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MOJUK: Newsletter 'Inside Out' No 866 (29/09/2021) - Cost £1

Human Rights for Working Prisoners

Virginia Mantouvalou, UK Labour Law Blog: 1. Introduction - A few days ago it was highlighted in the press that the Association of Independent Meat Suppliers was in discussions with the Ministry of Justice. The aim of these was to explore how prisoners could be used to cover labour shortages, one of the many reported effects of Brexit. The scheme under which this could be done is the 'Release under Temporary License', which permits certain categories of prisoners who are on day release to work. Another group of prisoners who could work in this context are those with long sentences that are coming towards the end of these and who are idle for years while in prison (see further here). The justification of prison labour is controversial. Work in prison is not part of prisoners' punishment: the European Prison Rules explicitly say that '[p]rison work shall be approached as a positive element of the prison regime and shall never be used as a punishment' (Art. 26(1)). Instead, it is typically justified based on other reasons. A key reason is that prison work can promote prisoners' reintegration in society by teaching them new skills and improving their employability. By improving employability, it can reduce recidivism. In addition to promoting prisoners' reintegration, it can provide them with income that they can use to support their dependents while in prison, cover their own needs (such as buying credit for their phones) and make their life feel less boring and monotonous. The benefits of fair work in prison have been highlighted in research.

Even though work in prison is not part of punishment and should therefore be a right rather than duty, it is often compulsory. A Council of Europe survey that looked at forty (out of its forty-seven) member states found that in twenty-five of those prisoners are required to work at least in certain circumstances (Stummer v Austria, 2011, para 60(a)). Those who refuse to work may be sanctioned with reduced visits from friends and family, reduced television or gym time, less or no income and even solitary confinement. In reality, very often work in prison is meaningless, repetitive and is perceived by prisoners as part of their punishment rather than a route to reintegration. In this piece I do not talk about violations of the human rights of prisoners more generally that the European Court of Human Rights has often found, or about the institution of prison as a whole, which has been scrutinised by Angela Davis and others. I will only focus on prison labour.

2. State-mediated structures of exploitation - While real work in prison can be beneficial, as the Howard League for Penal Reform has regularly argued, working prisoners are forced and trapped in structures of exploitation that are state-mediated. By structures, I mean patterns that we can identify that are becoming all the more widespread, and where people are forced and trapped. I call them state-mediated because the state has a major role to play in creating and perpetuating workers' vulnerability by excluding them from protective laws. Prisoners are a vulnerable group of people, as the European Court of Human Rights has repeatedly ruled, and the authorities have a duty to protect them (Enache v Romania, para 49). That the state creates further vulnerability by excluding them from important labour and social security rights should be scrutinised carefully.

I will give a few examples of prisoners' exclusions from protective rules. Working prisoners are excluded from many labour and social security rights across the world. In comparative studies of European countries, it has been highlighted that working prisoners in several countries are excluded from the right to form trade unions and the right to strike, from being covered by collective agreements or a social security system, and from minimum wage laws. A Council of Europe survey showed that in twelve member states, prisoners are not included in a pension system (Stummer v Austria, para 60(c)), while in other countries the affiliation to a social security system depends on the type of work performed, and particularly whether it is remunerated and whether it is for outside employers. In France, the Criminal Procedure Code (Article 717-3) states that the employment relations of incarcerated people are not covered by an employment contract. As a result, prisoners do not have a right to form and join trade unions or a right to sick pay. They also do not have a right to have a say on working conditions, or a right to compensation for industrial accidents. Moreover, prisoners are not entitled to the minimum wage, from which they are explicitly excluded by law or a right to access labour courts. Similar exclusions are found in Germany, where prison work is compulsory but those working in prison have better coverage in unemployment protection that in France (see further here). Exclusions from labour rights of working prisoners exist in many other legal orders.

The UK National Minimum Wage Act 1998 explicitly excludes working prisoners from its scope by providing that a 'prisoner does not qualify for the minimum wage in respect of any work which he does in pursuance of prison rules'. Prison labour often consists of cleaning, cooking and other work towards the maintenance of the facilities. Other times prison labour involves boring and monotonous work for private employers. The work often does not support the development of new skills. A recent empirical study reported that a prisoner said:

Jermaine, Aged 18, Workshop - *This job down here, I detest it, I hate it. They … [the instructors] … they will tell you, they will attest to this, I don't like [coming here] at all … I'm not lazy but [these jobs] don't engage my brain, they don't make me feel like I've fulfilled something in the day … What am I doing? Clipping wires? Smashing computers?*

In this same study, it was suggested that private firms that employ prisoners do this to reduce labour costs. If people were employed to do this work outside prison, it would have been much more costly than £15-£25 per week, which was what these firms pay workers in prison. In a report of the Howard League for Penal Reform, it was documented that the average pay for prison service work is £9.60 per week, while it has also been reported that some prisoners work up to 60 hours per week. Certain private companies pay about £2 per hour for prisoners' labour. The Prisoners' Service Order 4460 involves prisoners' pay. It says that, even though prisoners are excluded from the national minimum wage for work that they do in accordance with prison rules, those who work for outside employers doing a job that is not in the voluntary or charitable sector have to be paid at least the national minimum wage (para 2.4.7). This means that if prisoners work outside prison, they are supposed to receive the minimum wage. The distinction between work in prison and work outside prison is not justified. Private employers get prisoners to work for them while in prison, and avoid in this way their obligations to pay the minimum wage.

The vulnerability of working prisoners is further compounded by the fact that it is most probable that they would not be viewed as working under a contract of employment. As a result, they may be excluded from other legal protections that depend on employment status. Looking at the question of whether the Factories Act 1937, which applied to those working in factories, also applies to prisons, it was ruled in the 1957 case of Pullen that this is not the case (Pullen v Prison Commissioners [1957] 1 W.L.R. 1186; see also Keatings v Secretary of State for Scotland 1961 S.L.T. (Sh. Ct.) 63 (1961)): for the Factory Act to apply there must be found to exist […] the relationship of master and servant and employment for wages. There is no employment for wages

in the case of prisoners. Prisons are put under the control of the Secretary of State, who exercises his control through the Prison Commissioners, and through visiting magistrates who visit the prisons to see that the provisions of the Prison Act 1952, are being carried out.

