

Prisons—Prisoners' rights—Detention at His Majesty's pleasure—Statute providing for review of minimum terms to be served by offenders detained at Her Majesty's pleasure—Right to request review limited to offenders under age of 18 when sentenced—Whether incompatible with Convention rights— Crime (Sentences) Act 1997 (c 43), s 27A(1) (11) — Powers of Criminal Courts (Sentencing) Act 2000 (c 6), ss 82A , 90 — Human Rights Act 1998 (c 42), Sch 1, Pt I , arts 5 , 7 , 14

Law Reports

Court of Appeal: [2025] 1 W.L.R 2682 (CA)

High Court: [2024] 1 W.L.R 3303 (DC)

Time occupied below

Court of Appeal: 1.5 days (excluding judgment)

Divisional Court: 1.5 days (excluding judgment)

In The Supreme Court of the United Kingdom

UKSC 2025/0138

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

President of the King’s Bench Division, Lewis LJ, Cobb J

B E T W E E N :

**THE QUEEN on the application of
QUAYE**

Appellant

- and -

SECRETARY OF STATE FOR JUSTICE

Respondent

STATEMENT OF FACTS AND ISSUES

I. INTRODUCTION

1. This appeal concerns the meaning and substance of detention during His Majesty’s Pleasure (“***DHMP***”) - the mandatory sentence reserved for those who commit murder under the age of 18, i.e. as children. In particular it concerns the effect of section 27A of the Crime (Sentences) Act 1977 (“***CSA 1977***”), inserted by section 128 of the Police Crime Sentencing and Courts Act 2022 (“***PCSCA 2022***”), which withdraws the opportunity for (some) HMP detainees to seek a review of the minimum term of

imprisonment fixed at their trial based on whether they are (or were) 18 at the date of their sentencing.

2. The Appellant's claim asserts that in removing the possibility of review on the basis of a detainee's age at the date of sentencing (and also that in doing so retrospectively), s.27A is incompatible with Article 14 (read with Article 5), Article 5 and Article 7 of the European Convention on Human Rights ("*ECHR*").
3. The Divisional Court (William Davis LJ, May J) granted a declaration of incompatibility under section 4 of the Human Rights Act 1998 in respect of Articles 14 (read with Article 5), and 5. (The Court considered it unnecessary to determine the issue in relation to Article 7). That order was subsequently quashed (and the Appellant's cross-appeal on Article 7 dismissed) by the Court of Appeal (Dame Victoria Sharp P, Lewis LJ, Cobb J) which accepted the Respondent's central contentions that: (a) although Article 14 was engaged, the differential treatment complained of between child offenders subject to DHMP could be "justified" for Article 14 purposes; and (b) section 27A did not engage Articles 5 or 7. The Court of Appeal's decision is the subject of this appeal.

II. THE FACTS

The Appellant and index offence

4. The Appellant is currently serving a sentence of DHMP following his conviction for murder (by stabbing), assault occasioning actual bodily harm, and possession of a knife, committed on 10 May 2014. He was born on 15 August 1996 and was seventeen at the time of the offence. The murder was committed jointly with another child who was aged fifteen at the time. The Appellant had no convictions prior to the index offences.
5. The Appellant (dob 15 August 1996) turned eighteen 3 months prior to the date of his conviction (20 November 2014). At the time of their sentencing on 16 January 2015, the Appellant was aged 18 years and 5 months and Mr Bile was still under eighteen. Both defendants were given the mandatory sentence of DHMP, each with a minimum term of 15 years.
6. On 15 March 2022, the Appellant reached the 'halfway' point of his minimum term, following which he would previously have been entitled to apply to the High Court for

a review of his minimum term of imprisonment. As a result of s.128(1) PCSCA, however, the Appellant is unable to seek a review (and potential reduction) of his minimum term, including with regard to any progress made since he was sentenced at the age of 18. He is now 29 years old.

