



BRIEFING NOTE:

Marian Price and the Criminal Justice System

Updated 17 June 2013

BRIEFING NOTE (SUMMARY):

The imprisonment of Marian Price raises a number of issues:

- 1) Do the conditions of her detention amount to a breach of Article 3 of the European Convention of Human Rights (amounting to inhuman and degrading treatment) and of Article 5 of the Convention (which protects the security of the person)?
- 2) Further, is Marian Price being discriminated against because she has chosen to being treated as a separated prisoner within the Northern Ireland prison regime when no facilities exist to accommodate her as this category of detainee? This would be in contravention of Article 14 of the Convention if linked to breaches of Articles 5 and 3. This could also be in possible contravention to UK equality law and in contravention of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)
- 3) Do the custodial procedures applied to Marian Price whilst in a civilian hospital amount to a breach of her right to medical confidentiality by the Northern Ireland Prison Service?
- 4) What was the basis of her release from prison in 1980, was it the Royal Prerogative of Mercy or the licence upon which she was released? In the absence of the original documents how can a decision be made either by the Secretary of State for Northern Ireland, the Minister for Justice or the Parole Commissioners Northern Ireland regarding her grounds for her detention now especially since she was originally granted bail?
- 5) How can a legal authority take a decision based upon the contents of a document it has not seen when it can only make inferences concerning the apparent contents of this unseen document?
- 6) What is the actual status of the Parole Commissioners for Northern Ireland pertaining to their independence from the Minister for Justice and the Secretary of State for Northern Ireland? In cases such as Marian Price, where secret evidence is being relied upon by the Secretary of State, what safeguards are in place, if any, to ensure the equality of arms between the detainee and the detaining authority?
- 7) At what point does the fact that Marian Price is too ill to stand trial mean that she is unfit to plead? At what point does the failure of the prosecution service in Northern Ireland to expedite the prosecution of Marian Price mean that there is an abuse of process?

Notes: All citizens of the UK are afforded the protection of the European Convention on Human Rights as given partial effect in domestic law under the Human Rights Act 1998. This includes the rights of prisoners. The Convention protects the individual from being subject to torture including inhuman and degrading treatment (Article 3) and also the right to liberty and security of the person (Article 5). Those in detention are also protected by the United Nations Minimum Rules for the Treatment of Prisoners and can rely up the European Prison Rules, and in by common law doctrines and the rules of natural justice as developed the domestic courts.

Marian Price: A Chronology

Date	Event	Source
1954	Marian Price born in Northern Ireland	http://www.bbc.co.uk/news/uk-northern-ireland-13415394
8 March 1973	Marian Price is part of an IRA unit who placed four car bombs in London on 8 March 1973.	<i>BBC On This Day 1973: IRA Gang Convicted of London Bombings</i> , BBC News, 14 November 1974
14 November 1973	Marian Price and her co-defendants are convicted at the Great Hall, Winchester.	<i>BBC On This Day 1973: IRA Gang Convicted of London Bombings</i> , BBC News, 14 November 1974
	<p>On being sentenced Marian Price and her co-defendants go on hunger-strike in a campaign to be repatriated to Northern Ireland; the hunger-strike lasts 200 days, with the hunger-strikers being force-fed for 167 of them</p> <p>Marian Price at HMP Brixton in London (a remand prison for male prisoners)</p>	<p><i>Sinn Féin Builds Image as Force for Peace</i>, by Michael O'Malley, <i>The Plain Dealer</i>, 5 March 1995 and <i>Hostages Teaches IRA kidnapers all about racing</i>, by Joe Joyce, <i>The Irish Times</i>, 10 June 1974</p> <p>(Reporting on the kidnap of Lord and Lady Donoughmore by the IRA in protest to the imprisonment and hunger strike of Marian Price and the three others).</p> <p>See also <i>Anxiety over Price sisters</i>, <i>Catholic Herald</i>, 7 June 1974</p>
23 May 1974	The House of Lords debate the hunger-strike and the force-feeding of Marian and Dolours Price;	Hansard, 23 May 1974, vol 351 ccl 1623-7

