

Not Just Another Brick in the Wall? Protecting Prisoners' Right to Education

1. Introduction

This article seeks to show why prison education matters and why the need for more support for education is still pressing. The focus will be primarily on prison education in England and Wales. The Coates Report, *Unlocking Potential: A Review of Education in Prison*, recommended making prison governors responsible and accountable for education, advocated rigorous mechanisms to measure academic performance and screening for Learning Disorders and/or Disabilities and further development of the digital infrastructure (Coates 2016). The Report argued that education should be placed at the heart of the prison system and reviews of prisons' performance. High quality teachers should be recruited with a new scheme to attract graduates to work in prisons for two years with an additional remit for supporting education. Governors should be able to use their budgets to fund learning at higher levels. Coates further argued that provision should be made for Personal and Social Development courses, arts, music and sports activities as well as basic skills.

The period 2016 to 2017 was a fertile time in the discussion of prison reform but the impetus has since faded. The White Paper, *Prison Safety and Reform*, stressed the need for change, given high levels of violence and self harm, the impact of new psychoactive drugs and blurred accountability between bodies holding prisons to account (Ministry of Justice 2016). It proposed *inter alia* greater autonomy and authority for governors how to spend their budgets, making them more accountable for the results they achieve in delivering the purposes of the prison system, more funding for staff, more drug testing, new league tables, a stronger role for the Prisons Inspectorate, and a new duty for the Secretary of State when prisons fail. The House of Commons' Justice Committee Report on Prison Safety also

highlighted the declining levels of safety and the need for more staff as there had been substantial staff cuts (House of Commons Justice Committee 2016).

A Bill to strengthen the rehabilitative purpose of imprisonment was introduced in the 2016-17 Parliament, but it did not progress because of the impending General Election. Clause 1 of the Prisons and Courts Bill stipulated that ‘In giving effect to sentences or orders of imprisonment or detention imposed by courts, prisons must aim to – (a) protect the public, (b) reform and rehabilitate offenders, (c) prepare prisoners for life outside prison, and (d) maintain an environment that is safe and secure.’ It would have placed a duty on the Secretary of State to report on the extent to which prisons are achieving their purpose. The Bill also included provisions strengthening the system of accountability, giving the Prisons Inspectorate and the Prisons and Probation Ombudsman a greater role.¹

The provisions in the Bill were welcomed by prison reform groups although it was thought that they did not go far enough in addressing the pressures of overcrowding or the need for a greater focus on decency, humanity and fairness to treat prisoners with respect for their human dignity (Prison Reform Trust 2017).

While the goals of reform and rehabilitation have been a key concern of those working in the prison system and enshrined in Rule 3 of The Prison Rules 1999 which states that ‘The purpose of the training and treatment of convicted prisoners shall be to encourage

¹ Clause 2 gives the Inspectorate a statutory basis and endows the inspector with additional powers where there are serious concerns regarding the treatment of prisoners. Inspections would also take account of the statutory purpose of prisons and how they are achieving that purpose.

and assist them to lead a good and useful life’, these goals have often conflicted with other objectives including public protection or risk management and deterrence. The purposes of sentencing, originally set out in s 142 of the Criminal Justice Act 2003 and now found in s 57(2) of the Sentencing Act 2020, do refer to reform and rehabilitation, but require the court to also consider the punishment of offenders, the reduction of crime, including by deterrence, the protection of the public and the making of reparation by offenders to persons affected by their actions.

However, while the Prisons and Courts Bill did not progress, some positive measures in the Bill were introduced through administrative changes, for example the Urgent Notification process and independent reviews of progress.² Governors have been given more responsibility for educational provision in their prisons and are able to commission educational provision suited to the needs of their particular prisoner groups and to decide how much of their budget to spend on libraries and education. They are now able to commission courses on core subjects outside the Offenders’ Learning and Skills Service (OLASS) under the Prison Education Framework introduced in 2018. The new contracts commenced in April 2019 and last for four years with a possible two-year extension. However the same providers under the OLASS contracts won many of the contracts under the Framework. The Key Performance Indicators now include the achievement rate, that is, the

² The Urgent Notification process allows the Inspector of Prisons to directly alert the Secretary of State for Justice if there are urgent and significant concerns regarding the performance of a prison and has been used several times, in relation to HMP Bedford, Birmingham, Bristol, Exeter and Nottingham as well as HMYOI Feltham A and Rainsbrook Secure Training Centre. The Secretary of State should provide a response and action plan within 28 days, followed by plans for longer term improvements.

numbers starting the course who obtain the accredited qualification as well as attendance rates. A further positive change has been the use of common awarding organisations for the most popular subjects to avoid disruption when prisoners are transferred. A new prison officers recruitment scheme Unlocked Graduates was introduced in 2017.³ Graduates spend two years working in selected prisons alongside prison officers, while also studying for a Master's degree.

In 2018-19 the Education and Employment Strategy was implemented. It included an expansion of opportunities for employment through release on temporary licence (ROTL) and by giving governors more control over education, allowed education to be geared more to the local labour market (Ministry of Justice 2018a). The strategy also supported using in-cell technology for prison learning and recognised the importance of employment in reducing reoffending. Education is valuable as 'the evidence shows that prison learners were significantly more likely to be in P45 employment than non-learners one year from release' (Ministry of Justice 2018a: 10). The Strategy recognised the need to tailor education more towards the needs of employers and different cohorts of prisoners. However, if the focus is only on what is vocational, this may be problematic as arts and humanities courses can be very helpful in stimulating prisoners' interest in education. Moreover, the humanities can play a key role in promoting citizenship and strengthening democracies by promoting critical reflection and thinking, as Nussbaum (2010) has argued. While vocational courses are highly prized by governments, policy makers and employers, humanities courses offer a broader perspective, giving prisoners a voice as they reflect on wider issues and promoting agency. For example Lee *et al.* (2020) discuss the experiences of teaching and following a course on Critical Race Theory in an American prison and draws on voices and experiences

³ <https://unlockedgrads.org.uk/>.

of the students on the course in understanding power structures in American society and the impact on their experience. Dreier (2019) shows how the Prison Shakespeare Project has the potential to focus on alternatives to the toxic masculinities within the hyper-masculine environment of a men's prison. A review of Prison Education by the House of Commons' Education Committee is in progress and has been hearing evidence from a range of groups and individuals, including employers, course providers and the Prison Reform Trust and the Prisoner Learning Alliance.⁴

Moreover, some changes have been made in response to the recommendations of the Coates Report , including national screening for LDD on entry into prison, more weight has been given to education in tests for purposeful activity, more training to prison officers in relation to support for education, and the establishment of the graduate entry scheme for officers, Unlocked Graduates. Governors have more control over commissioning of courses and the New Futures Network was set up to facilitate links with employers. A review of neurodiversity and the criminal justice system in 2021 considered ways of meeting the needs of a wide range of groups and recommended improvements, including a common screening tool, sharing of information and staff training, (Criminal Justice Joint Inspection 2021a).

The White Paper *Prisons Strategy* reports that a new Prisoner Education Service is planned (Ministry of Justice 2021: para 105). It stresses that greater use will be made of digital technology, particularly in the new prisons being built and the focus will be improving literacy and numeracy, skills and vocational training, and more support will be given to prisoners with learning disorders and disabilities and more training to staff to support the provision of education and the recruitment of dedicated Employment Advisors. It reflects

⁴ <https://committees.parliament.uk/work/817/prison-education/publications>.

the promise in the 2020 White Paper *A Smarter Approach to Sentencing*, to develop a prison education service more focused on work based training and skills (Ministry of Justice 2020: para 237).

