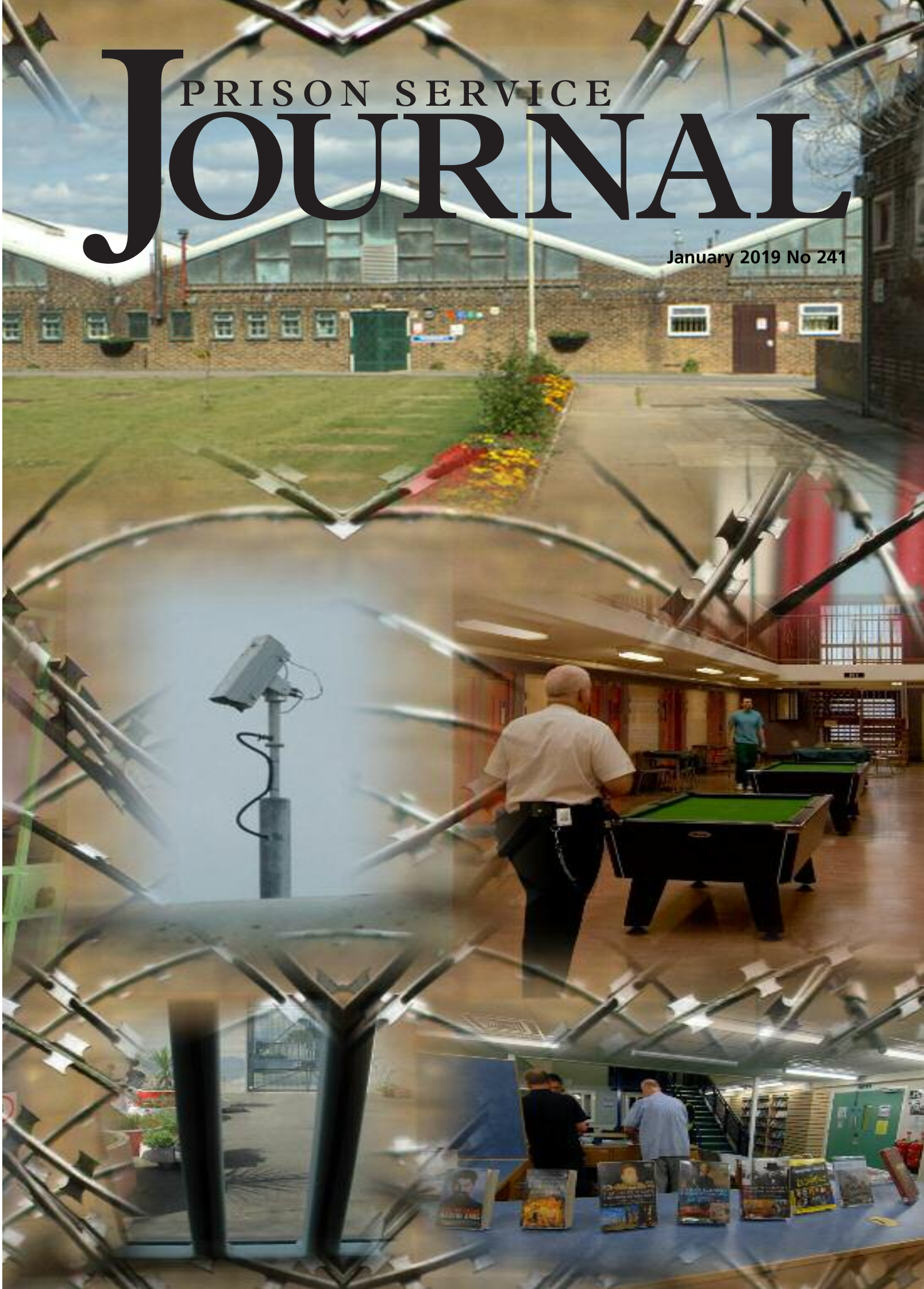


# PRISON SERVICE JOURNAL

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# Editorial Comment

Predominantly, this issue of *Prison Service Journal* is concerned with the relationship between prisoners, prisons and families. The opening article is by Lord Farmer, author of the influential report *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, published in 2017. In this, Lord Farmer described that family ties should be a 'golden thread' that runs all the way through prison processes. The article in this edition is based upon a lecture delivered at the therapeutic community prison, HMP Grendon, in 2018. The article develops the idea of family ties within the context of psychotherapy, arguing that there is significant overlap in the principles and that there can be a reinforcing relationship.

In 2016, the Inspectorate of Prisons published a report on indeterminate sentences for public protection, entitled *Unintended consequences*. In their article, Dr. Harry Annison from University of Southampton and Rachel Condry, from University of Oxford, report on the impact of indeterminate sentences of the families of prisoners. They catalogue some of the unintended consequences on family members. Their analysis shows the parallel sentence experienced by families and how their lives are shaped by interactions with prisons, probation, parole board, and even after release the anxiety of potential recall looms over family life. They also draw out some of the consequences on the material conditions, relationships and health of family members. This article is an important contribution to the research on families and exploring the ongoing, even if unintended, consequences of the indeterminate sentence for public protection.

The next two articles consider how prisoners and prison staff approach both the start and end of life. Dr. Laura Abbott from the University of Hertfordshire reports her research on the experience of pregnancy and birth, particularly focussing on escorts to hospital. Some major themes emerge. One is about the use of restraints, questioning the necessity in many cases and its potential harmfulness for the pregnant woman. The second theme is around the impact that staff can have, for good or bad, in the pregnancy and birth. Those who showed a particularly maternal approach could make a positive difference. Finally, the distressing experience of mothers being separated from their child at birth is discussed. Although this is

rare, Abbott suggests that support arrangements are often ad hoc and are not adequate for the needs of mothers and those who work with them. In relation to the end of life, Carol Robinson from University of York, examines the use of restraints on terminally ill prisoners. This is a growing issue, with almost 200 people dying of natural causes in English and Welsh prisons in 2017, and almost two out of three of those people died in a hospital, care home or hospice. The article explores the prison service instructions, Prison and Probation Ombudsman recommendations, and legal cases in order to provide a fuller picture of the regulatory framework. One observation that Robinson makes is that it is actually High Security Prisons that have better practice than other prisons, offering a model for improved practice elsewhere in the prison system.

This edition also includes an article by distinguished prison governor, Lynn Saunders. She has worked at HMP Whatton for a decade and led an establishment that has become widely recognised for its expertise in the working with men who have committed sexual offences. The establishment has also developed innovative practice with older prisons, disabled people and in nurturing a rehabilitative culture. In her article, Saunders provides an overview of some of the work of the establishment and the challenges this presents. This article is based on a lecture she delivered at the 2018 Perrie Lectures. PSJ has a long standing collaboration with the Perrie Lectures and are delighted to continue this tradition.

The final substantive article is a study by Peter Vedel Kessing and Lisbeth Garly Andersen of the Danish Institute of Human Rights, exploring the implementation of procedures for identifying and reporting individuals who may be radicalised in prison. The article draws out the complexity of getting the reporting right. Under-reporting can lead to opportunities being missed to prevent violent extremism, but over reporting can be counter-productive and indeed increase alienation and radicalisation.

As ever, it is intended that *Prison Service Journal* will offer a range of research and perspectives that encourage readers to reflect upon theory and practice, and to question not only how things are done but why, to what ends, and with what consequences.

# The Golden Thread?

## Families, Prisons and Therapeutic Communities

*Lord Farmer of Bishopsgate, City of London, is a businessman and Conservative peer. In 2017, he published a major review into prisoners' family ties.*

### Introduction

**This article is based on the keynote address I was asked to give at the Annual Grendon Seminar on the theme of prisoners and their families. I visited HMP Grendon whilst carrying out the Farmer Review on the importance of strengthening (male) prisoners' family ties to prevent reoffending and reduce intergenerational crime.<sup>1</sup> As a result of my visit, I became aware of the significant overlap between the principles of therapeutic communities (TCs) which make them successful, and the importance of putting families and healthy relationships at the heart of rehabilitation in all prisons.**

This emphasis on families and relationships is the 'golden thread' referred to in the title of the Annual Seminar, this article and the final report from the Review.<sup>2</sup> I shall describe how it is a resonant theme which gained early support and will stress that this initial enthusiasm must be harnessed so it can be built upon and influence other policy areas within and beyond criminal justice. The prevalence and harms of relationship and family breakdown cannot be ignored as they drive and exacerbate so many other social problems.

After outlining the remit set by the Ministry of Justice (MoJ) for the Farmer Review I will describe the overlap with TC tenets referred to earlier, in terms of the three key principles which underlie what I found and what I recommended.

Given the acceptance of the Review's recommendations by the MoJ, I will comment on the potential for further embedding of TC principles in all prisons in the light of the greater emphasis now being

laid on families and relationships. I end by suggesting that those working within prisons and in wider social policy must take advantage of this window of opportunity so that the emphasis on relationships becomes embedded and irreversible across government and other related agencies.

### The Golden Thread

The main message of the Review can be summed up as 'Families and other supportive relationships need to be the golden thread running through all processes of prisons'. The MoJ communications team picked up on the 'golden thread' theme when they launched the report<sup>3</sup> and it clearly inspired the organisers of the Grendon Seminar when determining the focus of the annual event.

Family services organisations have also popularized this concept.<sup>4</sup> Particularly noteworthy is POPS' work with families of prisoners which has encouraged them to own this phrase and apply it to themselves. They worked with children and young people from across the North West of England to produce a powerful and moving four-minute film, #WearetheGoldenThread, which is available on their website.<sup>5</sup>

The close involvement of both voluntary sector and government agencies in the work of the Review was instrumental in ensuring an exceptionally high level of stakeholder 'buy in' and support for its recommendations. Notably, senior members of the former National Offender Management Service (NOMS), now Her Majesty's Prison and Probation Service (HMPPS), were included on the Task Group. Their personal commitment to the family agenda, often based on many

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1. Farmer, M., (2017), *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, Ministry of Justice.

2. Ibid, p8.

3. Gov.UK, (2017), 'Landmark Review Places Family Ties at The Heart of Prison Reform,' accessed on 27/9/18 at [www.gov.uk/government/news/landmark-review-places-family-ties-at-the-heart-of-prison-reform](http://www.gov.uk/government/news/landmark-review-places-family-ties-at-the-heart-of-prison-reform)

4. For example, Wainwright L, and Harriott P, (2018), *The Golden Thread*, Prison Reform Trust; Care for the Family, (2018), 'The Golden Thread', in *Stories of Us*, (1), pp49-54.

5. POPS, (2018), '#WearetheGoldenThread', accessed on 27/08/2018 at [www.partnersofprisoners.co.uk/wearethegoldenthread](http://www.partnersofprisoners.co.uk/wearethegoldenthread)



years' frontline experience in prisons, and their awareness of institutional mechanisms which ensure a Review is diligently implemented were invaluable in developing recommendations.

Upon their advice I stipulated that the Ministry of Justice produce an action plan and meet regularly with me to evaluate progress on the Review's implementation.<sup>6</sup> The same cultural change which I called for in prisons, where the importance of relationships with families and significant others becomes embedded across an establishment—and is the golden thread running through its processes—is also required in the MoJ and HMPPS. The ongoing process of 'reviewing the Review' is intended to help achieve that outcome.

### The wider social and policy context

This cultural change is also required across government, and before I describe the Review in more detail, I want briefly to set it in a wider policy context than simply the justice system. My concern about the deterioration of family relationships and the instability this brings to many children and adults' lives was a major driver of my becoming involved in politics in the first place. My work in the House of Lords focuses on the development of policies to strengthen families and prevent family breakdown, whether due to the separation or divorce of parents or their inability, for whatever reason, to give their children the safe, stable and nurturing relationships they need to thrive.<sup>7</sup>

Young people from fractured families are twice as likely as those from 'intact' families to have behavioural problems.<sup>8</sup> They are more likely to suffer depression, turn to drugs and alcohol and do badly at school.<sup>9</sup> They are between three to six times more likely to have suffered serious abuse.<sup>10</sup> Children on the 'at-risk' register are eight times more likely to be living with their birth mother and a 'father substitute' compared with others of similar income and education levels.<sup>11</sup>

Around a quarter of all prisoners were previously removed from their parents' care and looked after by the

local authority.<sup>12</sup> Among prisoners in therapeutic community settings, around two thirds said they had experienced severe physical abuse and 40 per cent sexual abuse during childhood.<sup>13</sup> Close to three quarters of them experienced the loss of or separation from their parents for at least one year before the age of 16.<sup>14</sup>

Among 30 or so countries in the Organisation for Economic Cooperation and Development, the UK has one of the highest rates of family breakdown: only two thirds of children aged between 0 and 14 years live with both their parents, well below the OECD average of 84 per cent.<sup>15</sup>

Almost half of 15-year-olds will no longer be living with both parents.<sup>16</sup> More than one in seven were born into homes where there was no resident father and over a quarter of children live with their mother and not their father.<sup>17</sup>

When I was appointed to the House of Lords, I recognised the opportunities of that position to work with the Government to ensure family support is embedded in the everyday business of every department of government. I and other parliamentarians recently published a Manifesto to Strengthen Families signed by more than 60 Conservative MPs, a living document which aims to be a rolling programme for government.<sup>18</sup>

The Manifesto make the case that there needs to be a change in the culture of government: all departments need to recognize that positive family relationships are as important for children's and adults' lives as health, education and employment. It lays out a very broad programme and includes a section on prisoners' families which refers to the Farmer Review.

When the MoJ accepted all the recommendations from the Review and began to implement them, I saw this as an important first step for this and future governments in acknowledging the importance of family and other relationships for all they want to achieve.

I have found a high level of ministerial agreement that families, in all their diversity and complexity, are under huge pressures including but not limited to financial need. We must be very wary of a

6. Farmer, (2017), see n.1., p10.

7. Centres for Disease Control and Prevention, (2014), *Essentials for Childhood*.

8. Meltzer H et al, (2000), *Mental Health of Children and Adolescents in Great Britain*, Norwich: The Stationery Office, 2000; Hansen K, Jones E, Joshi H and Budge D, (2010), *Millennium Cohort Study Fourth Survey: A User's Guide to Initial Findings*, (2nd edition), London: Centre for Longitudinal Studies, pp165–176.

9. Rodgers B and Pryor J, (1998), *Divorce and Separation: The Outcomes for Children*, York: Joseph Rowntree Foundation.

10. NSPCC, (2002), *Child Maltreatment in the Family*.

11. Creighton S, (1992), *Child Abuse Trends in England and Wales 1988-90*, NSPCC; and Quilgar D, (2001), *Poverty: the Outcomes for Children (Child Abuse)*, Economic & Social Research Council.

12. Care Leavers Association, (2013), *Care Leavers, Looked After Children and the Criminal Justice System*, p4.

13. Shine, J., and Newton, M., (2000), 'Damaged, Disturbed and Dangerous: A Profile of Receptions to Grendon Therapeutic Prison, 1995-2000', in Shine, J., (ed.), 2000, *A Compilation of Grendon Research*, HMP Grendon.

14. Ibid; Newberry M, (2009), *Changes in the characteristics of offenders at Grendon prison 1998 and 2008*, HM Prison Service.

15. OECD (2014), *OECD Family Database: SF1.3 Further information on living arrangements of children*, OECD, Paris, accessed on 28/09/2018 at <http://www.oecd.org/social/soc/oecdfamilydatabase.htm>

16. HM Government, (2012), *Social Justice Outcomes Framework*, p6.

17. Office for National Statistics, (2017), *Estimated Number of Male and Female Lone Parent Families*.

18. Strengthening Families Manifesto, (2017), 'Manifesto For Strengthening Families', accessed on 27/09/2018 at [www.strengtheningfamiliesmanifesto.com/assets/Family\\_Manifesto.pdf](http://www.strengtheningfamiliesmanifesto.com/assets/Family_Manifesto.pdf)

defamilialisation approach to social policy, particularly in our welfare policy, which makes a virtue of people not needing to rely on other family members in order to survive: in particular, in economic terms.<sup>19</sup>

Notwithstanding all the important caveats about not expecting families to stay together when there is irresolvable conflict and violence, governments should see family stability—reliable love—as something to be encouraged. Families where, to reiterate, there are safe, stable and nurturing relationships, are the ideal place for children to be socialised and learn, experientially, how to be others-centred, rather than self-centred, how to take on and fulfil responsibilities, how to tell right from wrong and how to treat people well.

### The remit of the Farmer Review

So, against that backdrop, I undertook this Review with a very clear two-part remit from the Ministry of Justice:<sup>20</sup>

First, the importance for prisoners' rehabilitation of them maintaining relationships with their family members and significant others. British taxpayers are currently spending £15bn per year on reoffending and 38 per cent of men will return to prison after release, 65 per cent of those who served sentences of less than a year.<sup>21</sup> The Ministry of Justice's own research shows that men in prison who have visits from their family are 39 per cent less likely to reoffend than those who do not.<sup>22</sup>

Second, the need to prevent intergenerational crime: one landmark British study found that almost two thirds of prisoners' sons went on to offend themselves.<sup>23</sup> Research on adverse childhood experiences, or ACEs, which include having a parent in prison, and parental separation, has found that when four or more of these combine in a child's life, they are 20 times more likely to be incarcerated themselves in the future than someone who did not have any ACEs.<sup>24</sup> Keeping a child connected with their parent can mitigate the harm to that child of their parent's imprisonment and reduce the likelihood that he or she will end up in prison themselves.<sup>25</sup>

Finally, I was asked to focus on the majority male prison population in England and Wales for this Review.

As an aside, the Government's Female Offenders Strategy, launched in June 2018, referred to my being commissioned to conduct a Follow-on Review for the women's estate. I have been asked to tailor the original recommendations to women's needs and, given that an estimated two thirds of women in prison are mothers,<sup>26</sup> I have also been asked to consider how to support family ties while they are serving community sentences and post-release. The report from this Follow-on Review will not be available until early 2019.

### Overlapping principles between the Farmer Review and therapeutic communities (TCs)

Turning now to what I found and what I recommended, I have distilled these down to three clear principles: relationships, responsibilities and rewards, all of which are highly relevant to therapeutic communities.

In a nutshell, TCs value relationships, and are particularly alive to the influence, positive and negative, that residents' current and birth families have, both on their prior offending and on their day-to-day behaviour in prison. TCs strongly emphasise the need for men and women in prison to take responsibility for those relationships, to reflect on how they treat people, particularly

those who matter to them, and the repercussions of their actions towards them.

Finally, TCs work on the basis that there are enormous rewards to be reaped by treating relationships as an asset which should, where appropriate, influence how other important aspects of prison life are conducted, particularly security.

### Relationships

First, the importance of relationships. I say in the Foreword to my Review that:

*This report is not sentimental about prisoners' families, as if they can, simply by their presence, alchemise a disposition to commit crime into one that is law abiding. However, I do want to*

British taxpayers are currently spending £15bn per year on reoffending and 38 per cent of men will return to prison after release...

19. Lister, R., (2003), *Citizenship: Feminist Perspectives*, Palgrave, p73

20. Ministry of Justice, (2016), *Prison Safety and Reform*, p32

21. House of Commons, (2016), *Work and Pensions Committee, Support for Ex-Offenders*, p29; Ministry of Justice, (2016), *Proven Reoffending Statistics Quarterly Bulletin*, p1

22. Ministry of Justice, (2008), *Factors Linked to Reoffending*, p6

23. Ministry of Justice, (2012), *Prisoners' Childhood and Family Backgrounds*, p12

24. NHS Wales, (2015), *Adverse Childhood Experiences*, p5

25. The University of Huddersfield, (2016), *Children of Prisoners: Their Situation and Role in Long-Term Crime Prevention*, p19

26. Howard League, (2014), *The Howard League for Penal Reform, (2014), Mothers in Prison: The Sentencing of Mothers and the Rights of the Child*, Coventry University, p2 'Mothers in Prison', p2

*hammer home a very simple principle of reform that needs to be a golden thread running through the prison system and the agencies that surround it... relationships are fundamentally important if people are to change.*<sup>27</sup>

Whenever politicians talk about rehabilitation, they refer to the importance of education and employment. It is exceptional for them also to mention families and relationships. I will know my Review is really changing the culture when politicians find it impossible to talk about rehabilitation without also referring to the role of relationships because they have grasped that these provide the all-important motivation for people to change.

In the book, *Life Beyond Crime, Positive Justice* Gloucestershire's Hilary Peters says:

*I have known several prisoners who have changed their lives. They have all said that the very first step is recognising that there is someone who accepts them unconditionally ...suddenly they feel worthwhile. Then it is worth making the effort to change. That contact is like cracking a shell. The imprisoned person starts to grow...connecting is always the key.*<sup>28</sup>

The implication is that many people inside prisons have not experienced this unconditional acceptance. There is no doubt that problems in prisoners' family backgrounds, which may have contributed to their now being in prison, can cast a dark shadow over their lives, even decades later. This is acknowledged by the research on TCs and their everyday practice.

Many people who recognise they need to be part of TCs endured or witnessed harrowing and destructive early experiences, such as abandonment and abuse, which undermined their healthy emotional and psychological development. These ordeals have had a lasting influence on them, profoundly shaped how they see the world and defined who they are in their own

eyes. They have seared unhealthy patterns of how to interact with, and what to expect from others, into their relational repertoire.<sup>29</sup>

One of the TC's key tasks is to provide a corrective emotional experience by enabling residents to build reparative relationships between residents and with staff. Within this safe relational envelope, often in a group context, people feel able to be open about their lives and the hurdles which seem insurmountable and, vitally, their self-perceptions that they are doomed to fail are challenged.<sup>30</sup>

Here is a key overlap with family: the psychiatrist, Irvin Yalom, describes how 'group therapy produces group dynamics that resemble and reproduce familial dynamics.'<sup>31</sup> As basic trust and secure attachment deepens, the resident can talk about his distressing emotional baggage—the unfinished business of relationships that went wrong in early life.

More than that, the everyday relational glitches of community life provide them with ample opportunity to revisit how he or she has managed and experienced relationships in the past. While safely contained in a therapeutic frame they can experiment with new ways of relating and experiencing emotional intimacy. So, prisoners who have spent time in TCs are learning, often for the first time, how to relate constructively with others who, in

a sense, are temporarily part of their family grouping.

One element of the 'local family offer' I recommended that all governors provide in their prison is 'family learning'.<sup>32</sup> In response to the Review, the Ministry of Justice now requires each prison to publish a Family and Significant Others Strategy which must include this and the other 'family offer' elements.<sup>33</sup> Family learning refers to evidence-based programmes that enable prisoners to maintain and improve their relationships. These are often provided by the voluntary sector.

For example, Safe Ground's Family Man and Fathers Inside programmes, enable students to develop a better understanding of their role as a father. The activities and exercises men undertake, are specifically

One of the TC's key tasks is to provide a corrective emotional experience by enabling residents to build reparative relationships between residents and with staff.

27. Farmer, (2017), see n.1, p4.

28. Peters, H., 'Connecting is the Key', (2017), in Crane, Paul, (ed.), 2017, *Life Beyond Crime*, Lemos&Crane, p127.

29. Bowlby, J., (1988), *A Secure Base: Parent-Child Attachment and Healthy Human Development*, Routledge.

30. Stevens, A. (2016), 'Therapeutic communities' in Jewkes, Y., Bennett, J. and Crewe, B. (eds) *Handbook on Prisons* p.497-51.