Summary Overview of Detention During His Majesty’s Pleasure

7. Since 1909, DHMP has been the punishment for those who commit murder during childhood (i.e. when under 18 years old) regardless of their age when sentenced. It is a sentence of imprisonment for an indefinite period (as long as is considered necessary) in a place determined by the Secretary of State, and under lifelong licence subject to recall thereafter. There have been many legislative enactments reaffirming DHMP as the mandatory sentence for such persons. DHMP sentences are currently imposed under s.259 of the Sentencing Act 2020, which replaced s90 of the Powers of Criminal Courts (Sentencing) Act 2000 (“**PCCSA 2000**”) under which the Appellant’s sentence was imposed.
8. Since approximately 1983¹, sentences of DHMP have included a ‘tariff’ (now ‘minimum term’) representing the minimum period deemed necessary to serve the purposes of retribution and deterrence during which a detainee will not be considered for release. Thereafter detainees have been released at the Secretary of State’s discretion subject to consideration by the Parole Board as to whether it remained necessary for him/her to be detained in order to protect the public from serious harm.
9. The nature and content of DHMP was last considered by this Court, constituted as the House of Lords, in *R (Smith) v Secretary of State for the Home Department* [2006] 1 AC 159; [2005] UKHL 51, following its decision in *R v Secretary of State for the Home Department Ex parte Venables* [1998] AC 407. In *Smith*, Lord Bingham (with whom Lord Nicholls, Lord Hoffman, Lord Hope, and Baroness Hale agreed) held that sentences of DHMP imposed prior to 30 November 2000 required that they “*should remain subject to continuing review for reconsideration of the minimum term imposed if clear evidence of exceptional and unforeseen progress is reasonably judged to require it*” [17]. This requirement was “*an important and distinctive feature*” of DHMP [10], which arose from “*the inherent nature of the sentence of [D]HMP*” [11]. As such,

¹ Pursuant to a policy announcement by then Home Secretary Leon Brittan on 30 November 1983. The Policy explicitly applied to adult life sentences but was also applied in practice to sentences of DHMP.

“[w]hile there is or may be no objection in principle to the fixing of a minimum term to be served by an HMP detainee before the grant of parole, such term may only be provisional, since the progress of the detainee in custody, reported through continuing review of the detainee's progress, may call for it to be varied downwards” [10].

10. Over the 22 years following *Smith* and prior to the enactment of s.27A, CSA 1977, the High Court has exercised the jurisdiction (upon referral by the Secretary of State) to review minimum terms. In such cases, a minimum term of DHMP was capable of reduction where:

- i. The offender made exceptional and unforeseen progress during his or her sentence;
- ii. The offender's welfare may have been seriously prejudiced by his or her continued imprisonment, and the public interest in the applicant's welfare outweighed the public interest in a further period of imprisonment lasting until the expiry of the current minimum term; or
- iii. There was a new matter which called into question the basis of the original decision to set the minimum term at a particular level.

Sections 27A and 27B, CSA 1977

11. Section 128(1) PCSCA 2022 inserted two new sections (s27A, and s27B) into the CSA 1977 under the heading *“Sentence of detention during Her Majesty's pleasure: review of minimum term”*.

12. Section 27A is headed *“Sentence of detention during Her Majesty's pleasure imposed on a person under 18: application for minimum term review”*. It provides a statutory right for *“relevant young offenders”* who have served half of their minimum term of detention² to apply to the Secretary of State for a reduction of that minimum term. A *“relevant young offender”* is defined in subsection 1 as *“a person who: (a) is serving a*

² Subsections 8 and 9 provide that: *“minimum term”, in relation to a person serving a DHMP sentence, means the part of the sentence specified— (a) in the minimum term order made in respect of the sentence, or (b) where one or more reduction orders have been made under section 27B in respect of the sentence, in the most recent of those orders.*

“minimum term order”, in relation to a DHMP sentence, means the order made under:

- (a) Section 322 of the Sentencing Code [where the DMHP was imposed under section 259 of the Sentencing Code, or Section 218 of the Armed Forces Act 2006];
- (b) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 [where DHMP was imposed under Section 90 of the Powers of Criminal Courts (Sentencing) Act 2000]; [...]