2. The value of prison education

But while there have been some positive changes, prison education has been under-resourced and problems remain. Why education matters and the extent of the protection of the right to education in international and domestic law will be considered, followed by a discussion of barriers to the realisation of this right. Further investment should be made in education for prisoners because of its benefits to the wider society and to the prison environment and to prisoners themselves.

2.1 *Social benefits: the contribution to rehabilitation*

There are benefits for the wider society, principally in terms of the implications for rehabilitation and recidivism.⁵ If education leads to improved employment prospects, this may make it easier for former prisoners to integrate into society on release and ultimately to reduce reoffending. It may be difficult to prove conclusively the impact of a particular programme, as it may depend on the time span considered and some prisoners may be more receptive to these programmes than others. We also need to be careful that we are comparing like with like. But notwithstanding the methodological challenges, there is certainly *some* evidence that engagement in educational programmes is linked to a reduction in reoffending.

It is well established that reoffending rates are higher if released offenders are unemployed (Ministry of Justice 2013). Being in employment on release from prison cuts the

⁵ The transformational potential of prison education is explored in a special issue of the *Prison Service Journal* published in May 2016. See also Munoz 2009.

risk of reoffending between one third and one half (Social Exclusion Unit 2002:6). Education may contribute to cutting reoffending by improving employability skills as prison learners may have to work to deadlines, take responsibility for tasks and work with others, all of which are transferable skills.

The benefits to society from investment in education have been affirmed by a number of empirical studies. Steurer, Smith and Tracy (2001) examined over 3,000 inmates released in late 1997 and early 1998 from prisons in Maryland, Minnesota and Ohio, and found that those who had participated in correctional programmes had lower rates of re-offending than those in a control group who had not participated:

The analysis of the data indicates that inmates who participated in education programs while incarcerated showed lower rates of recidivism after three years. For each state the three measures of recidivism, re-arrest, re-conviction and re-incarceration were significantly lower. The employment data shows that in every year, for the three years that the study participants were followed, the wages reported to the state labor departments were higher for the education participants compared to the non-participants. (Steurer *et al.* 2001:7)

The Three States Study was intended to address some of the methodological weaknesses of earlier work on this subject and to consider employment outcomes as well as recidivism. It concluded that the amount saved by offenders not returning to prison as a result of correctional educational programmes amounted to twice the state's investment in those programmes, so for every dollar spent on education, society reaped a return of more than two dollars in reduced prison rates. A meta-analysis in 2009 by Wilson *et al.* of 33 independent experimental and quasi-experimental evaluations of recidivism for education, vocation and work programmes, found that participants had higher rates of employment and lower

recidivism rates than non-participants (Wilson *et al.* 2000). A later meta-analysis of research on the effect of inmates' participation in correctional education indicated that 'on average inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not' as well as improved job prospects (Davis *et al.* 2013).

These studies may raise methodological issues as the correlation between employment, desistance and education do not themselves establish causal effect as there may be other intervening variables to account for lower recidivism rates or the behaviour may result from a combination of factors. Findings from the experience of the United States may not be easily extrapolated to other jurisdictions, or indeed from the three states studied by Steurer *et al.* to other states within the US. They also represent a particular period in time with a specific labour market, economic health. We also do not know if the desistance measured at the point of the study continued in later years as desistance may be uneven. Nonetheless, it is clear that social capital and transferable skills from education may improve access to the labour market, and that meaningful work may assist in the shift of identity needed for desistance and offer legitimate opportunities for status and rewards, reduce time available for engagement in crime and contact with criminal subcultures. Active labour market interventions including regular meetings with caseworkers, have been offered by states to encourage job applications and to counter the negative effects of unemployment with positive effects (Andersen 2021).

In the UK a Ministry of Justice Data Lab analysis examined employment and benefit outcomes of those offenders who had received Distance Learning Grants from the PET and compared them to similar offenders who did not receive grants (Ministry of Justice 2018b). It found that thirty-nine per cent of the grant recipients were employed during the twelve months after release, compared with thirty-one per cent of the latter group. While both groups received out of work benefits during the twelve months following release, the treatment

group spent fewer days receiving them than the comparator group. A later report from the UK's Justice Data Lab showed that re-offending rates for those who had taken Open University courses while in prison were lower than for the comparator group (Ministry of Justice 2019). Given the pressure on prison budgets in both the UK and the US, educational programmes may be vulnerable to the risk of reduction or curtailment, but cutting spending on education is clearly a false economy.

Education promotes human capital, with opportunities for reflection, developing self-awareness, more responsibility, for example, in meeting deadlines and is empowering. Education may sharpen rational thinking skills which will be of value in making decisions on whether engaging in crime is worthwhile. At a practical level it may increase access to employment and to higher earnings on release. It also promotes social capital in overcoming negative attitudes towards society. As the offender becomes part of a community of learners and learns to collaborate with others, and listen to their ideas, openness to new ideas and the ability to deal with criticism may also be fostered. Being part of this community may generate a desire to contribute to society. For example, the offender may engage in active citizenship through participation in a student or prison council, and function as a *zoon politikon*, or political animal (Easton 2018).⁶ Respondents to the Prisoner Policy Network consultation stressed their desire to contribute within prison and to be active citizens (Wainwright *et al.* 2109).

If the prisoner ultimately achieves stable and reasonably paid employment, economic advantages may accrue to the wider society, as fewer benefits will be claimed, but there will

⁶ The term *zoon politikon* was used by Aristotle in his *Politics* where he defines citizenship in terms of participation in the life of the community or polis and in doing so, the citizen transcends narrow self-interest to pursue what is best for the community.

also be the key social benefit of crime reduction. Pike and Hopkins (2019) examined the impact of prison-based higher-level distance learning (PHDL) on personal change and positive identity. They conducted interviews with ten released prisoners and fifty-one serving prisoners in ten prisons in England and Wales and found that PHDL did encourage personal change in incarcerated students through transformative learning, leading to increased self-awareness, critical reflection and a positive student identity.⁷

Encouraging prisoners to become involved as mentors gives them opportunities to demonstrate active citizenship. Peer mentoring is playing an increasing role in a wide range of prison activities. For example, a scheme run by the Shannon Trust, a charity which supports prisoners learning to read, involves prisoners helping other prisoners to read, where the learner is mentored on a one to one basis which can also be a source of great satisfaction to the mentors.⁸ The costs are minimal as the Trust provides Toe by Toe reading materials and training.⁹ Clearly literacy is the first key step in following formal courses or training and ultimately to obtaining employment on release. The problems of literacy have been an enduring feature of prison education highlighted in earlier studies such as the study of

⁷ The notion of transformative learning is drawn from Paolo Freire's *Pedagogy of the Oppressed*. Freire (1970) argued that transformative learning occurs when there are collaborative learning communities, where knowledge is shaped by the many, not owned by the few, and where conflicts themselves can be transformative.

⁸ <https://www.shannontrust.org.uk/>

accessed November 11 2021.

⁹ For further details of the Toe by Toe literacy scheme see <https://toe-by-toe.co.uk/about-us/>, accessed 11 November 2021.

Pentonville (Morris and Morris 1963). If prison constitutes the social exclusion of the already socially excluded, then education offers a means of including prisoners. Peer mentoring is used in a range of roles inside prison and on release ex offenders may engage in a range of roles (Edgar *et al.* 2011, Easton 2018).¹⁰

Moreover, the further the offender travels along the education pathway, then the greater the possibility of the prisoner identifying with an alternative identity to that of ‘offender’. Education may also have a role to play as part of de-radicalisation programmes in prison and a range of programmes have been developed for assessment and intervention, including VERA-2R (Violent Extremist Risk Assessment Revised), ERG22+ (Extremist Risk Guidance) and HII (Healthy Identity Intervention). Studying social sciences or the humanities may also promote citizenship in the broader sense by reminding offenders of the principles of political obligation, the social contract and the rights and duties of citizens. For example, Anders Breivik, convicted of the murder of eight people in Oslo and sixty-nine people, including Oslo University students, at Utøya summer camp, was permitted to study for a social science degree online despite many objections.¹¹ Of course it is difficult to prove

¹⁰ However, while mentors may value their roles, those involved in schemes such as Listeners may feel burdened by the weight of problems they confront (Jaffe 2012). The available research studies have focused on the successes rather than the pressures on mentors as Nixon (2020) observes.