	the Price sisters had been visited by Labour Peer Lord Fenner Brockway who raises concerns during the debate	
4 September 1974	Force feeding of Marian Price at HMP Brixton, London continues	<i>The World Magazine</i> , 4 September 1974
February 1975	The mother of Marian Price, Chrissie, dies. Her daughters are not granted permission to attend the funeral but are later transferred to Armagh Prison, Northern Ireland	<i>Marian Price: 'I have no regrets'</i> , by Rosie Cowan, <i>The Guardian</i> , 13 March 2003
30 April 1980	Marian Price is released from prison; on release Marian Price is suffering from anorexia and tuberculosis and weighing around five stone	See: http://cain.ulst.ac.uk/othelem/chron/ch80.htm <i>What life sentence means for Old Bailey bomber Marian Price</i> , letter to <i>The Guardian</i> , by Owen Paterson MP, <i>The Guardian</i> , 3 August 2012; <i>The detention of Marian Price harks back to internment</i> , by Eamonn McCann, <i>The Guardian</i> , 18 January 2012
2000	Marian Price gives the graveside oration at the funeral of Joseph O'Connor, a member of the Real IRA killed in Belfast.	<i>IRA denies murdering dissident</i> , <i>BBC News</i> , 18 October 2000.
13 March 2003	In a newspaper interview Marian Price states that "Nothing has changed to make what we did in	<i>Marian Price 'I have no regrets'</i> by Rosie Cowan, <i>The Guardian</i> , 13 March 2003.

	<p>the 1970s right then and wrong now." She was condemning the Northern Ireland peace process.</p> <p>Neither of these acts resulted in the revocation of her licence</p>	
17 November 2009	<p>Marian Price is named as being one of two people arrested in connection with an attack on the Masserene Army Barracks in Northern Ireland in March 2009 in which two British soldiers were shot dead</p>	<p><i>IRA bomber held over base murders, BBC News, 17 November 2009</i></p>
13 May 2011	<p>Marian Price is charged with encouraging support for an illegal organisation relating to her involvement in a statement given at an Easter Rising rally in Derry; the Secretary of State revokes her licence</p>	<p><i>Old Bailey bomber Marian Price charged over rally, BBC News, 15 May 2011; Marian Price returned to jail by Secretary of State, BBC News, 16 May 2011</i></p>

16 May 2011	Marian Price is detained at the all-male HMP Maghaberry Prison	<i>Marian Price returned to jail by Secretary of State, BBC News, 16 May 2011</i>
18 May 2011	The House of Commons discuss the imprisonment of Marian Price and the Minister of State for Northern Ireland, Hugo Swire MP says "The legal process will take its usual course"	Hansard, 18 May 2011, Column 326
17 February 2012	Marian Price transferred from HMP Maghaberry to HMP Hydebank Wood	<i>Marian Price moved from Maghaberry to Hydebank, BBC News, 17 February 2012; Marian Price moved to Hydebank, UTV News, 17 February 2012</i>
27 March 2012	Independent medical (psychiatric) report written by Dr Ian T Bownes, recommending release and treatment and inability to stand trial	<i>On file with RW(UK)</i>
29 March 2012	Individual complaint made by BIRW on behalf of Marian price to UN Special Rapporteur on the Right to	<i>On file with RW(UK)</i>

	Health	
10 May 2012	The charges against Marian Price in relation to the Easter Rising rally in Derry dismissed by the judge because the DPP for Northern Ireland did not have the papers ready	<i>DUP criticise DPP for dropping Derry Easter rally charge, BBC News, 11 May 2012</i>
29 May 2012	Doctors appointed by the United National Special Rapporteur on the Right to Health examine Marian Price at HMP Hydebank Wood	<i>UN doctors to examine Marian Price, BBC News, 29 May 2012</i>
13 June 2012	Application for release made on behalf of Marian Price to the Parole Commissioners for Northern Ireland	<i>On file with RW(UK)</i>
15 June 2012	The Parole Commissioners for Northern Ireland receive Confidential Medical (psychiatric) report by Dr I Bownes and Dr P McGarry commissioned from Adult Services and Prison Healthcare Directorate, South Eastern Healthcare and Social Care Trust,	<i>On file with RW(UK)</i>