*DHMP sentence*³, and (b) was under the age of 18 when sentenced”. Subsection 5 imposes a duty on the Secretary of State to consider applications for the review of a minimum term and refer them to the High Court (which has the power to reduce the minimum term to a period it thinks appropriate under section s.27B) unless the Secretary of State is of the view that the application is frivolous or vexatious.

13. Subsection 27A(11) provides that: “*There is no right for any person who is serving a DHMP sentence to request a review of the minimum term other than that conferred by this section.*”

14. On 28 April 2022, section 128(1) received Royal Assent and came into force on 28 June 2022. The effect of sections 27A (1) and (11) is that, since that date, DHMP detainees are unable to request a review of their minimum term if their sentencing hearing took place on or after their 18th birthday.

The Claim against the Defendant

15. On 8 September 2022, the Appellant lodged an application for judicial review seeking a declaration of incompatibility in respect of s.27A under s.4 of the Human Rights Act 1998. It was argued that the provisions were incompatible with Article 14 (in the ambit of Article 5), Article 5, Article 6 and Article 7 ECHR.

Divisional Court

16. The Divisional Court determined that:

(i) The “*essential nature*” of sentences of DHMP remained as identified by this Court (constituted as the House of Lords) in *Venables* and *Smith*: [47], [54]. “*In statutory terms [DHMP] is to be distinguished from a sentence of imprisonment or detention for life. Had Parliament wished to legislate to change the basis of sentencing for those who commit the offence of murder when under the age of 18 but who are not sentenced until after their 18th birthday, it would have done so explicitly.*” [47]

(ii) In relation to Article 14, it was common ground that the provisions created differential treatment within the ambit of Article 5. However, s27A was “*without*

³ Subsections 8 and 9 (combined) provide that: “*DHMP sentence*” means a sentence of detention during Her Majesty’s pleasure imposed (whether before or after this section comes into force) under” [...]: “Section 259 of the Sentencing Code; Section 90 of the Powers of Criminal Courts (Sentencing) Act 2000; [or] Section 218 of the Armed Forces Act 2006.

reasonable foundation” [49] and the justifications advanced by the Secretary of State were insufficient to render that differential treatment proportionate. S27A was therefore discriminatory and incompatible with Article 14 (see [46]-[58]). This was on the basis that:

- a. The Court accepted that “*a wide margin of appreciation must be given when considering the judgment of the legislature and the objective justification for differential treatment*”. Further, whilst “*any issue relating to the liberty of the subject required close scrutiny*”, the scrutiny to be applied in this case is lower in the absence of differential treatment arising from ‘suspect grounds’: [46]. However, “*even with a low level of scrutiny there is no objective justification for the differential treatment of offenders sentenced to DHMP who are 18 at the date of sentence*”: [47].
- b. In respect of the Respondent’s first justification- that offenders sentenced after their 18th birthday fall to be treated as adults:
 - (1) That suggestion was “*not sustainable*” [48]. For the purposes of sentencing “*[w]hat is critical is the age of the offender when the offence was committed*” as “*culpability [...] must be assessed by reference to age at the time of the offence. This principle is made explicit by the statutory basis of the sentence of DHMP*” which is reserved for those who commit murder when aged under 18. The conflation of “*offenders who committed offences over the age of 18 and those who committed murders as children*” also failed to reflect established sentencing practice given statutory force by relevant Sentencing Guidelines coupled with s59 of the Sentencing Code 2020: [49].
 - (2) A “significant part” of the justification for the differential treatment was the suggestion (reflected in the White Paper published prior to the enactment of the PCCSA⁴) that persons aged 18 are not subject to “*the same accelerated development and maturation as a child*”. This proposition was unsupported by evidence, contrary to a “*welter of authority*” to the effect that young adults continue to mature after their 18th birthday, and contrary to scientific evidence referred to by officials

⁴ “A Smarter Approach to Sentencing” published in September 2020

advising on the proposed legislation: [50].