¹¹ Breivik suspended his studies to focus on an appeal against the conditions of his confinement, which he argued breached Article 3 and Article 8. However, the Appeals Court rejected the claim that Article 3 had been breached and this was upheld by the Norwegian Supreme Court in *Anders Behring Breivik v Ministry of Justice*, Supreme Court HR-2017-1127-U (case no. 2017/778 (8 June 2017)). The case was taken to Strasbourg under

the positive effect of this degree on the promotion of citizenship in an individual case. Breivik received a 21 year sentence and while he is eligible to apply for parole after 10 years and has lodged an application for parole, it has been rejected. The sentence may be extended indefinitely if there is a risk of repetition of the offence. So it would be difficult to test the impact in such a case. However, the permission to pursue higher education demonstrates an awareness of its inherent value and an opportunity to endorse shared values of citizenship.

2.2 Benefits to prisoners

While the social benefits have inevitably preoccupied governments and policy makers and much attention has been given to showing the advantages for reducing reoffending, it is arguable that even if it is difficult to prove the causal power of education it still benefits to prisoners and should be valued and promoted on those grounds. Benefits to prisoners include more time outside their cells, the pleasures of learning, engaging in something quite different from ordinary prison life, and pursuing educational qualifications gives learners a goal to work towards. The provision of education is a part of the process of normalisation, namely the principle that conditions in prison should be as close as possible to those outside. Work, education and training, key elements of constructive prison regimes, can humanise the prison environment as well as promoting rehabilitation. Reasons for study include making time inside pass more quickly, an interest in the topic of study or hope for a change in one's life after prison, personal development, and obtaining qualifications (Department for Business, Innovation and Skills 2016, Pike and Hopkins 2019). Warr (2016) also stresses prisoners' joy of learning for its own sake. Education may also help prisoners cope with prison life and deal

Breivik's new name, Fjotolf Hansen, where the Court ruled the case inadmissible as both the Article 3 and Article 8 claims were unfounded (*Hansen v Norway* App No. 48852/17 (29 May 2018)).

with the pains of imprisonment (Sykes 1958). It offers an antidote to the authoritarian and infantilising prison structure and is also liberating in offering the freedom to consider ideas in contrast to prisoners' physical confinement. Many students record their good relations with education staff. In the Prisoners' Education Trust survey of 343 prisoners, respondents praised their supportive and encouraging tutors and learning support staff (Prisoners' Education Trust (2014:3). It is acknowledged that this study is not representative of the prison population as a whole as it contained a large number of prisoners serving life or indeterminate sentences. However, it is argued that a learning strategy for these prisoners is needed so the input from these respondents is valuable. An earlier study by the Prison Reform Trust found that support from teaching staff and from prison education departments was much appreciated (Prison Reform Trust 2003). This study received responses from 153 prisoners in 15 prisons. One respondent said that 'If I hadn't come to the education department I think I would have hung myself' (Prison Reform Trust 2003: 44). Participating in classes meant escaping from the wing and enjoying a better atmosphere where prisoners felt that they were treated as normal human beings. Of course these studies are based on relatively small cohorts of students and are not contrasted with control groups and represent the specific experiences of the students interviewed. However, they are nonetheless valuable in showing benefits to those students and highlighting issues beyond the question of recidivism. In the Prison Reform Trust study the aim was not to test a particular hypothesis or to look at purposes of education in prison, but rather to present the perceptions of prison learners.

Moreover participation in educational programmes has been linked to a reduction in violence during incarceration (Pompoco *et al.* 2017).¹² Participation in a national education programme, even if only by distance learning, allows prisoners to maintain contact with the outside world (Hughes 2012). Education may also take place outside the prison walls, if prisoners are released on temporary licence to attend courses outside.

Even if a prisoner's initial motivation to learn reflects a desire to escape boredom or the confinement of one's cell, to improve job prospects, or to impress families, education may come to be valued for its own sake as an inherently enriching experience. Education also offers a new identity as a student. The Prisoners' Education Trust (PET) cites the experience of Patrick who could not read or write at 13 and had a very negative experience at school, but engaged in education in prison and ended up taking an Open University degree, when serving a 15 year sentence, changing his life as a result (PET 2018: 9). A study of prison learners highlighted the positive impact of studying Open University courses on students' personal and professional lives and includes insightful discussion by prisoners of the

¹² This major study of 92,217 inmates in Ohio prisons compared participants and non participants in Ohio's prison education programmes with rates of misconduct while in prison and on release and found that completion of college classes or general education classes within the inmate's first year of imprisonment 'can produce significant benefits in lowering violent misconduct rates, while vocational training and apprenticeship programs have no effect on inmate violence or on any other form of misconduct examined here' (Pompoco *et al.* 2017: 540). While the findings are limited to the particular programs in that state, they do suggest that investment in education may be cost effective if it contributes to a safer prisoner environment.

challenges they faced as well as the benefits they reaped from their studies (Earle and Mehigan 2019).

3. The right to education

The right to education can be seen as part of the right to rehabilitation, the right to services and activities which enable prisoners to address problems which may lead to reoffending. The right to education is also a key means of realising other human rights.

3.1 Domestic law

Under domestic law, prisoners in the UK retain all rights which are not taken away expressly or impliedly by imprisonment, as affirmed in *Raymond v Honey* [1983] 1 AC 1. where rights were construed residually, that is, they exist unless specifically or impliedly excluded by law, but any restrictions imposed should be the minimum necessary to meet the requirement of imprisonment. Life in prison is circumscribed by the Prison Act 1952 and the UK Prison Rules which require that educational classes should be provided at all prisons and provision should be made for prisoners with special educational needs. Prison Rule 32 states that every prisoner able to profit from the education facilities at a prison should be encouraged to do so. This domestic law is overlaid by international human rights law and standards including the European Convention on Human Rights, Article 2 of Protocol 1 of which protects the right to education which had a considerable impact on improving prisoners' lives even before the Human Rights Act 1998, which came into force in 2000 and incorporated the Convention rights into domestic law, compensated for the gaps in private law.

3.2 International human rights standards

Prisoners' right to education is protected by international human rights instruments, including Article 26 of the UN Universal Declaration of Human Rights which states that 'Everyone has the right to education', and by the UN Minimum Standard Rules for the Treatment of Prisoners, now known as the Mandela Rules which stipulate that 'all prisoners should be treated with the respect due to their dignity and value as human beings' (Rule 1.1).

Rule 104 deals with sentenced prisoners and states that:

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction for the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as is practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.¹³

The right to education is also enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights which asserts that:

1. The States Parties to the present Covenant recognize the rights of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups,

¹³ Previously Rule 77.

Article 13 is the most comprehensive provision on the right to education in international human rights law as it refers to human dignity, as well as the ability of all to participate in society and to promote understanding among diverse groups. States parties are required to ensure that education conforms to the aims and objectives identified in Article 13.¹⁴ There should be sufficient programmes, and those who cannot access institutions because of their physical location should be able to have access to distance learning. The Covenant imposes obligations on States Parties to guarantee that the right will be exercised without discrimination and to take steps towards the full realisation of Article 13. States Parties should respect, protect and fulfil the right, by avoiding measures which undermine the enjoyment of the right and facilitate positive measures to ensure education is accessible. Non-discrimination in education is also explicitly addressed in the Convention against Discrimination in Education under which States Parties undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity. The right to education is also found in Articles 28 and 29 of the UN Convention of the Rights of the Child. The International Covenant on Civil and Political Rights does not explicitly refer to a right to education, but the requirement in Article 10(3) that the penal system should aim at reformation and rehabilitation may be interpreted as including education, whether academic or vocational.