31. Yalom, I., (1995), *The Theory and Practice of Group Psychotherapy*, New York, quoted in Stevens, (2016), see n.30., p502.

32. Farmer, (2017), see n.1., p38.

33. HM Prison and Probation Service, (2017), *Delivering Effective Family Practice*.

34. Safe Ground, (2016), *Summary of How Safe Ground Programmes Support the Prison Reform Agenda*, Unpublished Evidence Submitted to The Farmer Review.



designed to increase awareness and empathy and to develop the soft skills that are indispensable for success in employment, training and education, both in prison and on release.<sup>34</sup>

Beyond a programmatic approach, I recommended that personal officers should be encouraged and trained to develop personal relationships with their prisoners. This would help to reverse the de-skilling of wing officers that has accompanied under-manning. When I interviewed prison officers they told me they had become too busy to talk even just for a few minutes about what mattered to prisoners, such as their family ties. Short, constructive, skilfully conducted conversations are satisfying for staff and help them to stave off problems. Again, this is highly consistent with the intentional building of reparative relationships between residents and staff that TCs specialise in.

Given the high numbers of prisoners formerly in the care of the local authority already mentioned, personal officers must also be aware of how to help those who are care-experienced with the psychological and other issues they often face. Their internal working models often lead them to default to the position that relationships are inherently unreliable at best, abusive at worst.

When insecurity and a sense of threat are entrenched in an offender's attachment template it is very hard to form relationships that will help them to desist from offending and integrate themselves into society after their sentence.

### Responsibilities

Turning to responsibilities, I will quote Corin Morgan-Armstrong, a serving prison officer for two decades, who was on the Task Group for the Review. His ground-breaking family work at HMP and YOI Parc has been showcased across the world:

*Even if they have destroyed their family relationships through their criminal choices, there remained something raw, intrinsic and indefatigable, a hope or desire to repair damage, to try and somehow make things better. For me, this motivation for change above all other practical motivations (accommodation, employment, education etc) is the most powerful, and critically the most sustainable.<sup>35</sup>*

Short, constructive, skilfully conducted conversations are satisfying for staff and help them to stave off problems.

Another way of talking about this motivation for change is in terms of a newly-found sense of responsibility.

Similarly, being in a TC presents opportunities to take individual and collective responsibility. Allocation of tasks means that when people do not take responsibility, they have not offended against the anonymous prison service but against their peers and the values and customs they and their community have developed and endorsed.<sup>36</sup>

Flouting these does not just lead to an adjudication which can be laughed off. They are held to account by the group, to whom they must explain themselves and from whom they learn the consequences of what they have done. Residents are forced to abandon any notion that each man is an island when they become acutely, even painfully, aware that human beings coexist in a web of moral and relational interdependency. More

positively they experience first-hand the benefits of working collaboratively and harmoniously.

With reference to my Review, it was clear that holding men accountable for their family responsibilities produces many longer-term dividends in terms of the safe running of the prison regime. This is well-established by research and I saw it in practice.

One father I spoke to in HMP Winchester told me:

*If part of your prison routine is to do homework with your child or ring home regularly to hold a quality conversation with her, this is a strong deterrent to taking a substance that would mean you were unable to do that because you were 'off your head'.*

Similarly, a focus group of men in Frankland high security prison described how the good contact they had with their families had a restraining effect on their behaviour when something 'kicked off' on their landing. Knowing how much their families would worry if they heard about them being involved in a fight, had a strong deterrent effect to joining in:

*The first thing I think about is my family when there is an altercation.*

Technology can and should be deployed to help men fulfil their responsibilities. One man I met in prison, who was not unusual in having no visits, had been in

35. Morgan-Armstrong, C., (2017), 'Parenting is not for Cowards', in Crane, (2017), see n.28., p90.

36. Stevens, (2016), see n.30.

care as a child and had already served a sentence for 26 years. The only person with whom he had a significant relationship was his 93-year-old grandmother, but she was unable to make the long journey to see him. His prison was being digitalised (phones were being installed in every cell and tablets provided so men could order their own meals and canteen items) but they still seemed to be a long way from being able to offer skype-type or virtual visits.

It is apparent when considering such cases that the prison system must make the most of technology, not just for family members to stay in touch but for prisoners to express their sense of responsibility towards them. If a teenager is doing important exams it can be very disruptive for them to travel across the country and see their father inside. It is hard to cope with the rigours of visiting when there's a very new baby to look after. Both the teenager and the new mother need to know that the father understands their daily struggles, instead of being wholly absorbed in his own.

That is why I recommended that virtual visits using video calling technology be made available as soon as possible for the limited numbers of families where members cannot visit frequently or at all. In other countries—Tasmania, Northern Ireland and Australia for example—it is already mainstream, for example to use tablets in the visits hall.<sup>37</sup> HMP Grendon explored skype-type visits and further pioneering establishments are working with the Government to develop models for how this can be done safely across the estate.

Finally, I was determined that my Review include men who had absolutely no supportive relationships, familial or otherwise, often because they were taken into local authority care as children and found much to recommend in the approach taken by Lifelong Links, also known as Family Finding. This model, currently being piloted in nine local authorities in England and Scotland, aims to build lifelong support networks for children and young people in care. Lifelong Links team members identify and work with relatives and other supportive adults with a connection to a child in care, who are willing to make a life-long commitment to that child and give them ongoing emotional and practical support. The aim, in so doing, is to reinforce their sense of identity and

belonging. Criminal justice social workers in Edinburgh (who do the work of probation officers in England and Wales) are also testing the potential of this model to help prisoners forge new connections that will motivate them to undertake rehabilitation activity whilst inside and help them make a fresh start upon release.

## Rewards

As a metals trader for 50 years, I have spent my working life calculating the risk-rewards of business opportunities and I approached my Review in the same hard-headed way. When assessing if a deal is worth taking a risk on, one needs to look at how great that risk is relative to the potential rewards. If there is a 20 per cent risk but the reward is 80 per cent, one takes the shot.

When I looked at the evidence on the impact of family relationships a similar calculation made harnessing these seem like a risk worth taking. The short-term risks seemed to be based on the view that family work in prisons creates a chink of weakness in the prison's armour of security which a minority intent on smuggling in illicit goods can exploit. Family members can indeed be pressurised into bringing in contraband by the prisoner they are visiting, who in turn is being coerced by someone inside. However, if this is to be dealt with

effectively, security and family work should not be treated as conflicting or competing priorities.

If they are then security will and always should be the paramount concern. What can break the impasse is if a Deputy or Governing Governor vocally champions this area of prison life because of the dividends family work can pay as I just mentioned. When I visited HMP Leeds the Governing Governor told me that he used the extra budget allocated for improving safety, to place a prison officer in his visitors' centre. He knew it was vital to improve how the community outside related to prison life inside and vice versa. Experience had taught him that families can be assets which, if fully deployed, can profoundly change how men in jail see themselves and therefore how they serve their sentences. Prisoners with more stable family relationships were more likely to be stable themselves.

Again, the issue of safety is one which those running TCs have grappled with extensively. There are

This model, currently being piloted in nine local authorities in England and Scotland, aims to build lifelong support networks for children and young people in care.

37. Farmer, (2017), see n.1., p105

38. Family Rights Group, (2018), 'Lifelong Links', accessed on 21/09/2018 at [www.frg.org.uk/involving-families/family-group-conferences/lifelong-links#what-is-lifelong-links](http://www.frg.org.uk/involving-families/family-group-conferences/lifelong-links#what-is-lifelong-links)

similar security issues to consider when changing prisons' practice towards families, as there are with putting therapeutic principles at the heart of prison processes.

Prisons or units operating on TC principles have valuable experience in managing the tensions between seemingly conflictive priorities and avoiding an overemphasis on any one that will ultimately be destructive to the whole. TCs are familiar with holding in tension the priorities of 'therapy and security, care and control, the clinical and the penal.'<sup>39</sup> Both aspects of these inherently somewhat opposed pairs are always indispensable, and neither should consistently dominate or excessively intrude in ways that will undermine the other.

The need to manage such tensions well is particularly seen in carceral geography, how space is organised in prisons. A prison visiting hall might be seen as an unavoidable security risk hotspot because prisoners' visiting rights have to be fulfilled and therefore it will be staffed with a measure of reluctance. Alternatively, it could be seen as somewhere with great potential for positive change, because families and others who are significant to prisoners have a role to play in rehabilitation that is becoming increasingly apparent and valued.

Moreover, if families are to feel valued by establishments this should be reflected in the spaces they visit. HMP Grendon has extended their visits area so children can play outside with their fathers, which makes the whole experience much more healthy and enjoyable. Fathers receiving visits in good weather know they are not restricting their children to playing inside because they are in a prison.

It does not take much to brighten up the areas visitors walk through so they are not unnecessarily bleak. There are low cost solutions such as giving artistic prisoners or organisations in the community the opportunity to demonstrate their creative flair.

The Review refers to the difference between being an extrovert and an introvert prison.<sup>40</sup> I saw extrovert prisons which have developed relationships with businesses, voluntary organisations and other community bodies including universities. This can facilitate a flow of goods, services and funding into the prison. In return, it provides volunteering, research and corporate social responsibility opportunities for individuals and agencies outside the prison.

This can have the welcome result that when the visits hall—the place that's shared between the prison and the community, where inside meets outside—needs some new, obviously risk-assessed, furniture; the toy box would benefit from a refresh; and prisoners' teenage children need replacement X Box controllers which have taken a hammering, there is a wealth of other resources to draw on beyond prison budgets.

Other prisons I visited seemed cut off from the world. In one, I held a group discussion with the men inside, about how family work could be improved. Some of their suggestions depended on availability of funding, for example, the chairs in the visits hall were old, no longer comfortable and badly needed replacing. The prison officer attending the discussion was sympathetic but said the budget could not meet this need. It was clearly not in his mind that there might be community

partners who could be approached, so funding and other opportunities went unnoticed. More concerningly, if those running prisons do not realise that the outside has something to offer and they are inward-looking, such 'introvert' establishments will be at a distinct disadvantage when trying to change the culture, so that relationships, especially with families outside, are prized as rehabilitation assets.

On the broader issue of safety, lack of contact with families was viewed by respondents to my Review as a key factor not just in violence but also in self-harm, suicide and the deterioration of mental health. Families can provide vital information and insights about the risk of self-harm or suicide for prisoners.

So, my Review recommended that each prison should establish a clear, auditable and responsive 'gateway' communication system for families and significant others—a dedicated phone line that is listened to and acted upon.<sup>41</sup> It also recommended that families' concerns about mental and physical health are properly recorded and action taken. This could be run by a voluntary sector organisation or prison staff, but whoever deals with those calls cannot treat them lightly.

I met with families who were deeply frustrated that their detailed knowledge of men who had come to harm in prison had not been drawn upon. They could have provided crucial information about health needs, medication and dangerously bullying relationships and thereby prevent violence, self-harm, suicide and further

## The need to manage such tensions well is particularly seen in carceral geography, how space is organised in prisons.

39 Stevens, (2016), see n.30, p507

40 Farmer, (2017), see n.1., p102

41 Ibid, p13.

deterioration in health—and the vicious cycle of danger which accompanies these.

Excessive risk aversion can mean security concerns dominate how prisons relates to families to the extent that they become side-lined in the battle against the disorder and despair that help to drive violence, drug use and poor mental health—and a vicious cycle of danger.

Just as the short-term risks of security lapses should be set against the potential long-term rewards of a much more positive and rehabilitative culture, we must be willing to accept, and ready to respond to, the political risk that this whole agenda will be dismissed as being soft on crime.

When my report was launched a small minority of politicians accused me of precisely that. My rebuttal to this charge is simple: bringing men face to face with their family responsibilities reduces reoffending and means fewer victims, more children growing up with their fathers and less likely to offend themselves, fewer future prisoners, lower costs, more men taking advantage of educational and employment opportunities, so they work when they come out of prison and therefore generate more tax revenue.

## Conclusion

I have set my remarks about the Farmer Review in the context of the wider issue of family breakdown—family and other significant relationships need to be valued and better supported by policy across every government department, not just the MoJ.

With regard to the overlapping principles that make TCs successful, I have outlined the undergirding principles of the Farmer Review and how these informed its recommendations. These principles are the need to harness the resource of good family relationships and make them the golden thread running through all processes of prisons; the need to bring home to men that they have enduring responsibilities to their families; and the need to focus on the rewards that consistently good family work and a change in culture across the estate can bring.

I will close with some remarks about how this affects the Therapeutic Communities agenda. Were a major cultural change across the mainstream prison estate to be achieved, along the lines I recommend above, and these three principles guided standard practice, I suggest this would lead to many of the improvements in the wider prison system proponents of the TC agenda have been championing for decades.

Some of the ends of TC treatment will be well-served by the emphasis on family and other significant relationships I have sketched out here. After all, almost

half of the entire sentenced prison population is not serving a long enough sentence to benefit from TC treatment. Those who will only be able to make progress if they undertake treatment that is as intensive as a TC are not typical. As one researcher has expressed it:

*By the nature of their offence, sentence and psyche they are not 'normal' offenders and need a treatment intervention that goes beyond the 'normal'.<sup>42</sup>*

As awareness of the importance of relationships to successful rehabilitation grows, I am cautiously optimistic—and optimism is important in therapy—that appreciation of the specialist work that is carried out in TCs will grow, not least because there are other promising developments to build on. For example, the Offender Personality Disorder Pathway programme now includes TCs and it has been suggested that their integration into a key strand of policy will mean the number of applications to join TCs will increase, thereby boosting take up of the model. Indeed, it has been suggested that a 'spring of hope' and renewal might be approaching for this most 'special kind of prison'.<sup>43</sup>

Implementation of the 'families agenda' is ongoing—and going well. Given the synergies and overlaps between it and the Therapeutic Communities agenda it is my hope that these two vines will grow up together. The more we understand that everyone needs relationships to change, the more it will be understood that some will struggle more—a lot more—to forge and maintain these, and that therapeutic community places are indispensable.

To use the language of TCs, operationalised respect for the 'universal therapy' that healthy family ties can deliver, has been noticeable by its absence. Previous approaches to rehabilitation that only emphasised employment and education did not work.

The relational imperative the TC agenda has been proselytising on behalf of for many years, with reference to a tight framework of theory and practice, has been sorely lacking. It is this relational imperative that the Farmer Review is working to universalise.

As I said earlier, there is growing conviction among ministers in the current administration, that we need to strengthen families, given that they can undermine or bolster the aims of every department of government. However, a future administration, of whatever colour, could unravel this welcome emphasis on families and relationships. The voluntary sector, prisons and other social policy agencies must work together to ensure it becomes so embedded, both in our prisons and in other areas of policy, that the relational consensus is unbreakable—and here to stay.

<sup>42</sup> Stevens, (2016), see n.30, p500.

<sup>43</sup> Ibid, p510.

# The Pains of Indeterminate Imprisonment for Family Members

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**The indeterminate Imprisonment for Public Protection (IPP) sentence has rightly been described as one of the ‘least carefully planned and implemented pieces of legislation in the history of British sentencing’.<sup>1</sup> Notwithstanding increasing scholarly and policymaker interest in both prisoner families and ‘dangerous offender’ measures such as the IPP,<sup>2</sup> the experiences of families of IPP prisoners has so far remained unexplored. This paper reports on a research project that addresses this lacuna.**

In this paper we outline some of the difficulties faced by families of IPP prisoners. We identify a range of challenges, and resulting harms, experienced by these families of IPP prisoners, some of which are common to all prisoners’ families, but many of which follow specifically from the IPP sentence. In particular, the findings make clear that a pervasive sense of injustice and uncertainty underpins and permeates more specific concerns relating to efforts to progress towards release, and indeed to manage the stresses of life beyond release. Families report significant material effects, which also appear to be heavily gendered in their distribution. Family relationships—both with the prisoner and more widely—are often heavily disrupted. Negative health effects caused by the stress and anxiety of the experience.

## **Context: The IPP Sentence and Prisoner Families**

The IPP sentence was created by the Labour government in 2003 and implemented in 2005. It was intended to target individuals who posed a ‘significant risk of serious harm’ to the public but whose immediate

offence did not merit a life sentence. Driven by dominant political ideologies of the time and a simplistic, favourable view of the capabilities of emerging risk assessment practices, the sentence was developed in over-broad terms and in a manner which overly constrained judicial discretion.<sup>3</sup>

While some IPP prisoners have committed very serious offences and thus received very long tariffs, it is widely accepted that the boundaries around the IPP sentence were drawn far too broadly. Within two years the IPP population had reached 4000; by 2011 it had reached 6000. England and Wales had the dubious honour of holding the most indeterminately-sentenced prisoners of any European nation by a wide margin. Concerns with the IPP sentence mounted, centred upon its contribution to prison overcrowding, the sclerosis in the penal estate (inability of prisoners to access relevant courses, to progress through the estate and so on) and recognition of principled arguments against the sentence.

Having been amended in 2008, in 2012 the sentence was abolished.<sup>4</sup> It was accepted by the then-Justice Secretary that the sentence was fundamentally unfair in principle and unworkable in practice. However, existing IPP prisoners remained: their situation was not addressed by the legislation.

Fifteen years on from its creation, this preventive sentence has proved to have a very long tail. As of June 2018, over 2,700 of those sentenced to IPP remain in custody.<sup>5</sup> While the release rate has improved a great deal, the number of recalls to custody in the past year has increased by 22 per cent to 928.<sup>6</sup> Once recalled, prisoners are back on their original IPP sentence and face again the difficulties of working towards proving their non-dangerousness. Furthermore, over 2,400 IPP

1. Jacobson, J., and Hough, M. (2010) *Unjust Deserts London: Prison Reform Trust*, vii.
2. On the former, see for example Akerman, G., Arthur, C., and Levi, H. (2018) A qualitative study of imprisoned fathers: Separation and the impact on relationships with their children. *Prison Service Journal*, Issue 238, pp. 16-27; and McCarthy, D., and Brunton-Smith, I. (2017) Prisoner-family ties during imprisonment: Reassessing resettlement outcomes and the role of visitation. *Prison Service Journal*, Issue 241, pp. 23-27.
3. See Annison (2015) *Dangerous Politics Oxford: Oxford University Press*.
4. The IPP sentence was abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
5. Ministry of Justice Offender Management Statistics Quarterly: January to March 2018 London: MoJ.
6. *ibid*.

prisoners have never obtained release despite being well over their initial tariff period.<sup>7</sup> In 2017, the Prison Reform Trust reported that the incidence of self-harm by IPP prisoners had perhaps unsurprisingly risen to 872 per 1000, considerably higher than the incidence for both prisoners serving a determinate sentence and a life sentence.<sup>8</sup>

The effects of imprisonment on family members have been subject to rigorous research for many years in both the UK and internationally and there is strong evidence of how detrimental these effects can be. Evidence for the problems faced by prisoners' families can be traced back over fifty years. One of the earliest studies found that partners of male prisoners reported a wide range of difficulties including financial problems, concerns about the effects on children's behavior, and a lack of support and visiting facilities.<sup>9</sup>

More contemporary studies have found negative effects across a wide range of dimensions, including economic or material costs, changes in family relationships, health problems, behavioural changes in prisoners' children, and problems with schooling and education for those children. Yet successive governments have been slow to recognize these difficulties or to provide resources to support those affected. In public policy, prisoners' families remain a much neglected group.

Contemporary research has also begun to recognize heterogeneity within the broad category of 'prisoners' families', one which of course includes a variety of kin relationships, of diverse ages, ethnicities, genders, sexualities, and so on. In trying to distinguish how these effects work, the distinction between mediators (mechanisms by which effects are produced, which might also contribute to those effects) and moderators (issues that afford some relief from those effects, or indeed might make them worse) has been applied.<sup>10</sup>

In the context of prisoners' families, 'mediators' might include stigma, guilt and shame; the type of offence; police practices; prison regimes; and the duration of imprisonment. So, for example, a relative

of a serious offender might experience strong feelings of stigma and shame, have to contend with a high security prison regime, and a long sentence. All of this *might* make their experience more difficult than the relative of a lower level offender who receives a short sentence. 'Moderators' might include various types of family and individual resilience; gender, ethnicity and age; welfare policies and social services; and the work of NGOs. All these factors potentially have significance for the effects of imprisonment on IPP families and how the experiences of individuals and families might vary. It is also important to note that mediators and moderators might be closely interwoven and affect families in different ways at different times.<sup>11</sup>

Our focal point here is how families' experiences are impacted by the IPP sentence itself. Our research suggests that the IPP sentence itself is an important mediator producing and contributing to a number of negative effects: the sense of injustice and uncertainty experienced by family members; their hope and hopelessness; and a protracted, often bewildering and apparently endless criminal justice process.

## Contemporary research has also begun to recognize heterogeneity within the broad category of 'prisoners' families...

### Methodology

The research comprised an online survey and in-depth interviews, supported by analysis of a range of relevant documentary materials. The survey was promoted via prison newspaper Inside Time, Twitter and relevant Facebook groups. Family members were asked questions relating to how they were affected by the IPP sentence; organizations or individuals who may have provided support to them; possible involvement with campaigns relating to the IPP sentence; and demographic information. In total 119 people responded to the survey, with an average of 70-80 responses to each individual question.<sup>12</sup>

In-depth interviews were conducted with 15 family members of indeterminate-sentenced prisoners.<sup>13</sup> Interviews lasted between 40 minutes to over 3 hours. Interviews were conducted in person at the respondent's home, or in another location

7. *ibid.*

8. Prison Reform Trust (2018) *Prison: The facts, Bromley Briefings Summer 2018*. London: Prison Reform Trust.

9. Morris, P. (1965) *Prisoners and their Families*. London: George Allen & Unwin.

10. Murray, J. et al (2014) *Effects of Parental Incarceration on Children: Cross-National Comparative Studies*. Washington, DC: American Psychological Association.

11. For full discussion, see Condry, R., and Smith, P. eds. (2018) *Prisons, Punishment, and the Family* Oxford: Oxford University Press.

12. Respondents could choose to answer as many questions as they wished.

13. An expansive notion of 'family member' is utilized here, including blood relatives but also (for example) close family friends who are primary supporters, in order to capture the variety of individuals heavily involved in providing ongoing support to IPP prisoners, and who consider themselves to be, or to be acting as, 'family'.



requested by the respondent, with a small number conducted by phone.

Information was provided to interviewees and survey respondents explaining the nature and goals of the research. In particular, their freedom to consent (or not) to participation in the research, and the anonymization of responses, was emphasized.<sup>14</sup> Some quotes presented have had identifying information redacted in order to ensure anonymity.

### Research Findings

It is essential to place front and centre the specific dynamics generated by the IPP sentence and its history: in particular, the feelings of injustice and uncertainty that this engenders in family members (and indeed prisoners). This results in a complex mixture of hope and hopelessness, endurance and despair.