- (3) The suggestion that achieving the age of 18 before sentence could justify differential treatment also lacks logic in light of the fact that reviews are concerned with an offender's progress throughout the whole of his sentence (not just the period prior to attaining 18) and that crucial progress justifying a reduction of sentence is commonly made when an offender has passed their 25th birthday: [51].
 - (4) Differentiating between persons subject to the same sentence by reference to age at *date of sentencing* (cf. date of offence) is arbitrary. The nature of a sentence should be determined by reference to age and culpability at the time of the offence. Further, the date of sentence can be subject to delay for a variety of reasons including delays due to court backlogs, the arrest and/or trial of other co-defendants, and the preparation of necessary reports for sentencing. In that context *"the fact an offender was 18 at the date of sentence would be random and wholly unconnected with the offender's culpability. Differential treatment resulting from random events cannot be objectively justified"*: [52].
 - (5) The Respondent's submission that the legitimate aim of s27A was to protect those under 18 *"could only have force if the legislation amounted to a fresh start for sentencing those who were under 18 when committing murder. It did not, it was concerned with only one aspect of DHMP"*: [54].
- (c) In relation to the Respondent's second justification - the protection of victims' families from distress: the Court held that *"even affording a wide margin of appreciation, the interest of victims did not provide an objective justification for those age 18 at sentence being deprived a review. That is not to ignore or diminish the position of victims' families. Rather, it is to engage in an objective assessment as to how the rights of those families can impact on a particular aspect of an offender's detention."* [57] The Court had regard to (i) the emphasis in the White Paper on distress caused by repeated (rather than single) reviews, (ii) the limited extent to which victims can properly be involved in the process of minimum term reviews given that reviews are

conducted “*on grounds wholly unconnected with the effect of offending on the victim’s family*”, and (iii) that offenders will, in any event be eligible for parole thereafter at which point victims have a significant role to play: [56-57].

(iii) Section 27A was also incompatible with Article 5 as the removal of a mechanism by which the Appellant may exercise an inherent right afforded as part of his sentence (i.e., the right to review) was arbitrary and generated a risk of arbitrary detention: see [59]-[61].

(iv) There was no incompatibility with Article 6, which was not engaged: [61].

(v) It was unnecessary, in light of the conclusions reached on other grounds, to consider Article 7: [62].

(vi) The Court declined to admit further evidence submitted by the Appellant (including statements from other HMP detainees and expert evidence of Child and Adolescent psychiatrist Dr Delmage concerning the existence and extent/rate of ongoing maturation and capacity for change in young adults post 18 up until their mid-twenties). The Court accepted the Respondent’s submission that admission of the evidence was unnecessary in light of judicial pronouncements to the effect that “*maturation continues well beyond a person’s 18th birthday*” [24], which was also reflected in the materials before the Secretary of State prior to the enactment of section 27A and the Secretary of State’s existing policies relating to the treatment of young adults: [24], [29].

Court of Appeal

17. Following the Secretary of State’s appeal to the Court of Appeal (with permission granted by the Court below on public interest grounds) the Divisional Court’s order was overturned, and the Appellant’s cross-appeal in respect of Article 7 was dismissed.

18. The Court of Appeal held that:

(i) By the time of the Appellant’s sentencing (following the enactment of s.82A of the PCCSA 2000 on 30 November 2000 and/or thereafter by virtue of further changes made with the Criminal Justice Act 2003 on 4 April 2005) the operation of sentences of DHMP had been altered such that it was no longer an inherent requirement of a sentence of DHMP that the tariff fixed by the trial judge must be

capable of review and reduction in light of post-sentence progress. The sentence imposed upon the Appellant therefore had not included any inherent right to seek a review: [84]-[87], [131].