3.3. European sources of the right to education

In European human rights law, the right to education is protected by the European

¹⁴ General Comment No. 13: The right to education (article 13) (1999). (Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999).

Convention on Human Rights and the European Social Charter¹⁵ and by the European Prison Rules which have been adopted by the UK.

3.3.1 *The European Convention on Human Rights*

Education was not included in the original European Convention, but was added as a Protocol. Article 2 of Protocol No. 1 states that: ‘No person shall be denied the right to education.’ Whilst it is primarily aimed at children, many young offenders may still be serving sentences within the period of compulsory education. In Convention jurisprudence it has been applied to adult prisoners, both sentenced and remand, and used to address discrimination issues, for example, in relation to the treatment of Roma children, the parental rights of children with special educational needs and access to mixed education.¹⁶ A breach of Article 2 of Protocol 1 was also found in *Mehmet Reşit Arslan and Orhan Bingöl v Turkey*, App Nos. 47121/06 (18 June 2019) where prisoners were denied access to the internet which was necessary to pursue their higher education. The Strasbourg Court thought that there had been a failure to strike a fair balance between national security considerations and the prisoners’ right to education.¹⁷

¹⁵ Article 10 of the Charter states that everyone has the right to appropriate facilities for vocational training.

¹⁶ See *D.H. and others v Czech Republic*, App No. 57325/00 (13 November 2007) and *Koureas and Others v. Greece*, App No. 30030/15, (18 January 2018).

¹⁷ See also *Jankoviskis v Lithuania*, App No 21575/08 (17 January 2017) where the court found a breach of Article 10 of the Convention, the right to freedom of expression and to receive and impart information, when a prisoner was denied access to a Ministry of Education and Science website, which was needed to obtain information on educational

It has been well established since the *Belgian Linguistic case* (No 2) (1968) 1 EHRR 252, that the value of the right to education will depend on the educational system of the particular state: ‘the Contracting Parties do not recognise such a right to education as would require them to establish at their expense, or to subsidise, education of any particular type or at any particular level...’ (para 3). So while there is no positive obligation to provide education to prisoners in all circumstances, where education is available it should not be subject to arbitrary and unreasonable restrictions.

This means that the individual has the right to access existing educational institutions, a right to an effective education and the right to official recognition of qualifications through their studies. It is for the state to determine the language of instruction, but citizens who are members of minorities have the right to establish and manage schools at their own expense using their own language and religion. The Strasbourg Court in the case of *Velyo Velev v Bulgaria*, App No. 16032/07 (27 August 2014) concluded that remand prisoners enjoy a right to education, but this was not seen as a full social right to education, but rather gave access only to existing educational facilities. The Court stressed that the right to education is not absolute but may be subject to limitations. Many states have made reservations to the Protocol. The UK has accepted the Protocol only in so far as it is compatible with the promotion of efficient instruction and training and avoidance of unreasonable public expenditure.¹⁸

provision. The national authorities had failed to advance sufficient reasons to justify interference with that right.

¹⁸ Schedule 3, Part II of the Human Rights Act 1998 affirms the principle in the second sentence of Article 2 of the Protocol: ‘The article does not require any particular system of education; even less does it require access to a particular school.’

3.3.2 The European Prison Rules

The UN Standard Minimum Rules (the Mandela Rules) were the model for the European Standard Minimum Rules, first adopted in 1973, and replaced by the European Prison Rules in 1987. The EP were then revised in 2006 and 2019 and include provisions on education:

28.1 Every prison shall seek to provide all prisoners with access to education programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

28.2 Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.

28.4 Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education...

28.7 As far as practicable the education of prisoners shall:

a. be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and

b. take place under the auspices of external education systems.

The Rules stipulate that access to education and training should be available to adults and compulsory for prisoners under school leaving age. Although the EPR reflect and influence the jurisprudence of the European Court of Human Rights, a breach of the EPR does not per

se constitute a breach of Article 3 of the European Convention and the Rules are not binding, but merely soft law. Nonetheless they are significant, particularly EPR 4, which makes clear that the infringements of prisoners' rights are not justified by a lack of resources and EPR 28.4 which stresses the need for education to have equal status to work as prisoners may be reluctant to take courses if there are financial disadvantages. EPR 5 provides that 'Life in prison shall approximate as closely as possible to positive aspects of life in the community' which has implications for access to education as well as to books.

4. The right to education in practice

Although prisoners have a right to education, in practice the exercise of the right is limited as a range of practical and political factors may affect levels of participation in education. Education may compete with other more lucrative activities, be disrupted by prison routines, court visits, or medical appointments, or by movement around the prison estate. In the PET study, reasons for non-participation included the lack of options at the appropriate level, and insufficient support for students with specific learning disabilities (Prisoners' Education Trust 2014). Education may offer students less income than work and cell sharers may find it harder to study than those in single cells. Although the Woolf Report (1991) and the Coates Report (2016) gave equal weight to education and work as part of the constructive mix of activities in prison, in practice education has been accorded less weight by prison regimes. If the value of education is not affirmed by the prison administration through appropriate rewards, then prisoners may be less eager to participate.¹⁹ Coates advocated that prisoners should be paid the same if not more for education than other activities. Non-monetary incentives such as extra gym time or extra visits could also be given. Governors should be

¹⁹ Several respondents to a Consultation by the Prison Policy Network were critical of the fact that education is paid less than work (Wainwright et al., 2019: 15).

able to design a framework of incentives to encourage attendance and progress. Coates also noted that prison education staff are paid less than in mainstream education and there are fewer progression routes to leadership posts, compared to education outside, which reinforces the perception of this work as low status.²⁰

4.1 Improving access to education

Given that the educational background of many prisoners includes habitual truancy and exclusion from school, it may be challenging to motivate those with a prior negative experience of education. Forty-seven per cent of respondents in the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners reported no qualifications prior to custody and forty-two per cent of adult prisoners were excluded from school (Hopkins 2012). Twenty-one per cent needed help with literacy and numeracy. Over three quarters of the respondents in the PET study reported a negative experience of school, but a large number of those who started with no qualifications before entering prison had progressed while inside prison, with 84 per cent taking formal courses, 56 per cent had gained a qualification at level 2, 32 per cent at level 3, 5 per cent had been awarded a degree and two per cent a postgraduate qualification (PET 2014: 13). Over one third of the respondents in the PET sample were taking distance learning courses, including Open University courses (PET 2014).

²⁰ Prison education staff have also raised concerns over their safety during the epidemic: <https://www.ucu.org.uk/article/11348/Novus-members-vote-overwhelming-to-proceed-to-industrial-action-ballot-over-health--safety-issues?list=10700> (Accessed February 2021).

The prison population includes those with special educational needs, attention deficit hyperactivity disorder and learners on the autistic spectrum.²¹ A range of approaches may be needed, including embedded learning, with skills taught as part of workshops or industrial work and blended learning, which uses a variety of methods including online activities. For some learners shorter blocs may be more effective than longer classes. However, prison learners should not be stereotyped as a group lacking formal qualifications. A 2016 research study found a wide range of qualifications among the 343 students undertaking OLASS courses in the period January to March 2015: 71 per cent had prior qualifications, 43 per cent had the equivalent of 5 GCSEs at level A-C, 22 per cent had no qualifications, 5 per cent had degree level qualifications, and 23 per cent had learning disabilities (Department for Business, Innovation and Skills 2016). The PET study found that 80 per cent of the prisoners surveyed had prior qualifications (PET 2014: 2). In fact the problem for many respondents was the scarcity of courses available at a sufficiently high level. McFarlane and Pike (2019:25) report that about 2 per cent of the prison population is studying at university level. In 2019 there were about 2,000 students on undergraduate courses, of whom 1800 were following Open University courses across 120 prisons. The remainder were taking Inside Out courses with under graduate students, funded by the universities concerned.

