make a number of general directions in relation to various steps required in order to progress the claims and in relation to the discovery of documents (paragraph [46]).

Conclusion: The court found that a stay of the civil claims was not consistent with either Article 6 of the EHCR or the overriding objective of the Rules. Given the delay to date in relation to the civil claims, the likely further delay and the effect that that delay has had and will have on the parties and their witnesses, the court determined it was imperative that some progress be made in all of the civil claims. Mr Justice Horner set out the way forward: A case management hearing will be fixed in the week commencing 11 October and, in the interim, parties should try and reach agreement. In the absence of any agreement, the parties should lodge their proposed directions for the progress of these claims on the basis of this judgment on or before 4 October 2021 and try to agree a mutually convenient date for the case management hearing with the court office. In the absence of an agreed way forward, further directions for the management of these civil claims will be given at the case management hearing.

Class A Drug Possession Effectively Decriminalised in Scotland

Scottish Legal News: Possession of Class A drugs may incur a police warning rather than prosecution under a new "diversion from prosecution" policy for drugs announced by the Lord Advocate, Dorothy Bain QC. In a statement, Ms Bain said: "I have decided that an extension of the recorded police warning guidelines to include possession offences for Class A drugs is appropriate. Police officers may therefore choose to issue a recorded police warning for simple possession offences for all classes of drugs." The scheme does not apply to drug supply offences, which will continue to be prosecuted. Moreover, Ms Bain said that "recorded police warnings do not represent decriminalisation of an offence", but "a proportionate criminal justice response to a level of offending and are an enforcement of the law".

Despite the new policy, police will retain the ability to report cases of possession to the procurator fiscal and accused persons may still reject the offer of a warning. Diversion entails referring a case to social work or another agency "as a means of addressing the underlying causes of offending when this is deemed the most appropriate course of action", Ms Bain added. "At the conclusion of the diversion program, the results are reported to the prosecutor. Where the program has been successfully completed, the prosecutor will routinely decide that no further action is required and that is the end of the matter." She added: "The most appropriate response – the smartest response – in any drugs case, must be tailored to the facts and circumstances of both the alleged offence and the offender. Scotland's police and prosecutors are using the powers available to them to both uphold the law and help tackle the drug death emergency."

Solicitor Iain Smith, of Keegan Smith Defence Lawyers, told Scottish Legal News: "The Lord Advocate's decision is a brilliant and bold move. She will be open to criticism from those who don't understand why addiction occurs." He added: "For 50 years we have stigmatised and labelled those addicted to drugs as 'junkies'. What we know now and didn't know then is that most people addicted to drugs or alcohol are people who struggle to cope. Often this stems from childhood trauma, including sexual abuse and neglect. "I've never had any 'happy' clients who are addicted to painkilling drugs like heroin. When we realise and understand what happens to people then the response should be one of compassion not retribution. We cannot punish people into a better way of being but we can offer help, empathy and hope."

Faculty Defends Juries Against 'Baying' Special Interest Groups

Kapil Summan, Scottish Legal News: Plans to exclude juries from rape trials have been rubbished by the Faculty of Advocates. In a submission to Holyrood's Criminal Justice Committee, the Faculty states that many within the legal profession had been accused of being conspiracy theorists when they suggested last year that there was "a hidden agenda at the haste with which an attempt was made to introduce juryless trials under the cloak of the Coronavirus Act". Yet "here we are a year later having the self-same discussion", it adds. It says that the efforts of "special interest groups" to exclude the public in favour of judges who form a "middle aged and older, university-educated, middle and upper middle-class elite which is predominantly male and entirely white" will "erode society's trust in criminal justice". Many such special interest groups while "looking after their own constituency" are "vociferous in their criticism of things which offend their particular subset of society, in a way unparalleled by any other group".

Juryless trials, the Faculty argues, could erode the public's confidence in the prosecution of sexual offences and lead either to "a risk of bias in favour of conviction, or a widely held perception of such bias". The social pressure to convict may also make those judges who acquit defendants in rape trials the targets of discontent, in turn raising the prospect of a perverse incentive to convict. "There is a danger that in the not-too-distant future following a freedom of information request we will be presented with a league table of 'acquittal judges' and the subsequent pressure on those individuals that will come with that." Juries, conversely, face no prospect of demotion or promotion in carrying out their duties.

