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Shrewsbury 24 to Challenge Miscarriage of Justice Watchdog

Jon Robins, 'The Justice Gap': Construction workers claiming to have been wrongly jailed following an industrial dispute in the 1970s are to challenge a refusal by the miscarriage of justice watchdog to refer their case back to the Court of Appeal. The judicial review is the latest step in an epic fight by the so called Shrewsbury 24 who say they were wrongly convicted of offences relating a national builders' strike at Shrewsbury crown court in 1973. Six men were jailed, including the actor Ricky Tomlinson who got two years, having been charged under arcane legislation (Conspiracy Act 1875) for offences relating to intimidation and damage to property for picketing during the first nationwide industrial action by the building trade.

The Shrewsbury 24 made an application to the Criminal Cases Review Commission (CCRC) over six years ago in April 2012 but their application was only rejected earlier this year. 'Our case should have been referred back to the Court of Appeal at least three years ago,' commented the campaign secretary Eileen Turnbull. 'The CCRC has dragged its feet for more than five years and then failed to apply the relevant law to the fresh evidence that we provided. We look forward to the full hearing in the spring as we are confident that we will succeed.' Mr Justice Jay has granted permission for the case to proceed to a full judicial review hearing. According to the campaign, it is the first time that the Shrewsbury pickets have been before a court since 1974. The CCRC had opposed their application for judicial review and they were originally refused permission for the application to go forward to a full court hearing. The Shrewsbury 24 will now challenge the CCRC on the grounds that their rejection was 'irrational and perverse'.

Terry Renshaw, speaking on behalf of the pickets, said it was 'a momentous victory' for the campaign. 'When we left the court we were delighted with the decision and felt a great sense of achievement after campaigning for the past twelve years to overturn this miscarriage of justice. We are nearly there.' The case is likely to be heard in next Spring and the court will look at two main grounds: that the destruction of original witness statements by the police, which was concealed from the defence and court by the prosecution, amounted to an abuse of process; and the broadcasting of an ITV documentary (Red under the Bed) halfway through the trial was highly prejudicial to the pickets. 'I want to thank our trade union and Labour Party supporters for the unwavering backing that they have given to us as we would not have got this far without it,' said campaign chairperson Harry Chadwick: 'The fight is not over yet. We need your continued support to raise funds for the forthcoming hearing. We ask branches, trades councils and CLPs to affiliate to us for 2019 and donate to our legal fund.'

UK Has Highest Number of Life-Sentenced Prisoners in Europe

Klara Slater, 'The Justice Gap': There are 8,554 prisoners presently serving a life sentence in the UK more than France, Germany and Italy combined. According to the Prison Reform Trust's Bromley Briefings, an analysis of international figures from 2016, the UK is also the European country with the highest proportion of citizens serving life sentences, at 13 per 100,000. This is in stark contrast to France and Russia, where the rates are 0.7 and 1.2 respectively.

Contributors to the report, Professor Dirk van Zyl Smit and Dr Catherine Appleton said that the UK's use of indeterminate sentences was 'plainly out of kilter with the majority of international comparators'. They identified the passage of the Criminal Justice Act 2003, which introduced the indeterminate sentence for public protection (IPP), as a 'watershed' moment which, they argued, had inflated punishment tariffs for formal life sentences.

Although IPPs were abolished in 2012, there are still 2,598 people currently in prison serving such sentences and almost nine out of 10 (89%) had passed their original tariff expiry date. Their analysis goes on to identify other factors contributing to the high figures, particularly the UK's imposition of mandatory life sentences for murder and the wide range of offences which attract discretionary life imprisonment, which is not the case for most European countries.

Peter Dawson, Director of the Prison Reform Trust commented: 'In many cases [there is a] sense that punishment, though deserved, has ceased to be proportionate or just in its administration. This has profound implications…if the treatment of those serving the longest sentences is to be both humane and purposeful.'

Murder Trial Collapses Due to RTÉ Programme

Natasha Reid, Ireland International News: A High Court judge has criticised what she described as "a parallel justice system in the court of public opinion", which is "gathering force" in Ireland and operates without "any regard to the courts at trial". Ms Justice Carmel Stewart made the remarks as a murder trial collapsed at the Central Criminal Court due to the content of Tuesday night's Prime Time programme on RTÉ, which she said was likely to have influenced the deliberating jury. The defence applied to discharge the jury following a 10-day trial due to a segment on the programme which "rubbished" the defence of provocation on which he was partially relying.

The jury had begun deliberating on Tuesday on whether the man, who stabbed a musician on either side of his neck, was guilty of murder or manslaughter. Keith Brady, 31, was charged with murdering Martin 'Matt' Kivlehan, 59, on either 2 August or 3 August 2015. He had pleaded not guilty to murdering the man, but guilty to his manslaughter. It was a retrial, so the matter was already being considered by a jury for a second time. Defence barrister Brendan Grehan SC had said that Mr Brady satisfied the defence of provocation because he had perceived that the deceased was touching his sister, Janice Brady. The judge had explained that provocation could reduce murder to manslaughter.