This diversity of backgrounds of prison learners means a range of educational opportunities is needed. So juveniles will need courses which prepare them for the labour market while older prisoners may need activities which prepare them for retirement. Women's specific educational needs should also be considered. An issue raised by the Coates Report (2016) and others was the provision of courses which reflect stereotypical views of

²¹ See *Phelps v Hillingdon LBC* for a discussion of the duty of education providers to make provision for special education needs.

women, for example, focusing on health and beauty, rather than industrial skills and efforts are now being made to avoid this (Ministry of Justice 2018a).²² The Female Offender Strategy however does not refer to women with disabilities (Ministry of Justice 2018c). Prisoners serving longer sentences may have different needs to shorter sentenced ones. In fact, the number of options for life sentenced prisoners has been reduced since 2012, with a focus on developing skills immediately before release.

Resources for prison education

Resources for prison education are limited and budget cuts in recent years and a substantial reduction in staffing compared to 2010, affects security cover for classes and access to equipment and libraries. While there is a relatively wide range of courses available, from basic skills to undergraduate courses in the UK, there are insufficient courses to meet demand, especially at higher level. There are waiting lists for courses and some prisoners may have to repeat courses.

The move towards digitisation of educational materials has made it harder for students without access to the internet and this digital exclusion reinforces social exclusion and a lack of IT skills may make it harder to find employment (Pike and Adams 2012, Jewkes and Reisdorf 2016). Respondents in the Prisoner Policy Network study noted the problem of keeping up to date with current technology (Wainwright *et al.* 2019). These issues are not confined to the UK. For example, a study of prison learners in Queensland, Australia by

²² A learning and skills curriculum for women was developed by NOMS. The Offender Rehabilitation Act 2014 also required that women's specific needs should be taken into account in arrangements for supervision and rehabilitation of offenders under the *Transforming Rehabilitation* agenda.

Hopkins and Farley (2014) found that the students, who were usually from lower socio-economic groups, had limited educational skills and limited access to computers. The majority of incarcerated students they point out are poorer groups with low income, marginalised, unemployed and with few educational qualifications and low social capital and the majority of those students had no access to the internet at a time when tertiary education in Australia was being digitised. They cite examples where students were permitted to follow advanced studies, they had to ask overworked Education Officers to obtain information on their behalf. The prison learners were already socially and culturally isolated and further excluded by the lack of access to the internet. Australia was a prison island, as they observe, but the Australian prison is still a metaphorical island, because prisoners are cut off from the network of information used by the population outside.

Although blanket security policies have limited access to the internet for prison learners in the UK, a survey found that just under three quarters of prison governors and managers supported prisoners having controlled and secure access to the internet (Champion and Edgar 2013). Access to websites can be filtered by software programmes but it should be possible to give prisoners access to libraries and job information.²³ Greater use could be made of in-cell technology and videoconferencing for educational purposes, although digitisation should not be used to erode the key role of the staff, as personal contact with tutors can engage and motivate prisoners. The UK prison system's secure intranet system, Virtual Campus, first piloted in 2006, gives prisoners access to community education and training courses, as well as access to employment opportunities. It allows students to view

²³ See for example PrisonCloud, a flexible IT platform for secure distribution of content and services to prisoners: <https://www.ebo-enterprises.com/prisoncloud> (Accessed February 2021).

material, take part in interactive quizzes, complete computer-marked assignments and contact tutors through secure messaging services. However, in the PET study, most respondents said that access to the VC was poor and some had never seen or heard of it. Even those undertaking distance learning and Open University courses had problems accessing it (PET 2014:3).²⁴

4.3 Variability of provision

The availability of places, the quality of educational provision and access to technology also varies across the prison estate. Activity places may remain unfilled because of administrative problems in allocation or staff shortages which limit access to learning and skills provision and other purposeful activities. The Report of the Prison Inspectorate in 2019 found that while there were examples of good practice at Oakwood and Humber, ‘In many prisons, chronic staff shortages and operational constraints led to reduced education and training provision’ (HMCIP 2019: 36). It noted that ‘The quality of teaching, learning and assessment in education, skills and work-related activities also declined and was judged inadequate in three prisons’ (HMCIP 2019: 37). Support for prisoners engaged in higher education and distance learning also varied between establishments. Some prison regimes are supportive while in others, prison work is given priority. Variability between prison regimes was also recorded in Pike and Hopkins’ study (Pike and Hopkins 2019). A review of prison inspections by Adriaanse (2017) found examples of good practice in some prisons, including resettlement embedded in learning and skills work, activities individualised for offenders and good use of the Virtual Campus, but in many prisons, there were insufficient activity places

²⁴ The Prison Inspectorate found that the VC was rarely fully operational and in one prison was unavailable to Open University students. (See HMCIP, 2019: 61).

and undemanding work activities and failure to attend classes due to lack of available staff or disruption by other activities.

The 2020 Report of the Inspectorate also showed widespread poor performance and varying progress in the area of purposeful activity (HMCIP 2020). Full inspections were suspended during the pandemic but short scrutiny visits were made. But even before the pandemic, it was clear, based on 2019-20 inspections, that few prisons showed signs of improvement in activity outcomes with too much time spent in cells, especially in local prisons and with insufficient activity places. In adult male prisons: 'The overall effectiveness of education, skills and work was less than good in almost three-quarters of the prisons inspected' (HMCIP 2020: 46). Too few prisoners finished their courses and achieved qualifications. The quality of teaching, learning and assessment was not good enough in six out of every ten prisons inspected. In its 2021 report the Inspectorate recorded the impact of the pandemic on education with classes suspended during the lockdown, but notes that the variations of performance preceded the pandemic in comparable establishments and is likely to persist (HM Chief Inspector of Prisons 2021:9)

Furthermore, prisoners with additional learning needs did not have access to specialist learning support. An issue raised by the Coates Report (2016) and others was the provision of courses which reflect stereotypical views of women, for example, focusing on health and beauty, rather than industrial skills and efforts are now being made to avoid this (Ministry of Justice 2018a).²⁵ In 2019 the Prison Inspectorate had found that when young

²⁵ A learning and skills curriculum for women was developed by NOMS. The Offender Rehabilitation Act 2014 also required that women's specific needs should be taken into account in arrangements for supervision and rehabilitation of offenders under the *Transforming Rehabilitation* agenda.

offenders attended training or provision, it was mostly of good quality (HMCIP 2019: 53). Leadership and management of education had improved, but many children did not receive the full 15 hours of education to which they were entitled. The Inspectorate found that there had been improvements at Feltham A, the children's unit, but purposeful activity was not sufficiently good (HMCIP 2019: 53). However, that visit was in January and in April, violent incidents led to thirteen officers being hospitalised and twenty injured. The Urgent Notification process was invoked for Feltham A in July 2019 by the Chief Inspector of Prisons, following an unannounced inspection.²⁶ The inspector found a dramatic decline in standards since the previous visit, with high levels of violence and self-harm and poor relations between children and staff. There was also a decline in relation to education: 'leaders and managers at all levels had failed to provide an acceptable standard of education for the children at Feltham'.²⁷ Attendance at classes was low and teaching and learning were inadequate. Problems remained by the time of the 2020 Inspection Report. In Feltham A young offenders failed to receive a proper education and were locked up for excessive periods (HMCIP 2020: 17). The Report noted fundamental weaknesses at Feltham A and Cookham Wood but education was well led at Wetherby, Werrington and Parc.