Prison work is 'penal in the sense that the prisoners are obliged to work as a consequence of their sentence'. The Health and Safety at Work Act 1974 provides that the employer has duties also towards those who are not employees (section 3), which suggests that the act covers those who are not employed under a contract. However, section 52 requires a contract. Moreover, many of the detailed regulations, such as the Manual Handling Regulations, are restricted to employees with contracts. This suggests that the question whether there is a contract can be crucial. Many other labour rights are dependent on employment status. The employment status of working prisoners was discussed in the UK Supreme Court decision Cox v Ministry of Justice (2016), where a working prisoner in the prison kitchen accidentally injured the catering manager. The question was whether the prison service was vicariously liable for the act of the working prisoner. In the Court's judgment it was pointed that the relationship of the working prisoner and the prison authorities differs from an employment relationship: prisoners do not work on the basis of contract, but because they have been sentenced to imprisonment, and are only paid nominally. However, these features 'rendered the relationship if anything closer than one of employment: it was founded not on mutuality but on compulsion' (para 14; see also para 35). The Supreme Court concluded that the prison service was vicariously liable because those working in prison kitchens are integrated into the operation of the prison as their activities are essential for the running of the prison, they work in circumstances where they may commit negligent acts, and they work under the direction of staff of prisons (para 32).

The principle established in Cox, being that the relationship between the prison authorities and working prisoners is even closer than an employment relation because they are compelled to work, should make us question whether it is legitimate to exclude them from basic labour protections. The element of compulsion that the Supreme Court recognised makes working prisoners more vulnerable to exploitation than other workers. The full range of labour rights has to apply to them, and close inspection of working conditions is essential. Those in prison are deprived of their physical freedom, but there is no justification for them to be deprived of labour rights when they work. At the same time, there should be scope for recognising an employment relation for prisoners who are employed voluntarily and not under the threat of sanctions by the prison authorities. In the case of those employed voluntarily, the standard test on employment status should apply, recently analysed by the Supreme Court in Uber v Aslam (discussed here by Atkinson and Dhorajiwala).

Other examples of working prisoners' exclusions from protective laws come from the United States. There are over two million prisoners, the highest prison population globally, a phenomenon that Zatz and others describe as a 'carceral state' (see, for instance, his contribution in this volume), while the rate of incarceration for black Americans is much higher than white Americans and Hispanics. Working prisoners are not explicitly excluded from basic labour rights protections, which are found in the Fair Labour Standards Act. However, as in several other countries, courts do not usually view them as employees, so this has the same exclusionary effect. In Vanskike v Peters, a court had to examine whether working prisoners who were janitors, kitchen workers and garment workers, were entitled to the minimum wage. It decided that working prisoners were not entitled to the minimum wage because they were not employed by the government: 'prisoners are essentially taken out of the national economy upon incarceration'. Their work, in turn, is part of their sentence of imprisonment. As a result, it has been documented that prisoners are paid minimal or no wages at all for prison maintenance work, which is the vast majority of prison work in the US.

Another instance of an exclusion of working prisoners from labour rights is found in Jones v North Carolina Prisoners' Labor Union, which limited rights to free speech and assembly of prisoners and circumscribed in this way their right to organise unions. A prisoners' labour union brought a case to court because the prison authorities banned prisoners from soliciting others to become union members, holding union meetings and sending bulk mail of the union. The Supreme Court ruled that this does not violate free speech and associational rights under the First Amendment and that it was a reasonable measure adopted by prison authorities that should be left to their discretion, as adequate alternatives existed for prisoners, while a prison labour union was fraught with threats to order and security. The majority found that curtailment of constitutional rights, such as the right to association, is justified in prison. The Court's decision created in this way a legal structure that makes incarcerated workers vulnerable to exploitation by excluding them from rights to unionise that other workers enjoy.

In Jones Mr Justice Marshall (joined by Mr Justice Brennan) dissented: "There was a time, not so very long ago, when prisoners were regarded as 'slave[s] of the State,' having 'not only forfeited [their] liberty, but all [their] personal rights.' Ruffin v. Commonwealth, 62 Va. 790, 796 (1871). In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their 'hands off' penal institutions. […] Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a 'union,' takes a giant step backwards toward that discredited conception of prisoners' rights and the role of the courts. I decline to join in what I hope will prove to be a temporary retreat." Sadly, the ruling in Jones has not been overturned, but there have been some developments, which are discussed here. (On the activities and challenges faced by the Incarcerated Workers' Organising Committee in the US and the UK see here).

3. Are the exclusions justified? - Some may think that these exclusions of working prisoners from protective laws are justified because working prisoners should contribute to the cost of the running of the facilities. Yet upon closer inspection, we see that the work that prisoners do often consists in much more than maintenance of the facilities, that it can involve long working hours, that the quality of the work does not support their reintegration and that private firms make profit from this situation (see the blog post by Pandeli). The fact that the work of prisoners is linked to structures of exploitation must make us question this supposed justification. To the contrary, what we see is that the rules increase and perpetuate existing structural unfairness: people who may already be disadvantaged because of background conditions of poverty are excluded from the protection of labour law. They are in this way made vulnerable to exploitation by profit-making organisations that are involved in the running of the prisons or the running of prison workshops where prisoners are employed.

There is another crucial issue that must be highlighted. These structures of exploitation do not only affect workers employed while in prison. They are connected to precarious work after they leave the criminal justice system. It has been observed by Erin Hatton that those who have worked in prison 'come to expect – and sometimes embrace – low-wage precarious work outside prison'. In addition, they also face serious obstacles when attempting to find better work because of their criminal record (see this article by Dallas Augustine). What we see is that the structure of exploitation in prison extends to structures of exploitation after prison.