#### **Injustice and Uncertainty**

The abolition of the IPP sentence in 2012 was justified explicitly on the basis that, in the words of then-Justice Secretary Kenneth Clarke:

*[They are] unclear, inconsistent and have been used far more than was ever intended...That is unjust to the people in question and completely inconsistent with the policy of punishment, reform and rehabilitation.*<sup>15</sup>

Understandably, the decision not to make the abolition retrospective, or to take some other form of action,<sup>16</sup> caused considerable difficulties for families. When provided, respondents' comments on imprisonment were not abolitionist, nor seeking to downplay the crime committed by their relative: while some pointed to specific concerns about their case (e.g. mental health issues that raised concerns about the initial decision to imprison), many believed that a determinate prison sentence would have been entirely appropriate.

However, the incongruence of strident assertions for its abolition by government representatives at that time with a refusal to pursue this to its logical conclusion for electoral reasons<sup>17</sup> caused respondents anger and confusion:

Understandably, the decision not to make the abolition retrospective, or to take some other form of action, caused considerable difficulties for families.

*I feel bitter towards the justice system knowing worse crimes are committed with much lesser sentences.* (Survey)

*I may be naïve, but I don't understand how they can just ignore the truth of the deep injustice of it.* (Interview)

One respondent spoke of the injustice of the law 'eating away at you' (Survey).

As regards the overarching 'not knowing when it will ever end'(Survey) that results from their relative serving an indeterminate-sentence, respondents pointed both to the substantial emotional challenges posed by the open-ended sentence, and the extent to which they experienced themselves as serving the sentence with their relative:

*The not knowing is the hardest part, we have no end date, no light at the end of the tunnel, no hope.* (Survey)

*We serve this sentence too because our lives are spent waiting for something that right now to me personally feels like it may never come.* (Survey)

#### **Hope and Hopelessness**

Many respondents reported being in a condition of what one respondent described as 'chronic loss' (Survey):

*...it's exactly the same feeling as when you've lost somebody. [But] It don't go away and you can't move on from it.* (Interview)

We argue that many families of IPP prisoners find themselves in a liminal state, hopeless but unable to fully abandon hope; hopeful but worn down by constant setbacks.

Families are fighting a 'a never-ending battle' (Survey). But the ever-present possibility that a prisoner's situation might improve means that 'every single one of us has got that little bit of hope that something's going to change' (Interview):

14. The research received ethical approval by the University of Southampton ethics committee (Ethics ID:28613).

15. Hansard: HC Deb 1 November 2011, col 785-787.

16. For example, conversion to determinate sentences or introduction of a maximum period of imprisonment, see Annison (2018), Tracing the Gordian Knot: Indeterminate-Sentenced Prisoners and the Pathologies of English Penal Politics. *The Political Quarterly*, 89: 197-205.

17. See Annison, H. (2015) *Dangerous Politics*. Oxford: OUP, ch 7.

*I am professional and understand well how the systems work, including mental health systems. I have huge resilience, but I am worn down at times. I have never been through such a difficult process ... [my partner and I] can barely support each other any longer because it has broken us all down. (Survey)*

*I will not let them break me where I'll give up my campaign for [my son], you know? I can't. That IPP's coming off him, that IPP, I swear to God. (Interview)*

## Key Organizations

### Prison

As Wainwright and Harriott have recently noted, families can find it 'virtually impossible...to penetrate the prison system'.<sup>18</sup> Respondents reported a range of challenges faced in supporting their relative. Basic issues regarding distance from prison, and practical difficulties flowing from this, were central to many respondents' concerns:

*The 350 mile journey to see my brother every 3—4 weeks is something I dread. It's also very expensive. Being treated like a criminal at the prison—having to be searched, even your open mouth examined. (Survey)*

*He has been moved 2 times in 2 weeks.... both times we had no warning and both times were to different counties. (Survey)*

Families sometimes found the requirement for the prisoner to give permission for them to receive information and (potentially) speak on their behalf challenging:

*[As a Mum] you're supposed to be the person that's there making sure they're ok and everything. But, once they're an adult, is it difficult for them to...? You have to have the person's permission who's in the prison, for*

*example, don't you, for them to liaise with you and things like that? (Interview)*

While the reasons for permission are understandable and appeared to be largely understood, relatives described such processes, as part of supporting their relative, as complicated by a number of inefficiencies, poor communication and ever-changing staff:

*You have no power...it's hard to speak to anyone. They'll normally let you speak with the chaplain, and they'll pass on your message to the relevant person. You can't speak to anyone directly. So your only option is to write. And you might get a response in three weeks, if you're lucky. (Interview)*

Some pointed to inconsistencies in policies between prisons, and even apparent inconsistencies between staff within one institution:

*At one point, one prison he was in, he had to stop me getting angry. I think it was about important papers that he was allowed to have, and he needed to pass on. He was told he could, but then this prison officer [later] said, 'He can't have them'. (Interview)*

The prison service has endured deep and sustained cuts in recent years<sup>19</sup> and this was recognized by some respondents: 'they're cutting down [on staff] more and more' (Interview).

### Probation

Respondents reported a range of concerns with probation. As with prisons, while some of the concerns may flow from what family members might perceive as 'cultural' issues with probation (i.e. a general reluctance to engage with family members), many of the issues have roots in the substantial resource cuts imposed in recent years. The probation service has also been buffeted by its part-privatization and marketization under 'Transforming Rehabilitation' in 2015.<sup>20</sup>

Stories of long delays in communication with probation were commonplace; this response was particularly striking:

As Wainwright and Harriott have recently noted, families can find it 'virtually impossible...to penetrate the prison system'.<sup>18</sup>

18. Wainwright, L., and Harriott, P. (2018) *The Golden Thread: Evaluation of the Pact Helpline for the families of prisoners and people with convictions*, London: Pact21.

19. See latest Centre for Crime and Justice Studies' report, Garside, R. et al. (2018) UK Justice Policy Review 7, London: CCJS'.

20. See Justice Committee Report. (2018) Transforming Rehabilitation, HC 482; HM Inspectorate of Probation, *Transforming Rehabilitation* (2014-2016) inspection reports. Available at: <https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/>

*I've been actually trying to speak to [relevant probation officer] for the last probably six weeks. I've left messages, the reception have emailed her, I've rung and spoken to her boss, and actually I managed to get through to her today and I had a lengthy conversation with her. She only works two days a week. She's in at 10 o'clock and left usually by half past two. You know, it's just not conducive to... well, how on earth can she do the work that she needs to do in that time? (Interview)*

Concerns about the nature and quality of probation supervision and support towards release were commonplace, being reported as 'detrimental to him getting out' (Interview), not providing 'support for families...and recognition for what families do to support their loved one':<sup>21</sup>

*[My partner] hasn't even got a progression plan... [I think] 'pull your finger out your backside and do something', because he's sat there festering. His parole's been deferred again, and yet you're still not seeing him to say to him, 'OK, this is what you're doing, you need to do this differently' or, you know, 'if you did this, you're going to have a better chance'. (Interview)*

*[The prisoner] was asked, in preparation for the Parole Hearing to write a Release Plan and a C.V. but was given no guidance as to how to do this or what they were to encompass. (Survey)*

### **Parole**

A widespread issue for many prisoners and their families are delays to their parole hearing.<sup>22</sup> This was one particularly acute example:

*There was a huge delay, he was put in a prison where he didn't do any of the courses he was required to do. Then the Parole Board, at less than 24 hours' notice, cancelled his parole hearing. (Interview)*

Some respondents reported that they 'don't want to be part of [the process], because they don't want to

go through the trauma ... When [the prisoner is] thinking, 'I might get released, I might be recalled', and then it's delayed, deferred' (Interviews):

*It's a really, really hard emotional journey, really emotional. I mean, this parole, by the time it comes around in the new year is probably... It's been deferred three times...it's the constant waiting and not knowing. (Interview)*

Families, further, reported the perceived difficulties of their relative being 'dangled on a string' (Interview)

*The Parole Board goes against you again, knocks you back again. You can't get on the right programme, or the prison won't let you. A sense of helplessness, that you can't help the prisoner, you cannot make the prison put your loved one on the right course. You cannot make the prison get your loved one into the right prison. (Interview)*

## Concerns about the nature and quality of probation supervision and support towards release were commonplace ...

Some respondents also reported issues regarding information and guidance about the parole process. For example, some reported being unprepared

for—or simply not informed about—parole hearings:

*There's things people don't know, like what [my family member] just said before, he didn't know that he could go to parole. You know, they don't get the permission, so they don't get to speak to [the prisoner], you know. (Interview)*

Sometimes they did not proceed as expected, leading to family members feeling pressured—but unprepared—to help their relative to obtain release:

*Well, you're allowed... I think if the prisoner wants you at the hearing, they can ask, and I was allowed to be there. I was there as an observer but, in fact, when I got there, the parole... the chairman of the panel said did I want to say anything, which I didn't realize I was going to be allowed to. (Interview)*

21. Further research is required to obtain a detailed, holistic understanding of these issues.

22. See The Parole Board for England and Wales. (2018) 'Annual Report and Accounts 2017/18' London: Parole Board

The perceived injustice of the IPP situation (discussed above) has led a number of family members to campaign publicly against the sentence, as well as supporting one another through a number of (mostly online) groups. Some raised concern about how this was perceived by criminal justice professionals, and the potential for negative consequences flowing from this for their relative:

*scared to flag up my partner's name [when connecting with other IPP families, or campaigning] and [criminal justice organizations] use it against him. (Survey)*

*Probation don't like it when you go to groups about IPPs. They are seen as protesting, which is also against IPP licence conditions and can warrant a recall. (Survey)*

### **Beyond Release**

Families whose relative had been released reported continuing stress and anxiety regarding the ongoing potential for recall:

*My partner is a released IPP prisoner. It's like living on the edge, constant probation contact still, we can't go abroad. [He has] anxiety [about] fear of recall and the fact he wouldn't have a tariff [if returned to prison]. We have kids now and constantly worry. (Survey)*

*I mean I cry as often [as when he was in prison]... I know [my partner's] home, but it is the fear of like someone taking him away. (Interview)*

Families worried in particular about licence requirements imposed, and the potential for technical breaches (i.e. not further offending) that might lead to recall to prison. The restrictions imposed could also place heavy burdens on family members:

*He cannot use a mobile phone, a computer, or travel without notifying the police—meaning a huge amount of continuing stress for me as I shall have to be his constant 'helper'... [Building] a normal life again, this can all be swept away for any minor incursion, with me being left to pick up the pieces yet again. (Survey)*

Some family members whose relative was yet to be released reported experiencing anxiety in relation to release: desiring it but fearing the consequences:

*If my husband is ever released I have the fear of recall as probation [resort to that] rather than help, so I fear recall. Being thrown right back into this never ending nightmare, my husband got 8 years not life. (Survey)*

Further, some families reported not understanding the recall process when it did occur:

*My partner is an IPP in recall, we don't know where we stand. I don't know what really happens when an IPP is recalled. (Survey)*

Families worried in particular about licence requirements imposed, and the potential for technical breaches (i.e. not further offending) that might lead to recall to prison.

### **The Effects on Families**

#### **Material Impact**

Families generally reported significant material impacts including financial and time commitments, emotional labour and work to support their relative's efforts to obtain release. There were indications that, in line with existing literature, that these efforts were highly gendered with women predominantly (but not exclusively) taking on this additional labour.

A wide range of circumstances were reported. Some respondents were on low incomes or other difficult circumstances. This forced difficult decisions to be made:

*I have had to house his daughter. I have a tiny [house]. I used to make a little extra income renting out the spare room. I can't now, despite being on a low income. (Survey)*

*The cost of regular prison visits [are] a constant drain but we want to maintain family ties to show him we still care and support him. (Survey)*

Others were in an apparently better position, well-educated and employed in a professional role, but faced considerable challenges nonetheless:

*I have had to find a way to manage all of this and still work in my professional role. I have*

*been limited in my job role, because I have lacked the energy at times to pursue what I might have done had our lives not been blighted by this sentence. (Survey)*

*It is very difficult to juggle everything. at work, I go to university and also dealing with this. It affects me massively. (Interview)*

Many respondents reported their day-to-day life having been completely transformed following their relative's imprisonment on an IPP sentence:

*My whole life is centred around my partner, phone calls, letters, emails, visits....they take priority. Solicitors, petitions, protests, interviews—I do them all. It's taken over completely—it's consuming. (Survey)*

*I had to end up acting as a [de facto] solicitor because I found out, through cut-backs, there was no Legal Aid and no solicitors in the area who were willing to take on any prisoners. (Interview)*

These challenges were compounded for some families by the lack of 'one word of acknowledgement or support' (Survey) from any relevant individual or organization of their plight.

### **Family Relationships**

Respondents reported significant negative effects on the dynamics of the family and its individual members:

*It has caused a huge gap in the family, depression, separation and suicidal thoughts. Siblings have found it incredibly hard to continue visiting due to having children of their own, work commitments and illness. (Survey)*

*[My son] got to school age and he'd say, 'Why haven't I got a daddy like everybody else?' (Interview)*

*[His son] throws tantrums and he screams and shouts and it affected him, going to the prison to see him. So, the mum doesn't take him up*

*there anymore, he's not seen him for two years. (Interview)*

Birthdays, weddings and so on—were tainted by the absence of the relative: 'every special occasion is a reminder that he's not here' (Survey).

These dynamics were reported to place considerable burdens on those caring for the children, who amongst our respondents were primarily mothers:

*His children, who are now 12 and 14, have grown up without their father. I have been the sole person trying to help them maintain some contact but their relationship with him is damaged and may never be healed. (Survey)*

*Over the last year it has completely torn mine and my daughter's relationship apart. She's become so angry at me; she wants her dad home. (Survey)*

### **Health**

Respondents reported significant health effects due to supporting their relative serving an IPP sentence, being described by some as 'pure torture' and 'like a slow painful death' (Survey).

Some reported losing 'trust and happiness', as being fundamentally changed by the experience, being 'not the same person I once was' (Survey). Many

reported stress, anxiety and trouble sleeping:

*[The family member] is seeing the doctor for depression. He has written a letter saying that a lot of it, and a lot of her anxiety and phobias, stem from seeing this happen to her son. (Interview)*

*The sentence has caused mental health issues with myself, my son and his siblings. These have ranged from self-harming, psychosis and depression. (Survey)*

*I've gone grey! My heart's pumping fast, I throw things, you know. I sit there and I have a drink and I start crying, and I start smashing things. And then my daughters are like, 'Mum's upset again', so it's affecting them. (Interview)*

Many respondents reported their day-to-day life having been completely transformed following their relative's imprisonment on an IPP sentence.

Some respondents reported their difficulties being exacerbated by their relative's struggles with their ongoing incarceration:

*You can't eat, you can't sleep. And then you get the IPP prisoner on the phone, 'What're you doing? Help!' You know, 'do this, do that'. And you feel like if you're not doing it or you can't get through or they're not talking... You feel like you're letting them down. (Interview)*

### How might IPP families be helped?

The findings presented here are ultimately and intrinsically tied to the 'legacy' population of individuals continuing to be imprisoned (and indeed released on licence) on an IPP sentence. Notwithstanding sustained efforts by the Parole Board to reduce delays and improve progression/ release rates, and more recent efforts by the Prison Service, National Probation Service (drawn together and supported by a HMPPS IPP Group), significant issues remain.

Many family members told us they wanted legislative change and a number of proposals have previously been made. The proposals that would have most impact for family members at this point in the history of the IPP sentence include:

- ❑ Introduction of a 'sunset clause' where IPP prisoners cannot be imprisoned for longer than the maximum available sentence length for the offence committed.
- ❑ Changes to the risk test. Section 128 of LASPO enables the Justice Secretary to alter the release test for indeterminate-sentenced prisoners, but has not currently been utilized. This could be used to 'reverse the test', placing the burden on the Secretary of State to demonstrate that IPP prisoners remain dangerous and require to remain incarcerated.
- ❑ Shorten licence periods. There is a growing consensus that the automatic life licence for

released IPP prisoners is inappropriate in principle and undesirable in practice. It has been suggested that licence periods of 2-5 years would be more appropriate.

- ❑ Reducing the point at which a released IPP prisoner can apply for expiry of the licence period (currently 10 years).
- ❑ Ending the IPP on release, with breaches of licence conditions, or further offending, dealt with on their merits.

Recognition of the role of prisoners' families and the benefits of family support is increasing, particularly since the publication of the Farmer review in 2017. Lord Farmer's review recognized that 'relationships are fundamentally important if people are to change' and described families as the 'golden thread' running through reforms across the prison estate.<sup>23</sup>

There is, however, a long way to go in providing increased facilities, funding and support for prisoners' families. The families we spoke to were keen to be seen as part of the solution and to have their role in the support and rehabilitation of the prisoner recognized. While this is an important aim, it is also important to note that families of

prisoners deserve support in their own right—as 'ends', not just instrumental 'means', for what they can do for the prisoner. The ways in which family support works to lower recidivism are complex and we need to be cautious not to place too onerous a burden on families.<sup>23</sup>

Our findings make clear the extent to which many family members feel unsupported, isolated and uninformed in trying to understand the IPP process and their relative's journey through it. Therefore, while not directly addressing the substantive issues facing IPP prisoners and their families, improvements in transparency for and communication with IPP families would stand as important institutional responses.

Importantly, this should not be a unidirectional process. Establishing means by which families of IPP prisoners can report concerns would serve as an important feedback mechanism to identify issues to be addressed. The Parole Board are admirably open to

The ways in which family support works to lower recidivism are complex and we need to be cautious not to place too onerous a burden on families.

23. Farmer, M. (2017) *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. London: MoJ, 4.  
24. Codd, H. (2008). *In the Shadow of Prison: Families, imprisonment and criminal justice*. Cullompton, Devon: Willan,



engaging with family members—primarily through social media or in response to telephone queries—but there may be benefits in establishing a more structured approach to recording and responding to issues raised.

For parole members and probation staff (and other relevant professionals) there is much value in ensuring better understanding of how the process as a whole, and the specific activities falling within their remit, are perceived by family members. Families often will not have a full understanding of the context surrounding a particular issue: due to data protection, risk management concerns and so on, or simply an understandable lack of detailed knowledge of the intricacies of parole, probation and ongoing policy and resourcing decisions.

Perceptions have important substantive effects, not least on perceived legitimacy of the processes/institutions and on health and wellbeing. Being able to understand better the objectives, rules, and limits, of different stages in the process—and the responsibilities of different organizations—may improve perceptions of fairness and legitimacy.<sup>25</sup> It may thereby also help to mitigate the acute stress and anxiety—and related health problems—reported by many IPP families. And greater organizational openness to families' perspectives may serve to ensure that the potential gap between practitioners' intended messages and effects, and the received messages and actual effects, is minimized.

## Conclusion

This research has identified a number of challenges, and resulting harms, experienced by families of IPP prisoners. Some of these are common to all prisoners' families; some are exacerbated by the IPP sentence; and others are specific to it. The pervasive sense of injustice and uncertainty colours the more specific concerns relating to efforts to progress towards release, and indeed to manage the stresses of life beyond release. Families report significant material effects, which also appear to be heavily gendered in their distribution. Family relationships—both with the prisoner and more widely—are reported often to be severely disrupted. Respondents reported significant negative health effects caused by the stress and anxiety.

IPP prisoners are a complex group, and the challenges are therefore particularly acute. Whether a particular IPP prisoner was seriously dangerous at point of sentencing and is in a process of risk reduction, or has become caught up in a sentence whose net was cast far too wide and whose journey towards release is often treacherous, families often have an important role to play. Crucially, the state also has a principled duty to provide them with support, particularly in the context of a recognized policy failure such as the IPP sentence.

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25. For discussion of these tenets of procedural justice theory, see Hough, M., et al (2010) 'Procedural Justice, Trust, and Institutional Legitimacy'. *Policing: A Journal of Policy and Practice*, Volume 4, Issue 3, pp. 203-210.

# Escorting pregnant prisoners — the experiences of women and staff:

‘Quite a lot of us like doing it, because you get to see a baby, or you get to see a birth’

*Dr Laura Abbott, is a Senior Lecturer in Midwifery, Fellow of The Royal College of Midwives, University of Hertfordshire.*

**It is understood that pregnant women make up around six per cent of the female prison population although precise numbers are not collated, this amounts to around 600 pregnant women held in prisons in England and Wales and some 100 babies born to women prisoners. There are limited qualitative studies published that document the experiences of pregnancy whilst serving a prison sentence. This study provides qualitative, ethnographic research of the pregnancy experience. The study took place during 2015-2016 and involved non-participant observation and semi-structured interviews with 28 female prisoners in three English prisons who were pregnant or had recently given birth. Ten members of prison and health care staff were also interviewed. Apart from the experiences of being on ‘bed watch’ with pregnant or labouring women, a new typology of prison officer has emerged from this study: the ‘maternal’; a member of prison staff who accompanies pregnant, labouring women to hospital where the role of ‘bed watch officer’ can become that of a birth supporter. The officer (s) attending pregnant women in hospital have an important role to play and may have been ‘chosen’ by the woman. This paper provides narratives of these experiences and discusses the relationship of the bed watch officer who may be both guarding and supporting the woman. Pseudonyms are used throughout.**

## **Health care arrangements for pregnant women in prison**

Midwives, usually based in local community teams, provide antenatal care in a prison, monitoring the

pregnancy and wellbeing of the women and visiting them post-birth in order to provide post-natal care. Scans and specialist referrals are usually facilitated in the local hospital and women are typically escorted by two prison officers unless she has been released on temporary license. When a woman’s labour begins in prison, either by her having regular contractions or if it is suspected that her membranes have spontaneously ruptured (waters breaking), she will be transferred to the local hospital in a taxi or prison van, usually accompanied by prison officers (PO’s). Following birth, dependent on whether a woman has been allocated a place in a prison Mother and Baby Unit (MBU), she will return either to the MBU with her baby, or to the general prison without her baby.

## **Mother and Baby Unit Provision**

There are six MBUs attached to prisons in the UK and babies can reside with their mothers for up to 18 months. Each prison has an MBU liaison officer and any eligible women can apply to one unit and subsequently attend an MBU board, consisting of a multi-disciplinary team, usually including a social worker, who decides suitability.<sup>1</sup> Decision making centres upon ‘the best interest of the child’ and the ‘welfare and safety’ of the mothers and babies who reside in the unit.<sup>2</sup> There is a variation in MBU provision and Her Majesty’s Inspectorate (HMI) have described good practice, for example units that provide: ‘an excellent facility’ but also reports their ‘underuse’.<sup>3</sup> New gender specific standards for female prisoners suggest that women should be supported to breastfeed or express milk for their babies, be provided with facilities to cook for their babies and have additional family visits.<sup>4</sup> Nonetheless, it

1. Sikand, M. (2017). *Lost Spaces: Is the Current Provision for Women Prisoners to Gain a Place in a Prison Mother and Baby Unit Fair and Accessible?* The Griffins Society University of Cambridge Institute of Criminology.
2. National Offender Management Services. (2014). *Mother and Baby Units Prison Service Instruction (PSI) 49/2014 PI 63/2014.* <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2014/psi-49-2014-mother-and-baby-units.pdf>
3. Her Majesty’s Inspectorate of Prisons (2015) <http://www.justiceinspectorates.gov.uk/hmiprison/about-our-inspections/>
4. Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England (2018). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/687146/Gender\\_specific\\_standards\\_for\\_women\\_in\\_prison\\_to\\_improve\\_health\\_and\\_wellbeing.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687146/Gender_specific_standards_for_women_in_prison_to_improve_health_and_wellbeing.pdf)

is reported that far more separations of babies from their mothers, soon after birth, than places are provided on MBUs although exact numbers are not collected.<sup>5</sup> Plans for separation are governed by MBU rules and women prisoner's policy and detailed in Prison Service Instructions.<sup>6,7</sup>

### Birthing partners

Research shows that women feel a loss of autonomy over their environment and choices:<sup>8</sup> A woman who is pregnant in prison, although in receipt of health care, has little choice over the place of birth or her birth partner.<sup>9,10</sup> Due to the smaller number of female prisons in the UK, it is likely that a woman will give birth far away from her home service prior to transfer, in an unfamiliar hospital.<sup>11</sup> Whatever provisions for labour a woman may have made will be superseded whilst in custody; replaced by 'local' arrangements with the nearest maternity unit to the Prison she is being held at. Attending hospital appointments or labouring as a prisoner, accompanied by guards, often removes all privacy and dignity and a woman may feel 'judged' and 'embarrassed' for her 'maternal conduct'.<sup>12</sup> An example of disempowerment for a woman in prison is when she attends hospital for an ultrasound scan. A woman in prison will not be told the date of her scan for security purposes and will be accompanied by Prison Officers rather than a partner or family member.