The Faculty also warns in its submission that there is a risk of more evidential restrictions being introduced in court in order to defeat phantoms. "We all too often hear about the 'rape myths' however what we are now in danger of having running alongside them unfettered and uncriticised are 'rape trial myths'." These myths are "regularly trotted out in the press" and include the false belief that the defence have "unfettered access to complainer's phones or medical records". "This is simply untrue. The evolution of s.275 jurisprudence [which requires an application be made to lead excluded evidence] has ensured this. And yet these claims are routinely presented as being facts. They are not facts. The public and Parliament should be made aware of just exactly what evidence the defence are allowed to elicit and therefore what evidence a jury hears and more importantly what evidence a jury does not hear." Should the Scottish Parliament approve legislation putting juryless trials on a legislative footing in the future, it is effectively telling the public they are unfit to be jurors in sexual cases because it dislikes their conclusions, the Faculty states. It imagines politicians telling the public: "We trust you to vote for us, you have the sense and responsibility to do that we are happy to take your vote, we also trust you to sit in judgement in the majority of criminal cases including murder, but we do not trust you to sit in judgment in sexual offence cases.

Government Must Learn Lessons From Use of Criminal Law in The Covid-19 Pandemic

The Justice Committee has called on the Government to learn lessons from its use of the criminal law in the covid-19 pandemic. In a report published today, the Committee has argued that a central lesson from covid-19 has been the enduring impact pandemics can have on the criminal justice system and courts. In future, it argues, the Government need to have the requisite legislative tools in advance respond in a swift and proportionate manner that does not risk criminalising behaviour in ways incompatible with widely understood principles of the rule of law. The Committee found that the Government was justified in acting quickly in the face of an unprecedented health crisis but must learn lessons to ensure it is better prepared for the future. It calls for the Ministry of Justice to have a more central role in the development of all new criminal offences, as well as improvements in the Parliamentary scrutiny and public communication of such measures. It further calls for a wide ranging study to be conducted by the new pandemic preparedness agency (the UK Health Security Agency) to review the effectiveness of key elements of the justice response to the pandemic, including Fixed Penalty Notices and the single justice procedure, to assess their appropriateness for future use.

The Government implemented a series of new offences to enforce restrictions implemented to protect public health in response to the Covid-19 pandemic. Failure to wear face coverings when required, restrictions on public gatherings, and quarantine following a positive test or international travel could see fines of up to £10,000 for repeat offenders. The Justice Committee found that the Government was justified in acting with speed to implement new enforcement measures in the face of a public health crisis. However, valuable lessons must be learnt to improve the development and implementation of such measures in the future.

The establishment of the UK Health Security Agency is a welcome step in improving pandemic preparedness, but it must have adequate criminal law expertise to influence the direction of enforcement measures. The Committee recommends that the agency launches a study into the role the criminal justice system played in protecting public health during the pan-

demic and the effectiveness of new offences in ensuring compliance of covid-19 restrictions. Parliamentary scrutiny is avital in testing the case for new criminal offences and assessing their impact, as well as ensuring the law-making process is transparent and public. The Government must work with the Procedure Committee to understand how scrutiny of future emergency regulations can be done more quickly. Improvements must also be made in how public health restrictions are communicated to the public, particularly in ensuring the line between what is guidance and what is prohibited by law is absolutely clear.

The Committee also calls on the Government to move away from an over-reliance on issuing fixed penalty notices (FPNs) of increasing amounts to ensure compliance with public health regulations. The Government should undertake a review of the effectiveness of FPNs and establish parameters for their future use. The use of the single justice procedure, where a case may be dealt with by a single magistrate rather than a trial in open court, should be reviewed to assess if it provided the appropriate transparency for new and complex offences.

Chair of the Justice Committee Sir Robert Neill MP said: "The speed and seriousness of the Covid-19 pandemic necessitated restrictions that we previously thought unimaginable. New criminal offences were introduced to enforce them and it is right that the Government acted quickly to create them. However, it is also clear that lessons need to be learnt and improvements made. As the Justice Committee, our focus is on the integrity of the criminal justice system and the Rule of Law. Our report sets out a number of lessons for the every Government on the development, communication and enforcement of new criminal offences. The new UK Health Security Agency should review the way in which the Government used the criminal law to protect public health during the pandemic. In particular it should examine the effectiveness of certain measures, such as Fixed Penalty Notices and the single justice procedure. We need to better understand whether their use was always appropriate and proportionate, and a model we should follow in the future. "That the justice approach to the pandemic was not perfect in its early stages is understandable; to fail to learn valuable lessons to better prepare for the future would be much less so."