4. Human rights for working prisoners - The exclusions of working prisoners from labour rights may violate human rights law. One problem in that respect is that even in human rights law, in documents that were drafted several decades ago, we find exclusions of prison labour. We

can see this by looking at constitutional and other human rights provisions that treat working prisoners differently to other workers. Article 4 of the European Convention on Human Rights ("ECHR"), which prohibits slavery, servitude, forced and compulsory labour, states: 'For the purpose of this Article the term "forced or compulsory labour" shall not include […] any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during release from such detention'. A similar exception is found in the Thirteenth Amendment of the US Constitution that states that '[n]either slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction'.

The International Labour Organisation ("ILO") draws a distinction between private and public prisons in the Forced Labour Convention No 29 of 1930, and places specific requirements to the regulation of private use of prisoners' labour, probably because of the danger of exploitation of prison workers by private entities. It excludes prison work from the scope of the Convention when it is performed in state prisons, but includes privately-run prisons. These exclusions of working prisoners from labour rights may have seemed acceptable at the time that these legal documents were adopted, but they are not acceptable anymore. The ILO examined in 2007 whether prison labour for private employers complies with Convention No 29. In order for prison work for private employers to comply with the Forced Labour Convention, what is needed is the formal, written consent of the prisoner and working conditions similar to a free labour relationship (in relation to wage levels, social security and occupational safety and health). These would indicate that labour is voluntary (see paras 59-60 and 114 ff). The European Committee of Social Rights, the monitoring body of the European Social Charter, has also examined prison labour in the context of Article 1, paragraph 2 of the Charter, which protects the right to work in an occupation freely entered upon. It reached similar findings to the ILO, saying that prisoners employed by private employers have to be employed with their consent and in conditions as similar as possible to working conditions outside prison.

The Grand Chamber of the European Court of Human Rights examined prison labour in the Stummer case that I mentioned earlier, which involved affiliation of working prisoners with an old age pension system. The finding of the majority was disappointing, as it ruled that lack of affiliation with an old-age pension scheme does not render the Applicant's work forced labour contrary to Article 4 of the Convention or violate his right to property (Article 1 of Protocol 1) and the prohibition of discrimination (Article 14). The Court recognised that the 2006 European Prison Rules require that work is as normal as possible for those in prison. Still, the majority was reluctant to apply this principle to old age pension (rule 26.17).

However, there were powerful dissenting opinions in Stummer on the human rights of working prisoners. The dissenting judges said that the exclusion of working prisoners from old age pension violates Article 1 of Protocol 1 (right to property), as well as Article 4 (prohibition of forced and compulsory labour). In doing so they placed special attention to the fact that the ECHR is a living instrument that must be interpreted in light of present-day conditions, and not in light of the drafters' intentions. At the same time the rights of the ECHR must be practical and effective, as Judge Tulkens particularly highlighted in her dissent: [C]an it really still be maintained in 2011, in the light of current standards in the field of social security, that prison work without affiliation to the old-age pension system constitutes work that a person in detention may normally be required to do? I do not think so. This, in my view, is the fundamental point. Nowadays, work without adequate social cover can no longer be regarded as normal work. It follows that the exception provided for in Article 4 § 3 (a) of the Convention is not applicable in the present case. Even a

prisoner cannot be forced to do work that is abnormal. The dissenting opinions in Stummer should form the basis for the development of the law in the future.

5. Captive labour and a continuum of exploitation - I want to point to a continuum of exploitation here. A few months ago I wrote for this blog on unpaid work requirements that are imposed on certain offenders and managed by profit-making organisations in the UK, and some time before that on work in immigration detention. In all these instances, I argued that the exclusion of offenders and immigration detainees from labour rights such as the right to a minimum wage is not justified. If we take these examples together with those working in prison and excluded from labour rights, we see that the state creates and sustains a continuum of structures of exploitation. It systematically creates or increases the vulnerability of captive labour, through concrete legal rules that exclude these workers from legal protections. This is not acceptable.

Frances Crook, chief executive of the Howard League for Penal Reform, was right in her powerful piece in the Guardian. She explained that prisoners can work for private companies and that this can be valuable for them and for society at large. But for prison work to be fair, radical change is needed: prisoners have to earn real wages, have workers' rights, and pay tax and social insurance contributions. It is only through radical change of the legal framework on working prisoners' rights that their recruitment by private companies can be acceptable. Without that, the authorities will be playing a major role in state-mediated structures of exploitation for private profit and violate in this way the human rights of working prisoners.

"Devastating" Impact of Covid-19 Restrictions on Women Prisoners' Mental Health

Prison Reform Trust: Women in prison have revealed the devastating impact of Covid-19 restrictions on their mental health and wellbeing, in a briefing launched today by the Prison Reform Trust. Based on evidence from women in prison from May 2020 to May 2021, as well as supporting evidence from HM Inspectorate of Prisons and other sources, the briefing looks at women's experiences of prison during the first and second waves of the pandemic. It highlights the consequences for women of a restricted regime amounting to 'prolonged solitary confinement', where they were often locked up for 23 hours a day without access to work, training or rehabilitation, and were not able to receive visits from family and loved ones.

One woman said: "Never in the six years of my sentence so far has lockdown been this severe or long…Mental health is deteriorating for me and [those] around me. Most were coping but over the past 2 to 3 weeks there is a lot of unrest. The worst cases are getting put in seg and we hear the screaming which is awful."

Another woman said: "Mental health is a massive issue here in prisons and there is no duty of care for it, we are simply given a colouring pack. Depression, anxiety, discomfort, boredom and comfort eating, the ladies are piling the weight on. I feel I'm in the passenger seat of an out of control car are we are about to hit a brick wall." The importance of family contact, especially with children, emerges as a particularly important theme in the report. At the time the evidence was gathered for the briefing, social visits were suspended, and although measures to compensate for the lack of face-to-face visits were put in place, these were unable to fully make up for the loss.

A third woman said: "Personally I feel contact with family/friends is really hard. To start with, we were only allowed 10 mins phone time a day, which has now progressed to 20 mins a day, which isn't enough…I think everyone's main issue is family contact and maintaining family ties. This includes family members outside. They find it upsetting and are as frustrated as us."