### Hospital appointments

Hospital appointments were an essential and regular occurrence for research participants, yet most of the women spoke of being handcuffed or handcuffed via a chain in the maternity department, despite policy directing that the handcuffing of pregnant women should be discretionary.<sup>13</sup> Where used, the requirement of handcuffs was when a potential escape risk was identified, although a common comment from women was, 'I cannot run

anywhere, even if I want to'. One woman described the humiliation of being handcuffed while pregnant as 'worse than being sentenced'. Overwhelmingly, all pregnant women in this sample described the experience of being handcuffed as humiliating: 'such a degrading experience'. Sammy described her feelings:

*I was heavily pregnant. quite big...we were cramped in the back (of the car) like sardines. It was just a protocol that nobody can sit in the front, they had to be in the back with me, and I had to be handcuffed at all times. Even through my scans. If there was a female officer, then I had to stay handcuffed to her; but if it was two male officers, then I had to be put on the chains. Just because I was a prisoner. It was awful...It was demeaning, it really was. (Caroline)*

Feeling 'judged' also extended to contact with the general public during hospital for appointments:

*You've got all the Mums and the Dads, husbands and wives and sitting there holding their precious little bump, and there I am walking in and they just looked at me like I was filthy. And it's like, I've just made a mistake, I was stupid; I haven't hurt anybody, a good Mum. (Sammy)*

Most women described how they 'don't get treated like an individual'. For Caroline, being chained to officer's unknown to her, who were guarding her during such an intimate event, amplified her feelings of distress and heightened her sense of loneliness at being without her partner. Lola, perceived that the handcuffs gave the officers a feeling of power and control over the woman:

*Twice a week I was travelling back to my home town, handcuffed, and I would see*

5. Powell, C., Marzano, L., and Ciclitira, K. (2016). 'Mother-Infant Separations in Prison. A Systematic Attachment-Focused Policy Review', *The Journal of Forensic Psychiatry & Psychology*, Taylor and Francis. pp.1-16.
6. Prison Service Order 4801. (2008). *The management of mother baby units*. <https://www.justice.gov.uk/offenders/psos> [https://insidetime.org/download/rules\\_and\\_policies/psi\\_\(prison\\_service\\_instructions\)/2011/PSI\\_2011\\_054\\_Mother\\_and\\_Baby\\_Units.pdf](https://insidetime.org/download/rules_and_policies/psi_(prison_service_instructions)/2011/PSI_2011_054_Mother_and_Baby_Units.pdf)
7. Prison Service Order 4800. (2008). *Women prisoners*. <https://www.justice.gov.uk/offenders/psos>
8. Abbott, L.J (2018) *The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons*. University of Hertfordshire.
9. Albertson, K., O'Keefe, C., Lessing-Turner, G., Burke, C., and Renfrew, M. J. (2012). *Tackling Health Inequalities Through Developing Evidence-Based Policy and Practice with Childbearing Women in Prison: A Consultation*. The Hallam Centre for Community Justice, Sheffield Hallam University and The Mother and Infant Research Unit, University of York.
10. Galloway, S., Haynes, A., and Cuthbert, C. (2015). *All Babies Count – An Unfair Sentence: Spotlight on the Criminal Justice System*. In: London: NSPCC.
11. Abbott, L. (2015). *A Pregnant Pause: Expecting in the Prison Estate*. In L. Baldwin (Ed.), *Mothering Justice: Working with Mothers in Criminal and Social Justice Settings* (1st ed.). England: Waterside Press.
12. Howson, A. (p136, 2013). *The Body in Society: An Introduction*: John Wiley & Sons.
13. 'Pregnant women are not handcuffed after arrival at a hospital or clinic as published protocol. Women in active labour are not handcuffed either en-route to, or while in, hospital. Restraints are to be carried but not applied unless the woman's behaviour is refractory or there are indications that she may attempt to escape' Prison Service Order 4800. (2008). *Women prisoners*. <https://www.justice.gov.uk/offenders/psos>.

people that I know. The officers don't, like even try and hide that they're officers. They wear the uniform, and they wear it with pride, like 'I've got a prisoner'. And you see people looking at you, because of the way that the officers are walking. (Lola).

Considering the level of restraint and suppression that pregnant women feel, they appeared to be less likely to attempt an escape, especially if this meant jeopardising a place on the MBU. Women would scoff at the concept of their running off, especially in the later stages of pregnancy: 'look at me (gesturing to large abdomen), where am I going to run off to?'; 'even if I wanted to run off I couldn't'. Trixie did not understand why the handcuffs were needed, especially as she was wary of the impact any negative behaviour may have on her MBU place:

*I'm hardly going to escape, because I want to go to the Mother and Baby Unit, and I just want to get my sentence out the way. (Trixie).*

Women who had attended appointments accompanied by officers and in handcuffs, would talk about how the public would look at them: 'for my scans I was handcuffed to an officer, so children were looking at me'; 'everyone stares at you'; 'they all literally looked you up and down'; 'they looked at me like I was filth'. Layla found the experience of being handcuffed exacerbated her shame:

*People look at you as if to say, oh, well, she must be really bad, her, if she's got two officers escorting her in handcuffs...you can see that they're moving away from you, and they're pulling their kids away from you and they don't want to be anywhere near you...they assume that you must be some really, really evil, violent person, and you're not you're just somebody that either made a mistake, or was wrongly accused. (Layla)*

It was especially difficult for women when they felt 'judged', as if the juxtaposition between expectant mother and serving prisoner was in some way shameful in itself. Sammy, like most women in this study, was sentenced for a non-violent crime. Therefore, she found

it more hurtful and humiliating to feel judged to be the same as a violent criminal:

*I do everything for my children, and I still am trying to be as active a mum as I can, so don't look and judge me. That was tough, especially the little children looking like as if I'd killed someone, because I was walking in with the handcuffs, so I must be a really, really bad person. (Sammy)*

Caroline talked about her experience of being handcuffed and chained to male officers during a hospital visit, when she had been transferred as an emergency in her 39th week of pregnancy; she felt it was a personal violation and especially upsetting:

*I know they have got procedures to follow, but it was never like the short handcuffs, it was the ones with long chains on which are heavy, and I was handcuffed to the man officer and he had to be asked every time they wanted to examine me to go out...But he stayed in the room the whole time. (Caroline)*

## Women who had attended appointments accompanied by officers and in handcuffs, would talk about how the public would look at them

### Choice of officer attending the birth

Women reported that they could often request specific officers to accompany them in labour, suggesting a new typology<sup>14</sup> of Prison Officer: 'a maternal'. When accompanied by a supportive officer of their choosing, women had a better experience of labour and birth, and often talked in glowing terms of their accompanying officer: 'she was lovely'; 'really caring'; 'he was ace'. Staff, too, found the experience of supporting women in labour rewarding, albeit emotional: 'everybody loves to see babies'; 'I've had my fingers squeezed'; however, no training was in place to prepare them for the emotional support needed when a mother was separated from her baby. Several women interviewed spoke about requesting POs they trusted and had built a relationship with to accompany them on a 'bed watch' when they went into labour: 'It depends who's on'; 'I've got preferred officers'; 'I've made a list of the officers who I would like to be there'. Women would choose staff who they felt were the most caring:

14. Tait, S. (2011). A Typology of Prison Officer Approaches to Care. *European Journal of Criminology*, 8(6), 440-454.

You can choose an officer from here, and I've chose...I've chosen Miss B, because she's lovely. (Krystal)

Whilst most women received their choices, some did not:

First, they were saying I could make a list of officers that I would like to, officers that I get on with, but they can't make any guarantees, but whoever's on that shift and if they're on they could be my prison escort when I go into labour. So, I did the list, submitted it and then I got a message back saying, 'No, whoever you get you get' basically. (Caroline)

Susan spoke of having continuity of care with one of the officers who had accompanied her to scans and who she wanted with her in labour:

She's been to all of my scans as well so it's quite nice, so she saw me like grow from like literally the first and then she saw my scan, so it would be nice as I am really relaxed with her, so it would be nice to get her. But obviously, I can't, I can't choose when. (Susan)

Being able to choose their accompanying officers alleviated some anxieties for the women, often contributing to a more positive experience of labour. Conversely, some women felt they were treated more harshly because they were pregnant.

### Positive experiences of Prison Officer support during labour

Several participants spoke of staff with high regard, having had a positive experience. It appeared that sometimes the PO took on a maternal role as they supported women in labour: 'The officers were brilliant, they were holding my hand and everything'; 'Some officers actually booked time off work to arrange to be at the birth and were just amazing'. The support shown by some officers seemed to be extraordinary and full of compassion, making women feel valued and cared for. On the other hand, some women had mixed experiences:

The first was a bit of an arse. I don't know whether she was [just detached] or what, but she just wasn't nice. In the end, I had my personal officer, but he left the room when I

was ready to push. He's a star, I think he's ace, me. And Miss, I'd never met her before, but she was really lovely, really kind, really supportive, held my hand, everything. (Ellie)

### Staff experiences of attending births

Everybody loves to see babies, don't they, but there's no training for it and there's no training for dealing with a separation either. (PO 4)

During interviews with prison staff, they often talked warmly of supporting women in labour but admitted to not having had the training or support they needed, especially when women were separated from their babies soon after birth. Some described their relationships and role with women in labour as: 'talking and trying to keep the person calm'; 'supporting them and encouraging them'. Nonetheless, the role of birth supporter was carried out more through aptitude, than formal training:

Quite a lot of us like doing it, because you get to see a baby, or you get to see a birth. But there's quite a lot of us that won't do it now, because I think if you know that they're being separated it's not a nice thing. In fact, everybody loves to see babies, don't they, but there's no training for it and there's no training for dealing with a separation either'. (PO 1)

Staff would sometimes feel 'awkward' at being in the room with a labouring woman:

You also try and blend in the background a bit because you're aware that the midwives are thinking, 'Oh, the prison officers stood there,' and stuff. So, it must be traumatic enough giving birth, without the knowledge that someone, well, they might not even know. (PO 2)

### Negative descriptions

Women's general opinions on staff varied from negative descriptions: 'disrespectful'; 'spoken to like shit'; 'a lot of favouritism'; 'they make the rules, so

*it's what they say goes*'. Most participants talked about one particular officer who would treat women poorly, as Kayleigh illustrates:

*They don't care! Why? Because we're criminals. There's one officer who I don't like. I don't want to sound horrible when I say this— trying to find a nice word—she's a bit much. It's one of them kind of if I wasn't a criminal and we were both on the outside, I would have beat her up. (Kayleigh)*

The restraint shown by women like Kayleigh when faced with staff who, in her view, were 'disrespectful' increased the burden of the prison experience. Preferentialism was also commonly experienced:

*There is so much favouritism. The girl next door gets so much more than me. She even gets more money than me and has a fridge in her room. The other girl who is next door is also favoured by one of the officers and that is why she gets everything. (Trixie)*

Caroline explained how her identity as pregnant prisoner was labelled on the front of her notes, yet during her scan she was required to expose her body in front of a male PO:

*It's upsetting having a male officer there because I think the first man to see my baby should be the father, on my second scan I saw on the top of my notes 'prisoner pregnant, female officers only' and they'd ignored that...I had to go on the monitor for half an hour and it was the same experience, they had to take my top off and sit about that far away (gestures a small distance with her hands) from me. (Caroline)*

The choice of language used by officers and health staff exposed both humane and dehumanising forces at work. Bias is acknowledged here as those staff agreeing to be interviewed may have been from a generally more helpful and caring group. However, their views were valuable in distinguishing the pregnancy experience between prisoners and staff.

### **Experiences of separation at birth**

In comparison to the overall female prison population, only a minority of women prisoners are separated from their babies immediately following childbirth each year; therefore, separations are an unusual and irregular experience for prison staff. Such

limited experience, coupled with lack of training, meant that support mechanisms were often ad hoc. Reactions included a dread of being the person escorting the separating woman; 'distress' of staff witnessing separation, and acceptance that: *'this is how it is'*. All staff interviewed identified the risk to a woman's mental health in returning to the prison without her baby, and that they are 'automatically placed on an ACCT' to ensure close monitoring to prevent self-harm by 'the distraught mother'. Staff demonstrated awareness of this risk:

*They return, and they've got no baby, and they're on suicide watch...it's grief, really, isn't it? Dealing with that grief that they've lost their own child. (PO 5)*

Additionally, staff may organise 'listeners' (prisoners who have had Samaritans training) to help women returning to prison without their baby: *'we've had two listeners in the cell with them all night, because of how bad they became'*. Staff would demonstrate empathy with the women, stating: *'it must be quite difficult'*; *'it's quite painful'* and *'really emotional'*. Some staff sentiments centred on missed *'opportunities to change'* and become a good parent, suggesting women should be *'given the opportunity'*; *'a lot of genuine ones that would make fantastic mums'*; *'they just need the opportunity to prove it'*. Staff were also concerned for their colleagues: *'having to deal with that'*; *'distressing for the staff'*. Some staff accepted that this was part of the job but realised that separation is not a societal norm: *'It's where we work; we've chosen to work here, and this is how it is'*; *'they don't take kids off people for fun'*. Some staff expressed a lack of sympathy for the woman: *'they have lost the right'* (to be a mother) whilst others were concerned with the lack of sanctioned support for women: *'not a lot of provision for supporting them'*. Staff would also succour the woman: *'we can help them deal with it'*. However, support for staff was not explicit: *'It was awful, and we were all in tears'* (at the distress of a mother being separated from her baby). The lack of support for the women was a strong theme throughout the staff interviews:

*There doesn't seem to be a lot of provision for supporting them. The wing staff will support them the best they can. But it's almost like a bereavement, isn't it? (PO 6)*

### **Discussion: Staff and pregnant prisoner relationships**

Most staff viewed the environment and care that pregnant women received as positive, in line with



previous research undertaken:<sup>15,16,17</sup> *'I think from a clinical point of view they're quite well looked after'*. My interviews with staff uncovered some confusion around the protected role of the midwife, sometimes with incorrect advice being given. The assumption from prison staff was that a Registered Nurse was qualified to make autonomous decisions in relation to the pregnant woman under his/her care. All PO staff were unsure of the process for midwifery care: *'I don't know what happens after'*; *'I don't know if they attend health care'*; *'I don't know if a midwife does come in'*; *'We don't have a midwife on-site'*; *'if they've got any immediate concerns you straightaway get health care, which is usually one of the nurses'*; *'there isn't actually any of them that are midwives'*.

Being a pregnant woman in prison was recognised as being *'really tough'* by prison staff and suppression of natural bodily urges was expressed through empathy, especially from staff who had been pregnant themselves. Staff were often sympathetic about the loss of control pregnant women may feel, yet felt powerless to help: *'We take away so much control, even more so when they're pregnant, I think'*; *'They don't even know when their scans are; they just get told half an hour before'*; *'A lot of the control here is taken away from them, and I think that's frustrating'*; *'They don't want to be told that they're going to hospital with no notice...we can't tell them beforehand because of security risks'*. A prison officer reflected on her own experience of having autonomy in pregnancy:

*I always felt in control of my pregnancy... You've got your midwife's contact number, you know that if you're concerned, I was in control of ringing them... Even if they said, 'Oh, you're all right' and then I'd sit there for an hour, and then I'd be back on the phone, because that*

*was my prerogative. They don't have that, so it must be really tough.* (PO 5)

## Discussion

Prison Officer (PO) typology has been described by prison researchers.<sup>18,19,20,21,22</sup> Bakker and Heuven describe the work of the police and of nurses as keeping an 'emotional distance' whilst demonstrating compassion and caring; similarly, types of prison staff can be categorised as 'true carers' and 'reciprocators' who like to help.<sup>23,24</sup> The stress involved in prison work has been suggested to increase the likelihood of amplifying prisoners' suffering, especially when POs' stress levels are high.<sup>25</sup> The typology of 'avoider'—where a member of staff avoids prisoner contact and is often the last on the scene of an emergency—may arise from such enhanced stress, and similarities of this typology are seen in health care settings.<sup>26</sup> Liebling groups together POs who show certain traits, such as humour, solidarity, suspiciousness and cynicism, bringing staff together through their characteristics whilst keeping a distance from prison management.

The relationships between pregnant women and staff mirrored findings from the criminology literature where characteristics and personalities of prison officers were intrinsic to the prison experience.<sup>27,28</sup> Most of the pregnant women would talk about specific members of staff, from describing them as *'a laugh'*; *'going the extra mile'*; to *'evil'* or a *'complete bitch'*. There were favoured members of staff and these were often the ones who were chosen to be on a rota to escort pregnant women in labour. *'Turning a blind eye'* to some contraventions from women following birth was a common occurrence. Some staff would state that they would treat the *'women like I want to be treated'*;

15. Albertson, K., O'Keefe, C., Burke, C., Lessing-Turner, G. and Renfrew, M. (2014). Addressing Health Inequalities for Mothers and Babies in Prison. *Health and Inequality: Applying Public Health Research to Policy and Practice*, 39.
16. Galloway, S., Haynes, A., and Cuthbert, C. (2015). All Babies Count – An Unfair Sentence: Spotlight on the Criminal Justice System. In: London: NSPCC.
17. O'Keefe, C., and Dixon, L. (2015). *Enhancing Care for Childbearing Women and their Babies in Prison*, [http://www.birthcompanions.org.uk/media/Public/Resources/Extpublications/FINAL\\_MBU\\_report\\_8th\\_December\\_2016.pdf](http://www.birthcompanions.org.uk/media/Public/Resources/Extpublications/FINAL_MBU_report_8th_December_2016.pdf)
18. Gilbert, M. J. (1997). The Illusion of Structure: A Critique of the Classical Model of Organization and the Discretionary Power of Correctional Officers. *Criminal Justice Review*, 22(1), 49-64.
19. Liebling, A., Price, D., and Shefer, G. (2010). *The Prison Officer*: Routledge.
20. Tait, S. (2011). A Typology of Prison Officer Approaches to Care. *European Journal of Criminology*, 8(6), 440-454.
21. Liebling, A. (2011). Moral performance, Inhuman and Degrading Treatment and Prison Pain. *Punishment & Society*, 13(5), 530-550.
22. Shannon, S. K., and Page, J. (2014). Bureaucrats on the Cell Block: Prison Officers' Perceptions of Work Environment and Attitudes toward Prisoners. *Social Service Review*, 88(4), 630-65 Bakker, A. B., and Heuven, E. (2006). Emotional Dissonance, Burnout, and in-role Performance Among Nurses and Police Officers. *International Journal of Stress Management*, 13(4), 423-7.
23. Tait, S. (2011). A Typology of Prison Officer Approaches to Care. *European Journal of Criminology*, 8(6), 440-454.
24. Gilbert, M. J. (1997). The Illusion of Structure: A Critique of the Classical Model of Organization and the Discretionary Power of Correctional Officers. *Criminal Justice Review*, 22(1), 49-64.
25. Shannon, S. K., and Page, J. (2014). Bureaucrats on the Cell Block: Prison Officers' Perceptions of Work Environment and Attitudes toward Prisoners. *Social Service Review*, 88(4), 630-65 Bakker, A. B., and Heuven, E. (2006). Emotional Dissonance, Burnout, and in-role Performance Among Nurses and Police Officers. *International Journal of Stress Management*, 13(4), 423-7.
26. Gilbert, M. J. (1997). The Illusion of Structure: A Critique of the Classical Model of Organization and the Discretionary Power of Correctional Officers. *Criminal Justice Review*, 22(1), 49-64.
27. *ibid.*
28. Arnold, H. (2016). The Prison Officer. *Handbook on Prisons*, 265.

however, this often depended upon the severity of the crime that had been committed. Health care staff were reported to be more judgemental, more demeaning and less sympathetic to the pregnant prisoner. Staff held varying views on the pregnant women, and relationships were often dependent on how acquiescent the women were: 'staff will go an extra mile always'; 'People think that because we're a guard, we don't care, but how can you not care?' It was clear that those staff interviewed were dedicated to their jobs and to the women: '*it's a measure of how well you are, how well you treat your prisoners*'; yet the fine balance in a relationship was recognised as not going beyond a prisoner/staff relationship:

*'Because these aren't really relationships, they aren't people that you've chosen to be with. Because next week when you're at home, these people won't mean a thing to you; you will have forgotten all about them. It's not like if you get upset with your best friend, because they're being rude to you and that kind of lives with you, doesn't it?' (PO 3).*

A new typology of prison officer has emerged from this study. The 'maternal' is a staff member who is considered 'lovely'; 'nice', or a 'true carer'<sup>29</sup> and is chosen to go on 'bed watch' with pregnant, labouring women. Goffman<sup>30</sup> exposed the 'sympathiser' as an officer most likely to burn out; yet it appears that the 'maternal' is left feeling valued as a chosen person able to 'hold a hand' or 'hold a baby'. This role ambiguity between guard and birth supporter warrants exploration. It is clearly juxtaposed: the officer, chosen or not, is going on bed watch in her/his role to 'watch' and 'guard' the prisoner. However, as the findings have demonstrated, in many cases both staff and prisoners see the role of 'bed watch officer' to be like that of a birth supporter. This role confusion is interesting: the boundaries appear more fluid when an officer is outside of the institution on 'bed watch' and it can lead to rule breaking.

### Conclusion

Staff were often unaware of whose role it was to care for the pregnant woman; a common theme amongst staff and women is the limited knowledge of

entitlements; this led to officers' perceptions that nursing staff were able to make midwifery decisions and, therefore, nurses were at risk of acting outside of their sphere of practice and at risk of breaching the Nursing and Midwifery Statutory Order (2001)<sup>31</sup> which forbids the attendance of anyone other than a Registered Midwife or Medical Practitioner from attending a birth. A new concept of 'maternal' prison officer typology has emerged, where officers supporting labouring women have blurred boundaries between being 'prison guard' and 'caring birth supporter'. The layers of bureaucracy essential in the smooth running of a prison institution, does not usually consider the anomaly of pregnancy. The institutions of 'health' and 'prison' appeared to collide with confusion over the role of each culture.