Although the provision was problematic in many institutions before the pandemic, it is clear that its impact has worsened the situation. In its Report on the impact of Covid-19 on prisons, the House of Commons Justice Committee (2020) noted the negative impact on access to work and education: 'education provision in the prison setting is minimal, consisting primarily of in-cell work packs' (at para 12). A Criminal Justice Joint Inspection

²⁶ <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/07/22july-SofS-Urgent-Notification-FelthamA.pdf>,

²⁷ *ibid* 16.

found that education providers were not able to provide face to face education in adult prisons for several months (CJJI 2021b). In surveys conducted in the second half of 2020 ‘only 21% of prisoners who responded said it was easy to access education. Prisons often provided in-cell education and activity packs instead. Some 57% of prisoners who responded to Her Majesty’s Inspectorate of (HMI) Prisons’ survey during the same period said they had received an in-cell activity pack. Fewer than half (48%) of prisoners who had received a pack found it to be useful’ (CJJI 2021b: para 2.8). Education was also initially suspended for children in custody with variability in its restoration (ibid, para 2.9).

4.4 Access to higher education

A further problem is the scarcity of courses leading to higher level qualifications. Many prison learners are studying courses at a lower than appropriate level because of insufficient options. The largest group in the PET study *not* engaging in learning were prisoners with a standard level of education; respondents indicated that this was mainly due to a lack of courses at a high enough level, subjects they were interested in were unavailable and waiting lists for courses were too long (PET 2014: 16). The current system is geared to shorter courses and basic skills, rather than longer courses offering greater depth. The problem of insufficient higher level courses has also been highlighted by the Prisons Inspectorate (HMCIP 2019: 38).

A rule that prisoners can apply for a student loan from the Student Loan Company for degree courses only when they are within six years of release was introduced in September 2012:

The learner’s earliest release date is within 6 years of the first day of the first academic year of the current course or current part time course. For prisoners on

indeterminate sentences the minimum period of imprisonment set at trial (the sentence tariff) should be treated as the earliest release date.²⁸

The Higher Education Policy Institute estimates that if prisoners were permitted to begin studies earlier in a long sentence, this could increase student numbers by approximately 200 each year. While this would cost an extra £2 million in upfront student loans, it ‘could save between £3 million and £6 million as a result of reduced reoffending rates’ (McFarlane 2019: 1). These benefits would accrue even if the loans were not repaid. The calculation was drawn from Justice Data Lab findings (Ministry of Justice 2019).

Sentenced prisoners are eligible for advanced study if they can demonstrate evidence of appropriate learning at or above National Qualification Framework level 2, having a current Individual Learning Plan which indicates Open University or Distance Learning or Higher Education as a viable objective, have evidence of required potential and motivation to complete it, meet screening requirements and have a successful application for, or are in receipt of adequate funding to pay for the programme.

Sources of funding include the prisoner’s own funding from savings or wages, third party funding such as relatives or charities, or a combination of these. Open University students can apply to the University for a bursary, but these are limited in number. Prisoners who have resources should pay themselves or contribute some funds from their prison wages and savings and if not, should seek support from a third party or charitable trusts. Information

²⁸ PSI 32/2012, reissued 1 April 2019; see also the England (Student Support) Regulations 2011, as amended.

on charitable funding is available from the Hardman Trust.²⁹ Open University access courses may be free to those on low incomes who have not previously completed undergraduate courses and these can be commenced within eight years of release.³⁰ But the cost for an ordinary degree is daunting for a prisoner on low earnings. The Social Exclusion survey found that that 48 per cent of respondents already had high levels of debt before entering custody (Social Exclusion Unit 2002: 106).

4.5 Pursuing prisoners' rights claims

As well as barriers internal to the prison regime, there are wider impediments to pursuing rights claims. Prisoners serving short sentences are unlikely to pursue rights claims as by the time they are released and the case is heard, the issue is no longer relevant to them. Most of the prisoners' rights cases have been brought by lifers and Imprisonment for Public Protection (IPP) prisoners.³¹ For example, a challenge to the denial of books to prisoners was brought by a prisoner with a doctorate in English Literature, serving an indeterminate IPP sentence.³² The fear of incurring legal costs may also act as a deterrent especially as cuts to legal aid for prisoners were imposed by the Legal Aid, Sentencing and Punishment of

²⁹ <https://www.hardmantrust.org.uk/> (Accessed February 2021). Sentenced prisoners following A Level or vocational courses may be eligible for Advanced Learning Loans.

³⁰ <http://www.open.ac.uk/secure-environments/sites/www.open.ac.uk.secure-environments/files/files/Steps%20To%20Success%202020-21.pdf>.

³¹ Although IPP sentences were abolished in 2012, a large number of prisoners serving sentences of imprisonment for public protection remain in prison.

³² *R (on the application of Barbara Gordon-Jones) v Secretary of State for Justice and the Governor of HMP Send* (5 December 2014) EWHC 3997 Admin.

Offenders Act 2012. Given these barriers, the involvement of prison reform groups in campaigns for change may be crucial. The Howard League has been a party to a number of actions, including challenges to the cuts in legal aid.³³ The challenge was initiated in 2013³⁴ and in the interim some access to legal aid funding was permitted.³⁵ It also ran the Books for Prisoners Campaign in 2014. Changes to the Incentives and Earned Privileges Scheme introduced by PSI 30/2013 included restrictions on receiving books and other items from relatives by post or during visits. The book ban was challenged in the High Court which ruled that it was unlawful, although restrictions on other items remained.³⁶ It was still possible for prisoners to obtain books from libraries, but the availability of books varied between prisons and the Court rejected the view that books should be seen as a privilege, as access to books is seen as a key element of rehabilitation. But even if the court supports a prisoner's claim, there

³³ See *R (Howard League for Penal Reform and the Prisoners' Advice Service) v The Secretary of State for Justice and the Governor of HMP Send* [2017] EWCA Civ 244 where the Court ruled that the cuts were unfair and unlawful in relation to reviews by the Parole Board, Category A reviews and transfer to a Close Supervision Centre, but not in relation to Offending Behaviour Programmes or disciplinary proceedings resulting in additional days.

³⁴ Although it was blocked by the High Court in 2014, the Court of Appeal overturned the judgment in 2015 in *R on the application of the Howard League for Penal Reform and the Prisoners' Advice Service v the Lord Chancellor* [2015] EWCA Civ 819.

³⁵ In relation to applications concerning segregation, licence conditions and admissions to Mother and Baby Units and resettlement cases, where Article 8 issues were raised.

³⁶ *R (on the application of Barbara Gordon-Jones v Secretary of State for Justice and the Governor of HMP Send* [2014] EWHC 3997, Admin.

may be problems in enforcing a decision as there are still problems regarding access to libraries and the distribution of books to prisoners.³⁷

The European Prison Rules are not enforceable, but even when the courts deal with enforceable rights under the Convention and other instruments, the jurisprudence reflects a tension between prisoners' assertion of rights claims and the institutional needs of the prison regime and rights claims may be seen as less compelling than institutional priorities. The study of prisoners' rights across a range of areas has shown that in practice rights may be limited where there are security issues (Easton 2011). An example would be the use of handcuffs to prevent a prisoner absconding on court or hospital visits, or the searching of prisoners' families on prison visits.³⁸ Most rights instruments, including the European Convention, have express or implied limits on many of the rights and states may be accorded a margin of interpretation in giving effect to the rights protected by the Convention and applying the principle of proportionality.³⁹ However, the Strasbourg Court has become more

³⁷ <https://howardleague.org/news/books-for-prisoners-five-years-on-people-in-prison-are-still-struggling-to-receive-books-and-use-libraries/> (Accessed February 2021).