A family member of a woman in prison reported: "Video calls are 30 mins but only once a

month. Her visit entitlement is almost once a week so this is a far cry from that and there has been four months without any contact." Some women also felt that technology for video calls was designed to give priority to security rather than enhancing ties between mothers and their young children.

Fourth woman said: "I have spoken to a number of the ladies who have experienced purple visits and the overall feedback was 'brilliant'. [But…] the software is extremely sensitive and freezes quite a bit…The women and their family members find this frustrating." The briefing highlights areas of good practice, implemented by individual establishments, to make the situation more bearable. These include increased provision to call and write to family members, access to exercise and other activities, and kindness from staff. As prisons emerge from pandemic restrictions, the briefing suggests what prisons should do as they restore a normal regime. These include: Increase the number and duration of visits, providing open air visits and physical contact; but maintain phone credits and video calls. Provide support in the aftermath of visits that leave painful emotions. Enable staff and prisoners to discuss how they have been affected by the pandemic and the regime. Run wing meetings to gather the views of prisoners about what is most important to them and how to proceed. Create or maintain peer support workers and Covid-19 wellbeing reps and support them in their roles. Encourage officers to maintain empathy and caring in their work with prisoners. Explore how the recovery process needs to differ for women. Raise the level of mental health support in prison permanently.

Commenting, Peter Dawson, director of the Prison Reform Trust, said: "As prisons emerge from Covid-19 restrictions, recovery plans must be based on evidence about how women have been affected. Recovery in prisons is going slower than in the community, and is even more fragile. It's crucial that the measures taken to mitigate the impact on women and their families—such as additional phone credit—are not wound down, and that women in prison are involved in planning for what comes next. But this report should also cause the government to rethink its plans to expose even more women, typically convicted of non-violent crime, to the needless suffering of imprisonment."

Review of Imprisonment for Public Protection

Q: What steps they are the Government taking to review the cases of people with Imprisonment for Public Protection sentences with a view to recommending early release wherever possible.

A: The Government keeps the operation of sentences of Imprisonment for Public Protection (IPP) under constant review. This includes continuing to ensure that IPP prisoners, who have completed their minimum term of imprisonment, have every opportunity to progress towards safe release. By law, they are entitled to a review of their detention by the Parole Board at least once every two years. At the conclusion of any parole review which has not resulted in a release direction, an indicative date will be set for the prisoner's next review, taking account of advice from the Parole Board as to the risk reduction work which a prisoner needs to complete in the intervening period. A planned review may be brought forward where the prisoner has made exceptional progress. HM Prison and Probation Service are focused on reducing the risk and thereby the successful rehabilitation of IPP prisoners via an action plan which is being taken forward jointly with the Parole Board. This approach is working, with published statistics confirming the high numbers of IPP prisoners achieving a release decision each year. Our primary responsibility is to protect the public; however, HMPPS remains committed to safely reducing the number of prisoners serving IPP sentences in custody.

Innocent Children Feeling Pressure to Admit Guilt to Avoid Prosecution

Rebecca Helm, Scottish Legal News: Children who have not committed a crime are likely to be admitting guilt and accepting cautions just to avoid prosecution, a new report warns. Cautions are formal warnings from the police, and when accepted mean that the case against a defendant is not pursued in court. In order to receive a caution and avoid further action, defendants must 'admit' guilt. The report suggests that the compelling benefits of receiving a caution rather than facing prosecution in court mean that children in particular are likely to 'admit' committing offences that they have not committed. These admissions are problematic because accepting a caution can have a negative impact on a child's future.

Young people feel pressure to admit guilt because they want to avoid court or more severe consequences, according to the research. They feel accepting a caution is a quick and easy way to deal with accusations against them, and sometimes feel that it is the only option where they are scared by the prospect of further proceedings. Experts have said teenagers often don't appreciate the consequences of admitting guilt and accepting a caution. They are hugely influenced by short-term benefits of securing release from the police station, are getting insufficient support, and are feeling pressure to accept cautions due to a fear of prosecution when actually they would never be proceeded against anyway. Many children are not requesting legal assistance at all.

The research, led by Dr Rebecca Helm, director of the Evidence-Based Justice Lab at the University of Exeter and funded by the Economic and Social Research Council, recommends legal representation should be mandatory for children and lawyers working with children should receive specialist training. The report also recommends language surrounding cautions should be regulated and recorded in order to ensure children understand cautions and the implications of accepting them. Giving a caution should be clearly justified based on evidence and, when given to children, cautions should not have criminal records implications.

Dr Helm interviewed and surveyed 33 lawyers and 18 appropriate adults with experience working with children, and also people who themselves had accepted cautions as children. A total of 55 per cent of lawyers and 85 per cent of appropriate adults in the study said that children who have not committed a crime are 'admitting' guilt and accepting cautions. One barrister said: "I think the reason why they accept is just, they are given the impression it won't affect their future chances as much as a conviction and you can get it over with speedily." One appropriate adult said: "The young people are frightened in police custody. They are frightened. A lot of them are not hardened criminals or anything like that as you can judge from their actions, it's their first time. They just want to get out of there as quickly as possible."

Children have two primary sources of potential support when deciding whether to admit guilt and accept a caution – a lawyer or police station representative (to give legal advice) and an appropriate adult (to support the child, ensure they are treated fairly, and assist with communication). Currently, children need to have the support of an appropriate adult, but do not need the support of a lawyer if they do not want it. Dr Helm said: "Our research suggests that children are often left to make formal admissions and sign without legal representation. Children can also lack understanding of the long-term implications of accepting a caution, and that this may partly be due to language used surrounding cautions. "This lack of representation and understanding combines with the short-term benefits associated with admitting guilt and accepting a caution to create an environment in which children are systematically making admissions that are inconsistent with reality. Making these admissions has important consequences for a child's future."