### Recommendations

Three major recommendations arise from this work. First, female staff should accompany pregnant women to hospital appointments. NHS staff should be made aware of this. Staff should leave the room for scans or any examination which may expose a woman's body unless she expresses the wish to have prison staff present. Appropriate training and support should be given to prison officers who attend pregnant and/or labouring women on 'bed watch', with debriefing available when this has been especially emotional.

Second, at present the PSO 4800 (2008) states: 'Pregnant women are not handcuffed after arrival at a hospital or clinic. Women in labour are not handcuffed either en route to, or while in hospital. Restraints are carried but not applied unless necessary'. Policy should be explicit to ensure this guidance is followed. The use of handcuffs and / or chains should be the exception rather than the rule for perinatal women and guidance should be updated to reflect this. If handcuffs/chains are considered essential due to flight risk, written permission should be sought from the managing Governor.

The third recommendation is that the Birth Companions' Birth Charter<sup>32</sup> is a useful resource for all prison staff, detailing best practice and recommended guidance when pregnant women and new mothers are in prison.

29. Tait, S. (2011). A Typology of Prison Officer Approaches to Care. *European Journal of Criminology*, 8(6), 440-454.

30. Goffman, E. (1968). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*: Aldine Transaction.p.79

31. Nursing and Midwifery Order, 45 Statutory. (2001). Department of Health. [http://www.legislation.gov.uk/ukxi/2002/253/pdfs/ukxi\\_20020253\\_en.pdf](http://www.legislation.gov.uk/ukxi/2002/253/pdfs/ukxi_20020253_en.pdf)

32. Kennedy A, Marshall D, Parkinson D, Delap N & Abbott L (2016) Birth Charter for Women in Prisons in England and Wales. Birth Companions.

# Prison ‘rules’ and the use of restraints on terminally ill prisoners<sup>1</sup>

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## Introduction

**This article will consider how prison ‘rules’ help staff address particular concerns about the appropriate use of restraints on terminally ill prisoners during hospital escorts. The issue is particularly pressing given that in recent years the rate of deaths in prison custody resulting from natural causes has increased steadily, from 1.11 per 1,000 prisoners in 2007 to 2.15 per 1,000 in 2017, when 62 per cent of the 295 prisoner deaths were established to be from natural causes.<sup>2</sup> In both 2016 and 2017, 61 per cent of these deaths occurred in hospitals, hospices or nursing homes outside of the prison,<sup>3</sup> in situations where decisions about the use of restraints are required. Getting the decisions right for terminally ill prisoners is a matter of decency, but it is also subject to scrutiny, especially in light of the 2007 High Court ruling known as the Graham judgement. More than ten years on, the Prison and Probation Ombudsman continues to be critical of the misapplication of restraints on prisoners who have subsequently died. This article will seek to explain why the guidance and instructions given to prison staff in the relevant Prison Service Instruction may actually serve to confuse the decision-making process with regard to the use of restraints.**

Difficulties in comprehending what is required in a given situation are not unusual within the prison service, as Loucks (2000) indicates:

*Regulations governing the minutiae of prison life often represent an impenetrable bureaucracy. In order to uncover management policy, one has to unravel layers of rules upon rules (p6)<sup>4</sup>*

The sheer bulk of rules and regulations governing prison life leads Liebling and Maruna (2005) to observe with regard to prisoners that ‘it is difficult to know all the rules, much less comply with them’ (p105).<sup>5</sup> Arguably the same could be said for prison officers and other prison staff. The rules, regulations and guidelines in place within the prison service, Liebling and Maruna (2005) argue, require subjective interpretation, with the use of staff discretion leading to inconsistencies and arbitrariness in how rules are implemented. Liebling, Price and Shefer (2011) suggest that discretion has become an intrinsic part of a prison officer’s role as a result of a ‘never-ending flow’ of regulations (p138).<sup>6</sup>

## Prison and Probation Ombudsman on the Use of Restraints

In his 2013 publication, *Learning from PPO Investigations—End of Life Care*,<sup>7</sup> the Prison and Probation Ombudsman identifies a number of challenges presented to prisons by deaths from natural causes. These include the difficulties originating in prison architecture that is often ill-suited to the needs of frail prisoners, the importance of establishing an end of life care plan when a diagnosis is terminal, the need to facilitate the involvement of prisoners’ families where appropriate, the requirements for timely applications for compassionate release when desirable, and the importance of risk assessments in decisions about the use of restraints (PPO, 2013).

Whilst not all deaths from natural causes are predictable, a terminally or seriously ill prisoner may need to be taken to outside hospital, as an out-patient or in-patient, several times in the weeks or months preceding their death. The use of handcuffs, escort chains or, very exceptionally, body belts, is routinely reviewed by the Prison and Probation Ombudsman

1. This paper is based on analysis conducted as part of an ongoing PhD using ethnographic methods to look at how deaths from natural causes in prisons impact on prison regimes, culture and relationship and how the responses of prison regimes and personnel to dying prisoners are determined.
2. Ministry of Justice (2017). *Deaths in prison custody 1978 to 2018*. [Online]. Ministry of Justice, UK. Available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2018> [Accessed 14 September 2018].
3. Ibid.
4. Loucks, N. (2000). *Prison Rules: a working guide*. London: Prison Reform Trust.
5. Liebling, A. and Maruna, S. (2005) *The effects of imprisonment*. Cullompton: Willan.
6. Liebling, A., Price, D. and Shefer, G. (2011) *The prison officer*. 2nd edn. Cullompton: Willan.
7. Prison and Probation Ombudsman for England and Wales (2013). *Learning from PPO Investigations End of Life Care*. London: Prison and Probation Ombudsman.

after a death. The long-term difficulties experienced by prisons in complying with the requirements are apparent in the PPOs report, where the ombudsman says:

*While a prison's first duty is to protect the public, too often restraints are used in a disproportionate, inappropriate and sometimes inhumane way.<sup>8</sup>*

In reviewing 214 foreseeable deaths from natural causes between 2007 and 2012, the PPO highlights that in 20 out of 170 cases where restraints were considered, no risk assessment was conducted, and in 30 out of 158 cases risk assessments were not subsequently reviewed. The PPO is referring to deaths from natural causes in prison that occurred after the 2007 Graham judgment and these cases illustrate a failure of the prison service, in the opinion of the PPO, to fulfil the requirements placed on them by that judgment. The report, whilst being the most recent summary from the PPO on the issue, is now dated. However, many prisons will be familiar with the recommendation which continues to appear regularly in PPO reports published following deaths, to the effect that in the future:

*The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints and that assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time. (PPO)<sup>9</sup>*

Taking a small but more current sample, of the 61 deaths that occurred in the first 6 months of 2017 for which the PPO had published reports by September 2018 this paragraph appears in the reports for two fifths of the cases (25 instances). There were fewer cases, only 8, where the PPO stated they were satisfied that the use of restraints was appropriate.

## **R (on the application of Graham and another) - v - Secretary of State for Justice**

More than ten years on from the Graham judgment, it is perhaps surprising that prison governors and directors are still struggling to implement the judge's findings. The case, R (on the application of Graham and another) v Secretary of State for Justice,<sup>10</sup> was taken by two prisoners who were handcuffed for out-patient and in-patient hospital treatment. It considered whether the use of restraints was an infringement of article 3 of the European Convention on Human Rights which states that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.<sup>11</sup> In his judgment, Judge Mitting found that:

**While a prison's first duty is to protect the public, too often restraints are used in a disproportionate, inappropriate and sometimes inhumane way.**

*The unnecessary use of handcuffs on a prisoner who is receiving treatment, whether as an in-patient or an out-patient, at a civilian hospital is capable of infringing art 3 in two respects: either because it is inhuman or because it is degrading, or both. The use of handcuffs to guard against an adequately founded risk of escape or of harm to the public in the event of escape does not infringe art 3.*

Key to his judgement was the notion that restraints should only be used if the risk of escape, or of harm to the public occurring if the prisoner did escape, had been adequately assessed and was well founded. It is the routine use of handcuffing, without an assessment of individual risk, which the judge found likely to be unlawful. Whilst recognising that 'these are matters of fine judgement', the judgment suggests that the assessment should include:

*the crime for which the prisoner has been sentenced; his previous history of offending; his category as a prisoner; his prison record; his fitness; in appropriate cases, information*

8. Prison and Probation Ombudsman for England and Wales (2013). *Learning from PPO Investigations End of Life Care*. London: Prison and Probation Ombudsman. p5.

9. This paragraph appears in various PPO fatal incident reports. Prison and Probation Ombudsman (2017, 2018). *Fatal Incident reports*. [Online]. Prison and Probation Ombudsman, UK. Available at: <https://www.ppo.gov.uk/document/fii-report/> [Accessed 18 September 2018].

10. *R (on the application of Graham) v Secretary of State for Justice* [2007] All ER (D) 383.

11. Council of Europe. *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13*. [Online] European Court of Human Rights, France. Available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [Accessed 17 November 2017].

*about the ability or willingness of others to facilitate his escape, and no doubt many other factors.*

These criteria, and others, are now found in section 6.7 of Prison Service Instruction 33/2015,<sup>12</sup> discussed below. With regard to situations where it would be impossible for the prisoner to escape, the judge found that handcuffing him would be unlawful and a breach of article 3 of the ECHR:

*A dying prisoner, properly assessed as posing a risk of escape when fit, and a risk of violence to the public were he to escape, could properly contend that handcuffing him during his dying hours was nonetheless an infringement of his right not to be treated inhumanely or in a degrading manner.*

### **The implementation of the Graham Judgement**

R (Graham) v Secretary of State for Justice is referred to in a key Prison Service Instruction: PSI 33/2015, which is concerned with arrangements for external escorts. In the Executive Summary to this, it is stated that the Prison Service Instruction (PSI) ‘incorporates clarifications and updates to policy introduced by way of the following documents’ amongst which is listed the note from the Head of Security Group to Governing Governors about the Graham judgment, issued on 14 April 2014.<sup>13</sup> The intention of this PSI is clearly to ensure the more appropriate use of restraints on seriously and terminally ill prisoners, in line with the Graham judgment. A review of this document, however, highlights one potential explanation why prisons continue to be criticised in PPO reports after a death from natural causes for the inappropriate use of restraints. It is clear that contradictions exist within the document, specifically between what is mandatory (usually indicated in PSIs by italic text, or highlighted in a shaded box) and what is merely advisory, guidance or examples of good practice.

### **PSI 33/2015—the presumption of the use of restraints**

With regard to risk assessments and the use of restraints on terminally and seriously ill prisoners who are not Category A, PSI 33/2015 mandates that the prison’s management is responsible for ensuring a risk assessment is completed to determine whether to use restraints on an escort, including in an emergency.<sup>14</sup> However, the likely outcome of any risk assessment is pre-empted elsewhere in the PSI, including in the next paragraph,<sup>15</sup> which makes it compulsory that:

*under normal circumstances, all external escorts will comprise at least two officers and the prisoner will have restraints applied. This also applies to Category D/open prisoners on external escort in circumstances where ROTL is deemed inappropriate.*

The intention of this PSI is clearly to ensure the more appropriate use of restraints on seriously and terminally ill prisoner, in line with the Graham judgment.

The following paragraph<sup>16</sup> makes it mandatory for a risk assessment to indicate what type of handcuffing is required, but does not suggest the option of no handcuffs being used. The use of restraints is further established as the ‘norm’ in this paragraph in non-italicised text which states that ‘normal practice is for male

Category B and E-List prisoners to be double cuffed while on escort’.<sup>17</sup> Similarly, non-italicised text later in this PSI<sup>18</sup> says that ‘the minimum standard escort strength is two officers or more, with restraints applied to the prisoner in all but exceptional circumstances’. The assumption demonstrated by these paragraphs, both mandatory and advisory, is that a risk assessment will always find the use of restraints to be appropriate. There is no clear definition of what constitutes ‘normal’ or whether this includes terminally and seriously ill prisoners.

There are some exceptions to ‘normal’ that are made explicit. In the same PSI, it is mandatory to have personal approval from HMPPS Chief Executive before handcuffing a tetraplegic or paraplegic prisoner,<sup>19</sup>

12. NOMS Agency Management Board (2015). *National Security Framework, External Escorts – NSF, External Prisoner Movement, Reference PSI 33/2015*. [Online]. Ministry of Justice, UK. Available at: <https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2015>. [Accessed 17 November 2017].

13. *Ibid*, 1.2.

14. PSI 33/2015, Paragraph 5.3.

15. *Ibid*, 5.4.

16. *Ibid*, 5.5.

17. *Ibid*, 5.5.

18. *Ibid*, 6.5.

19. *Ibid*, 5.6.

suggesting that this should be exceptional rather than routine. Other possible circumstances where handcuffs will not normally be used are given, in non-italicised text, in the next paragraph and include transfer to open prisons and when prisoner's mobility is 'severely limited, for example due to advanced age or disability unless there are grounds for believing that an escape attempt may be made with external assistance'.<sup>20</sup> However, there is no specific mention of the circumstances of a prisoner at the end of life. Any suggested or mandatory exceptions are qualified by the following paragraph, which is mandatory and reminds the reader of the importance of risk assessments in these cases:

*the relevant circumstances must be fully addressed in the risk assessment and the officer in charge must make a written report to the Governor on return to the prison if it was necessary to use handcuffs on the prisoner and set out why the handcuffs were used.*<sup>21</sup>

There is more clarity around life-threatening situations, where two paragraphs<sup>22</sup> make it mandatory for restraints to be removed immediately and the duty governor informed as soon as possible afterwards. Examples are given, in italics, of circumstances such as an emergency necessitating the use of defibrillation equipment, where escorting staff are mandated to comply with medical professional's requests for restraints to be removed. In such circumstances, it is stated<sup>23</sup> that restraints 'must be re-applied as soon as it is clinically safe and reasonable to do so' and elsewhere, in non-italic text, there is a reminder that the responsibility for the removal of restraints when requested on medical grounds remains with the prison.<sup>24</sup> Further italicised text<sup>25</sup> deals with emergency admissions, stating that risk assessment can be delayed but must be completed within 24 hours, but again making a presumption in favour of the use of restraints, specifying that in the interim 'restraints must be used unless there are medical objections from a qualified medical professional.'<sup>26</sup> These provisions suggest that expected hospital admittances are 'normal' circumstances in terms of the earlier paragraphs<sup>27</sup> where the use of restraints is presumed.

## PSI 33/2015—the presumption of individual risk assessments

In contrast, PSI 33/2105 also includes three paragraphs<sup>28</sup> which use italics to indicate that risk assessments are mandatory for the use of restraints. These paragraphs are in a section dealing explicitly with hospital escorts. Paragraph 6.11 requires that risk assessments are reviewed regularly, in light of changes to the prisoner's condition or physical surroundings, and that escorting staff must bring such changes to the attention of prison management as soon as possible. Paragraph 6.17 states that 'decisions reached must be proportionate to the risks posed in individual cases and supported by fully completed risk assessment documentation'. This is amplified by paragraph 6.18, which mandates that medical opinion should be part of the assessment process and that staff undertaking the risk assessment must ensure that:

- ❑ The restraint by handcuffs of a prisoner receiving chemotherapy, or any other life saving treatment, must be justified by documented security considerations.<sup>29</sup>
- ❑ Each decision must be properly considered, taking account of all relevant information, and be proportionate to the risks involved.
- ❑ A fresh risk assessment must be conducted for each escort and when/if the prisoner's condition changes in order to establish: the level of restraints to be used during transportation to and from the hospital, and; the level of restraints to be used during the prisoner's stay in hospital including consideration of the withdrawal of restraints altogether where lifesaving treatment is being administered, taking into account information supplied by healthcare professionals; the circumstance under which close family and relatives may be allowed to visit the prisoner.

This latter provision of the PSI is clearly in keeping with the Graham judgment, and if followed could be expected to be deemed by the PPO in their review of the case to have led to the appropriate use of restraints on a prisoner who has subsequently died. Its clarity is, however, weakened by the paragraphs<sup>30</sup> discussed in

20. Ibid, 5.7.

21. Ibid, 5.8.

22. Ibid, 5.9 and 6.14.

23. Ibid, 5.9.

24. Ibid, 6.14.

25. Ibid, 5.12 and 6.5.

26. Ibid, 5.12.

27. Ibid, 5.4 and 5.5.

28. Ibid, 6.11, 6.17 and 6.18.

29. The specific inclusion of chemotherapy in this paragraph may reflect the references to this particular treatment in the Graham judgement, where one of the claimants was a prisoner who had received chemotherapy.

30. Ibid 5.4 and 5.5.

the previous section which imply that the use of restraints will be the 'norm', without emphasising the requirement for an individual and dynamic risk assessment in all cases. The underlying message of the Graham judgment is further obscured by text in parts of paragraph 6.17 and 6.18 not being in italic font, specifically that in paragraph 6.17 which recognises the sensitivity of the circumstances around a hospital escort for a prisoner diagnosed as seriously or terminally ill:

*Such circumstances require sensitive handling to ensure that the needs of security are balanced against the clinical needs of the prisoner*

and that in 6.18 which states there is a:

*need to make a distinction between the risk of escape and the risk of harm to the public posed by a prisoner when fit, and those risks posed by the same prisoner when suffering from a serious medical condition.*

Were these provision to be mandatory, they would arguably enhance the PSI's compliance with the Graham judgment.

## Conclusion

Reviewing the relevant PSI in this way makes apparent the difficulties prison staff face when basing decisions about the use of restraints on terminally and seriously ill prisoners on the instructions and advice this document provides. PSI 33/2015 contains inconsistencies and mandatory actions that could lead to contravening the Graham judgment. It is striking that in a presentation at a recent conference, the Deputy Ombudsman reported that high security prisons were performing better than other prisons with regard to the appropriate use of restraints on terminally and seriously ill prisoners.<sup>31</sup> He attributed this to them having conducted internal reviews of their own procedures and ensured that input from healthcare staff as to the condition and escape risk of the prisoner is included in risk assessments. In contrast he gave as an example of poor practice the case of a

Category C prison where restraints were used on an 80 year old lower limb amputee who was in a wheelchair and required treatment at an outside hospital.

There are of course other possible explanations as to why high security prisons are performing better, in the opinion of the ombudsman, with regard to the appropriate use of restraints. Firstly, separate guidance exists for the use of restraints on Category A prisoners,<sup>32</sup> meaning that staff working in these settings are less reliant on PSI 33/2015, even when considering the use of restraints for other categories of prisoners receiving medical treatment outside the establishment. Secondly, a disproportionate number of deaths from natural causes occur amongst prisoners in high security establishments (13.2 per cent of deaths from natural causes in 2012 to 2016, compared with approximately 7 per cent of the prison population).<sup>33</sup> Put simply, high security prisons are getting more practice, and receiving more feedback from the PPO, on the use of restraints on terminally ill prisoners. Thirdly, as part of an ongoing study,<sup>34</sup> examples of how high security estate prisons have changed practice have been found. This has included a security department in a high security and long-term prison working with their healthcare colleagues to ensure that the medical staff know what restraints look like, and so can make better informed contributions to the risk assessments for escorts to external hospital. It has also involved the development of new written protocols, following criticism from the PPO in specific cases, to ensure adequate individual risk assessments always occur.

A case could be made for revising PSI 33/2015 to remove ambiguity and improve compliance with the Graham judgment. However, further research is necessary to assess to what extent prison staff actually use these documents when making such decisions. Being less reliant on the PSIs, for example through initiatives in some prisons to review practice, establish clear in-house protocols and ensure informed input from prison healthcare staff, may already be assisting better decision-making with regard to the use of restraints than reliance on PSI 33/2015. As yet, the extent to which this is happening is purely anecdotal and revealed only through the PPO investigations which follow a death in prison custody from natural causes.

31. Pickering, P. (2017). Investigation of Deaths in Custody – Trends and Themes. Unpublished presentation at 'Death in Punishment Conference'. 25-26 October 2017. Sheffield.

32. PSI 09/2013.

33. These figures are derived from Ministry of Justice (2017). *Deaths in prison custody 1978 to 2018*. [Online]. Ministry of Justice, UK. Available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2018> [Accessed 14 September 2018] and data on operational capacity available from Ministry of Justice. *Prisons in England and Wales*. [Online]. Ministry of Justice, UK. Available at <http://www.justice.gov.uk/contacts/prison-finder> [Accessed 14 September 2018].

34. See note 1.

35. Robinson, C., 2017. Personal interview. Part of ethnographic data collection for PhD Thesis. 20 October 2017.

# Working with people with sexual convictions

A presentation given to the 2018 Perrie Lectures.

*Lynn Saunders OBE is Governor HMP Whatton and Co-founder of the Safer Living Foundation.*

**The background for this lecture spans a thirty year career, (intermittently) working with people with sexual convictions in the criminal justice system. Most recently, as the Governor of Whatton Prison, an 841 place treatment site for this particular client group. I originally trained as a social worker and started my career as a probation officer in 1987. I was responsible for running a range of offending behaviour group work programmes, and supervising a range of clients, including people convicted of sexual offences.**

During the lecture today I want to consider a number of questions. What is the impact of the 'sex offender' label on the successful resettlement of this group of people? What do we know about people who commit sexual offences? How do we keep the public safe? What can we do to help people in prison? And what happens when people with a sexual conviction leave prison?

## **The impact of labelling on the successful resettlement**

The popular press often portrays people who have committed a sexual offence in a negative and stereotypical way. The press headlines of 'beast', 'paedophiles', and 'monster' are frequent and familiar. People who have committed offences against children are almost always labelled as paedophiles, when in fact only a small percentage of this group actually have a sexual preference for children.<sup>1</sup> Their offending is often behavioural and/or they have a desire for intimate relationships with adults, but a variety of factors including IQ, physical restrictions or attractiveness inhibit these preferences. People convicted of sexual offences often reflect on how they are perceived and people in prison at Whatton regularly comment about how people

convicted of other serious offences such as murder or other offences of violence are considered more sympathetically and given more support for their successful resettlement in the community.

There is significant discussion in some circles about the impact that the term 'Sex offender'<sup>2</sup> has on a person's wellbeing and self-worth commentators also question how this labelling of people by something we don't want them to be is helpful to their desistance journey.<sup>3</sup>

Many treatment programmes for people with sexual convictions have moved on from risk management and relapse prevention strategies to a strengths based approaches to promote 'good' or 'better' lives.<sup>4</sup> Yet many practitioners, colleagues, academics and policy makers continue to label and define people by possibly the worst thing that they have ever done, rather than seeing people as human beings with the same hopes and aspirations as the rest of us. If we are to change negative public attitudes then I would argue we as professionals need to look to ourselves first.

## **History/Politics/Legislative Response**

It is interesting to consider the extent of the growth in the number of people in prison convicted of sexual offences in prisons in England and Wales, in 1981, this was four per cent of the overall prison population. By 2018 this had risen to 18 per cent and according to NOMS data in 2016 25 per cent of the overall prison population had a current or previous conviction for a sexual offence.

Of the people in prison for a sexual offence ninety nine percent are men, and the age of this group is much older than the rest of the prison population. Almost eighty percent are over thirty years of age and eighteen percent are over sixty. A large majority of this population are serving long sentences (eighty one percent are

1 Seto, M.C.(2004) Pedophilia and sexual offences against children. Annual review of sex research:2004.15Research library pg 321.