	Northern Ireland, as part of its hearing in the application for release made on behalf of Marian Price	
21 June 2012	Finding of the Parole Commissioners, Belfast	<i>On file with RW (UK)</i> findings of the Parole Commissioners for Northern Ireland are confidential.
22 June 2012	Marian Price transferred from HMP Hydebank Wood to the Royal Victoria City Hospital, Belfast following examination by doctors appointed by the United Nations Special Rapporteur on the Right to Health	<i>Old Bailey bomber Marian Price 'moved to hospital', BBC News, 22 June 2012</i>
19 July 2012	Northern Ireland Secretary of State, Owen Paterson MP, says in Dublin regarding Marian Price he "would not override carefully established legal arrangements"	<i>Jailed republican Price in legal limbo despite her illness, by Gerry Moriarty, The Irish Times, 21 July 2012</i>
2 August 2012	Marian Price moved to intensive care with pneumonia	<i>Fears grow for bomber Marian Price after she's hospitalised with pneumonia, by Suzanne Breen, Belfast Telegraph, 2 August 2012</i>
3 August 2012	Northern Ireland Secretary of State, Owen Paterson MP, explains in a letter to <i>The Guardian</i> newspaper, the reasons for the	<i>What life sentence means for Old Bailey bomber Marian Price, letter to The Guardian, by Owen Paterson MP, The Guardian, 3 August 2012</i>

	detention of Marian Price. He claims that the Royal Prerogative of Mercy was only exercised in relation to lesser offences, but she was granted parole on the life sentence she received.	
16 August 2012	Marian Price is transferred from the Royal Victoria City Hospital, Belfast to Musgrave Park Hospital, Belfast for tests	<i>Row after guards stayed as doctors attended to Marian Price, by Suzanne Breen, Belfast Telegraph, 21 August 2012</i>
17 August 2012	Marian Price undergoes “oppressive security” including being handcuffed whilst undergoing invasive surgery at Musgrave Park Hospital, Belfast	<i>Row after guards stayed as doctors attended to Marian Price, by Suzanne Breen, Belfast Telegraph, 21 August 2012</i>
20 August 2012	Marian Price transferred back to HMP Hydebank Wood	<i>Email on file with RW(UK)</i>
6 September 2012	Minister of Justice for Northern Ireland, David Ford MLA, confirms that a dynamic risk assessment will be undertaken each time Marian Price is moved between locations but refuses to	<i>Letter to RW(UK)</i>

	exercise his discretion to release her on compassionate grounds	
26 September 2012	Marian Price confirmed as having contracted E.coli in her lung	
27 September 2012	Marian Price too ill to stand trial in relation to the Masserene Barracks shootings. The case is adjourned for three weeks	<i>Marian Price 'too ill' to stand trial, BBC News, 27 September 2012</i>
9 October 2012	Marian Price is transferred from Hydebank to the Psychiatric Unit of the Royal Victoria Belfast City Hospital	
24 January 2013	Dolours Price commits suicide	<i>Ex-IRA woman Dolours Price is found dead in Dublin, BBC News, 24 January 2013, at http://www.bbc.co.uk/news/uk-northern-ireland-21181174</i>
25 January 2013	Marian Price granted bail; she remains in hospital pending the decision of the Parole Commissioners for Northern Ireland.	<i>Marian Price given bail after death of her sister, BBC News, 25 January 2013, at http://www.bbc.co.uk/news/uk-northern-ireland-21199385</i>
30 May 2013	Marian Price released on bail following a hearing before the parole Commissioners for Northern Ireland	<i>Marian Price released from custody, BBC News, 30 May 2013, at http://www.bbc.co.uk/news/uk-northern-ireland-22720535</i>

BRIEFING (FULL)