Angry and Despairing Criminal Bar to "Draw a Line in the Sand"

The "Prevailing Mood" among criminal defence barristers is one of "visceral anger and despair" and it is time to draw a line in the sand, the new chair of the Criminal Bar Association has warned. An uncompromising Jo Sidhu QC said the delivery of criminal justice depended on the capacity of the women and men who upheld it. "That capacity is utterly exhausted. We can do no more." In his first message to the association, he continued: "We find ourselves in uncharted territory. Every single day trials are stood out for lack of available counsel or because they are stacked with no realistic prospect of being heard. The pleas of our clerks are ignored, forcing cases to be returned at the eleventh hour with scant regard to the interests of complainants and defendants alike. Accepting returns has become a veritable lottery in which sleep is abandoned in order to prepare for a trial the following day that often fails to proceed, leaving our advocates frustrated and unrewarded."

The silk, who practises from No5 Chambers and 25 Bedford Row, said it would take "years" for the vast majority of barristers to recover the income they lost during lockdown. Many have already voted with their feet and who can blame them?… They are lost to us because of repeated failures by government to invest in a beleaguered public service. Those who remain face the dismal prospect of trying to sustain practices that are barely viable." Mr Sidhu said the profession's leadership now had a duty, as never before, "to draw a line". He explained: "We await the [criminal legal aid review] report of Sir Christopher Bellamy. We have been patient beyond measure. Without a significant and substantial increase to our pay the list of casualties from the criminal Bar will only get longer and the exodus will be permanent. How then will our precious [criminal justice system] meet the relentless demands placed upon it now and in the future? Over the coming months there will be difficult decisions for us to take and no options will be set aside."

Though pay was his overriding priority, Mr Sidhu said he would also be pushing for a national protocol on the use of remote hearings – their introduction was "one of the few welcome changes precipitated by last year's disruption", particularly for those with caring responsibilities. The present position, where different courts across our circuits operate different protocols, creates inconsistency and confusion for counsel." At the same time, the association would remain firmly opposed to the introduction of extended operating hours, recently revived under the new guise of 'temporary operating arrangements'. Mr Sidhu noted that, to date, no resident judge has signalled an intention to deploy extended hours "and we hope that this reluctance reflects a recognition amongst our judiciary that criminal barristers have already been stretched to breaking point". His other priority was "ensuring that the criminal Bar remains open and accessible to new entrants from the widest range of backgrounds".

In the Footsteps of Sir Francis Drake - Home Office Plans to Rule the Waves

Adrian Berry, Cosmopolis: By its Nationality and Borders Bill, through new maritime enforcement powers, the Home Office seeks to extend its activity, beyond the United Kingdom territory, beyond UK territorial waters, and into international waters and into foreign waters. In so doing it seeks powers to stop, board, divert, and detain foreign ships and ships without nationality.

Before considering whether the proposed powers are compatible with international law commitments by which the UK is bound, such as international maritime law, human rights law, and the Refugee Convention, it is important to understand their scope and reach. While it may be unfair to compare those powers to the licence exercised by Sir Frances Drake in seizing

Spanish treasure ships on the High Seas in the 16th Century, the extent of the powers sought is a cause of concern, not just as regards compatibility with UK international law commitments but also as regards the impact of their use on international relations with countries such as France. That a French ship outside of UK waters may be boarded by UK immigration officers seeking to divert asylum seekers from reaching English shores has the capacity to impact adversely on Anglo-French relations. What is it that the Home Office is trying to do?

There are some existing maritime enforcement powers. By the Immigration Act 2016, which amends the Immigration Act 1971, the Home Office acquired powers to take to the sea to exercise immigration control. These existing powers concern immigration-related offences. Other maritime enforcement powers in relation to other matters are found in the Modern Slavery Act 2015 and the Police and Crime Act 2017. Under the Immigration Act 1971, an immigration officer, a police officer, or an enforcement officer (a commissioned naval officer, or a person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force) is given powers – in relation to UK waters – as regards a United Kingdom ship, a ship without nationality, a foreign ship, and a ship registered under the law of another British territory (e.g. the Isle of Man). Such powers are only to be exercised for the purpose of preventing, detecting, investigating or prosecuting the specified immigration-related criminal offences: helping an asylum seeker to enter the UK, assisting unlawful immigration, and assisting entry to the UK in breach of a deportation order or exclusion order.

As a check on the use of these powers, the authority of the Secretary of State is required before an immigration officer, a policeman, or an enforcement officer is able to exercise them in relation to a foreign ship, or a ship registered under the law of a British territory. Further, authority may only be given in relation to a foreign ship if the 1982 United Nations Convention on the Law of the Sea permits the exercise of those powers in relation to that ship. Under existing powers, where a relevant officer (immigration officer, police officer or enforcement officer) has reasonable grounds to suspect that a specified immigration-related criminal offence is being, or has been, committed on the ship, or the ship is otherwise being used in connection with the commission of an offence, they may: stop the ship, board the ship, and/or require the ship to be taken to a UK port and detained there. There are also connected powers to search and obtain information; powers of arrest and seizure; powers of to conduct protective searches of persons; and powers to search for nationality documents.

The Nationality and Borders Bill (by clause 41 and Schedule 5) seeks to modify existing maritime enforcement powers found in the Immigration Act 1971 and to insert new ones. As provided for in the Bill, an immigration officer or an enforcement officer may exercise specified powers: Such powers may only be used for the purpose of preventing, detecting, investigating or prosecuting a relevant immigration-related offence. As a check on the use of these powers, the authority of the Secretary of State is required before an immigration officer or an enforcement officer is able to exercise them: The definition of 'ship' is broadened in the Bill so that it extends to fragile and insecure vessels that cross the English Channel. Presently 'ship' is defined so that it includes every description of vessel (including a hovercraft) used in navigation. That definition is to be supplemented so that ship also includes any other structure (whether with or without means of propulsion) constructed or used to carry persons, goods, plant or machinery by water.

The Francis Drake Clause – Seizing and Ships and Property: In the Bill, immigration officers are given new powers to seize and dispose of a ship and its property on the authority of the Secretary of State, if they have reasonable grounds to suspect that it has been used in the commission of a relevant immigration-related criminaloffence and the ship is in UK waters or otherwise in the UK. These powers go further than those found in the Immigration

(Disposal of Property) Regulations 2008 made under the UK Borders Act 2007. Where the ship seized is a ship without nationality, the Bills allows the Secretary of State to dispose of that ship and other property or retain it after 31 days from the day of seizure. The means of disposal include the sale and destruction of the ship and property.