2 Willis, G.M (2018) Why Call someone by what we don't want them to be? The ethics of labelling in forensic/correctional psychology. Psychology Crime and Law doi:10.1080/1068316x.2017.1421640

3 Harper, C.A., Hogue, T.E., & Bartels, R. M (2017) Attitudes towards sexual offenders: What do we know, and why are they important? Aggression and violent behavior doi: 10.1016/j.avb.2017.01.011

4 Ward, T., & Stewart, C. A. (2003) The treatment of sex offenders: risk management and good lives. Professional Psychology: Research and practice, 34353-360. 10.1037/0735-7028.34.4.353



... serving sentences over four years, including life and indeterminate sentences for public protection). An analysis of the criminogenic needs of this group found that the majority had issues with relationships, and problems with their attitudes and thinking. A relatively small number had substance misuse features to their offending.<sup>5</sup>

There are two main reasons for the growth in the numbers of people with sexual convictions in prison. Firstly an increase in the prosecution and subsequent conviction and sentencing for historical sexual offences and secondly increases in the length of sentences handed down to people with sexual convictions. For example fifty five percent of the 2283 people in prison for Indeterminate Sentences for Public Protection in 2016 had been convicted of a sexual offence.<sup>6</sup>

People with sexual convictions are often perceived as a homogenous group but this is not an accurate representation. There are a wide range of sexual offences. There are those involving direct physical contact with victims, and those that do not, such as downloading or viewing internet based child or adult sexual abuse images. Victims, may be children, adult men, adult women, or animals. Offences can be committed utilising a variety of means. People may be coercive, groom victims or be surreptitious in their approach. Offences may be committed in the context of under-age peer child abuse or as an element in extreme violence such as murder. Offences may involve indecent exposure or voyeurism or making or distributing child abuse images. Given this complexity the simple characterization of 'sex offender' is neither helpful informative or illustrative of a person's ongoing risk of reoffending. This worth bearing in mind when considering the media perception of a homogeneous group.

Since 1997 there has been a range of legislative and administrative restrictions controlling and increasing the level of surveillance for people convicted of sexual offences. The Sex Offender Act 1997 first introduced the Sex Offender Register. This requires people convicted of a sexual offence serving over 30 months or imprisonment for life to be subject to be Sex Offender registration indefinitely. Registration requires people with convictions for sexual offences to inform the police of their names and any aliases and of their home addresses. The Crime Services Act 1997 also

introduced Sex Offender Orders, which requires that the person who has been convicted of a sexual offence is subjected to a 'release supervision order' unless 'there are exceptional circumstance to justify not doing so'. In 2003 the Criminal Justice Act established indeterminate sentences for public protection and extended sentences. Also in 2003 the Sexual Offence Act established an extra range of restrictions, such as Sexual Offence Prevention Orders (SOPO), foreign travel orders, risk of serious harm orders and increased the length terms for sexual offender registration for people receiving a sentence of 30 months or more to an indefinite period.

It is significant that the SOPO was amended and strengthened to a Sexual Harm Prevention Order by the Anti-Social Behavioral Crime and Policy Act 2014.

Legislative restrictions aside, there have also been a range of administrative procedures to manage and control people convicted of sexual offences over recent years. In 2008 the Child Sex Offences Disclosure Scheme was at first trialed, and then eventually extended to all police forces in 2011. This scheme allows people who care for children to apply to find out if someone has a record for sexual offences against children.

Polygraph testing was piloted in two probation areas, the East and West Midlands in 2009 and extended to the whole country in 2014. GPs monitoring for high MAPPA risk cases for people with sexual convictions can also be considered, and this is currently being extended more widely.

The scale of this level of surveillance and control is in some part understandable because of concerns about public safety, but it is potentially self-defeating if people with sexual convictions are isolated and seen as having fundamentally different needs to the rest of the population. Research in the United States has highlighted the potential implications of these restrictions and as Laws and Ward pointedly observe:

*Most sex offenders are people like us with the potential to lead meaningful law abiding lives, if given the change and appropriate support<sup>7</sup>*

The legislative and administrative restrictions on a person convicted of a sexual offence are becoming so dominant and such a focus that the need to help and

... the simple characterization of 'sex offender' is neither helpful informative or illustrative of a person's ongoing risk of reoffending

5. NOMS (2016) Commissioning Strategy Interventions and services for people convicted of sexual offences (unpublished).

6. Ibid.

7. Laws, D R and Ward, T (2011) Desistance from sexual offending; Alternatives to throwing away the keys. Guilford Press. P.6

support people to transform their lives when they leave prison is very much a secondary issue. Risk management and compliance procedures are of dominant concern. Yet ironically it is worth considering that these control measures may have a direct influence on a person's ability to desist from offending as opportunities to gain suitable employment, safe housing and meaningful relationships are restricted. It could also be argued that the media portrayal of the person with sexual convictions as a social pariah<sup>8</sup> also has a significant impact on the likelihood of his successful resettlement.

### **So what do we know about people who commit sexual offences?**

There has been a significant amount of research over a number of years conducted to try to understand the motivation for their offending. The National Offender Management Service<sup>9</sup> (now HMPPS) summarized the research outlining four distinct groups. Firstly, people who have a sexual motivation for their offending. This group are motivated by sexual interests that are markedly different to the general population (people with a sexual preference for children, or sexual violence for example). The second group are people who have an anti-social motivation. This group may commit a variety of different criminal offences including sexual offences when angry or aggrieved. This group of people are a high risk of re-offending, and therefore a priority group for HMPPS accredited offence focused interventions. Thirdly, a group of people who are motivated by combination of sexual and antisocial factors. This group are considered to have a hostile motivation to the world and a propensity to anger and grievance. They are the highest risk of sexual re-offending and again considered to be a priority target by HMPPS for offence focused programmes. The final category are people who commit offences who have neither a sexual nor an anti-social motivation. This group of people normally prefer sexual relationships with consenting adults but in certain circumstances they can be aroused by children and/or by rape. For example when they begin a sexual relationship with a minor as a substitute for activity with an adult partner. This group of people typically will not have an extensive criminal history and be a low risk of sexual re-offending. This group of people are not currently eligible for accredited offence focused programmes by HMPPS, as the research base suggests that formal programmes for

this group of people have little impact on re-offending rates.<sup>10</sup>

### **How do we keep the public safe?**

There are a number of key factors to consider in the operational management of a prison holding people convicted of sexual offences. Protection of the public needs to be of paramount concern, so a number of key elements are essential if this objective is to be successfully achieved. Firstly the prison's security procedures must be robust. Good prison security comes in many forms. The physical security of the building and the strong and consistent management of procedures are vital. This ensures the safety and wellbeing of both the people who live, and those who and work inside the prison. It is also critical to the protection of the public outside this community. Good staff prisoner relationships are also vital to ensure that intelligence is gathered about prisoner activities, and to ensure that security procedures and policies are successfully and effectively applied.

The management of risk is also a critical feature of the operational focus of the prison. This ensures that the public and the prisoners in the establishment are kept safe. Prisoners risk of reoffending (and reconviction) is assessed by a number of risk assessment tools but predominantly by Risk Matrix 2000 (RM2000)<sup>11</sup> is currently utilized by Criminal Justice agencies in England and Wales. This tool assesses which a person's risk of reoffending and/or reconviction for a sexual offence. People can be assessed as high, very high, medium or low risk of sexual reconviction. This measure utilises a number of static risk factors such as, the age of first offending, and the gender and age of victims. An updated risk assessment tool OAYIS Sex Predictor (OSP), also a static risk prediction tool is shortly to be introduced in both prisons and the community. The benefit of this updated method of risk assessment over RM2000 is that it is a more accurate assessment of risk of reoffending, for some groups and it is simpler and easier for a practitioner to score. The risk management of a person whilst in custody is also crucial to both the safety and security of prisons, and also the safety and of the public when the prisoner eventually leaves the prison. Ensuring that prisoners do not obtain access to weapons or to material that is likely to enhance their opportunities to cause harm is crucial, and security information and intelligence gathering is linked to this.

The prison Interdepartmental Risk Management brings together all the relevant intelligence about an

8. McAlinden, A. M (1999) Sex offender registration: some observations on Megan's law and the Sex offenders Act 1997. *Crime prevention and community safety*. Vol.1 Issue 1. Pp41-53.

9. NOMS (2016) see n.5

10. Wakeling, H. C., Mann, R E and Carter A J. (2012). *The Howard Journal* vol51. No 3 July 2012. Pp286-299.

11. Wakeling, H, Mann, R. E, Milner, R (2011) Interrater reliability of Risk Matrix 2000s. *International Journal of Offender therapy and comparative Criminology* 55(8) 1324-37.

individual prisoner and makes informed decision about the risk they pose to others. This group considers applications for child contact, the extent of telephone monitoring and the implications of Court directions such as Sexual Harm Prevention Orders and/or Harassment Orders.

The group also consider applications for a change of name (prisoners often want to change their name to prepare to develop a positive ‘new me’ identity like they leave prison and also to reduce the possibility of being identified by hostile members of the community when they begin their resettlement process). A key objective of the prison is the creation of a rehabilitative culture is to create a climate that helps people with sexual convictions to begin to understand their risk factors, how to manage them, and to be alive to risky situations. In short to learn to become better people when they get out of prison from when they came in. Offence focused offending behaviour programmes are an important, but only part of this process. Improving self-esteem and self-worth and providing activities and educational opportunities are also key. It is vital that people have the motivation and the desire to desist from offending as well as the climate and support to do so.

<b>Horizon</b>	Medium risk RM2000 – 29 sessions
<b>Becoming New Me + (BMNT)</b>	Adapted programme – 4/5 months (4 sessions per week) group sessions plus one to one sessions High or very high risk
<b>New Me Strengths</b>	Adapted programme - 3 months (3 sessions per week)
<b>Living as New Me</b>	Successful completion of (BNM or BNM) roll on roll off programme (at least 5 sessions)
<b>Kaizon</b>	High intensity programme – rolling format 68 sessions
<b>Healthy Sex Programme (HSP)</b>	One to one basis between 12 and 20 sessions

**What do we do in prison?**

There are a range of offence focused offending behaviour programmes for people convicted of sexual offences whilst they are in prison. The table below gives a brief summary of those currently available.

A new suite of programmes Kaizon and Horizon have been in operation since early 2017 and replaced the old Core and Extended Programme which were replaced following research about their effectiveness.<sup>12</sup> The development and improvement of new accredited

offending behaviour programmes is continuous, and interventions are developed and adapted to reflect the best available evidence.

**Other Interventions at HMP Whatton**

In 2009 the prison funded and established a pilot anti-libidinal project. The project focuses on the provision of medication to prisoners who are sexually pre-occupied. This initiative came about because group work facilitators thought that some prisoners were unable to focus on the offence focused offending behaviour programmes because of intrusive sexual thoughts. Because they were masturbating excessively, or because they were expressing concern about their thoughts and feelings around sex. The project was evaluated from the outset by researchers at Nottingham Trent University.<sup>13</sup> Participation in the programme is entirely voluntary. Release decisions are not made on the basis of a prisoner’s participation in the anti-libidinal programme, and an assessment of a prisoner’s suitability for the programme is made by a psychiatrist who will decide on whether to prescribe SSRI’s (anti-depressants) or Anti Androgen medication. Very few prisoners require a prescription for Anti Androgen’s and the majority of people who have been involved throughout the nine years of the project have been prescribed SSRI’s. This programme has had encouraging results<sup>14</sup> and is now rolled out to nine other prisons (now called Medication to Manage Sexual Arousal, MMSA rather than an Anti Libidinal service) and a randomised control trial is now planned to further objectively test its effectiveness. Prisoners are able should they choose, to continue to take the medication when they are released.

Education and Employment are key features of the prisons release planning. A range of programmes and education classes are available for people to develop their skills or to be re-skilled to enter the world of employment upon release from prison. There are also a number of people due to age or disability who will not be able to obtain employment upon release from prison. Activities to help people to develop and to plan constructive use of leisure time are equally important as employability skills and the prison works with voluntary sector organisations such as Age UK and the Carers Federation to develop these skills.

Many prisoners were in employment prior to the start of their prison sentence, and some people committed offences during the course of it, as a result they will not be able to return to their former careers. A

12. Mews, A, Di Bella, L Purver. M (2017) Impact evaluation of the prison based core sex offender treatment programmes. Ministry of Justice Analytical series.  
 13. Winder, B, Livesley, R, Kaul, A, Elliot, H,,Hocken K. (2014) Preliminary evaluation of pharmacological treatment with convicted sexual offenders experiencing high levels of sexual preoccupation. The journal of forensic psychiatry and psychology 25 (2) 176-194.  
 14. Winder, B Livesley, R Elliott, H, Hocken, K, Faulkner, J,,Kaul, A (2018) Evaluation of the use of pharmacological treatment with prisoners experiencing high levels of hypersexual disorder. The Journal of Forensic Psychiatry and Psychology 29 (1) 53 71.

number of people may also have restrictions on working with the public, with children, or because they have offended whilst in positions of trust. This will inevitably have an impact on the number of employment opportunities available to them. In addition, some employers simply would not consider the employment of a person with a sexual conviction at all regardless of the circumstances or type of offence,<sup>15</sup> finding suitable employment is therefore a major challenge for this group.

### **Rehabilitative Culture**

Positive staff/prisoner relationships based on respect are critical to maintain the effectiveness of the group work programmes. Research undertaken at Whatton in 2016<sup>16</sup> emphasised the importance of the prisons culture in supporting prisoner well-being and desistance. The wide range of peer support projects available in the prison, also support this culture. Research by Perrin and Blagden<sup>17</sup> explored the role of the prisoner listener scheme in enabling prisoners to 'give something back' to help rather than to harm others. The other peer support projects include; the Social Care Support Project, prisoners are trained as peer supporters care to care for and support older prisoners with complex needs and social care needs. The prisoner wheelchair pushers provide a taxi service to the large number of wheelchair users to move around the prison. The Insiders help people to adjust when the first arrived in the prison. The Programme Support Volunteers help people who are struggling to cope with the emotional drain of participation the new offence based programmes, and the Shannon Trust mentors and One to One Member Project Peer Support workers help people with literacy and numeracy problems.

All of these programmes allow prisoners to participate in the work of the prison. This helps to improve the individuals well-being but also enhances the positive culture of the prison.

### **Life Beyond Prison**

We can have the best, most innovative prison in the world, but this doesn't mean a great deal if there is insufficient help and support for people to continue what they have learnt and practiced in prison when they return to the community.

There is a strong argument I would argue, that we need to consider whether we need to revise our approach to dealing with this group of people. We

need to consider whether the legislative and administrative framework outlined at the beginning of the presentation would be enhanced by more support and care for the person leaving prison with a sexual conviction. To consider whether simply increasing the range and sophistication of surveillance, and developing more restrictive and intrusive monitoring requirements is effective in reducing the risks posed by this group of people.

The Safer Living Foundation a charity based in the prison was established in 2014 to support vulnerable people leaving prison and to help them successfully resettle in the community. The charity was established because prisoners often said that they felt that they had little reason to leave prison, because they have few friends and family contacts outside. This was particularly pertinent as social isolation was often a contributory factor in their original offending. The first prison based Circles of Support (COSA) project was initially focused on people with intellectual disabilities (around 30 per cent of the prisoners at the prison have some form of intellectual disability). The prison is one of only a small number providing adapted offence focused programmes, and so more people with an intellectual disability are housed there. The Circle (utilising Volunteers from the community) supports the prisoner and holds him to account for his behaviour. The Circle meets in the prison for the last three months of the sentence and then through the gate into the community up to 18 months after his release. Thus assisting people with this difficult period of transition.

The Circle helps to reduce social isolation, and provides help with finding accommodation, applying for benefits and dealing with debt. It also helps to reinforce the key learning from the prison based offending behaviour programmes the individual learning and risk management plans.

The Safer Living Foundation has also developed a community circles project financed by the Big Lottery, and a young peoples' project for people exhibiting sexual harmful behaviour. A prevention project to help people with sexually intrusive or harmful thoughts to equip them with the skills and support not to reoffend. in the first place has been in place since 2017. A drop-in centre to help people to successfully reintegrate. is planned for 2019.

To conclude. There is much that can be done to keep the public safe and to improve the lives of the people in our care with imagination, team work, enthusiasm compassion and creative thinking.

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15. Brown, K, Spencer, J Deakin, J (2007). The reintegration of sex offenders, barriers and opportunities for employment *The Howard Journal*.
  16. Blagden, N Winder, B Hames, C (2016) 'They treat us like human beings'. Experiencing a therapeutic sex offender prison. Impact on prisoners and staff, and the implications for treatment. *International Journal of Offender Therapy and Comparative Criminology* 60(4) pp371-396.
  17. Perrin, C, Blagden, N (20xx) Accumulating meaning purpose and opportunities to change. 'Drip drip' the impact of being a listener in prison. *Psychology Crime and Law* 20 (9) pp 902-920.

# Preventing radicalisation in Danish prisons

## Human rights and due process rights of prisoners

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### Introduction, method and sources

**On 14 and 15 February 2015, Copenhagen was hit by two terrorist attacks.<sup>1</sup> Two members of the public were killed and six police officers were wounded. The attacker, a Danish-born Palestinian, was subsequently killed in an exchange of gunfire with the police.**

The perpetrator had only recently been released from Vestre Prison in Copenhagen, where he is assumed to have been (further) radicalised. Due to this, the Danish government decided to implement a number of measures to consolidate efforts to combat radicalisation and extremism in Danish prisons and detention centres. One such measure was to introduce an obligation on prison staff to report prisoners suspected of being radicalised to the Danish Security and Intelligence Service (PET), and upon release to the relevant local police and municipality.

In 2016, a number of organisations, including the Danish Prison Officers' Union and the Danish Bar and Law Society, expressed concern regarding the more rigorous reporting scheme, and as a result, following a dialogue with the Directorate of Prisons and Probation, the Danish Institute for Human Rights decided to conduct a study of the scheme, with the aim of assessing its consequences for due process and human rights.

Denmark is not the only country concerned to address the issue of radicalised prisoners. Several other countries also face this issue and it is becoming no less

important over time. The number of prisoners prepared to commit violence is growing across Europe with increasing terrorist convictions and returning fighters facing prosecution for having participated in ISIS combat in Syria or Iraq. In addition to this there have been several examples in Europe of prisoners radicalised in prisons who have gone on to commit or attempt to commit terrorist attacks after their release.<sup>2</sup>

This development has spurred considerable international research in recent years on radicalisation and violent extremism in prisons.<sup>3</sup> Are prisons 'schools for terroris'? Considerable attention has been directed at examining what prison authorities can do to prevent and counter radicalisation, including sectioning radicalised prisoners, placing them in solitary confinement; monitoring religious practices and preaching in prisons; introducing de-radicalisation programmes; and reporting potentially radicalised prisoners to the police and intelligence services.

Nevertheless, virtually no international research has explored the impact of these restrictive interventions. Prisoners have the same human rights as everyone else—with the obvious limitations that follow from being detained—and any violation of these basic rights may lead to (further) radicalisation and extremism, see section 9 below. This is the first study of this kind. It analyses how anti-radicalisation initiatives have affected the human rights and due process guarantees of prisoners in six different Danish prisons.

1. The incident led to debate in the Danish media about whether the act was an act of terrorism or whether it was a hate crime. On 27 September 2016, the Copenhagen district court ruled that Omar El-Hussein's acts committed at Krudttønden, a café in Copenhagen, on 14 February 2015, and at the city's central synagogue on 15 February 2015 were acts of terrorism. The ruling can be found here (in Danish): <http://www.domstol.dk/KobenhavnsByret/nyheder/domsresumeeer/Pages/Enigt%C3%A6vningetingfrikenderfirem%C3%A6ndformedvirkentilterrorisme.aspx>.
2. To illustrate two of the three Charlie Hebdo attackers in Paris got their education in radical Islam in the French prison system. So did Fabien Clain, one of the planners of the Bataclan mass shooting in November, 2015. For further examples see <https://www.bloomberg.com/view/articles/2017-03-27/how-to-produce-fewer-terrorists-in-prison>
3. See e.g. Margaret A. Zahn, *Prisons: Their Role in Creating and Containing Terrorists*, in *The Handbook of the Criminology of Terrorism* 2017; Clarke R Jones, *Are prisons really schools for terrorism? Challenging the rhetoric on prison radicalization*, *Punishment & society*, January 7, 2014; Andrew Silke, *Prisons, terrorism and extremism: critical issues in management, radicalisation and reform*, Routledge Taylor & Francis Group, 2014. Anne Speckhard, *Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities*, NATO publication, 2011; Hannah, Clutterbuck, Rubin. *Radicalisation or rehabilitation: understanding the challenge of extremist and radicalized prisoners* 2008; Mark Hamm, *The spectacular few: Prisoner radicalization and the evolving terrorist threat*, New York University Press: New York, 2013; Linda M. Merola and Heather Vovak, *The Challenges of Terrorist and Extremist Prisoners: A Survey of U.S. Prisons*, *Criminal Justice Policy Review* 24(6) 735–758, 2012.

As part of our research we have reviewed a number of international recommendations concerning the prevention of radicalisation in prisons, as well as Danish legislation and regulation of this area. To understand how the reporting scheme works in practice, we have also conducted a number of qualitative interviews with prison officers and prisoners, and we have reviewed a large number of confidential, anonymised reports of concern.

In total, we conducted 22 interviews: eight with prisoners in different prisons, eleven with prison staff, two with employees at the Directorate of Prisons and Probation, and one with the chairman of the Danish Prison Officers' Union. The Directorate of Prisons and Probation selected the prisons<sup>4</sup> and interviewees included in the study based on their assessment of who was knowledgeable about the area, and who had expressed an interest in participating in the study. In addition, we contacted a prison ourselves and secured more interviewees. The interviews with the prisoners and prison staff were conducted face-to-face in the prisons. In addition, we reviewed 259 confidential reports of concerns. All reports were anonymised and contained information about the background on which the report is based and a short description of the situation. Some only included a very brief description, whereas others were more detailed.<sup>5</sup>

In this article we present the primary conclusions and recommendations of the study. In section 2 we provide an overview of international guidelines on the prevention of radicalisation in prisons. Sections 3-5 describe how the reporting scheme works, including how many prisoners have been reported and the consequences of being reported. In section 6 we discuss how radicalisation and extremism are defined in the Danish prison system. In sections 7 and 8, we discuss the consequences of the Danish reporting scheme with regard to due process and human rights. Finally, in section 9 we sum up our findings and present our recommendations for revising the reporting scheme.