³⁸ See for example *Mathew v the Netherlands* App No 24919/03 (29 September 2005) and *Moisel v France* App No 67263/01 (14 November 2002) and *Wainwright v UK* App No 12350/04 (26 September 2006)

³⁹ In *de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69, 80 the Privy Council elucidated the three stage test to use in deciding if a measure is proportionate: 'whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right' (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective.'

critical of states which limit rights to satisfy public opinion, or which provide substandard prison conditions because of a lack of resources'.⁴⁰

If a Convention challenge does succeed, the prisoner may be given a declaration of incompatibility rather than compensation and this will be seen as just satisfaction, for example in the litigation on prisoner disenfranchisement.⁴¹ There has also been a sustained attack on the Convention from UK governments in recent years, fuelled in part by the Strasbourg Court's recognition of prisoners' rights (Conservative Party 2014). The Court has also extended its reach beyond conditions in custody and the nature of punishment towards the sentencing process itself and has been critical of whole life orders and has stressed the importance of regular reviews of detention in such cases.⁴² An independent review of the Human Rights Act is also now being conducted to consider whether the Act strikes the correct balance between the roles of the courts, Government and Parliament.⁴³

Support for prisoners' rights, including the right to education, will depend to a considerable extent on the wider political climate, political expediency and public punitiveness. For example, in the United States, Pell grants have been used since the the

⁴⁰ See for example, *Gusev v Russia* App No. 67542/01 (15 May 2008) and *Elefteriadis v Romania* App No. 38427/05 (25 January 2011).

⁴¹ See *Hirst v UK (No.2)* App No.74025/01 (6 October 2005), *Greens and MT v UK* App Nos. 60041/08 and 60054/08 (23 November 2010) and *Firth and Others v UK* App Nos 47784/09 and 47806/09 (12 August 2014).

⁴² See *Vinter & Others v UK* App Nos. 66069/09, 130/10 and 3896/10 (9 July 2013) and *Hutchinson v UK* App No. 5792/08 (3 February 2015).

⁴³ <https://www.gov.uk/guidance/independent-human-rights-act-review> (Accessed February 2021).

mid-1960s to assist prisoners pursuing higher education courses. These federal grants administered by the Department of Education provided financial support to incarcerated students following undergraduate courses and were based on financial need.. Higher education has been seen as valuable in helping to reduce crime and protect the public, to give prisoners advanced skills and assist with their rehabilitation. Prisoners on death row and those serving life sentences without parole were not eligible to apply. The grants were cut in 1994 due to a loss of public and political support, concerns over the financial costs and a desire to be tough on crime and offenders. Parents paying for their children's tuition fees also resented the fact that prisoners could obtain such assistance although there was no evidence that ordinary students were prejudiced by funds allocated to prisoners (Page 2004). Subsequently the number of education programmes offered to prisoners fell dramatically. However, they in 2015 a pilot study of grants to selected prisoners was undertaken and their application to all prisoners was considered by Congress.⁴⁴ The ban on grants for prisoners was lifted by Congress in December 2020 and change will be implemented in due course.⁴⁵

5. Conclusions

This article has highlighted the crucial role of education in rehabilitation and its benefits to learners, prison regimes and the wider society, as well as the barriers to realising the right to education in practice and has considered ways of improving access to education. Respecting the right to education benefits individual prisoners and the prison community, by reducing tensions and conflicts within prison, but additionally promotes reintegration which may reduce reoffending. Ways of reducing the costs of prison education have been considered,

⁴⁴<https://crsreports.congress.gov/product/pdf/R/R45737> .

⁴⁵ FAFSA Simplification Act 2020. However it is not expected to come fully into effect for incarcerated students until the summer of 2023.

including the use of online resources, distance learning and peer-assisted learning. Risk factors in educational participation can be managed using distance education and software filters and should be based on individualised risk assessments.

Access to education needs to be accorded proper weight and support within the prison, which may be difficult at times when resources are stretched because of budgetary constraints. Moreover, if education is to be given the same status as work, this needs to be reflected in the financial rewards for attendance and for pursuing educational opportunities. Prisoners should not be financially disadvantaged by attending classes.⁴⁶ It has been suggested that prisoners should be able to earn their release through obtaining educational qualifications. For example, Coates argued that if prisoners have shown an outstanding commitment to learning and are deemed low risk, they should be considered for early release. Prisoners serving long sentences need more opportunities for learning at higher levels and the ‘six year rule’ discussed above should be changed. There is also scope for universities to deliver courses to prison learners (Armstrong and Ludlow 2016).

Prisoners leaving custody may need more support to continue with their studies. Attention should be given to the wider issue of revealing criminal convictions when seeking further training or employment outside prison.⁴⁷ Efforts are being made to persuade

⁴⁶ In the *Time to Learn* study the lower rate of pay was referred to by prisoners who wanted funds to buy items in the canteen or phone cards (Prison Reform Trust, 2003).

⁴⁷ See discussion of this issue in *R (on the application of P, G and W (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2019] UKSC 3.

employers to take on released prisoners and to encourage more employers to ‘Ban the Box’, that is, to remove the criminal records box from application forms, so applicants do not have to reveal past convictions until further along the recruitment process. There have also been recent changes to the Disclosure and Barring Scheme in relation to juvenile offences.

The Government accepted the recommendation of the Coates Report for further support for education, but made clear that the changes were to be made within existing budgets. Unless the necessary resources are forthcoming, the positive changes recommended by Coates will have little impact. Even if more resources are available, it may be difficult for the right to education to be fully implemented in overcrowded prisons.

The White Paper *Prisons Strategy* is also committed to reforms to the Prisoner Education service and the evidence submitted to the House of Commons’ Education

Committee has highlighted its value to prisoners and staff. It makes clear that more attention will be given to the inconsistency between prisons which is welcome and more investment will be made in a digital platform and supporting students with learning disabilities.

So the political climate is more favourable to investment in education. This is an opportunity to implement the right to education and it needs to be properly funded to be effective or the opportunity will be lost. Moreover, while the White Paper is primarily focused on provision of skills for employment the value of courses in the humanities and social sciences should not be overlooked. As the current government is committed to creating

more prison places the prison projections remain high,⁴⁸ the wider contribution of education to reducing the pains of imprisonment should be recognised and supported.

As prisoners do have a right to education, education should be available to all prisoners regardless of the crime committed and length of sentence. The right also imposes obligations to attend regularly where prison routines allow and respect the rights of others. At present too many classes are disrupted by late arrivals and irregular attendance (HM Chief Inspector of Prisons 2020). If education is a right rather than a privilege then it should not be withdrawn unless the prisoner's behaviour during classes impairs the rights of others.

References

Adriaanse, K., 2017. Review of Prison Education and Training in England. DMH Associates, Exeter.

Andersen, S.H., 2021. Unemployment and crime: experimental evidence of the causal effects of intensified ALMPs on crime rates among unemployed individuals. *British Journal of Criminology*. 61(5), 1316-33.

Armstrong, K. and Ludlow, A., 2016. Educational Partnerships between Universities and Prisons. *Prison Service Journal*. 225: 9-17.

⁴⁸ For the latest prison projections see Ministry of Justice 2021. It is also expected that the impact of the Police, Crime, Sentencing and Courts Act will add to the prison numbers and to the numbers serving longer sentences. The automatic release point for serious sexual and violent offenders and for terrorist offenders has already been increased from half to two thirds of the sentence. The provisions in the Act reflect the recommendations in the White Paper *A Smarter Approach to Sentencing* (Ministry of Justice 2020).