Pushing Back Asylum Seekers: Thereafter, the Bill expands powers to stop, board, divert and detain a ship. If a relevant officer has reasonable grounds to suspect that a relevant immigration-related offence is being, or has been, committed on theship, or the ship is otherwise being used in connection with the commission of such an offence, they may: stop the ship, board the ship, require the ship to be taken to any place (on land or on water) in the UK or elsewhere and detained there; and or require the ship to leave United Kingdom waters. The power is broad enough to allow the relevant officer to require a ship carrying Asylum Seekers across the English Channel to be diverted away from the UK and back to France. Where a ship is required to be taken to any place, the relevant officer may require any person on board that ship to take such action as is reasonably necessary to ensure that person is taken to that place or to any other place determined by the relevant officer. And where a ship is required to leave UK waters, the relevant officer may require any person on board the ship to take such action as is reasonably necessary to ensure that person leaves United Kingdom waters.

The authority of the Secretary of State is required before a relevant officer may exercise the power to require the ship to be taken to any place within a state other than the UK, or within a British territory. Further, the Secretary of State may give such authority only if the State, or the relevant British territory, is willing to receive the ship. So much will depend on the stance of the French authorities in respect of Channel crossings. But a relevant officer acting in relation to a foreign ship or a ship registered under the law of a relevant British territory may require the ship to be taken to the following places without the Secretary of State's authority: a place in the state or relevant British territory in question, or if the state or British territory requests, a place in any other state or relevant British territory willing to receive the ship.

The problem with the power to divert ships bound for the UK is that it raises profound questions as to the safety and well-being of the people on board those 'ships' (remember that ships are defined to include the most fragile of vessels, see above) and ultimately questions as to the risk to their lives. It is all very well to say that the diversion of a ship will only occur where safe. But how is that to be policed and enforced? Further, no doubt there may be an intention to act in accordance with international law. But such intentions are only likely to be assessed meaningfully in retrospect, once people have been harmed.

It is clear that even the Home Office have concerns that their tactics may lead to risks to life and limb and thus to the commission of criminal acts by enforcement officers, as the Bill immunises them against and criminal and civil court proceedings. Under the Bill, a relevant officer is not liable in any criminal or civil proceedings for anything done in the purported performance of these functions if the court is satisfied that the act was done in good faith, and there were reasonable grounds for doing it. Finally, in addition to new powers to stop, board, divert and detain a ship, the Bill also contains connected powers to search and obtain information; powers of arrest and seizure; powers of to conduct protective searches of persons; and powers to search for nationality documents. As noted above, the powers proposed raise issues as to their compatibility with international law commitments by which the UK is bound, such as international maritime law, human rights law, and the Refugee Convention. Those issues are important and deserve discrete consideration.

£7m Payout for 1,600 Men Abused at Medomsley Detention Centre

Inside Time: A compensation scheme for men who suffered physical abuse at the former Medomsley detention centre in County Durham has paid out £7.2 million to 1,651 claimants. The centre, which housed teenagers who had committed minor crimes, closed in 1988. In 2019, five former prison officers were convicted for their part in abuse at the site. Men who came forward to claim under the scheme said they had been victims of abuse in 1960s, 1970s and 1980s. Barry Coles, from Hartlepool, who was sent to Medomsley at 17 for riding a motorbike without tax or insurance, told the BBC he had suffered regular beatings and seen appalling sights, including staff pulling teenagers out of barbed wire when they had tried to escape. He said staff would carry sticks which they used to hit residents, adding: “They used to come over and kick the bucket and give you a good kicking for getting the floor wet.”

The compensation scheme will close to new claimants on January 1. The maximum individual award is £5,000, with the sum varying depending on the length of time spent at Medomsley and the extent of injuries. Solicitor Nathalie Clayton, from law firm Tilly Bailey and Irvine, which represents claimants, said: “The scheme has enabled us to deal with claims more quickly and I think it’s given people a platform to eventually be able to speak about what happened to them and move forward knowing they’ve received some justice for what happened.” A spokesperson for the Ministry of Justice, which has paid out the money, said: “Our deepest sympathies remain with those who suffered abuse at Medomsley.”

Downview Prison - Transgender Women

To ask the Secretary of State for Justice, pursuant to the Answer of 13 July 2021 to Question 29877, Downview Prison, and with reference to the evidence quoted in the judgment in R (FDJ) v the Secretary of State of 2 July 2021 that biologically female prisoners have been allocated to HMP Downview’s E Wing alongside biologically male transgender prisoners, what the circumstances are under which a biologically female prisoner may be considered for placement on E Wing.

HMP Downview’s E Wing currently provides separate accommodation in the women’s estate specifically for transgender women with Gender Recognition Certificates (GRC) who pose, or face, too high a risk to be located in the general women’s population. Decisions on allocation of this nature can only be made via a Complex Case Board, chaired by a senior prison manager, as detailed in ‘The Care and Management of Individuals who are Transgender’ policy framework It is not Ministry of Justice and HM Prison & Probation Service (HMPPS) policy to place women on E Wing who do not hold a GRC. In exceptional circumstances, such as those seen during the COVID-19 pandemic, it remains open to HMPPS to utilise accommodation differently where it is considered operationally necessary. However, any women placed on E Wing in such circumstances would always be held separately from others on the unit.