The Legality of the Imprisonment of Marian Price

1. BIRW has concerns about the continued detention¹ of Marion McGlinchey née Price.² There has been much media attention paid to her detention and to the fact that between May 2011 and February 2012 she was held in the all-male HMP Maghaberry prison facility in Northern Ireland. We consider that transferring Marian Price to the HMP Hydebank Wood detention facility earlier this year does not address the issues around her detention and that there are concerns about both the conditions of her detention and her fitness for detention. These are issues of compliance with human rights standards in relation to detention. However, it is not only the manner of her detention and the her fitness for detention which cause concern, but also the lawfulness of her detention
2. BIRW consider that the detention of Marian Price whilst not unlawful per se maybe challengeable through law and can be interpreted as being motivated by political factors related to the stability of the fragile peace in Northern Ireland and resurgent dissident republican violence. BIRW is concerned that in these particular circumstances the checks and balances which should ensure the detention of Marian Price is compliant with domestic and international law are not in place and her continuing detention is based on a flawed presumption which does not have a legitimate legal base.
3. Marian Price was returned to prison in May 2011 following her thirty year period of freedom. She was arrested after appearing at a dissident republican rally in Derry. In the magistrate's court in Derry two days after her detention, despite strenuous prosecution objections, she was granted bail, then immediately re-arrested under an order signed by the Secretary of State the previous evening. This order revoked the licence that applied to Marian Price's freedom following her release from her detention in 1980. This in itself raises a concern for the respect for the role of the judiciary and its independence in the criminal process in Northern Ireland. It suggests that the Secretary of State for Northern Ireland may have determined in advance that *even* if a judge had decided that the conditions for bail were met, that Marian Price was to be detained anyway on the grounds of public safety in *any event*.
4. To appreciate the motivation of the then Secretary of State for Northern Ireland, Owen Paterson MP, the Northern Ireland licence system in relation to offenders with life sentences has to be examined. Section 9(2) of the Life Sentences (Northern Ireland) Order 2001 states that the Secretary of State may revoke a licence "where it appears to him that it is expedient in the public interest to recall that person" (see Appendix 1)

¹ Throughout this Briefing we shall refer to detention in preference to imprisonment as detention is the generic word and is used in the European and international human rights and humanitarian protocols and conventions.

² Marian McGlinchey is detained in her married name with the prison number F2290. Because she is widely identified in the press by her maiden name of Price, we refer to her throughout this briefing as Marian Price for ease of reference.

5. However, there is dispute over the legality of this authority; Kevin R Winters & Co. Solicitors of Belfast, representing Marian Price, had claimed that she was not subject to a licence when taken into custody in May 2011 arguing that she been pardoned in 1980 by a Royal Prerogative of Mercy (RMP) and therefore her current detention was and is unlawful. It appears that there is no copy of the RMP in existence, as it is claimed by the Northern Ireland Office that it was destroyed in 2010 by the UK government (see further below).
6. The legal basis of Marian Price's current detention was and continues to be the order made by the Secretary of State revoking her original licence of release under the RPM and the inference to be drawn of any specific conditions which attached to the RMP or could or have been implied by the scope of the RMP. BIRW understands that the Parole Commissioners for Northern Ireland assumed jurisdiction despite the doubt surrounding the scope of the authority or remit of both the RMP and the subsequent revocation of the ensuing implied licence by order of the Secretary of State on the evening before her bail hearing.
7. The Parole Commissioners for Northern Ireland superseded the Life Sentence Review Commissioners for Northern Ireland (LSRC) in 2008. The work of the Parole Commissioners for Northern Ireland is now governed by two Orders and one set of Rules: The Criminal Justice (Northern Ireland) Order 2008;³ the Life Sentence (Northern Ireland) Order 2001;⁴ the Parole Commissioners Rules (Northern Ireland) 2009.⁵ (See Appendix 2).
8. The superseded LSRC formed an independent body of Parole Commissioners appointed by the Secretary of State for Northern Ireland under the provisions of the Life Sentences (Northern Ireland) Order 2001 and were first constituted in September 2002. Their work has its origins in the Criminal Justice Review which recommended that an independent body of a judicial character be set up to assess the suitability for release of life sentenced prisoners. Their remit is to decide:
 - whether it is safe to release on licence persons sentenced to indeterminate custodial sentences after the period of their court imposed imprisonment has expired, once released whether they should be recalled and after recall whether they should again be released on licence;
 - whether persons sentenced to extended custodial sentences should be released on licence once they have served half of the custodial part of their sentence, whether once released such persons should be recalled and, if recalled, whether they should again be released; and
 - whether persons given other fixed term sentences and released on licence should be recalled to prison.