- (ii) The impugned provisions were compatible with Article 5. In the absence of any inherent right to review as part of a sentence of HMP detention, detention during the Appellant's tariff period did not engage Article 5 *per se*. Brown v Parole Board applied [2018] AC 1; [2017] UKSC 69 applied: [78]-[94].
- (iii) The opportunity to seek review of a minimum term of DHMP concerned matters of execution or enforcement (rather than substantive features of the sentence) and therefore did not engage the Article 7 prohibition on retrospectivity: [101]-[102].
- (iv) The impugned provisions were justified under Article 14 read together with Article 5. The aims of the legislation were legitimate ones: "*seeking to balance the interests of the families of victims with those of offenders*" [121]. There is a reasonable relationship of proportionality between the aims and the means employed on the basis that:
 - a. Applying R (SC) v Secretary of State for Work and Pensions [2022] AC 223, the subject matter concerns "*legislative choice in terms of penal policy and the balancing of the interests of victims' families with the interests of offenders*", where "*appropriate weight, usually substantial weight*" is given to the judgment of the legislature: [122].
 - b. The ground for the difference in treatment is 'age when sentenced' which is not a 'suspect ground' which would in principle require weighty reasons by way of justification: [123].
 - c. The fact of primary legislation and that Parliament considered a proposed amendment providing for persons under 26 to apply for a review was a "*very powerful factor*" indicating that the appropriate balance had been struck [124]-[125]; and the Divisional Court erred in refusing to consider what was said in Parliament on Pepper v Hart grounds [126]-[128].
 - d. The Divisional Court's reasons for finding the provisions disproportionate were incorrect because:
 - (1) The Divisional Court failed to recognise that the operation of DHMP sentences has altered over time such that a right to review was no longer

a feature of the sentence at the time it imposed upon the Appellant, and ss.27A(11) expressly provides that there is no right to request a review if the offender is/was over 18 when sentenced: [131]-[132]. Comparison with earlier legislation does not assist in considering the compatibility of the current legislation with Article 14: [133].

(2) The Divisional Court's observations that relevant maturation continues after 18 and that the offender's culpability falls to be assessed by reference to the date of the offence (cf. sentence) were correct but were not relevant to the issues in this case: [134]-[135]. This was because culpability is reflected in the length of the minimum term fixed at sentencing, whereas applications for review are concerned with events after the sentence has been imposed: [135].

(3) The Divisional Court was wrong to hold that there was 'no logic' in distinguishing between offenders based on age at the date of sentencing: [136]-[137]. In making that finding, the Divisional Court had not been "*carrying out the proper process of assessing [...] proportionality*" and did not specifically take account of Parliament's decision as to where the balance should lie: [137]-[138].

(4) Any arbitrariness associated with the timing of sentencing hearings (i.e., that they could be "*delayed for a variety of reasons*") could not render legislation disproportionate: [138].

b. The Divisional Court had "*minimised*" the significance of minimum term reviews to victims' families: [139].

(v) None of the other reasons given by the Divisional Court or advanced on behalf of the Appellant "*casts any doubt on the assessment made by Parliament that the legislation strikes a fair balance between the competing interests*": [142].

Permission to appeal to Supreme Court

19. On 9 April 2025, the Court of Appeal refused permission to appeal to the Supreme Court.

20. On 3 November 2025, the Supreme Court (Lords Briggs, Burrows and Stephens JJSC) granted permission to appeal.

III. AGREED ISSUES

21. The issue in this appeal is whether ss.27A, CSA 1997 is compatible with Article 14 (read with Article 5), Article 5 and/or Article 7 of the European Convention on Human Rights.