Brus v. Belgium: The applicant, Karel Brus, is a Netherlands national who was born in 1949 and lives in Zaventem (Belgium). The case concerns criminal proceedings which resulted in the applicant – who had been involved in corruption – being sentenced to prison. Relying on Article 6 §§ 1 and 3 (right to a fair trial/right of access to a lawyer) of the European Convention on Human Rights, the applicant alleges that he was deprived of the right of access to a lawyer during his pre-trial detention and during the hearings and interviews conducted during the preliminary phase of the trial. He also alleges that the length of the proceedings in question was incompatible with the “reasonable time” requirement. Violation of Article 6 §§ 1 and 3 (c) (fair trial) Violation of Article 6 § 1 (length of the proceedings) Just satisfaction: non-pecuniary damage: 14,000 euros

Abdi v. Denmark: The applicant, Mohamed Hassan Abdi, is a Somali national who was born in 1993 and lives in Ringe (Denmark). The case concerns the Danish authorities' decision in 2018 to expel the applicant, with a permanent ban on his re-entry to the country, following his conviction for possession of a firearm. Relying on Article 8 (right to respect for private and family life) of the European Convention, the applicant submits that, in their decisions, the Danish courts failed to weigh in the balance that he did not have a significant criminal past, that he had never been issued with a warning that he might be expelled, and that he had strong ties to Denmark where he has lived with his family since he was four years old. Violation of Article 8

File on Ex-RUC Officer Sent to Prosecutors

BBC News: Brian, John Martin and Anthony Reavey, were shot by loyalist paramilitaries in their home. The Ombudsman has submitted a "prosecutorial advice file" to the Public Prosecution Service. The officer was a former member of the Royal Ulster Constabulary (RUC). PSS will make a decision on whether or not there is enough evidence to press charges. The Catholic Reavey brothers were attacked during a spate of sectarian shootings in January 1976. They were among 16 people killed in a 24-hour period during an upsurge in Troubles-related violence. Brian Reavey, who was 22, and his 24-year-old brother John both died at the scene of the gun attack. Their younger brother Anthony, who was 17, was wounded in the shooting and died three weeks later. The murders have been attributed to the Ulster Volunteer Force (UVF). A spokesman for the Police Ombudsman's Office said it had "submitted a prosecutorial advice file to the Public Prosecution Service in relation to potential offences by a former RUC officer in the 1970s".

Attica Prison Riot 1971—'We Aren't Beasts, We Won't Be Beaten'

Fifty years ago prisoners in a US jail exploded in revolt. Sam Ord looks at the resistance—and the state's revenge. A prison uprising can leave even presidents shaken. That was certainly the case in August 1971 when people caged in Attica prison in upstate New York revolted against the system of incarceration. The revolt was a powerful element that formed part of a period of rage and revolt against the racism ingrained within US society. It also showed that determination to resist was so strong that it could appear anywhere, even within prison walls. Attica prison held a majority black and Latino population in terrible conditions with very little access to medical care. Such conditions were commonplace in prisons across the US. White guards, some of them members of white supremacist organisations, watched over the inmates. The prisoners faced brutal racism, with guards forcing white inmates to remain segregated and banning Islamic religious practices. The civil rights movement had inspired many of the inmates. And the recent murders of Black Panther Fred Hampton and Malcolm X led them to revolutionary conclusions. Inmate Herbert X Blyden co-founded the Attica Liberation Faction (ALF). The group understood that the violent prison system was a tool of the state to oppress individuals based on race and class. They argued for prison reforms such as a minimum wage and better conditions. But they also argued for prisons to be replaced with educational programmes that gave more opportunities to working class people. In August 1971, 700 Attica prisoners refused food in response to the murder of Black Panther George Jackson at San Quentin State Prison, California. In the following weeks, tensions between guards and inmates rose and culminated in a riot beginning on 9 September. Twelve hundred prisoners occupied the yard. They seized tear gas canisters and took 40 guards hostage. They organised first aid, rationed food and elected a strike committee. Elliott Barkley was elected speaker. He told the press, "We are men, we are not beasts, and we do not intend to be beaten or driven as such. What has happened here is but the sound before the fury of those who are oppressed."

In the yard rivalries between prisoners started to break down. One older man reportedly began to cry as it had been so long since he was "allowed to get close to someone." The revolt shook the ruling class leading President Richard Nixon to intervene. Nixon and the prison bosses wanted to set a clear example to black inmates and their families and supporters that their resistance would be futile. They called for the uprising to be crushed and demands for an amnesty to be ignored. Prisoners refused to back down, and so the prison commissioner ordered troops into the yard. Helicopters dropped tear gas, and guards fired 2,000 shots blindly into the haze. They massacred 29 prisoners and shot Barkley in the back.

Survivors were stripped, tortured and deprived of medical attention. Blyden was starved for days, and others were sexually assaulted and had their genitals mutilated. Prison bosses branded their rampage a "beautiful operation". Nixon agreed, saying the way to stop "radicals" was to "kill a few". Attica has been a model for many following prison strikes, including the 2016 strike, which began on Attica's 45th anniversary. Those strikes spread to 45 facilities. It showed that some of the most downtrodden and oppressed people would fight back fiercely by any means necessary.

Moldoveanu v. Republic of Moldova: The applicant, Nelli Moldoveanu, is a Moldovan national who was born in 1969 and lives in Chișinău. The case concerns the applicant's complaint that she was remanded in custody for 40 days in 2015 following her failure to repay a debt to another person. That person had brought criminal proceedings against her for fraud, arguing that she had never intended to repay the debt and that she had known repayment would be impossible. The criminal proceedings are still pending, while the civil courts, in a final decision handed down in April 2015, found against the applicant and ordered her to pay the debt with interest. Relying on Article 5 §§ 1 and 3 (right to liberty and security) of the Convention, the applicant alleges in particular that the dispute was purely civil and that she was therefore remanded in custody in the absence of a reasonable suspicion that she had committed an offence. She also alleges that she was deprived of her liberty on the grounds of her inability to fulfil a contractual obligation, in breach of Article 1 of Protocol No. 4 (prohibition of imprisonment for debt). Violation of Article 5 § 1 Just satisfaction: non-pecuniary damage: EUR 7,500 costs and expenses: EUR 2,000

Abuse in Prison - Extract From a Letter to MOJUK

I am writing this article to raise awareness of what is currently happening in UK prisons and would like any specialist or expert in the areas or fields referenced to get in touch. I have been subject and victim of severe abuse, maltreatment and negligence by the prison service, NHS, and other related services and bodies. This abuse has been from an early age, ranging from social services, courts, police, probation, and prison services. I will call it systemic abuse, as well as grooming and targeting, preparing me for the sexual abuse and harassment I'm currently facing. It is not a lie that I have suffered several sexual assaults by prison staff as well as physical and violent assaults. The disgusting, vile, inhuman treatment and behaviours I have experienced are unimaginable and incomprehensible to a normal, decent and understanding human being.