### **International guidelines on prevention of radicalisation and violent extremism in prisons**

It is well-known that prisoners, who are often in a vulnerable situation, are susceptible to influence and

may therefore be easy victims for other prisoners that promote extremism. It therefore comes as no surprise that international guidelines have been developed. It is surprising though that as many as seven sets of international guidelines for the prevention of radicalisation and violent extremism in prisons have been produced over the course of the past few years, including four in 2016. These are:

- ❑ Council of Europe: Guidelines for prison and probation services regarding radicalisation and violent extremism (2016)<sup>6</sup>
- ❑ *United Nations Office on Drugs and Crime (UNODC): Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons* (2016)<sup>7</sup>
- ❑ EU, Radicalisation Awareness Program (RAN), *Dealing with radicalisation in a prison and probation context*, Ran P&P Practitioners working paper (March 2016)<sup>8</sup>
- ❑ The International Committee of the Red Cross (ICRC), *Radicalization in detention—the ICRC's perspective* (June 2016)<sup>9</sup>
- ❑ International Institute for Justice and the Rule of Law: *Prison Management Recommendations to Counter and Address Prison Radicalization* (2015)<sup>10</sup>
- ❑ Global Counterterrorism Forum: *Rome Memorandum on Good Practices for the Rehabilitation and Reintegration of Violent Extremist Offenders* (2012)<sup>11</sup>
- ❑ International Centre for Counter-Terrorism: *The Hague Core Principles and Good Practices Paper on the Rehabilitation and Reintegration of Violent Extremist Offenders* (2012).<sup>12</sup>

Even though the standards in these guidelines are not legally binding, but solely serve as soft law, they also include reference to good practice with regard to detecting and countering radicalisation and violent extremism in prisons. It is noteworthy that every single one of these guidelines stresses that:

- ❑ Violating human rights and disregarding of process guarantees in prisons can lead to greater risk of radicalising prisoners, and

4. Nyborg, Jyderup, Ringe, Horserød, Søbysøgård and Vestre prisons.

5. For more information, see the report (in Danish) from the Danish Institute for Human Rights by Lisbeth Garly Andersen and Peter Vedel Kessing: *Forebyggelse af radikalisering i fængsler*, 2017: <https://menneskeret.dk/udgivelser/forebyggelse-radikalisering-faengsler>

6. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1a69](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1a69)

7. [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_VEPs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf)

8. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation\\_awareness\\_network/ran-news/docs/ran\\_p\\_and\\_p\\_practitioners\\_working\\_paper\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-news/docs/ran_p_and_p_practitioners_working_paper_en.pdf)

9. <https://www.icrc.org/en/document/responding-radicalization-detention-icrc-perspective>

10. <https://theijj.org/wp-content/uploads/Prison-Recommendations-FINAL-1.pdf>

11. <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rome-Memorandum-ENG.pdf>

12. <https://www.icct.nl/download/file/ICCT-Background-Paper-Rehab-Core-Principles-Good-Practices.pdf>

□ Efforts to prevent radicalisation and extremism must (therefore) remain within the boundaries of international human rights law.<sup>13</sup>

### Reporting scheme

Even before the February 2015 terrorist attacks in Denmark, a reporting scheme on radicalised prisoners was in use by the Danish Prison and Probation Service, but after this date the scheme was tightened in a guideline issued by the Directorate in July 2015, amended and updated in March 2016 and in January 2017.<sup>14</sup> The most recent guideline includes definitions of the terms radicalisation and extremism, and<sup>15</sup> describes the procedure for reporting concerns, the different categories of concern, the opportunities to withdraw a report, and the consequences of being reported.

In accordance with this guideline, prison officers report to the Directorate of Prisons and Probation. Reports need not—as was previously the case—first be presented to a superior for approval or be assessed/screened by other prison staff. Thus, the individual prison officer submits a report directly to the Directorate. Following the submission of a report, the prison or detention centre must follow up on the report with relevant security or social measures. Five categories of concern range from 0 to 4, where 4 is the most serious and 0 is the least serious.<sup>16</sup> On receiving a report, the Directorate assesses the prisoner to determine whether he or she should be moved to a new category of concern.

All reports are forwarded to the Danish Security and Intelligence Service. Once a report is filed, the prison must always consult the police/the Danish Security and Intelligence Service before any form of leave (e.g. weekend leave) or parole can be granted. Moreover the relevant municipality must also be notified when the prisoner is released, with the exception of prisoners in category 0. As a consequence of the tightening of the reporting scheme, the authority do decide whether a prisoner should be granted the right to leave or parole has been effectively transferred from the prison authorities to the Danish Security and Intelligence Service. If a report of concern has been issued for an individual, this may also determine where they serve

their sentence, including whether they are transferred to a maximum security prison ward.

Moreover, the report continues to apply throughout the entire period of imprisonment/ remand and cannot be rescinded or changed by either the prison itself or the Directorate of Prisons and Probation.<sup>17</sup> The report remains in place even after the prisoner is released, with the exception (from June 2016) of those in categories 0, 1, and 2 which are rescinded on release; though it can be reactivated if the prisoner is imprisoned again within a certain time period<sup>18</sup> Reports of concern in category 3 and 4, which are the most serious categories, remain in place even after a prisoner has been released from prison, and are reactivated if the prisoner is imprisoned again.

### Total number of reports of concern

The number of reported concerns regarding radicalisation in prisons increased after the terrorist attacks in Copenhagen in February 2015. In 2015, 51 reports were submitted to the Danish Security and Intelligence Service, whereas only six were submitted in 2013 and 17 in 2014. Thirty reports alone were submitted in the month following the attack. On 9 June 2017 the Directorate of Prisons and Probation reported that:

- In the period from February 2015 up to and including April 2017, they had received and forwarded 348 reports of concern to the Danish Security and Intelligence Service.
- On this date, 77 prisoners / detainees in prisons and detention centres had a report of concern.
- Of these, 19 were assigned to category 0, 28 to category 1, 18 to category 2, and 10 to category 3. Categorisation of two referrals was still pending.<sup>19,20</sup>

### Consequences of being reported

These can be severe. During the imprisonment period the prisoner may suffer several consequences: the right to leave or parole may be delayed or refused, or the prisoner may be placed in a maximum security ward or prison. The interviews with prison officers and prisoners

13. For a more detailed description of these issues and relevant quotations, see the Danish Institute for Human Rights report, *supra* note 27, pp. 14-16 (in Danish).

14. The Danish Prison and Probation Service, *Voldelig ekstremisme og radikalisering – Vejledning til håndtering og indberetning af bekymrende adfærd*, 31 January 2017 (in Danish). When we refer to the Danish Prison and Probation Service guideline in this article, we are referring to the most recent version from January 2017.

15. See more in section 6 below.

16. It should be noted that category 0 was not introduced at the same time as the other categories; it was first introduced by the Directorate on 1 August 2016. See more about this in the Danish Institute of Human Rights report, *supra* note 47, pp. 20-21.

17. In the following, when we refer to imprisonment, prison time, etc., this not only refers to prisoners in prisons but also to remand prisoners in detention centres.

18. See the DIHR report, *supra* note 47, p. 21.

19. See The Legal Affairs Committee (REU) 2016-17, REU final reply to question 20, 4 November 2016.

20. As a prisoner can be the subject of several reports and can be moved from one category of concern to another during imprisonment the number of reports does not equal the number of prisoners with a report.

indicate that a report of concern can also affect the prisoner's right to engage in education/training courses. There is also a risk that those who have been reported are de facto isolated because other prisoners are afraid of interacting with them and attract attention to themselves. A report of concern may also have consequences after release, because the relevant municipality and the police and Danish Security and Intelligence Service must be notified about it. Even though being the subject of a report of concern may have significant negative consequences for the individual, the Danish Prison and Probation Service does not systematically monitor the numbers being reported, or the consequences, making it difficult to assess whether reporting is necessary and justifiable from a human rights perspective (see section 8 below). Neither are the prisoners themselves clear about the consequences of being reported, including any procedural guarantees.

### **The terms radicalisation and (violent) extremism in prisons**

It almost goes without saying that identifying extremist and radicalised prisoners can be very challenging for prison staff. It is important to try to clarify the terms.

### **Definition of radicalisation and violent extremism in an international context.**

Despite several attempts at the international level to define extremism and radicalisation, no agreement has been reached and they remain vague and imprecise.<sup>21</sup> The UNODC handbook on violent extremism in prisons (2016) stresses the importance of distinguishing between extremist opinions/ thoughts and extremist actions, and provides this definition:

**Extremists:** Can be characterized as people who tend to reject equality and pluralism in society. Extremists strive to create a homogeneous society based on rigid, dogmatic ideological tenets; they seek to make society conformist by suppressing all opposition and subjugating minorities.

**Violent extremist:** Someone who promotes, supports, facilitates or commits acts of violence to achieve ideological, religious, political goals or social change.

Despite this clear and important distinction, echoed in The Council of Europe guideline on radicalisation and violent extremism (2016) no such distinction is made in the Danish definition.

### **The Danish definition of extremism and radicalisation.**

The current Danish government national action plan to prevent and counter radicalization defines its terms as:

**Extremism** refers to persons or groups that commit or seek to legitimise violence or other illegal acts, with reference to societal conditions that they disagree with. The term covers e.g. for example left-wing extremism, right-wing extremism and militant Islamism.

**Radicalisation** refers to a short- or long-term process where persons subscribe to extremist opinions or legitimise their actions on the basis of extremist ideologies.<sup>22</sup>

In contrast the Danish Prison and Probation Service's definition is broader and includes extremist opinions as well as actions:

□ The Danish Prison and Probation Service should give special attention to clients with extremist opinions such as:

- simplistic views of the world and of 'the enemy', in which particular groups or aspects of society are seen as a threat,
- intolerance and lack of respect for other people's views, freedom and rights,
- rejection of fundamental democratic values and norms, or non-acceptance of democratic decision-making processes,
- use of illegal and possibly violent methods to achieve political/religious ideological goals.<sup>23</sup>

### **Understanding and using the terms in practice**

A review of the 259 reporting forms indicates that, in practice, there has been a great deal of uncertainty about what warrants reporting a prisoner as radicalised or extremist, and that such reporting is based on very different types of observation. Interpreting what is often

It almost goes without saying that identifying extremist and radicalised prisoners can be very challenging for prison staff. It is important to try to clarify the terms.

21. See, for example, *Report of the Special Rapporteur on human rights and counter-terrorism*, A/HRC/31/65, 22 February 2016, para. 11.  
 22. See *supra* note 16. The Danish Government, Preventing and countering extremism and radicalisation, National Action Plan, October 2016, p.7.  
 23. See The Danish Prison and Probation Service guideline from 2017, *supra* note 16.



a short description can be difficult, and the numbers involved are reported with some caution. Furthermore the written reports do not stand alone; additional information about the prisoner is included in the overall security assessment and the assessment of which category of concern the prisoner should be assigned to. However, overall the reporting forms confirm that—in accordance with the guidelines issued by the Danish Prison and Probation Service and the Danish Ministry of Justice—not only are threats of violence or other illegal behaviour reported, but also—and more often—extreme, but lawful utterances or lawful religious behaviour are reported. Only approximately 10 per cent (28 reports) of the reports reviewed identified signs of readiness to commit violent acts in the form of actual threats of violence or illegal methods to force others to accept extreme opinions. Several concerned albeit extreme, but lawful utterances, for example expressions of sympathy for a terrorist organisation such as ISIS. Some seemed to rest on ideological beliefs, but others seemed to have been expressed in anger by a prisoner exhibiting no other signs of radicalisation. Several of the reports (23) concerned material found in the prisoner's cell. Most often this was graffiti or literature (books, pamphlets, noticeboards, etc.). A number concerned critical comments about democracy or violent comments about Denmark or the country's involvement in armed conflicts, etc. Examples are:

*During a break in the prison yard, the prisoner reported that he was sympathetic to ISIS and supports the most recent terrorist attack in Belgium.*

*Copy of letter confiscated from the prisoner's cell enclosed as an appendix. Part of the letter is in Arabic and part of it in Danish—Jihad is mentioned in some of the quotes.*

*After attacking another prisoner, he was assigned to solitary confinement, and on his way there, he lifted his right arm with a clenched fist and one finger pointing to the sky in a manner that resembled the hand gesture used by ISIS.*

*During examination of the clients room on (...), he was found to be in possession of a t-shirt (see enclosed photo) with the following text in*

*Arabic: I support the resistance movement in Gaza, the Al Aqsa movement.*

*Graffiti above door to cell: Hard times will pass. Sufferings will end. Just don't fail. In Allahs test.*

*'When clearing out the prisoner's room in connection with a move, pictures were taken of his noticeboard that seemed 'very Muslim' in appearance.*

*Confiscation of literature about Sharia law and other written material about Hizb-ut-Tahrir.*

*The client has borrowed the following books from the prison library: 1. 'Gangster' by Brian Sandberg, 2. 'I Hellig Krig' by Omar Nasri.*

*During conversations with the prisoner, he expresses that he is sympathetic to the terrorists that participated in the Paris attacks.*

## Several other reports concern lawful religious conduct where there was no indication of readiness to commit violence or use illegal methods

Several other reports concern lawful religious conduct where there was no indication of readiness to commit violence or use illegal methods (see section 8.3 about the right to freedom of religion). The interviews with

prisoners and staff showed that extreme, yet lawful utterances and opinions are being reported, and that several prisoners refrained from expressing themselves freely so as to avoid this. There were several examples of prisoners who refrained from engaging in political discussions or from commenting on terrorist attacks that have taken place. As one explained *'When there are discussions about, for example, Charlie Hedbo, I don't get involved. I don't want to get involved in the discussion.'* According to several prison officers, prisoners should be careful about criticising NATO missions, and they should refrain from making negative comments about, for example, Jews or from praising attacks carried out by Islamic State. If a prisoner makes these kinds of comments, he risks being reported.

### Summary and recommendations

International guidelines for the prevention of violent extremism and radicalisation in prisons agree that it is crucial to establish a precise definition of the terms 'extremism' and 'radicalisation', and they make a

crucial distinction between extremist actions (i.e. the implementation of extremist opinions) and extremist opinions. Whereas the current Danish government action plan for preventing extremism and radicalisation solely focuses on preventing violent extremism and radicalisation, the Danish Prison and Probation Service includes both extremist actions (violent extremism) and extremist opinions (extremism). This review of submitted reports of concern, and the interviews, show that in practice prison staff were very unsure of this distinction. On balance the reports examined more often focussed on lawful utterances made by prisoners that expressed sympathy for a terrorist organisation, or religious behaviour, with no reference to a readiness to commit violence or use illegal methods.

Here, it is also important to note that a broader definition of extremism—one that requires that lawful opinions/expressions of being sympathetic to a cause and legal religious practices are also reported—entails greater risk of conflict with the prisoners' right to freedom of expression, privacy and freedom of religion (see section 8 below). For this reason, we recommend that the definition is limited to violent extremism, i.e. that is extremist actions, and does not include extremist opinions.

### **Procedural protection guarantees**

To limit the risk of both over-reporting and under-reporting, and the risk of abuse of sensitive personal data, it is vital that the reporting scheme includes adequate procedural guarantees.

### **Identifying radicalised prisoners**

The international guidelines on preventing violent extremism and radicalisation include a number of precise recommendations on the procedure that should be followed to ensure that prisons correctly identify and report prisoners who show signs of violent extremism and radicalisation. It is crucial that the prison staff who carry out the risk assessment know the prisoner very well, and have received training in identifying signs of violent extremism and radicalisation, and that the risk assessment is carried out by a multidisciplinary team.

In some crucial areas, Danish regulation and practice differs from international recommendations: a single prison officer assesses the prisoner and submits

a report of concern; prison staff have often felt unsure of whether they were reporting correctly and expressed a wish for more training and resources in the area. On the basis of this, we recommend that risk assessment is always conducted by prison staff in a multidisciplinary team who have been trained to identify signs of violent extremism and radicalisation and who know the prisoner well. Moreover, prison staff should be able to seek guidance from a qualified staff member with special knowledge about radicalisation processes.

### **Procedural guarantee for prisoners**

The international guidelines on the prevention of violent extremism and radicalisation do not state whether the reported party should be informed of the grounds for the report, nor whether they should have the opportunity to question these grounds before the report is submitted. However, they do state that prisoners who have been reported should be able to challenge the report. The Danish Prison and Probation Service's guideline from 2017 is unclear about whether a prisoner should *'be informed of the grounds for the report and should have access to question these grounds'* and be included in a hearing of parties. The guideline only states that the prisoner

*'should be presented with the concern and should be given the opportunity to address the concern.'* On the other hand, the guideline states that prisoners who have been reported must be provided with guidance on how to appeal (or challenge) the report and should be informed of the regulations about withdrawal of the report of concern. Interviews with the reported prisoners show that several of them had not been informed of the grounds for the report—or at least in their view they have not been satisfactorily informed. Similarly, several were critical about the fact that they had not been given the opportunity to question it or in any other way *'defend themselves'* against the charges. However, it should be noted that the reasons for this could be *'overriding considerations to public or private interests'*.

We recommend that the procedural guarantees for prisoners are improved. For example, prisoners should be notified in writing about the grounds for the report and they should be given the opportunity to

The international guidelines on preventing violent extremism and radicalisation include a number of precise recommendations on the procedure that should be followed...

question these before a report is registered unless ‘overriding considerations to public or private interests’ speak against this.

### ***Clear and precise rules for the handling of sensitive information***

Reports of concern about radicalization contain highly sensitive personal information about the reported prisoner. Therefore, it is important to have clear and precise regulation for how the involved authorities register, use, exchange, delete and correct reports of concern

We recommend that Danish reporting practice is changed to ensure that an individual needs assessment is always carried out prior to prisons/the Prison and Probation Service transferring information to the police, the Danish Security and Intelligence Service and the relevant municipality.

#### **Human rights consequences**

In this section we examine the consequences of the Danish reporting scheme for prisoners in Danish prisons with regard to their human rights.

#### ***The right to privacy***

##### *International standards*

How authorities handle and exchange information concerning an individual's strictly personal matters, including the individual's religious or political opinions and ideologies, is protected by the right to privacy as stated in Article 8 of the European Court of Human Rights (ECHR).

However, as mentioned in section 8.1., the right to privacy can be restricted based on an assessment, providing that it is in accordance with the law and is deemed necessary and proportionate to achieving a legitimate aim as described in Article 8(2)<sup>24</sup>. The need to maintain good order in the prison or the need to prevent crime can be legitimate reasons for restricting prisoner's the right to privacy.<sup>25</sup> The ECHR has found it may constitute a violation of the right to privacy if the police

register sensitive personal data on a weak basis, without providing the individual the right to correct the information. In the *Khelili* case, the Court ruled that the Swiss police's use of the word ‘prostitute’ in its records for a woman over a period of several years on the basis of vague allegations constituted a violation of Article 8.<sup>26</sup>

With regard to the police registration of criminal acts, including warnings regarding criminal acts, the ECHR has stipulated that legislation must provide adequate procedural guarantees for the protection of the individual, including clear and detailed regulation about its collection, registration, storage and exchange, how long it may be kept in the police records and how it should be deleted.<sup>27</sup>

Prisoners' right to privacy is also stressed in the international guidelines on violent extremism. The UNODC handbook states, among other things:

*Any cooperation and exchange of information with the police or other law enforcement agencies must be based on strict and clear procedures in terms of privacy and data protection. Confidentiality and privacy issues can hinder multi-agency cooperation.*<sup>28</sup>

The Council of Europe guidelines on violent extremism in prisons contain an almost identical section.<sup>29</sup>

## Reports of concern about radicalization contain highly sensitive personal information about the reported prisoner.

### ***Summary and recommendations***

The Danish Ministry of Justice assesses that when prisons and the Danish Prison and Probation Service transfer information about radicalised prisoners to the relevant municipality and the police (and presumably also to the Danish Security and Intelligence Service), this constitutes an interference to the right to privacy as laid down in Article 8, (see section 7.3). However, this interference is deemed legitimate for three reasons: 1) it is in accordance with the law (section 115 of the Administration of Justice Act); 2) it serves to achieve a legitimate aim, i.e. that is the prevention of crime; and 3)

24. Article 8(2) states: There shall be no interference by a public authority with the exercise of this right [right to privacy] except such as is in accordance with the law and is necessary in a democratic society in the interests of *national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.* (Italics added).

25. Or any of the other legitimate reasons stated in Article 8(2).

26. See ECHR, *Khelili v. Switzerland* 18/10 2011.

27. See ECHR, *M.M. v. The United Kingdom* 13/11 2012, para. 199

28. The UNODC handbook from 2016 on the management of violent extremism and prevention of radicalisation in prisons, *supra* note 10, p. 121.

29. See Council of Europe guidelines from 2016, *supra* note 8, section III, b, para. 3.

it always requires a specific assessment of whether it is necessary and proportionate to exchange information between the Danish Prison and Probation Service, Social Services and Police (KSP collaboration partners) with a view to preventing crime.

Nonetheless, questions can be raised as to whether the three conditions are always met. Especially with regard to the third condition. The Ministry of Justice's precondition that the interference in the right to privacy is proportionate based on the grounds that a specific needs assessment is always carried out before information is exchanged can no longer be upheld following the 2015 terrorist attacks that led to a change of practice. Now reports of concerns and some types of sensitive personal information must always be exchanged.

Automatic exchange of sensitive personal information from the Danish Prison and Probation Service to the police, the Security and Intelligence Service and the relevant municipality, without first conducting a specific needs assessment, is a violation of the prisoners' right to privacy. Therefore we recommend that the reporting scheme is amended so that a specific and individual assessment of whether it is necessary and proportionate—with regard to preventing crime or maintaining good order—to transfer sensitive personal information about radicalised prisoners to other authorities in the KSP collaboration, including the relevant municipality and the Danish Security and Intelligence Service.

### **The right to freedom of religion** ***International standards***

The right to freedom of religion is protected in Article 9 of the ECHR and includes the right to set up, organise and actively participate in religious communities, including participating in prayer services and attending religious service meetings. This right also includes the right to observe religious rituals and wear clothing and symbols for religious reasons.

This right can be restricted provided that such restriction is in accordance with the law and is necessary and proportionate for the protection of public order or the rights and freedoms of others, see Article 9(2).<sup>30</sup> Prisoners also have the right to religious freedom, though the deprivation of liberty may in itself render it difficult for prisoners to fully practise their religion, for example, to congregate with others who share the same religious belief. Access to practising one's religion is also protected in the European prison rules of 2006 and the UN prison rules of 2015 (the Mandela rules). Furthermore several of the international guidelines on the prevention of violent extremism and radicalisation in prisons emphasise that manifestation of religious practices must not be misinterpreted as radicalisation and violent extremism. The UNODC handbook from 2016 issues caution with regard to this risk of misinterpretation, and stresses that religion can help many prisoners.<sup>31</sup>

Similarly, the European Radicalisation Awareness Network (RAN) working paper from 2016 also stresses that a distinction should be made between religious practice and radicalisation.<sup>32</sup> The organisation EuroPris,<sup>33</sup> an NGO consisting of practitioners from European Member States who deal with the conditions in prisons, prepared a guideline in August 2016 concerning religious staff in prisons and prevention of radicalisation (Prison Chaplaincy and Deradicalisation).<sup>34</sup> The guideline stresses, for example, that religion serves an important role with regard to preventing radicalisation in prisons and that:

*Prisoners should also have the right to hold religious objects in their cells, pertaining to their specific faith—as long as these objects present no danger to other prisoners, prison staff or the public. The State is neutral and must not favour any religious group or denomination. Nevertheless the State and its prison service must guarantee a prisoner's right to religious assistance.*<sup>35</sup>

## The UNODC handbook from 2016 issues caution with regard to this risk of misinterpretation, and stresses that religion can help many prisoners

30. The provision reads as follows: 2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, *for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.* (Italics added).