³ <http://legislation.data.gov.uk/nisi/2008/1216/data.htm?wrap=true>

⁴ <http://legislation.data.gov.uk/nisi/2001/2564/data.htm?wrap=true>

⁵ <http://legislation.data.gov.uk/nisr/2009/82/made/data.htm?wrap=true>

9. The Parole Commissioners for Northern Ireland are part-time judicial office holders appointed by the Secretary of State for Northern Ireland and although they should work independently of government, the previous Commissioner raised concerns about their independence in the Annual General Report of 2010/2011.⁶ They are therefore part of the executive in Northern Ireland and not the legislature which is significant in constitutional terms for accountability and remit (see Appendix 3). There was concern expressed by the Parole Commissioners for Northern Ireland that the reasoning in the judgment in *R (Brooke) and Others v Parole Board and Others* [2008] EWCA Civ 29 and the constitutional arrangements relating to the dismissal of Commissioners precluded their independence.⁷ (See Appendix 4)

10. A further complicating factor in this matrix is the devolution of criminal justice powers to the Minister for Justice representing the Department for Justice in Northern Ireland following the Hillsborough Agreement 2010. The Life Sentences (Northern Ireland) Order 2001 section 7 (1) and (2) provides that the Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds. Before releasing a life prisoner under paragraph (1), the Secretary of State *shall* consult the Commissioners, unless the circumstances are such as to render such consultation impracticable. BIRW assume that the powers under this order have now been vested in the Minister for Justice for Northern Ireland that therefore, after consultation, he has power to release on compassionate grounds.⁸ This is the assumption made by the Ministry of Justice in its Final Report "The Governance of Britain: Review of the Executive Royal Prerogative Powers"⁹

11. BIRW is also concerned that the remit of the Parole Commissioners for Northern Ireland does not extend to carrying out investigations into the conditions of detention and that therefore, in these circumstances, they do not have sufficient powers to satisfy the requisite procedural checks and balances necessary to prevent arbitrary detention and security of the person whilst in detention as

⁶ http://www.parolecomni.org.uk/download/PC_AR10_11.pdf at pages 12-13

⁷ "By virtue of paragraph 3 of Schedule 4 of the Criminal Justice (Northern Ireland) Order 2008 the statutory power to dismiss Commissioners remains vested in your Department. Again, I ask rhetorically: How can it be said that the imperative of the appearance or perception of the independence of the Commissioners is met when the power of dismissal remains explicitly vested in an entity that is a party to most of the cases coming before the Commissioners?" *ibid* at page 13

⁸ The first Minister for Justice for Northern Ireland, David Ford MLA, exercised this power in relation detained prisoner Brendan Lillis. The Minister made clear his position in a statement: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-doj/news-archive-doj-aug-11/news-doj-minister-meets-with-partner-of-brendan-lillis.htm>; see also *Partner feels 'vindicated' by Brendan Lillis release*, BBC News, 8 August 2011.

⁹ See *The Governance of Britain: Review of the Executive royal Prerogative: Final Report*, Ministry of Justice, The Governance of Britain Cm 7170, 2010 at pages 15–16 at paragraph 55 *except in relation to terrorist cases* ; available at <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-2493.pdf>

required by Article 5 of the European Convention of Human Rights (the ECHR) as given partial effect in domestic law through the Human Rights Act 1998 .

12. The Universal Declaration of Human Rights, Article 9 stipulates: “No one shall be subjected to arbitrary arrest, detention or exile.” The corresponding provision in the International Covenant on Civil and Political Rights (ICCPR) is Article 9, paragraph 1, which stipulates: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
13. The international standards reflect a universal consensus that an individual cannot be deprived of liberty except pursuant to a specific legislative authority and with respect for procedural safeguards. In the regional systems of human rights protection, Article 5, paragraph 1, of the ECHR stipulates: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...” Article 5, paragraph 4, stipulates: “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”
14. Pursuant to Article 15, the ECHR can be subject to derogation. In the context of the so- called “War on Terror” the UK derogated from Article 5 of the ECHR, as it did with regard to Article 9 of the ICCPR. The effect of the House of Lords ruling of 16 December 2004 in the Belmarsh prison case is, however, that this derogation was deemed invalid and it was withdrawn in 2005 (*A v Secretary of State for the Home Department (No 2)* [2005] UKHL 71).
15. BIRW is concerned that the relevant standards have not been met in the case of the detention of Marian Price. The reality is that, although the Parole Commissioners for Northern Ireland should vigorously test the legality of detention arising from the revocation of a licence, and ensure release if the detention is not properly proscribed by law, in this case, the Parole Commissioners appear to have accepted jurisdiction without conducting any rigorous investigation into the existence of an originating document leading to a licence (the RMP) and without establishing the facts underpinning her prior release, the terms of the RPM to her sentence (as a RMP attaches to the sentence and not the crime).¹⁰ It is unclear what the relationship is between a RPM and the free and conditional pardon regime.¹¹ (see Appendix 5)