I would like to start by highlighting the PPO (Prisons and Probation Ombudsman). I have always felt until recently that the PPO has been fair, reasonable, impartial and understanding, even though I have refuted multiple protests by prisoners that the PPO is unfair, corrupt and not independent at all. After my most recent dealing with the PPO I am inclined to agree with the prisoners that the PPO is unfair, corrupt, and not independent at all. They are abusive in nature and contribute to the abuse and harassment I and others are suffering on a daily basis

by prison staff. I will now give details of my statement, but it should be noted that I have never been arrested, charged, or convicted of an offence against prison staff.

I was assaulted last year in HMP Thameside by prison staff. The assaults were unprovoked and on a partially disabled man, yet the PPO has refused to investigate the two complaints of assault, both involving serious violence and the PPO has aggressively refused to investigate the complaints; they have refused to discuss or open up dialogue about the assaults providing 2 or 3 line responses to 3-4 page letters outlining the reasons they should investigate. The PPO is a public body whose role is to investigate complaints by prisoners in England and Wales and to make sure they are being treated decently, fairly, and humanely.

If you want to read the full letter, write to:

Kyle Major A8397AJ, HMP Leeds, 2 Gloucester Terrace, Stanningley Road, Leeds LS12 2TJ

3,000,000 Crimes Against Women and Girls Since 2018

Sophia Sleigh, Huff Post: Around three million crimes have been committed against women and girls since the government promised a review into making misogyny a hate crime, new figures have revealed. Analysis of data from the Crime Survey of England and Wales shows that an estimated 3,268,657 crimes have been committed against women since 2018. However, it is not known how many are motivated by misogyny. Labour's Stella Creasy said it shows why the government "cannot afford to wait" on updating hate crime legislation to cover misogyny.

Three years ago ministers asked the Law Commission to review hate crime legislation, including if protective characteristics such as sex and gender should be considered by new or existing law. The commission's consultation document, published September 2020, provisionally proposed that "sex or gender" be made a protected characteristic for the purposes of hate crime. Creasy, the MP for Walthamstow, has been at the forefront of the campaign to make misogyny a hate crime, arguing that it would allow regular offenders to be identified and action taken to prevent further violence. It could also enable judges and the Crown Prosecution Service to factor misogyny into decisions around prosecution and sentencing.

Separately, a major report was published that argued stopping violence against women should be considered as much of a priority for the police as combating terrorism. Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) found "problems, unevenness and inconsistencies" in the police's response to the "epidemic" of violence against female victims in the UK. The watchdog report was commissioned by home secretary Priti Patel in the wake of the murder of Sarah Everard. Creasy said the government should agree "now" to bring forward legislative proposals to give women and girls the "protection they deserve". She said: "Women and girls cannot afford to wait longer for the government to act to protect them from violence which they face solely because of their sex or gender. The current Law Commission process is immensely valuable, and ministers must commit to implementing it rather than putting it on a dusty shelf alongside other vital changes which never saw the light of day. "Finally updating hate crime legislation to cover crimes motivated by sex or gender would show that the government is taking this violence seriously and acting accordingly."

Earlier this year the government published its strategy to tackle violence against women and girls as they faced increased pressure following the murder of Everard. A home office spokesperson said: "The government is totally committed to tackling violence against women and girls right across the country. "As part of that, we have asked the Law Commission to conduct a wide-ranging review into hate crime to explore how current legislation can be used more effectively to tackle these awful crimes, and whether to add sex, gender or any other characteristics to the hate crime laws. "We are currently waiting for the Law Commission's recommendations and will respond to the review in full when it is complete." Government sources pointed to legislation they had introduced on honour based abuse, such as forced marriage and FGM, stalking and domestic abuse which disproportionately impact women. The home office is also due to ask police forces on an experimental basis to record and identify crimes of violence where the victim perceives it has been motivated by a hostility based on their sex. They are currently in consultation with the National Police Chiefs' Council and forces on how to do it.

Use of Video and Audio Links in Criminal Proceedings

The plans to expand the use of remote hearings via video and audio links in criminal proceedings will significantly impact the right to a fair trial and equality in the criminal justice system. The pandemic prompted huge shifts in how we work, socialise and engage with public services. Many activities that would previously have taken place in person were moved online in order to minimise the infection risks associated with travel and gathering indoors. The courts were no exception, where use of video and audio hearings for criminal cases was significantly expanded to reduce the need for groups of people to gather in courtrooms. While it is sensible to review the role that virtual technology can play in a post-lockdown world, we argue that some circumstances are too significant, and have such potentially serious consequences, to take place 'remotely'. The processes through which a person accused of a crime might wish to defend themselves and plead innocent or plead guilty, is one such example. Although during the pandemic video and audio link proceedings have been implemented as an exceptional measure to facilitate the continuance of criminal justice proceedings, the long-term normalisation of this practice could undermine fair and equal justice for the foreseeable future, negatively impacting defendants, including children and those with vulnerabilities. It also conflicts with international legal standards on the right to a fair trial. Clause 169 of the Bill would enable the use of video and audio links for a very wide range of criminal proceedings including: a preliminary hearing, a summary trial, a trial on indictment, appeals to the Crown Court, sentencing hearings, bail hearings, proceedings under the Criminal Procedure (Insanity) Act, and under the Mental Health Act.1 However, the safeguards set out in Clause 169(4) and 169(6) of the Bill, considered below, giving broad but unspecific discretion to judges, are not sufficient. The right to be present at trial is recognised in European and international human rights standards as a fundamental guarantee of the right to a fair trial,2 and is closely connected to the right to a hearing. Video hearings can be a restriction of those fundamental rights. The Government has committed to guarantee enjoyment of these rights and must comply with its legally binding obligations. Multiple pre-pandemic studies have shown that remote justice proceedings are an inadequate substitute for in-person hearings,with vulnerable and younger defendants especially at risk of unfair hearings.

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