- Champion, N. and Edgar, K., 2013. *Through the Gateway: How Computers Transform Rehabilitation*. PET/PRT, London.
- Coates, S., 2016. *Unlocking Education: A Review of Education in Prison*. Ministry of Justice, London.
- Conservative Party, 2014. *Protecting Human Rights in the UK: The Conservatives' Proposals on Changing Britain's Human Rights Laws*. The Conservative Party, London.
- Criminal Justice Joint Inspection, 2021a. *Neurodiversity in the Criminal Justice System: a review of evidence*. CJI, London
- Criminal Justice Joint Inspection, 2021b. *Impact of the Pandemic on the Criminal Justice System*. CJI, London.
- Davis, L.M., Bozick, R., Steele, J.L., Saunders, J. and Miles, J.N.V., 2013. *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs that Provide Education to Incarcerated Adults*. RAND Corporation, Santa Monica.
- Department for Business, Innovation and Skills, 2016. *Prior Qualifications of adult OLASS learners 2015*, BIS Research Paper 260. DBIS, London.
- Dreier, J., 2019. *From Apprentice to Master: Casting Men to Play Shakespeare's Women in Prison*. *Humanities*. 8(3), 123.
- Earle, R. and Mehigan, J. (eds), 2019. *Degrees of Freedom: Prison Education at the Open University*. Policy Press, Bristol.
- Easton, S., 2011. *Prisoners' Rights: Principles and Practice*. Routledge, London.
- Easton, S., 2018. *The Politics of the Prison and the Prisoner: Zoon Politikon*. Routledge, London.
- Freire, P., 1970. *Pedagogy of the Oppressed*. Penguin, Harmondsworth. 2017.
- HM Chief Inspector of Prisons, 2019. *Annual Report 2018-19*, HC 2469. HMIP, London.

- HM Chief Inspector of Prisons, 2020. Annual Report 2019-20, HC 856. HMIP, London.
- Hopkins, K., 2012. The pre-custody employment, training and education status of newly selected prisoners. Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners. Ministry of Justice, London.
- Hopkins, S. and Farley, A., 2014. A Prisoners' Island: Teaching Australian Incarcerated Students in the Digital Age. *Journal of Prison Education and Reentry*. 1:1, 42-51.
- House of Commons Justice Committee, 2016. Prison Safety: Sixth Report of Session 2015-16, HC 625.
- House of Commons Justice Committee, 2017. Prison Reform: Part 1 of the Prisons and Courts Bill, 14th Report of Session 2016-17, HC 1150.
- House of Commons Justice Committee, 2017. Prison Reform: Governor Empowerment and Prison Performance, HC 1123.
- House of Commons Justice Committee, 2020. Coronavirus (Covid-19) The Impact on Prisons. <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/299/29902.htm> (Accessed February 2021).
- Hughes, E., 2012. Education in Prison: studying through distance learning. Routledge, London.
- Jewkes, A. and Reisdorf, B., 2016. A brave new world: the problems and opportunities presented by new media technologies in prisons. *Criminology and Criminal Justice*. 16(5), 534-551.
- Lee, A.J., Harrell, M., Villarreal, M. and White, D., 2020. The Value of Teaching Critical Race Theory in Prison Spaces: Centering Students' Voices in Pedagogy. *Humanities*. 9(2), 41.

McFarlane, R., October 2019. Student Loans for those on long prison sentences, HEPI Policy Note 18.

McFarlane, R. and Pike, A., 2019. From prisoner to student, in Earle, R. and Mehigan, J. (eds), *Degrees of Freedom: Prison Education at the Open University*. Policy Press, Bristol, 11-30.

Ministry of Justice, 2013. *Analysis of the Impact of Employment on Re-offending on Release from Custody using Propensity Score Matching*. Ministry of Justice, London.

Ministry of Justice, 2016. *Prison Safety and Reform*, Cm 9350. Stationery Office, London.

Ministry of Justice, 2018a. *Education and Employment Strategy*, Cm 9621. Stationery Office, London.

Ministry of Justice, July 2018b. *Justice Data Lab Statistics Quarterly, England and Wales*. Ministry of Justice, London.

Ministry of Justice, 2018c. *Female Offender Strategy*, Cm 9642. London, Ministry of Justice, London.

Ministry of Justice, July 2019. *Justice Data Lab Statistics Quarterly, England and Wales*. Ministry of Justice, London.

Ministry of Justice, 2020. *A Smarter Approach to Sentencing*. Ministry of Justice, London.

Ministry of Justice, 2021. *Prison Population Projections: 2021 to 2026, England and Wales*. Ministry of Justice, London..

Ministry of Justice (2021) *Prisons Strategy*, CP 581

London Ministry of Justice

Morris, T. and Morris, P., 1963. *Pentonville: A Sociological Study of an English Prison*. Routledge, Abingdon.

- Munoz, V., 2009. The Right to Education of Persons in Detention, A/HRC/118.
- Nixon, S, .2020. "Giving back and getting on with my life": Peer mentoring, desistance and recovery of ex-offenders. *Probation Journal*. 67(1), 47-64.
- Nussbaum, M., 2010. *Not for Profit: Why Democracy needs the Humanities*. Princeton University Press, Princeton NJ.
- Page, J., 2004. Eliminating the Enemy: the Import of denying Prisoners Access to Higher Education in Clinton's America. *Punishment and Society*. 6, 357-378.
- Pike, A. and Adams, A., 2012. Digital exclusion or learning exclusion? An ethnographic study of adult male distance learners in English prisons. *Research in Learning Technology*. 20, 363-376.
- Pike, A. and S. Hopkins, S., 2019. Transformative Learning: Positive Identity Through Prison-Based Higher Education in England and Wales. *International Journal of Bias, Identity and Diversity in Education*, 4, 48-65.
- Pompoco, A., Wooldredge, J., Lugo, M, Sullivan, C. and Latessa, E. J., 2017. Reducing Inmate Misconduct and Prison Returns with Facility Education Programs. *Criminology and Public Policy*. 16(2), 514-547.
- Prisoner Learning Alliance, 2017. *Greenhouses not Warehouses: Commissioning education to plant seeds of hope and opportunity*. Prisoners' Education Trust, London.
- Prisoners' Education Trust, 2014. *Brain Cells: Listening to Prisoner Learners*. Prisoners' Education Trust, London.
- Prisoners' Education Trust , 2018. *Strategy 2018-20*. PET, London.
- Prison Reform Trust, 2003. *Time to Learn*. Prison Reform Trust, London.
- Prison Reform Trust, 2017. *Prison Reform Trust Briefing on the Prisons and Courts Bill*. Prison Reform Trust, London.

Social Exclusion Unit, 2002. Reducing Re-offending by Ex-Prisoners. Social Exclusion Unit, London.

Steurer, S.J., Smith, L. and Tracy, A., 2001. Three State Recidivism Study. Correctional Educational Association, Lanham, MD.

Sykes, G. (1958) *The Society of Captives: The Study of a Maximum Security Prison*, Princeton University Press, Princeton NJ.

Wainwright, L., Harriott, P. and Sajedi, S., 2019. What Incentives Work in Prison? A Prisoner Policy Network Consultation. Prison Reform Trust, London.

Warr, J., 2016. Transformative dialogues: (Re)privileging the informal in prison education. *Prison Service Journal*. 225, 18-25.

Wilson, D., Gallagher, C. and Mackenzie, D., 2000. A Meta-Analysis of Corrections-based Education, Vocation and Work Programs for Adult Offenders. *Journal of Research in Crime and Delinquency*. 37, 347-368.

Woolf, H. and Tumim, S., 1991. Prison Disturbances April 1990: Report of an Inquiry, Cm 1456. HMSO, London.