¹⁰ The RMP is the demonstrable form of the power of the sovereign to show mercy toward an offender, by mitigating or removing the consequences that follow conviction for an offence. See *The Governance of Britain: Review of the Executive royal Prerogative: Final Report*, Ministry of Justice, The Governance of Britain Cm 7170, 2010 at pages 15–16 ; available at <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-2493.pdf>

¹¹ *ibid*

16. We are not aware, and neither was Marian Price, that any investigation has been conducted into the absence of any information about the contents of the RPM which was applicable to her. Marian Price advised that her then solicitor, who is now deceased, held the pardon in his hand and said “you can put it all behind you now and get on with your life” and that she understood it applied to all charges, both the life sentence and the determinate sentence. These sentences arose from her involvement in the planting of the four car bombs in London in 1973. She was released in 1980 following health problems which were attributable to force feeding including suffering a punctured lung and contracting TB.
17. We are concerned that the unavailability of the evidence that the RPM could provide together with the Secretary of State’s reliance on circumstantial evidence to infer that Marian Price is still subject to licence does not meet the standards for lawful detention.

The Contention of the Government:

1. Marian Price sentenced to two life sentences in 1973; released on licence in 1980. She was granted the RPM in respect of a separate conviction which carried a 20 year sentence. The RPM did not cover the life sentence; the licence covered the two life sentences; SoS consulted the Parole Commissioners for Northern Ireland if they considered Marian Price to be in breach of her licence (3 August 2012)¹²
2. “The Parole Commissioners have considered the issue of Mrs McGlinchey’s RPM. Taking evidence from both her legal team and the Government’s legal representatives. They concluded that the RPM was exercised to allow Mrs McGlinchey to be released early from her fixed determinate sentence of 20 years only and that it did not apply to her other two life sentences. Mrs McGlinchey was released from her two life sentences by a life licence, the normal mechanism by which someone is released from a life sentence. This is accepted by the Parole Commissioners and is supported by contemporary documentation. Upon her release in 1980, Mrs McGlinchey signed a life licence agreeing that she could be recalled to prison if she did not adhere to the conditions set.
3. I regret that despite an extensive search by both the Northern Ireland Office and the Northern Ireland Prison Service a copy of the actual RPM awarded to Mrs McGlinchey in 1980 not (sic) been recovered. However, the existence and scope of the RPM as set out above has now been established as a matter of law through the Parole Commissioner’s process.” (Letter to BIRW from SoS, 29 September 2012) (See Appendix 6)

Question on the Contention:

1. In the absence of the original RPM can a judicial panel (the Parole Commissioners for Northern Ireland) *infer* the conditions of release attached to that document as subsequently interpreted by the Secretary of State who signed an order revoking the licence (did the Secretary of State in this instance act *ultra vires*)?

¹² See *What life sentence means for Old Bailey bomber Marian Price*, *The Guardian*, 3 August 2012

2. The RMP attaches to the sentence not the crime. Therefore, which sentence does the RMP attach to – the life sentence or the two other two life sentences?
3. In this instance what is the constitutional relationship between the Parole Commissioners for Northern Ireland, the Secretary of State for Northern Ireland, and the Minister for Justice for Northern Ireland in terms of the exercise of discretion to maintain detention after the revocation of licence in relation to terrorist offences?