31. See The UNODC handbook from 2016, *supra* note 9, p. 16.

32. See European Commission, RAN, working paper from 2016, *supra* note 10, p. 3.

33. See the organisation EuroPris, Promoting Professional Prison Practice <http://www.europris.org/>

34. Can be found on the EuroPris website, see *ibid.*

35. *Ibid.*

## Danish regulation

Freedom of religion is protected in section 67 of the Danish Constitution that stipulates: 'The citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done.' Section 35 of the Danish Sentence Enforcement Act further stipulates that all prisoners in prisons and detention centres have the same freedom of religion as everyone else. The Danish Prison and Probation Service's guideline from July 2015 on preventing violent extremism and radicalisation included a specific section on religion. This section established that all prisoners have a right to practice their religion. The 2015 guideline stresses that practising religious beliefs and/or converting to another faith does not necessarily entail radicalisation. However, this section has been deleted in the most recent guideline from 31 January 2017.

### Freedom of religion in practice — reports and interviews

Our review of the 259 reports shows that information about the religious practice of the prisoners is included in many reports (44 reports, corresponding to approx. 17 per cent of all reports). These reports seldom include other signs of radicalisation or extreme behaviour. The following reported activities illustrate this point:

*XX has more than 10 books about Islam in his room. The background image on his computer is an overview of prayer times, and he has a prayer rug on the floor.*

*I saw the prisoner with prayer beads [in his cell] (...) It's not usual to see the prisoner with prayer beads. The prisoner is a Danish citizen, was born in Denmark and has a normal Danish family background.*

*He himself is worried that he might be seen as being radicalised, and he's even cut his beard to signal that he's not. He's just trying to be a little bit more serious about his religion in here. But as I said, he seems to be aware of the fact that he needs to be careful about how he does this.*

*I've noticed that the prisoner has let his beard grow, and I've asked him directly whether it has anything to do with radicalisation, but he said no.*

*(...) told staff that the prisoner had suddenly borrowed a lot of books about Islam. She was very surprised by this sudden interest in Islam by the prisoner who has a Danish background.*

*When the prisoner's possessions were inspected, it was seen that he had a long tunic and a knitted white cap like the one an imam wears. And the prisoner has grown his beard a bit longer. He was very keen on knowing whether the meat was halal.*

*I think it's notable that the client has suddenly grown a beard. And started wearing a certain kind of clothes (Muslim clothing).*

In addition to prisoners having the right to freedom of religion as described in the above, research in prison environments and radicalisation shows that religion can play an important role in the lives of prisoners.<sup>36</sup> Religion can offer prisoners comfort, both spiritually and mentally, and can also sometimes even help at a physical and materialistic level. As such religion can help counter some of the harmful effects of

serving time in prison.

The question is whether prisoners impose restrictions on themselves with regard to practising religion because they are concerned that they will be reported for religious radicalisation.

### Summary and recommendations

In accordance with both international and Danish standards, prisoners have a right to freedom of religion. It is not uncommon that prisoners become more religious and make use of the opportunity to listen and speak to a religious representative. The Danish Prison and Probation Service is focused on ensuring prisoners have the right and opportunity to practise their religion, and is aware that religious practices can be misinterpreted as signs of extremism or radicalisation. Reporting a prisoner's religious practices may in fact be an interference of the right to religious freedom,

Section 35 of the Danish Sentence Enforcement Act further stipulates that all prisoners in prisons and detention centres have the same freedom of religion as everyone else.

36. Hannah, Clutterbuck, Rubin. *Radicalisation or rehabilitation: understanding the challenge of extremist and radicalized prisoners* 2008, p. 10. See also Linda Minhke Kjær, *Fængslets indre liv*, 2012.

especially where the reported religious practice is linked to a subsequent negative sanction, such as denying the prisoner the right to leave or parole.

The reviewed reports and interviews indicate that a number of prisoners have been reported for their religious practices alone. Several of the interviewed prisoners and prison staff also described how prisoners imposed certain restrictions on their own religious practices, for example not talking to the prison imam, because they were afraid they would be reported.

The prisoners' right to freedom of religion can be restricted, providing this is necessary and proportionate with regard to achieving a legitimate aim, including the need to maintain good order in the prison. Narrowing the scope of the definition of extremism to solely refer to violent extremism, as recommended in section 6 above, would minimise the risk of an unjustifiable violation of prisoners' freedom of religion in that the focus would be clearly on reporting actions that may be criminal, that is on preventing crime.

### **The right to equal treatment International standards on equal treatment**

Human rights law includes a general prohibition of discrimination. The prohibition of discrimination based on ethnicity is explicitly protected in the UN Convention on Racial Discrimination, the ECHR, the EU Charter on Fundamental Rights and the UN International Covenant on Civil and Political Rights.

Discrimination can both be direct and indirect based on ethnicity. Indirect discrimination is when a neutral action or lack of action places persons with another ethnic background at a specific disadvantage, and this differential treatment is not objective or proportional.<sup>37</sup> Several of the international guidelines on the prevention of violent extremism and radicalisation stress that discrimination can lead to risk of further radicalisation. Thus the Council of Europe guidelines from 2016 state that:

*While not necessarily sufficient in themselves to trigger radicalisation—violence, racism, islamophobia and other forms of discrimination—generate resentment and provide the ground for radicalising narratives to take root.*<sup>38</sup>

37. For more about indirect discrimination see, e.g. the ECHR *DH v. Czech Republic* 13/11 2007.

38. Council of Europe guidelines from 2016, *supra* note 89, para. 9

39. ICRC guidelines from 2016, *supra* note 11, pp. 4-5

42. See p. 6 of the guidelines.

The guidelines also underline the importance of ensuring prison staff receive training in how to avoid differential treatment of prisoners, for example on the basis of their ethnic or religious backgrounds, and that they are aware of this. The International Committee of the Red Cross guidelines from 2016 state that:

*Unskilled staff lack the capacity and credibility to address questions of religion or any other ideology. In addition, staff who are insufficiently aware of cross-cultural perspectives or whose prejudices or discriminatory attitudes towards certain ideologies or religions are uncurbed, undermine 'de-radicalization' efforts and are met with suspicion and rejection. This can lead to entrenching detainees in negative or violent attitudes.*<sup>39</sup>

The question is whether prisoners impose restrictions on themselves with regard to practising religion because they are concerned that they will be reported for religious radicalisation.

### **Danish regulation**

Section 3 of the Danish ethnic equality act stipulates that 'no person may subject another person directly or indirectly to unequal treatment on the basis of their or a third party's race or ethnic origin.'

If a person can demonstrate facts that indicate that they have been subject to direct or indirect differential treatment, the authorities (the other party) are responsible for proving that the principle of equal treatment has not been disregarded. In this type of situation there is a so-called reversed burden of proof, (see section 7).

As regards reports of concerns and equal treatment of prisoners, the Danish Prison and Probation Service guidelines from July 2015 stressed that 'militant Islamism constitutes the greatest threat right now. However, it is also important to be aware of *right- and left-wing extremist groups*,' and several examples of such groups are mentioned, including Red Army Faction (Rote Armé Fraktion), Combat 18 and the National Socialist Movement of Denmark (DNSB).<sup>40</sup> The passage mentioned here has not been included in the most recent guidelines from January 2017.

The 259 reporting forms reviewed show that almost all concern Muslim prisoners. By far the majority of the prison staff interviewed think that the Danish Prison and Probation Service primarily focuses its efforts on identifying radicalisation among Muslims. One prison officer explained that prison officers have only been asked to keep an eye out for militant Islamism, and another prison officer elaborated on this by saying that they ‘definitely’ focus on Muslims. Commenting on this one-sided focus on Muslims, another prison officer said, ‘Nothing else is mentioned [than that officers should keep an eye out for religious radicalisation]. When you are given some information, you focus on that one thing.’

Several prison officers believe that the reporting scheme unfairly focuses on Muslim prisoners. For example, a prison officer reports that with regard to Muslims, the prison officers are much quicker to think that this is a case of radicalisation ‘*without having substantial documentation.*’ A number of prison officers believe that, with its current direction of focus, the Danish Prison and Probation Service would fail to identify right-wing extremists. A prison officer explains, ‘*I wouldn’t be able to spot [a] Breivik [...]. I don’t have the tools to do that. It’s part of the same system, but I don’t think like that (...). We’re so focused on ethnic origin.*’ Another prison officer also explains that a character like Anders Breivik [a Norwegian convicted for terrorist action] would not have been reported because ‘*his name was what it was and he didn’t have that religion [wasn’t a Muslim].*’

This one-sided focus on Muslims also means that the same utterances are interpreted differently, depending on whether they are made by a Muslim or by a non-Muslim. For example, if a Muslim prisoner says that he wants to ‘drop a bomb’, this would be taken much more seriously than if it was said by a Dane. Thus, Muslim prisoners have a higher risk of being reported. The prisoners also feel that Muslims are specifically targeted in prisons. For example, a prisoner described this targeting of Muslims in the following manner: ‘*Christians also do stuff. And Jews also do stuff. But right now, it’s only Islam that does stuff.*’

According to international standards and Danish regulations, there must be no direct or indirect differential treatment of prisoners, for example reporting efforts may not focus solely on prisoners with a Muslim background. In addition, the Danish Prison and Probation Service guidelines from July 2015 also state that even though militant Islamism currently constitutes a prominent threat, focus should also be given to right-wing and left-wing extremist groups. In practice, however, the reviewed reports showed that almost all reports of concerns were about prisoners with a Muslim background. Similarly, most of the prisoners who were interviewed believed that only Muslim prisoners were reported.

We therefore recommend that the prisons and the Prison and Probation Service have a strong focus on avoiding any direct or indirect discrimination when identifying and reporting radicalised prisoners.

**Conclusion and recommendations**

Experience from Denmark and comparable countries shows that it is necessary to focus on preventing violent extremism and radicalisation in prisons. As is seen in the interviews with the prison officers, it seems often to be particularly challenging for the individual prison officer to

identify radicalised prisoners or those at risk of becoming radicalised. On one hand it is clearly important that prisoners who are violent extremists or radicalised should be subject to reporting, and that under-reporting should be prevented. On the other hand, as described in section 5, it is important to be aware that being reported may have very negative consequences for a prisoner both during and after serving a prison sentence. International guidelines on the prevention of violent extremism and radicalisation in prisons, and research in the field, highlights that incorrect reports, and reports that jeopardize prisoner’s fundamental human rights entail a risk that the prisoner will become (further) radicalised.

For this reason, it is also important to ensure that concerns are not over-reported. The Danish Prison and Probation Service may decide to err on the side of caution by submitting reports even in cases of doubt. However, unfounded and undocumented reports

As regards reports of concerns and equal treatment of prisoners, the Danish Prison and Probation Service guidelines from July 2015 stressed that ‘militant Islamism’ constitutes the greatest threat right now.

should be avoided. The risk of incorrect reporting and its potential negative consequences should be minimised to the greatest possible extent. Statistics show that since the terrorist attack in Denmark in February 2015, the number of prisoners reported due to concerns of radicalisation increased dramatically; suggesting a degree of over-reporting in the months following the terrorist attack.

Overall, the study shows that the definition of extremism and radicalisation used by the Danish Prison and Probation Service is broad in scope; *that* there has been and still is uncertainty about who should be reported; *that* reporting often disregards the basic legal safeguards of the prisoner; and *that* there is a risk that the prisoner's right to privacy, freedom of religion and equal treatment will be violated.

In order to ensure that future reporting is as correct as possible, and to limit potential negative consequences of reporting, we recommend that the Danish Prison and Probation Service:

- ❑ Routinely record and monitor the consequences that reported concerns have for individual prisoners, e.g. for example as regards refused temporary release and probation.
- ❑ Clarify and restrict the definition of extremism such that it applies solely to violent extremism.
- ❑ If the Ministry of Justice/Directorate of Prisons and Probation considers it necessary to use a broader definition of extremism that includes extremist opinions, then the Ministry/ Directorate should explain in more detail why this is necessary, and consider the negative consequences of such a broader reporting scheme, including the human rights consequences for prisoners.
- ❑ Ensure that there is a satisfactory procedure for reporting concerns that includes ensuring that assessment is carried out by a specially trained multidisciplinary team with knowledge about radicalisation working as closely as possible with the prisoner.
- ❑ Ensure that reported prisoners are protected by due-process guarantees, including communicating grounds, the right to question

these grounds, as well as providing appeals procedures and appeals guidelines.

- ❑ Pursuant to section 115(4) of the Danish Administration of Justice Act, the Danish Prison and Probation Service only disclose reported concerns to the police, the Danish Security and Intelligence Service and relevant municipalities on the basis of a specific needs assessment. The Danish Security and Intelligence Service may, on the basis of a specific assessment (suspicion), request information pursuant to section 4 of the Danish Security and Intelligence Service Act.
- ❑ Ensure that there are clear and precise rules governing how the Danish Prison and Probation Service manages reported concerns.
- ❑ Maintain continual focus on potential negative impacts on prisoners' human rights as a consequence of being reported.

It is noteworthy that in 2016 alone, four international organisations developed guidelines for preventing radicalisation in prisons, namely the Council of Europe; the UNODC; RAN (European Commission); and the International Committee of the Red Cross. These guidelines that describe best practices for the area were very useful with regard to assessing national Danish regulation and practice. All guidelines emphasize that measures to counter violent extremism in prisons must respect human rights obligations, including in particular the right to privacy, religious freedom and equal treatment. However they do not provide guidance on how prison staff can secure these human rights in practice, or when these rights can legitimately be restricted (see above).

It is also noteworthy that the international guidelines virtually disregard the due process issues inherent in the reporting system. These relate to important procedural guarantees regarding, for example, the prisoner's right to receive adequate grounds for being reported and to question these grounds. If and when the international guidelines referred to here are revised, it would be appropriate for them to include these due process concerns and describe in more detail the human rights issues that arise in connection with preventing violent extremism in prisons.



# Reviews

Book Review

## **The Murder of Childhood**

By Ray Wyre and Time Tate

Publisher: Waterside Press (2018)

ISBN: 978-1-909976-62-7

Price: £22.50 (Paperback)

## **Pick up the pieces: A Survivor's story of life with Ray Wyre**

By Charmaine Richardson

Publisher: Waterside Press (2018)

ISBN: 978-1-909976-63-4

Price: £16.50 (Paperback)

The first edition of *The Murder of Childhood* was written in 1993, with this second edition published 25 years later. As a second edition, it has two additional prefaces and an additional epilogue, but the main content of the book remains unchanged. The book appears to have two main purposes, one relating to Robert Black (a serial sex offender and child killer) and the other to discuss the work that Ray Wyre undertook with a number of high-risk sex offenders, including Robert Black.

Black, who died in 2016, had been serving life sentences for killing four children and abducting a fifth. He was also thought to have been guilty of many other unsolved cases, which for a number of reasons were not pursued. The book begins with the abduction of Laura Turner in 1990. While in prison, awaiting trial for this crime, Ray Wyre enters into Black's life. Black had heard of the work that Wyre was involved in at the Gracewell Clinic (see below) and wanted to speak to him. Over the course of four separate interviews, covering a period of two years the book documents what was said between the two men. In 1994,

following a nationwide investigation, which the book interestingly describes, Black was found guilty of the murders of 11-year-old Susan Maxwell, five-year-old Caroline Hogg and 10-year-old Sarah Harper. In 2011, he was also found guilty of the murder of Jennifer Cardy. Black had a number of previous sexual convictions prior to his capture in 1990, including sexually assaulted the victims named above. As an account of Black's life and the investigation into his killings, this is a compelling and easy to read account.

Ray Wyre, a former probation officer, is attributed with setting up the first residential sex offender treatment centre (The Gracewell Clinic). Prior to this, he had spent a number of years working with sex offenders in prison and firmly believed that at that time, in the 1980s and 1990s, not enough was being done to treat high-risk offenders. The argument throughout the book is that just detaining sex offenders is not going to protect children and so treatment is essential. While the focus of the book is on Black and the investigation, which linked the child murders to him, the reader is also informed about the techniques that Wyre used and the book serves as an important reminder of what was available in terms of sex offender treatment during this time.

The conclusion of the first edition of the book is therefore that not enough was being done to treat and risk manage those sex offenders who either did not receive a prison sentence or who had been released into the community following a prison sentence. This came at a time when the Gracewell Clinic had been

closed on a technicality, largely due to concern and protest from the local community in which it was situated. Sex offenders were thus released into communities with little or no support or monitoring. The prediction that there would be more Robert Blacks seems fair at this juncture.

The new epilogue serves as a brief summary of the changes, which have occurred in the 25 years between the two editions. These include, as mentioned by the book, the Sexual Offence Register (known as the Violent and Sexual Offenders Register (ViSOR)), the use of a risk management approach, which involves multi-agency working (MAPPAs), and Circles of Support and Accountability (COSA). The chapter also comments, negatively on the prison Sex Offender Treatment programme (SOTP) and states how this has been recently discredited. It concludes that little has been done to really change the situation and how even now 'there will be more Robert Blacks, and the murder of childhood will continue' (p.290). While I found this book interesting, this second epilogue, in my opinion, is ill informed and far too negative.

What this chapter does not do is to explain in any detail what MAPPAs are and the huge resources which go into ensuring that sex offenders in the community are monitored. It does not explain in any detail what COSA does nor does it tell the reader that there is a disclosure scheme, which allows the police to inform relevant people about who sex offenders are and where they live. It does not mention the use of mandatory polygraph conditions in some sex offender's prison licenses, the use of

pharmacotherapy to treat high-risk sex offenders or the fact that there are a number of successful community SOTPs. While it is true that the prison SOTP has been discredited there are now two replacements, Kaizen and Horizon which are based on the Good Lives Model, rather than on cognitive behavioural theory. There are also a number of other prison programmes that are running including healthy sex programmes and living skills programmes and some, which have been adapted for deaf prisoners and those with learning disabilities. While these important programmes and risk management strategies do not offer any kind of guarantee, many are effective and work so that the vast majority of children are protected from predatory sex offenders. This is the more sensible conclusion and the one, which in my opinion, Tim Tate should have reached.

The second book in this review is written by Charmaine Richardson, the wife of Ray Wyre when he died in 2008. Entitled *Pick up the pieces: A Survivor's story of life with Ray Wyre*, it covers the abuse that Richardson suffered as a child at the hands of her Grandfather and her life with Wyre. It also connects with the first book reviewed here, in the sense that it talks about the Black case, the childhood that Black had and to some extent the impact of the Black case of Wyre. Other chapters of the book cover the language, which we should use with children, the work of the Gracewell Clinic and the author's own work as a counsellor. For a book that is only 136 pages, however, it tries to cover a lot and because of this very little is covered in any detail.

While the book is interesting and does to some extent compliment the first book discussed here, it has a very similar negative tone. An example of this can be found on page 77 where the author

argues that since Wyre's death: *'there are no more dazzling conferences bringing people together to share their knowledge about child sexual abuse'*. In the United Kingdom, there is the work and events put on by organisations such as the National Organisation for the Treatment of Abusers (NOTA), Barnardo's and the NSPCC. In addition, other international organisations, which run annual conferences and workshops, include the Association for the Treatment of Abusers (ATSA), which is based in North America and the Australian and New Zealand Association for the Treatment of Sexual Abuse (ANZATSA). In 2018, this statement is incorrect. In summary, I would recommend the *Murder of Childhood* book, but I think only as a piece of history and as an account of the Black case.

**Dr Karen Harrison** is a Reader in Law at the University of Hull.

#### Book Review

#### **On prisons: A gaoler's tales**

By Danny McAllister

Publisher: Danny McAllister (2018)

ISBN: 978-1-911195-72-6

(paperback)

Price: £9.99 (paperback)

This new book by distinguished prison manager Danny McAllister, offers personal reflections on the experience of leading prisons. The book loosely covers McAllister's 27 year career, from his initial training following a successful first career as an army officer, through postings at various prisons, including as Governor of HMP Brinsford and HMP Whitemoor, then onto his roles as an area manager and Director of High Security Prisons. The book also has chapters on overseas work in Sweden, Netherlands, Germany, Hungary, Kosovo and Libya.

Many people working in prisons today will have worked with McAllister and will have admired his many qualities as a senior leader. Those who were not fortunate enough to have had that experience, will get a sense from this book of his exceptional operational leadership and expertise. This is brought to life most vividly in a chapter titled 'Bad day at the office', which describes the riot at Bristol prison in 1990, one of many that took place during that summer as disorder swept through the system. This is an extraordinary story of calmness and courage under fire, told with simplicity and without glorification. Many managers will also take much from McAllister's descriptions of the everyday challenges of prison management. His approach is characterised by bringing a sense of clarity and orderliness, to a world that is more often than not messy and complex.

There is also much in this book that will interest more general readers who may never have worked in or even set foot in a prison. In several chapters, including one on 'legends', McAllister writes lively pen pictures of prisoners. These diverse and memorable characters bring to life the wide range of people that are encountered in prisons, their lives and struggles. At times, including in the chapters on suicide and segregation units, their pain and distress is also laid bare. These descriptions, along with introductions to the range of incidents that prison managers encounter, will offer an accessible insight to the uninitiated.

There is also much here for the academic researcher. In recent years, prisoner autobiographies have started to be recognised as a potential resource, albeit problematic, for accessing and exploring the prison experience. They can authentically represent the realities and complexity of everyday

prison life in an accessible form. Similar claims could equally be made for the small body autobiographical writing produced by prison staff, including this book. McAllister is modest in his claims for the book, stating, 'My experiences, and my reflections, are not those of a criminologist, a lawyer, a social worker or a psychologist. I was none of those things. I was a gaoler, and these are gaoler's tales'. Herein lies the value of this book for the academic. By drawing upon a wealth of experience and

representing the perspective of a successful prison manager, this book offers an insight from deep within the world of prisons. There are many experiences recounted that reveal elements of the craft of prison management. In addition, a number of the chapters, including an assessment of 'do-gooders' such as independent monitoring boards and the inspectorate of prisons, a discussion of the impact of sick absence, and the morality of private prisons, are interesting not only as a contribution to particular debates,

but also because these are articulating a perspective from within the occupational culture.

Danny McAllister's tales have something for everyone, including readers with no experience wanting to find out about prisons, professionals on the inside wanting to develop their craft, or those researching prison work exploring the institutional culture.

**Dr. Jamie Bennett** is Governor of HMP Grendon and Springhill



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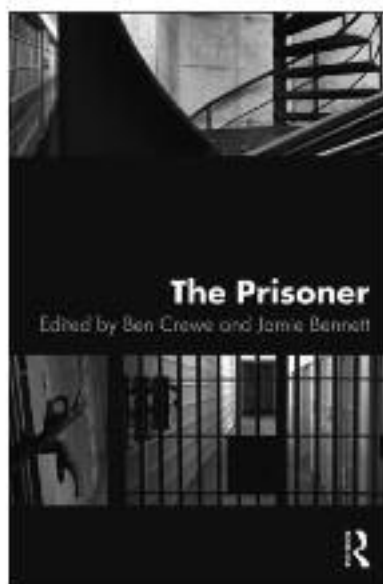
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