Older People Need Better Safeguards Against Predatory Marriage

Predatory marriage is the practice of marrying an elderly person exclusively for the purpose of gaining access to their estate upon their death. While the requirements for mental capacity to make a valid will are high, in most jurisdictions the requirements for entering into a valid marriage are much lower; even a person suffering dementia may enter into marriage. In many jurisdictions, a marriage arrangement will invalidate any previous will left by the person, resulting in the spouse inheriting the estate. Solicitors for the Elderly, the membership body that specialises in supporting older and vulnerable people, has seen a steady 13% increase in these types of cases. Frustratingly, once a marriage has been officiated, there are few protections in place for the victim or their family. It's also impossible to annul a marriage after death – even with proof of coercion or of the victim's lack of mental capacity. This leaves families who wish to reclaim their loved one's estate with drawn-out litigation. Legal disputes are emotionally and financially draining. As a society we need to ensure that there are better safeguards for vulnerable people in the community. We need to make sure that capacity testing is rigorous and that medical records proving dementia, or any other capacity-limiting diseases, are properly understood and taken into account by registrars before approving suspicious marriages. Any person who has entered a predatory marriage should be encouraged to have it annulled. If they don't have the mental capacity, it is possible to make an application to the court of protection to do so. If they do have capacity, they should also be encouraged to make a new will as the marriage will have revoked any previous will. They should also consider a lasting power of attorney. If a person doesn't have capacity to make a will, an application for a statutory will can be made to the court of protection. In such cases, it's best to seek the expertise of a specialist lawyer experienced in working with vulnerable and older people.

Female Screw at HMP Woodhill - Jailed for Bonking Prisoners

Latoya Gautrey, 32, was sentenced to 18 months' imprisonment at Aylesbury Crown Court 22nd September 2021. At a previous hearing, she pleaded guilty to three counts of misconduct in a public office, sneaking into the cells of dangerous killers Levan Greenfield, 30, and Tariq Williams-Dawodu, 23, for late-night trysts. Between October 2019 and March 2020, Gautrey was working as a prison officer at HMP Woodhill in Milton Keynes. During this time, she maintained "inappropriate relationships" with three prisoners. Although prohibited, Gautrey communicated with the prisoners through mobile phones which they had possession of. Amersham Crown Court heard how she started having intimate relationships with the killers within "a matter of months" after finishing her training. And she failed to tell the prison or counter corruption the convicts had phones. She was seen going into a cupboard with Williams-Dawodu, only to emerge shortly afterwards to "readjust her skirt".

Ecuador Jail: Death Toll in Guayaquil Prison Fight Passes 100

At least 116 people are now known to have died in a fight between rival gangs in Ecuador's jail, officials say, making it the worst prison violence in the country's history. At least five inmates were decapitated in Tuesday's 28/09/2021 clashes in the city of Guayaquil, while others were shot dead. Police commander Fausto Buenaño says the prisoners also threw grenades. It took 400 police officers to regain control of the jail, which houses inmates linked to global drug gangs. Local media report that the uprising was ordered by powerful Mexican drug trafficking gangs that are now operating in Ecuador. Ecuador's prisons service director Bolivar Garzon told local radio the situation was "terrible". "Yesterday 29/09/2021, police took control at 1400 [local time], but last night there were other shootings, other things, explosions and today in the morning we took total control, we are entering the pavilions where there was conflict and discovering more bodies," he said. It is the latest in a series of deadly incidents involving rival gang members fighting for control of prisons. In February, 79 prisoners were killed in simultaneous fights. The Litoral Penitentiary, where the latest deadly fight took place on Tuesday night, is considered one of the most dangerous in the country. Mr Buenaño said that inmates from one wing of the prison had crawled through a hole to gain access to a different wing, where they attacked rival gang members. More than 80 inmates were injured. Police managed to reach six cooks who had been trapped in the wing where the fight unfolded and get them to safety. President Guillermo Lasso has declared a state of emergency in the country's prison system. The Litoral Penitentiary holds inmates from Los Choneros, an Ecuadorean gang which is thought to have links with Mexico's powerful Sinaloa drugs cartel. But another Mexican criminal group, the Jalisco New Generation cartel (CJNG), is also trying to forge alliances with Ecuadorean gangs to seize control of drug smuggling routes.

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan