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## The Legally Sanctioned Stigmatisation of Prisoners' Families

### Introduction

For the first 22 years of my life I regularly visited a relative as he served several sentences in prisons across England, ranging from Categories A to C<sup>1</sup>. Each time, I visited I was searched and our every interaction in the communal visits hall was overseen by security cameras, prison staff, other prisoners and their visitors. The rationale for this was not something I questioned at the time. It was standard practice and a condition of entry to the prison and access to my relative. Ten years after my last visit, I began my foray into prisons research. In an uncanny co-incidence the first prison I entered as an official researcher was the last I had entered as a social visitor. I remembered that last social visit vividly as in addition to searching me, the visits staff did something 'new'; they swabbed our hands for drug residue. Despite remaining a picture of serenity to not arouse suspicion, internally I panicked; not because I had consumed or secreted drugs about my person, but in case I had inadvertently come into contact with any drug residue during my working life as a barmaid. Had a customer paid with a note that someone had used to snort cocaine off? Would that transfer show up on the test? The odds of this were remote but rational thinking was not at play here. My panic was predicated on the consequences of a positive test in an environment where security was paramount. I would likely have been refused entry or offered a closed visit<sup>2</sup> and any lack of culpability on my part would have been of little consequence. Thankfully the test was negative.

Thus when I arrived at this same prison for my first day there as a researcher, I was ready and had steeled myself to what I assumed would be a rigorous security vetting before I was permitted entry. On that day my hands were definitely clean. But the psychological labour I had expended proved unnecessary. The officer checked that the name on my Passport

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<sup>1</sup> For reasons of confidentiality I will name neither my relative nor the establishments he was imprisoned in.

<sup>2</sup> A closed visit would have meant sitting in a cubicle separated from my relative by a pane of plastic whilst spending most of the visit shouting into a microphone. A deeply unpleasant and dehumanising experience to be avoided if possible, especially as we had travelled some sixty miles on public transport at considerable cost for the one visit a month we were entitled to.

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matched that on the list and I was ushered through with a smile along with the rest of the team. I was not searched and neither were my bags. After years as a domestic visitor this was a revelation. But reduced, or at best perfunctory, security processing proved a regular occurrence whenever I entered a prison in an 'official' capacity. I frequently wondered why? I was still essentially the same person; the only difference was this shift in status from entering as a 'social' to an 'official' visitor. In her study of an American prison Comfort (2007) describes this as the transition from 'prisonised visitor' to 'professional outsider'. That shift transformed me from an inherently untrustworthy body that needed to be searched and constantly surveilled within the prison walls to a trustworthy one who did not. It is this conundrum that I wish to interrogate in this chapter drawing on my doctoral research conducted in two prisons in England and Wales.

It is frequently documented that prisoners' families are subject to a 'courtesy stigma'(Goffman 1963:44), akin to a guilt by association for choosing to remain connected to an imprisoned loved one. Numerous studies have highlighted the stigmatisation experienced by prisoners' romantic partners (Davies 1980, Fishman 1990, Girshick 1996, Lanskey, Losel et al. This Volume) that often manifests by way of 'disrespectful' prison visits practices (Liebling 2004, Hutton 2016) or as part of their 'secondary prisonisation' (Comfort 2007). For an insightful socio-legal take see Codd (2008). Important work has also highlighted the stigmatisation of families where a loved one has committed a particularly serious crime (May 2000, Condry 2007). Others have highlighted the stigmatisation of prisoners' children (Scharff Smith 2014, Knudsen This Volume) and how this contributes to their pathologisation (Knudsen 2016). Important insights have also been made as to the wider and longer-term consequences of this stigmatisation for families (Condry This Volume, Lanskey, Losel et al. This Volume). However, to date there has been little examination in the literature of the extent to which this courtesy stigma is embodied in the national rules and local procedures of prisons in their visiting practices. This piece addresses that lacuna.

This chapter will demonstrate empirically how the five elements of stigma identified in Link and Phelan's (2001) classic schema (labelling, negative stereotyping, seperateness, status

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loss and discrimination) manifested in the rules and procedures around visiting and was therefore legally sanctioned. I will begin by highlighting the ways in which prisoners' families' were labelled, misguidedly treated as a 'separate' group within society and negatively stereotyped. Then I will describe how upon entering the prison as social visitors, families suffered a loss of status as their 'outside' identities were erased while simultaneously being subjected to a form of (associative) discrimination brought most clearly into focus when comparisons were drawn between how social and official visitors (such as legal advisors) were treated, and more importantly, trusted by the prison system. Despite both groups entering the prison as 'outsiders', there were important differences around how they were processed, the extent to which they were searched and the location and conditions under which their visits took place. These differences were always to the detriment of prisoners' families who were ultimately treated as untrustworthy and inferior bodies in comparison to those entering for 'official' purposes. Thus this chapter concludes that prisoners' families are spuriously treated less favourably than official visitors, not because of who they are but because of who they are related to; prisoners. Therefore what follows is a comprehensive, empirically driven, socio-legal analysis of the 'subtleties, complexities and contextual nature' (MacLeod and Austin 2003:117) of how this not so courteous stigma manifests and is literally written in to the rules and procedures governing prisons.

### **Research Context and Approach**

This chapter draws on my doctoral research conducted in two category B/C local prisons in England and Wales. For the purposes of this chapter I have named them HMP Anon and HMP Fermington. Over nine months, I conducted 61 semi-structured interviews with prisoners and a range of visitors, predominantly family members. When recruiting visitors there were no specific criteria for participation beyond a personal connection to the prisoner. Similarly, with prisoners, I recruited those who received visits and a small number who did not (although those experiences are not recounted here). Later on in the study, I employed theoretical (or purposive) sampling to capture the experiences of those who engaged in specific types of visits such as family days and closed visits. All interviews were

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conducted in private ensuring the confidentiality of participants whose identities have been anonymised in this study. I also conducted ad-hoc, informal interviews with prison staff alongside extensive observation of each stage of the visiting process in both prisons. Interviews were recorded, transcribed, analysed and coded thematically using NVivo.

The purpose of the study was to deepen understandings of the 'empirical reality of human rights law including its doctrinal technicalities' (Murphy and Whitty 2013:13), in particular how Article 8 of the European Convention on Human Rights 1950 (ECHR), the right to respect for one's private and family life, operates and is understood in the prison environment. Much of the guidance issued to prisons on how to interpret their obligations under Article 8 ECHR is contained in Prison Service Instructions, more commonly, and henceforth, referred to as PSIs. PSIs are policy documents that contain the 'rules, regulations and guidelines by which prisons are run' (MOJ 2017). Thus, although PSIs often contain guidance and examples of 'best' practice for prisons to aspire to beyond the scope of their legal obligations, PSIs are legal instruments and a prison's failure to adhere to a PSI can form the basis for judicial review (von Berg 2014). During data analysis it became clear that whilst directing prisons as to their obligations under Article 8 ECHR ( see Hutton (2017)), another, previously unexplored, narrative emerged around the extent to which the PSIs embodied and facilitated the institutionalised stigmatisation of prisoners' families.

### **Conceptualising Stigma**

Goffman (1963) famously defined stigma as 'an attribute that is deeply discrediting'....'a special kind of relationship between an attribute and a stereotype' that reduces those subjected to it 'from a whole and usual person to a tainted, discounted one' (Goffman 1963:12). Later iterations of the concept have characterised stigma as a characteristic contrary to the norm of a given social unit (Stafford and Scott 1986); as akin to a 'mark' linking a person to undesirable characteristics (Jones, Farina et al. 1984); and an 'attribute' or 'characteristic' conveying a devalued social identity in a particular context (Crocker J 1998). In an excoriating critique Manzo (2004) complained that despite years of attempts to achieve conceptual and definitional clarity, stigma remained a term that was utilised

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liberally but rarely satisfactorily defined. Helpfully, in a comprehensive literature review, Pescosolido and Martin (2015) synthesise these definitions and conclude:

'Stigma, proper, is the mark, the condition, or status that is subject to devaluation. Stigmatization is the social process by which the mark affects the lives of all those touched by it.' (Pescosolido and Martin 2015:91)

Taking earlier critiques around the definitional ambiguity of stigma into account, in an influential meta-analysis, Link and Phelan (2001) identified four inter-related components which when present resulted in the stigmatisation of the group in question; labelling (the distinguishing and labelling of human differences), negative stereotyping (when labelled persons are linked with undesirable characteristics due to dominant cultural beliefs), separating (a degree of separation into 'us' and 'them' by the distinct characterisation of the labelled), status loss and discrimination (leading to unequal outcomes).

It is somewhat trite to state that being (or having been) a prisoner would be considered by many a devaluing mark, condition, or status; indeed, Goffman (1963) included this circumstance within the remit of stigma from the outset. But as Goffman (1963:44) highlighted, for prisoners' families the nature of this stigma is a vicarious one; a 'courtesy stigma' whereby they are stigmatised, not because of their own actions but rather by their close association with the one whom the stigmatised attribute has been ascribed to. What follows then is a close examination of the rules and procedures that govern prison visiting applying Link and Phelan's (2001) schema to illuminate empirically examples of when prisoners' families were explicitly labelled, negatively stereotyped, treated as separate and suffer status loss and discrimination. In short, all the ways in which prisoners' families, as social visitors are subjected to a legally sanctioned form of courtesy stigma. Link and Phelan's (2001) study also highlighted the tendency for earlier conceptualisations of stigma to be overly focussed on individuals with only a limited recognition of the structural factors that facilitated the stigmatisation. Therefore there is an important shift here away from

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individual practices to expose the extent to which this stigmatisation is embedded in the rules and procedures that govern establishments.

### **Labelling, Negative Stereotyping and Separateness**

The first component of stigma Link and Phelan (2001) identify is the labelling of a group; defined as the distinguishing and labelling of human differences that have been selected for their social salience. The second of their criteria is when the group are treated as separate (defined as a degree of separation into 'us' and 'them' by the distinct characterisation of the labelled). That prisoners families are labelled as 'different' and treated as a separate group in policy terms is best exemplified by the recent PSI on corruption that states:

'There is an increased risk of corruption where relationships are formed between staff and offenders and/or with an offender's family or friends. In some instances such relationships may be inappropriate and could constitute or involve criminal conduct (such as the common law criminal offence of Misconduct in Public Office), therefore they are included in the remit of this instruction.' (PSI 05-2016 on Corruption)

In the corruption PSI above, prisoners' families are treated as completely separate to those that work in prisons. This 'absoluteness' is a misguided position that fails to recognise that in many cases this dichotomy is a false one. Contrary to Prison Service logic, the two states are not mutually incompatible and I encountered a number of prison officers and Senior Managers who had prisoners or ex-prisoners in their families. What is also unacknowledged here, as (Maguire 2016) found, is that often there is a geographical congruence between prison staff and prisoners; they are frequently from the same areas so their 'knowing' prisoners' families is inevitable. That aside, this highlights that in policy prisoners' families are labelled and treated as a distinct and separate group and it is not uncommon to see reference to prisoners' families throughout HMPPS literature.

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The third element Link and Phelan (2001) identify is negative stereotyping (when labelled persons are linked with undesirable characteristics due to dominant cultural beliefs). A number of my participants spoke of and sensed that they were negatively stereotyped during their interactions with prison establishments:

“Trust, there is no trust is there? They think because you are coming to see a criminal, that you are kind of in those circles but I'm not” (Garth, Prisoners' father, HMP Fermington)

Here Garth encapsulates what is at the nub of the 'courtesy stigma' experienced by prisoners' families: the perception that they are equally as criminal as those they visit and consequently are inherently untrustworthy. That prisoners' families are negatively stereotyped was recently acknowledged by the Prison Reform Trust who told the All-Party Penal Affairs Parliamentary Group:

'Prisoners' families come from all walks of life and it is important to avoid crude stereotyping which can be stigmatizing and harmful.' (Prison Reform Trust, 2014)

But this aspect of institutionalised courtesy stigma was rarely stated explicitly by staff or in policy; instead my participants sensed it instinctively, albeit intangibly and generally by inference from the way the rules operated on families or staff behaviours towards them (for example by way of more onerous searching conditions as will be discussed below). However, that some staff held stereotyped views of prisoners' families did become clear as similar to Maguire (2016), I witnessed occasions when prison staff utilised these crude stereotypes of prisoners' families, albeit often only when they thought I was out of earshot as the following fieldnote demonstrates:

'I'm in the visits hall, an officer is next to me but I don't think she realises I can hear her as she calls a kid who looks about seven years old 'mini me C&R kid' and tells her colleagues to keep an eye on that one. She adds 'he's delights' in a sarcastic tone.'

(Fieldnote at HMP Anon)

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The reference to C & R is to the control and restraint procedures prisons use to physically restrain 'unruly' prisoners. Here then is an officer characterising the behaviour of a bored child in a sparse visits hall as worthy of punitive measures; the child is the problem, not the visiting system. At this same prison I was frequently informed that prisoners' families' testimony to me about visiting conditions was not to be trusted. One officer warned me of the need to keep an open mind 'because they [prisoners' families] lie . . . they will have an agenda'. What was most interesting about this exchange was the underlying presumption that there was no obvious contemplation of the possibility that I could have been a member of a prisoners' family and a researcher. Thus the attitudes of some staff very clearly labelled prisoners families, treating them as separate and worthy of negative stereotyping.

In policy, the PSI on corruption above is a rare example of this negative stereotyping of prisoners' families manifesting quite so explicitly. As stated, in the PSI, the mere act of prison staff 'knowing' a prisoners' family is treated as a security risk *per se*. Incredibly, within the PSI there is no justification as to why the presumption is made that all prisoners' families are inherently likely to be criminal enough to warrant such an extreme precaution with respect to preventing corruption. In the absence of any validating evidence, it is hard to see this provision as anything more than a manifestation of the unjust negative stereotyping of a group of people HMPPS actually know very little about. Of the families I met, only two had criminal records or involvement in criminal activities. The vast majority were law-abiding and working professionals; from hairdressers to civil servants to small business owners. The idea that they would be involved in 'corruption' or any kind of illicit dealings within prisons was anathema to them (Hutton 2016).

However, *explicit* examples of negative stereotyping such as in the PSI on corruption are rare. In the next section, I will demonstrate that the differences in the rules around social and official visitors are an *implicit* manifestation of this negative stereotyping to be inferred from the status loss and discrimination prisoners' families suffer in comparison to official visitors when interacting with establishments.



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### Status Loss

Link and Phelan (2001:371) consider that an axiomatic consequence of the separating, labelling, and negative stereotyping of a group is their downgrading in the status hierarchy as they suffer status loss.

Visits from legal advisors, police officers, probation officers, authorised researchers, pastoral visits from faith leaders, immigration officials, consular officials, the Crown Prosecution Service and Veterans organisations such as The British Legion all fall under this category of 'official visitor'<sup>3</sup>. As this extensive list demonstrates, the designation of official visitor extends to a wide number of professions but they are all characterised by the 'official' capacity under which they wish to enter the prison and their status as 'professionals'. Throughout their time in the prison, they remained defined by this 'outside' status and retained the trust and respect that comes by virtue of their profession.

In contradistinction, social visitors take on a transitory and anonymised identity. When prisoners' families enter the prison, who they were before the prison gate becomes irrelevant as they take on the singular identity of 'social visitor'. From that point forward they are only seen through the narrow lens of the prison and their role as the family member of the deviant contained within. Any previous 'status' is not only lost but erased. This status loss, this erasure of who prisoners families 'are' before the prison gates, leads to the facilitation of their treatment as 'polluted and inferior' bodies (Comfort 2007:63) compared to the treatment of official visitors as 'superior' bodies. Thus for social visitors the area where they are processed before entering the prison becomes a 'border region':

'the site of contested personhood, an intermediary zone where [social] visitors continually define and defend their social and physical integrity against the degradation of the self required by the prison as a routine condition for visiting.'  
(Comfort 2007:22)

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<sup>3</sup> A comprehensive list is available in the Prison Service Instruction 16-2011 'Providing Visits and Services to Visitors'

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One especially troubling practice that exemplified this process of status loss was the habit of 'stamping' the hands of all social visitors at HMP Anon as they were processed into the prison. All social visitors to the prison were 'stamped' with a mark that could be seen under an ultra violet light, ostensibly as a security measure to prevent prisoners swapping places with their visitors and escaping. But it was only prisoners' families who were deemed to represent a risk in this way as remarkably, legal visitors were not 'stamped' reinforcing their status as superior bodies. HMP Anon was an establishment that only housed adult men over the age of 21 and yet, every social visitor was 'stamped', irrespective of gender or age. Perhaps most disturbingly, HMP Anon deemed it necessary to place this mark on very small children and babies who could in no way have been capable of being utilised for an escape plan. Thus the stamping was for many a gratuitous and unnecessary act yet, reflecting the status loss endured by prisoners' families, no discretion was exercised by prison staff. All prisoners' social visitors were treated as one homogenous, collectively untrustworthy group. So while official visitors remained unsullied, the simple fact of having a more intimate connection to a prisoner necessitated the 'stamping' of social visitors invoking an unfortunate symmetry with Jones et al's (1984) classification of the stigma as a mark.

### **Discrimination**

The final component of stigma described by Link and Phelan (2001) is the consequent discrimination against the group who have suffered this status loss. This discrimination can manifest in a number of ways; individual discrimination (overt interpersonal acts of discrimination), status loss as a source of discrimination (where discrimination leads to, for example, reduced life chances) and, what will be the main focus here, structural discrimination.

Structural discrimination occurs when, irrespective of whether individuals deliberately intend to discriminate, institutional practices embody and reinforce the stigmatisation of groups (Link and Phelan 2001). I am arguing that the labelling and treatment of prisoners' families as a separate group, their negative stereotyping as inherently untrustworthy (and potentially criminal) bodies combined with their status loss facilitates institutional practices that discriminate against them. In essence, that the rules and procedures of prisons 'act to

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endorse and reinforce stereotypes, and disadvantage those labelled' (Pescosolido and Martin 2015:92). This discrimination is brought sharply into focus when comparisons are drawn between the treatment of social visitors (prisoners' families) and official visitors, particularly when we consider differences in how both groups are processed & searched as they enter the prison and the location and condition of visits they are entitled to. As Crocker J (1998) noted these structural factors are often context and spatially specific and transient in their application. Accordingly here the focus will be on illuminating important differences in treatment not only between social and official visitors but also between the two establishments.

### ***Processing & Searching:***

This differential treatment manifested itself in the rules around which level of search visitors could be subjected to as a condition of entry. All visitors (official and social) are generally required to undergo some kind of 'rub-down' search by a prison officer to detect attempts to convey illicit items into the prison. The rules on searching allow for two levels of search; Level A and Level B<sup>4</sup>. Both level A and level B searches involve officers running their hands over specified areas of a visitors' fully clothed body (similar to the body search one might experience at airport security). However the Level A search is designed to be more invasive and permits a more direct engagement with a visitors' physicality. In addition to the basic 'rub-down' officers were instructed to:

*'Search the [visitors] head by running your fingers through her/his head and round the back of her/his ears, or asking her/him to shake out her/his hair and run her/his fingers through it. Unpin long hair if necessary.*

*Look around and inside her/his ears, nose and mouth. You may ask her/him to raise her tongue so that you can look under it.*

*Ask her/him to remove footwear and search thoroughly. Check the soles of the feet.'*

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<sup>4</sup> See Prison Service Instruction 67 – 'Searching of the Person'

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This more invasive Level A search is reserved for only two categories of persons in the prison as a matter of routine; prisoners and social visitors. The rules are clear that official visitors are not to be subjected to this extra layer of security, albeit with no explanation as to why. Here then at a national policy level, prisoners and their social visitors are conflated and treated as equally untrustworthy necessitating the need for an enhanced level of search compared to official visitors. This then is the embodiment of legally sanctioned stigma writ large in visiting policy.

The rules do allow for an element of discretion and prisons are able to forgo the more stringent searching conditions if it is decided at a local level that it is not necessary. Interestingly, although both my research prisons were Category B/C and local establishments, only one (HMP Anon) had chosen to exercise this discretion and not subject social visitors to the enhanced search. However, that HMP Fermington had chosen to implement the enhanced search for social visitors, was noted by a number of my participants. Many of my participants experienced these additional requirements as an inconvenience that added to the labour of visiting. This was especially so for female visitors made to take down their carefully crafted hairstyles in order to prove that they were not conveying illegal items in their hair and were instead just trying to look as attractive as possible for their partners. But perhaps the most galling aspect of this additional layer of search for many was the requirement that unlike official visitors, they as social visitors had to remove their shoes before entering the metal detector. Their shoes then had to be x-rayed after which they had to walk barefoot across what they described as 'that filthy floor' leaving many feel exposed and unclean.

Others noted the extent to which they viewed the requirement social visitors remove their shoes, while official visitors such as legal visitors did not have to, as a discriminatory practice. As Calvin noted:

“For instance, my missus was out there the other week and she was walking through and there was these two men walking in and staff said ‘oh, you don't have to take your shoes off.’ So my missus said why do I have to take my shoes off?’ And it was like discrimination between the solicitor and her. If you look at the wall up there

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you'll see a solicitor on the wall who bought cocaine in his shoes so why don't they have to take their fucking shoes off? They are more or less saying you have to take them off because you're going to bring drugs in and it does happen but....." (Calvin, prisoner, HMP Fermington)

What Calvin was alluding to here was that at the time of the fieldwork there had recently been a case where a solicitor had been sentenced to six years imprisonment. He had been caught smuggling a positive cornucopia of illicit substances (including skunk cannabis, mephedrone and electronic scales) into two different prisons (that the authorities are aware of!) (Cheston 2012). In order to smuggle the illicit items in, he had taken advantage of the fact official visitors were not required to remove their shoes and bought shoes that were three sizes too big to accommodate his haul. Thus Calvin and his wife's indignation was clear; despite the very obvious case of an official visitor using the rules of the prison to facilitate illegality, it was his wife, not the legal visitors who must still remove her shoes. The presumption remained that compared to official visitors, his wife (who had no criminal record nor nefarious intent) was inherently more likely to engage in illicit activity simply by dint of being related to a prisoner; him.

A further irony was that on the second occasion this misbehaving solicitor was known to have attempted to have smuggled drugs into a prison, he had been on bail for his previous attempt. Thus despite pending legal proceedings due to having already been found with drugs in his possession on prison grounds, he had still been able to enter another prison and minister to his clients. This highlights another important difference in standards set for the banning of visitors as a consequence of being caught attempting to smuggle illicit items in to a prison.

The current rules are somewhat contradictory as to the appropriate response for prisons who discover a social visitor to be smuggling drugs, mobile phones (or any other list A or B prohibited items). On the one hand, the rules state that irrespective as to whether the

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visitor is a family member or friend, *'a ban must be the normal response'*<sup>5</sup>. Therefore, it appears social visitors will be axiomatically excluded from visiting, normally for a minimum of three months. But confusingly, the same document also states that because any decision to impose a ban (or closed visits) engages Article 8 ECHR, the principle of proportionality should be applied and decisions should be made on an individual basis<sup>6</sup>. Notably the guidance on official visitors takes a more emphatic, less contradictory tone:

*'There will be times when a dog indicates on an official visitor/Independent Monitoring Board (IMB) members or a member of staff/contracted staff etc. It is vital that prison management makes their response to the indication based on the individual circumstances. Any decision to ban an official visitor or discipline a member of staff must be justifiable.'* (PSI 67-2011 Searching the Person)

In contrast, when dealing with a possible incursion of the rules by an official visitor prison it is 'vital' that they are given the benefit of doubt and more importantly, the very clear presumption of innocence.

What was troubling during my fieldwork was that even though the rules clearly allowed prisons to exercise discretion and apply the principle of proportionality where social visitors were caught with illicit items, in practice both prisons automatically applied a three month ban from the establishment. One incident in particular stands out. A woman who was hearing impaired had attached her mobile phone to her chest with gauze so that she could feel it vibrate when being contacted. Upon it being discovered during searching, she had claimed that she had left it there by accident. The visits staff not only believed in her innocence but because they pitied her were sitting and comforting her. However, as far as the consequences for this indiscretion, the prison staff believed their hands were tied and said that they had no choice but to impose a ban from the prison for three months, most likely followed by three months on closed visits. Here then for a social visitor, acknowledged

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<sup>5</sup> PSI 15-2011 on Management and Security at Visits

<sup>6</sup> Ibid

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innocence and a lack of nefarious intent was no defence to the charge of attempting to smuggle illicit items into the prison.

The knowledge that prisons would take a strict liability approach was noted by many of my participants and they were especially troubled by the way normally innocuous items, such as money, could be transformed into illegal items just by entering a prison with them. Although cash was allowed to be taken over to the visits hall, the amount permitted was restricted. Therefore any money found over that limit left visitors open to sanction and accusations of an attempt to smuggle cash into the prison. That this was a mistake that could easily be made was something many visitors were conscious of:

'Lowe's brother, he had been on a night out and he had a five pound note all scrunched up in his back pocket and he didn't realise it was there. So the police were called for that and he got a caution and I think he was barred. Lowe's girlfriend ended up on a closed visit, and you thought, well that is bad.' (Dennis, Prisoners' father, HMP Fermington)

In this case the transgressor was not only banned from the prison but also received a criminal sanction; his fellow visitor (despite not carrying the money herself) was also penalised with a closed visit. However, from the prison's perspective, although five pounds is not a particularly large amount of money, the decision to take a strict liability approach was predicated on the notion that this attempt could have been a 'test-run'. The concern for the prison was that this attempt was a precursor and the next time the sum involved could be higher. But it is troubling that while the rules are unambiguous as to the benefit of the doubt to be accorded official visitors in these unfortunate circumstances, the rules on social visitors are anything but. The danger here is that this ambiguity leaves prisoners' families at a disadvantage and at risk of an automatic ban, irrespective of the individual circumstances.

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***Location and conditions of visits:***

In both establishments, although domestic and official visitors were initially processed in the same space, their paths diverged as their visits took place in different areas. Social visitors would be directed to a communal visits hall and official visitors would progress to a series of cubicles. At HMP Anon, an important consequence of this bifurcation was that social visitors were subjected to an extra layer of security on the way to the communal visits hall that official visitors were not – sniffer dogs. Conversely, at HMP Fermington, when sniffer dogs were deployed it was at a point in the searching process that would enable them to detect illicit substances on *all* visitors. However, at HMP Anon dogs were, as a matter of routine, only deployed on social visitors just before they entered the communal visits hall. At HMP Anon, it was not uncommon for those negatively 'indicated' by the sniffer dogs to be asked to undergo a full body search, previously known as strip searching. A full body search of visitors' exactly mirrors those carried out on prisoners. The visitor is made to remove the garments on the top half of their body in the presence of two officers of the same gender. The visitor is then scrutinised by the staff members from the waist up. The visitor is then permitted to cover their top half then remove the clothes from the bottom half of their body, again so that they can be scrutinised by prison staff. Thus a practical consequence of official visitors not passing by the sniffer dogs was that they were significantly less likely to be singled out for full body searching. Therefore, although *prima facie*, the power to conduct a full body search was applicable to all visitors, in reality, this was not the case in HMP Anon. Again, a subtle indicator of the designation of domestic visitors as inherently more untrustworthy than official visitors. To be clear, I am in no way trying to imply here that any visitor should be subjected to a full body search, indeed I have argued elsewhere the inappropriateness of such an extreme measure being available to prisons at all (Hutton, 2016 and see Codd, 2008) . I am simply highlighting that the most punitive and degrading measure that could be imposed on a visitor by a prison was only likely to be imposed on social visitors.



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Another important difference arose in the conditions of visits. As the Prison Service Instruction 'Providing Visits and Services to Visitors' (PSI 2011-16) decrees 'social visits *must*<sup>7</sup> take place within hearing range and sight of staff.' Prisons are therefore mandated to ensure a lack of privacy for prisoners and their social visitors that allows for every moment of their time in the prison to be surveilled by prison staff. Accordingly, social visitors would be led to a 'main' or communal visits hall where their visits would be conducted in a large, very public space, where at any one time, particularly on weekends, some 40-50 visits could be taking place at the same time. This meant that in addition to staff surveillance they could be seen and potentially overheard by other prisoners and their visitors. An additional layer of oversight was provided by security cameras that roamed overhead monitored by a team outside of the visits space.

In contradistinction, where privacy is to be kept at a minimum for social visits, the standards for official visits place a premium on facilitating privacy. Prisons are tasked with ensuring:

'Measures are in place to ensure that official visits – particularly those from legal advisers and consular officials – *should take place within sight but out of hearing range of staff*<sup>8</sup>, other prisoners and their official visitors' (PSI 2011-16 'Providing Visits and Services to Visitors')

In short, prisons were obligated to ensure official visits could be seen but not heard. Therefore, official visitors would progress to a designated space for official visits in a separate part of the prison comprised of cubicles; one per each official visit. Unlike the communal visits hall, the spaces for official visits were discreet, not communal, and the only persons present were those relevant to the discussion at hand. There were no security cameras overhead and although the cubicles had Perspex windows into which staff could see, they had to open the door to gain entry and it was only then that they would be able to overhear any discussion. Even the staff surveillance took on a different tone in this context. I conducted a number of interviews in the official visits area at both prisons I researched in. Although an officer was present at all times, for the most part they remained seated at a

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<sup>7</sup> Emphasis added

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desk at the end of the corridor. Unlike the visits hall where they were omnipresent, in this area their presence was intermittent - an occasional walk along the corridor. They would not stare directly in to the room instead glancing discreetly as they walked past to ensure all was well. This meant that official visitors were allowed a degree of privacy that was unimaginable and unattainable for prisoners during their social visits.

One of the biggest concerns for my participants was the impact that the lack of privacy during social visits had on their relationships. Unsurprisingly, the high levels of surveillance inhibited conversation and made it difficult to engage in private and sensitive discussions. And yet here we see that while privacy is prioritised for official visitors, for family members, whose relationships with prisoners would be equally, if not more important, it is not. The incongruity of this circumstance is best demonstrated by the fact members of veterans' organisations, as official visitors, are authorised entry under these privileged conditions to discuss resettlement issues with prisoners. However, the family members who many prisoners will be living with after release are not. Thus the rules decree that the most personal form of relationships, those between prisoners and their families, attract the least degree of privacy whereas the more anonymous relationships between prisoners and their official visitors are afforded the most.