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Date: 2 March 2026

ANNEX

Chronology of the Appellant, Index Offence and Impugned Legislation

Date	Event
15 August 1996	The Appellant's date of birth.
10 May 2014	The Appellant committed the index offences aged 17 years and 9 months together with his co-defendant Ayomindy Bile (aged 15).
20 November 2014	The Appellant and his co-defendant were convicted jointly of murder, assault occasioning actual bodily harm and possession of an offensive weapon. The Appellant was 18 years and 3 months at the date of conviction.
16 January 2015	The Appellant was sentenced to detention at Her Majesty's Pleasure, with a minimum term of 15 years. The Appellant was 18 years and 5 months at the date of sentence.
September 2020	The Respondent published a White paper "A Smarter Approach to Sentencing" which proposed reforms to <i>inter alia</i> the availability of minimum term reviews for HMP detainees. The proposals sought to limit the number of repeated reviews for HMP detainees after their 18 th birthday.
16 October 2020	Advice was provided to the Respondent (at the request of ministers) in relation to a proposed removal of the right to seek review of minimum terms altogether based on age at the date of sentencing. That advice included the proposition that the policy previously in place had been "<i>more generous</i>" than required by case-law insofar as it allowed for reviews of detainees who had been sentenced after turning 18. A request by officials to explore potential measures to mitigate unfairness occasioned by delays in the criminal justice system was denied by the Lord Chancellor on the basis that "<i>the fact they won't be entitled to a review is a matter for the court to take into consideration [at sentence]</i>".
18 February 2021	The Secretary of State revised his policy for minimum term reviews to exclude the opportunity of a review for those who were aged 18 or over at the time of sentence. This policy change was expressed to operate retrospectively.
10 June 2021	A proposed amendment seeking to replace references to the age of 18 in the draft s27A with the age of 26 was debated in Parliament. The amendment was rejected by a majority of 5 members to 2 members.

15 March 2022	The Appellant reached the half-way point of his minimum term.
28 April 2022	The impugned legislation received Royal Assent.
28 June 2022	Section 27A of the Crime (Sentences) Act 1997 came into force.

Chronology of Proceedings

27 June 2022	The Appellant sent a pre-action protocol letter to the Respondent.
29 July 2022	The Respondent provided a response to the Appellant's pre-action protocol letter.
3 August 2022	Further pre-action correspondence sent by the Appellant inviting a response in respect of outstanding issues raised in the Appellant's letter of 27 June 2022.
1 September 2022	The Respondent wrote to the Appellant indicating that no further substantive response would be provided and referring back to the letter of 29 July 2022.
8 September 2022	The Appellant filed an application for permission to bring judicial review proceedings against the Respondent, the Secretary of State for Justice.
7 March 2023	Permission to bring judicial review proceedings was granted on the papers by Sir Duncan Ouseley sitting as a High Court Judge.
23 January 2024	Substantive hearing of the claim was heard before Lord Justice William Davis and Mrs Justice May, sitting as a Divisional Court.
9 February 2024	Divisional Court judgment was handed down in <i>R. (on the application of Jesse Quaye) v Secretary of State for Justice</i> [2024] EWHC 211 (Admin).
14 March 2024	Permission for leave to appeal granted to the Respondent by the Divisional Court (on public interest grounds only). Permission was refused for the Appellant to advance arguments in respect of Articles 6 and 7, and the admissibility of further evidence.
11-12 February 2025	Oral hearing of the appeal before Dame Victoria Sharp P, Lewis LJ, and Cobb J.

11 March 2024	Court of Appeal handed down judgment: [2025] 1 W.L.R, 2682; [2025] EWCA Civ 226.
9 April 2025	Leave to appeal to the Supreme Court refused by the Court of Appeal.
31 October 2025	Supreme Court granted permission to appeal (Permission granted by Lord Briggs, Lord Burrows and Lord Stephens.)
3 November 2025	Order sealed granting permission to the appeal to the Supreme Court