The Conditions of Imprisonment of Marian Price

1. Marian Price was initially held in the all-male detention facility at HMP Maghaberry from May 2011. She was moved out of this high security facility in February 2012. The Northern Ireland Prison Service (NIPS) stated that the decision to move her was taken on clinical advice from the healthcare staff at the South Eastern Health and Social Care Trust.
2. NIPS said that since being returned to prison, both they and the local Trust have, on a number of occasions, discussed and reviewed Marian Price's needs while in custody. The women's wing at HMP Maghaberry was closed in 2004 with all female inmates being transferred to HMP Hydebank Wood. HMP Maghaberry is the only detention facility with the capacity to detain separated prisoners (those prisoners opting to be separated on the grounds of political ideology). Marian Price classifies herself as a separated prisoner.
3. The European Court of Human Rights (ECtHR) has judgments in which it has found that conditions of detention can violate Article 3 of the Convention. BIRW is concerned that Marian Price's detention may breach Article 3 that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (and note that the second limb of Article 5 concerns the *security* of the person in detention).
4. HMP Hydebank Wood was opened as a category C Young Offenders Centre (YOC) in 1979 and comprises five self-contained units (Ash, Beech, Cedar, Elm and Willow), each of which can accommodate approximately 60 young people in single cell accommodation. As well as housing young adults between the ages of 18 and 21, HMP Hydebank Wood YOC holds male juveniles aged under 18 years in separate accommodation in Willow House.
5. In June 2004, women prisoners previously held at the Mourne Unit, HMP Maghaberry Prison were transferred to Ash House (which was designated as a prison for women prisoners) and the centre was designated as HMP Hydebank Wood YOC and Prison. At present, women prisoners are accommodated in Ash House at HMP Hydebank Wood.
6. According to the Department of Justice "This was originally a house of the male Young Offenders Centre and, while there are discrete self-contained accommodation units for the young offenders and the women, there are considerable shared services and facilities."¹³ The Criminal Justice Inspectorate for

¹³ Women's offending behaviour in Northern Ireland: a strategy to manage women offenders and those vulnerable to offending behaviour 2010-2013, Department of Justice Northern Ireland, October 2010 at page 56, paragraph 47. See

Northern Ireland (CJNI) reported a number of findings relevant to the concerns of BIRW about the conditions of Marion Price's detention.

7. In a follow up report on Ash House in March 2011 laid before Parliament in October 2011, the CJNI reported that
 - Women were constrained both by the restrictions arising from a shared site with young men and by the inappropriate implementation of security measures relating to the male side, which were not sufficiently intelligence-led.
 - Too many male staff.
 - The general environment was good though access to the site was restricted.
 - The Ash House building was far from ideal for a women's prison; it was particularly claustrophobic for life-sentenced and long-term prisoners.
 - Health services had not improved sufficiently, despite transfer of responsibility to the Northern Ireland South Eastern Health and Social Care Trust.
 - Health services were under-resourced, poorly managed and there was sometimes unsatisfactory attention to the needs of patients.
 - Women had too little exercise.
 - There was no coherent learning and skills strategy that differentiated between the needs of the various groups held on the HMP Hydebank Wood site.
 - Only 27% of previous education recommendations had been implemented in comparison to over 50% of all other recommendations.
 - There was insufficient work to keep prisoners occupied. [They] suggest it is [now] necessary to establish effective collaborative partnerships with external education and training providers – such as further education and/or work-based learning suppliers – as a matter of urgency.¹⁴
8. The CJNI pointed out that although they recognise that Ash House was an improving establishment, that “However, the progress that could be achieved within the confines of an establishment catering for young adults and children, as well as women, was significantly limited.”¹⁵
9. The Committee on the Prevention of Torture (ECPT), in its 10th General Report stated “in all Council of Europe member States, women inmates represent a comparatively small minority of persons deprived of their liberty. This can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally

http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/final_draft_for_print_a_strategy_to_manage_women_offenders_and_those_vulnerable_to_offending_behaviour.pdf

¹⁴ Report on an unannounced short follow-up inspection of 21 - 25 March 2011 Report on an unannounced short follow-up inspection of Hydebank Wood Women's Prison by the Chief Inspector of Criminal Justice in Northern Ireland, Her Majesty's Chief Inspector of Prisons and the Regulation and Quality Improvement Authority, 21-25 March 2011-October 2011.

¹⁵ *ibid*

designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment”.