### **Conclusion**

In this chapter I have interrogated some of the ways in which the rules contained in nationally applicable Prison Service Instructions and local procedures of prisons in England and Wales reinforce and sanction the courtesy stigma experienced by prisoners' families. The above demonstrates that social visitors and official visitors are clearly not treated as equals despite the fact both groups enter the prison as outsiders not least because the national rules and specific procedures at both establishments categorised social visitors in need of additional scrutiny and surveillance. Thus, these additional requirements position prisoners' families as 'inferior bodies' by inference simultaneously reinforcing negative stereotypes of prisoners' families as inherently more likely to be criminal and untrustworthy. This is reinforced by the troubling way that all of these discriminatory measures operate corporally; they mandate a more intimate engagement with the bodies of

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those who are more intimately connected to prisoners compared to those who are not. The rules allow social visitors' bodies to be searched more rigorously and be subjected to greater scrutiny on prison grounds. It is hard to ignore the Lombrosian undertones at play here.

Undoubtedly then, all of these additional measures for social visitors discriminated against them by placing them at a comparative disadvantage to official visitors. And yet, these institutional practices of discrimination were not personal. Indeed how could they be when prisons know so little about the characteristics of social visitors or who prisoners' families are before they enter the prison? Therefore, I argue this discrimination emanates from their homogenised collective identity as prisoners' families and the negative stereotypes attributed to that status. Just as Goffman talked of 'courtesy stigma' as stigma by association, this discrimination operates in a similar way and is analogous to 'discrimination by association' (or associative discrimination) under the Equality Act 2010. Associative discrimination occurs where someone is subjected to discrimination not on the grounds of their own protected characteristic (such as race or gender) but because they are associated with one who does (Taylor and Emir 2015). Similarly, I argue that as social visitors are treated as inherently less trustworthy than official visitors based on little, if any, empirical evidence this discrimination stems not from who they are, but because of who they choose to remain connected to.

The next step is to think about precisely why this differential treatment between social and official visitors has been and remains the status quo. In short, is this institutional associative discrimination justified? This will inevitably be speculative as no justification is forwarded in the policy documents I have referenced above. One potential explanation could be that many of the professional visitors who enter the prison are subject to codes of conduct or ethics as part of their role. For example, solicitors are obliged to 'uphold the rule of law', 'act with integrity' and 'behave in a way that maintains....trust' (Solicitors Regulation Authority Code of Conduct, 2011). But such a justification would be flawed on a number of counts. Although I am by no means tarring all lawyers with the same brush, we know from the

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incident described above that lawyers have been found to smuggle illicit items into prisons. So, an obligation to abide by a code of ethics does not automatically translate into exemplary behaviour. Similarly, this is not to deny that some prisoners' families do use visits as a means to smuggle illicit items into prisons, but this, as with official visitors, is an ill-intentioned minority. Further, not all of those within the category of official visitors are employed in professions with a code of conduct, such as the veterans' organisations who are included in this remit. Finally, any reliance on the 'professional' status of official visitors to justify this differential treatment could only be grounded in the assumption that all prisoners' families *are not* members of such professions. Therefore, such a wide-ranging justification based on 'professional' status alone would clearly be predicated on fallacious logic and unjustifiable.

Link, Yang et al. (2004) emphasise that the presence of stigma depends heavily on social, economic and political power permitting differences to be identified. To this I would add the previously unconsidered way that the legal powers around visitation vicariously stigmatise prisoners' families. What is important here is that the stigmatising processes described in this chapter depend not on the vagaries of the actions of individuals within prisons, they are structural and embedded into the rules that govern prison visits. It is these rules that unjustifiably label prisoners' families, treat them as a separate group and embody negative stereotypes that translate into status loss and discrimination upon their entering the prison. As such the rules and procedures around prison visits ultimately designate prisoners' families as inferior and untrustworthy bodies compared to official visitors constituting and facilitating a form of legally sanctioned courtesy stigmatisation of prisoners' families. Accordingly, I have written this chapter in the hope that prisoners' families will eventually be afforded the same basic courtesy of trust and benefit of the doubt afforded to those who enter the prison as official visitors. This chapter is a plea to prisons and policy makers to recognise and address gratuitous stigmatising rules and practices in visiting procedures. A plea that prisoners' families not be subjected to unjustifiable, unfair, and unwarranted discriminatory practices based not on who they are but simply because of the imprisoned loved one they choose to remain connected.

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