10. Marion Price advised that when she was first transferred from HMP Maghaberry to HMP Hydebank Wood that the conditions she was transferred to could certainly not be said to be such and that there are were serious problems with the conditions of her detention. She advised that the cell to which she was transferred was filthy, there was blue mould on the walls and that for the first number of weeks there were workmen making adaptations to the cell and area surrounding it. Further, as the cell was designed for observation of those vulnerable to self-harm there was a camera in the cell. This has now, on her request been addressed and blanked out and she is not subject to continuing invasion of her privacy.
11. However, other issues indicate that the regime in HMP Hydebank Wood is not an improvement on the conditions in HMP Maghaberry. This is not what one would expect for a move arising from concerns about the prisoner’s health.
12. There are on-going issues which include the following:
 - There is a loudspeaker Tannoy immediately outside the cell of Marian Price and this is constantly sending loud general messages for the staff and to the detainees in the YOC, which adds to her distress.
 - In HMP Maghaberry she had access to an adjacent yard for exercise at all times when she was unlocked. While she was held there she advises that her cell was opened at 8.30a.m. and closed at 7p.m, whereas in the Health Centre at the HMP Hydebank Wood site where she is presently housed, she is unlocked for a much shorter time.
 - In HMP Maghaberry she therefore had unlimited access to a better exercise regime. In HMP Hydebank Wood, however she not only has to be walked through the areas where there are young males to get access to a small garden, but, she states, this area does not allow for proper exercise as it is too small.
 - Because of the design of the windows she does not have any view of the outside or have access to fresh air.
 - The Health Centre where Marion Price is housed is also the facility where young males come for drug replacement treatment, and although she has not been directly harassed, she is exposed to their distress and to fighting which is a further cause of stress.
 - The situation is exacerbated by the lack of a positive regime and purposeful activity. She wants access to education on an equal footing with the access that males in the separated regime have.
 - There is apparently no space in the women’s prison to create a separated area on a par with that which has been created in the male prison following the Steele recommendations.

13. Those circumstances were a cause for serious concern, especially given Marian Price's vulnerability and issues about her physical and mental health before being moved to the Belfast Victoria City Hospital on 22 June 2012. The Minister for Justice does have a power under section 7 of the Life Sentences (NI) Order 2001 to order the release of Marian Price on compassionate grounds and we, and others, have asked him to exercise this discretion in all the circumstances.¹⁶ His power is fettered by the fact he has to consult with the Parole Commissioners for Northern Ireland and that in relation to terrorist offences this power may reside with the Secretary of State for Northern Ireland.
14. In summary BIRW is concerned that both the legality of Marian Price's detention and the conditions under which she is held breach both domestic and international human rights norms. Further given her vulnerability and concerns about her health and in light of the decision to grant bail in connection with the charges against her, we believe that there are compelling humanitarian considerations supporting her immediate release. However, following her treatment by the prison authorities whilst in a civilian hospital (including be plasticuffed) the Minister for Justice has demanded a dynamic risk assessment on Marian Price each time she is moved.¹⁷ Our understanding is that Marian Price is now back in hospital following the opening of her trial in Derry on 27 September 2012 which she could not attend due to ill-health.¹⁸ The following questions are raised:
- Do the conditions of her detention amount to a breach of Article 3 of the European Convention of Human Rights (amounting to inhuman and degrading treatment) and of Article 5 of the Convention (which protects the security of the person)?
 - Further, is Marian Price being discriminated against because she has chosen to be treated as a separated prisoner within the Northern Ireland prison regime when no facilities exist to accommodate her as this category of detainee? This would be in contravention of Article 14 of the Convention. This would also be in contravention of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)
 - Do the custodial procedures applied to Marian Price whilst in a civilian hospital amount to a breach of her right to medical confidentiality by the Northern Ireland Prison Service?

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¹⁶ Section 7 (1) The Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.

(2) Before releasing a life prisoner under paragraph (1), the Secretary of State shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

¹⁷ *Row after guards stayed as doctors attended to Marian Price, Belfast Telegraph, 21 August 2012*

¹⁸ *Marian Price 'too ill' to stand trial, BBC News, 27 September 2012*

Appendices

Life Sentences (Northern Ireland) Order 2001

The Criminal Justice (Northern Ireland) Order 2008

The Parole Commissioners' Rules (Northern Ireland) 2009

Parole Commissioners for Northern Ireland 2010/2011 (extract pages 12-13)
***R (Brooke) and Others v Parole Board and Others* [2008] EWCA Civ 29**

Ministry of Justice The Governance of Britain Review of the Executive Royal Prerogative Powers: Final Report Cm 7170, 2010 at pages 15–16

What life sentence means for Old bailey bomber Marian Price,
The Guardian, 3 August 2012

Letter from Secretary of State for Northern Ireland to BIRW,
28 September 2012