However, before the jury was brought into court, Mr Grehan raised a segment from Tuesday's Prime Time programme with the judge. He explained that, following a report on the recent Kerry murder trial, there was a discussion about the law of provocation between the presenter and a well-known senior counsel, lecturer, author and media commentator. The defence then played the segment for the court. Mr Grehan said afterwards: "I'm not saying there can never be media, academic or legal discussion in relation to a defence or its merits. But we are, in this trial, at a particularly sensitive time where a jury is deliberating."

The criticism of the defence of provocation and of the subjective test used in the defence may or may not be valid, he said, but what the viewer was left with was a suggestion that it was an ancient defence where somebody could make any allegation against the deceased who can't rebut it and, in particular, an unwanted sexual advance - mirroring the facts of this particular case. According to Mr Grehan, the segment suggested "the courts here are soft on the defence" and made reference to two of the most well-known Supreme Court judges in the country.

He complained about the suggestion, attributed in the piece to the late Mr Justice Adrian Hardiman, that the frailties of this defence could be mitigated by the person raising it having to

get into the witness box to explain what they did and be open to cross-examination. Mr Grehan said that he couldn't find this comment in any of Mr Justice Hardiman's judgements.

He added: "It leaves the jury in the situation where they've heard directions from you but now may have been exposed to the view that judges of the Supreme Court don't agree with the law in respect of this matter. The application I'm bound to make is one to have the jury discharged as there's a real risk and danger that contamination may have taken place."

Paul Murray SC, prosecuting, said he could not think of any case either where Mr Justice Hardiman had expressed the view about the accused getting into the witness box. However, he said that he was not too sure that it was absolutely and necessarily fatal to the case.

Both barristers agreed that, if none of the jury had seen it, that could be the end of the matter so long as the piece would be taken off the internet.

However, it emerged that five of the members of the jury had watched the segment and it had been discussed among them the next morning. With great regret, Ms Justice Stewart said she was left with no option but to discharge the jury. The judge commented that "some sort of parallel justice system in the court of public opinion" was "effectively gathering force" in this country "without any regard to the courts at trial". She added: "You have to sit through a criminal trial from beginning to end to get the full picture. In this day of instant communications and instant response, this parallel running commentary ongoing in both media and on other public platforms and social media comment is quite concerning."

Noting that another trial in the Central Criminal Court had collapsed over the past fortnight due to such coverage, she said courts may have to return to sitting late at night and sequestering juries to a hotel, "if this type of running commentary continues where trials are ongoing". Mr Brady was remanded to 17 December, when a date will be set for his third trial.HH

Well-heeled: Dozens of pairs of designer trainers seized from a convicted gangster are set to be auctioned to raise money for fighting crime. A total of 55 pairs of trainers, together worth almost £20,000, were seized from Isaiah Hanson-Frost, 22, after his arrest. He is currently serving a six-year jail term for shooting a car of rival gang members in Gloucester last November. The designer trainers will now be auctioned under the Police Property Act. Detective Inspector Dave Shore-Nye of Gloucestershire Constabulary said: "We often see the reason for someone to commit crime is down to their own personal greed and to make money. "We are keen to put a stop to anyone who is living a lavish lifestyle which has been funded through crime and this shows the level Gloucestershire Constabulary will go to in order to strip a criminal of their assets and then put the money to good use."

Computer Says 'No': Fraud Algorithm Denies Tens of Thousands Justice

Scottish Legal News: Fraud victims have been denied justice after a computer algorithm dismissed four-fifths of reported cases. The Sunday Telegraph reports that 80 per cent of fraud incidents reported to the police in 2017-18 were rejected. In total, 237,200 of the 293,900 reports made to the police were sifted out by what officials called the National Fraud Intelligence Bureau's "brain", which filters for crimes worth more than £100,000 or those that have investigative leads. Two per cent of reported frauds have resulted in convictions. Yvette Cooper, chairman of the Commons Home Affairs Committee, said: "This is giving criminals a free ride, even though these crimes can be devastating for people who lose all their savings through fraud. "It shows how badly overstretched the police are, and also how they are struggling to

keep up with the changing pattern of new online crime." Police said the algorithm concentrates on "significant" value frauds, cases with leads and those posing the biggest threat. Detective Chief Superintendent Pete O'Doherty, City of London Police's head of crime and cybercrime said: "We should investigate more but I believe that for a proportion of crimes, enforcement is not the answer. If you find and arrest that offender, is he going to come out of prison, even if he gets to prison, and do it again? The answer is probably yes. Is it better for the public to understand how he committed that crime and remove the opportunity for that offender?" He added: "The question is how the police upskills itself at the pace at which it is required."t

Culpable Homicide Reform Could Bring Greater Precision to the Law

James Varney, Scottish Legal News: Proposed reforms to Scotland's culpable homicide laws aim to make it easier for businesses or organisations to be held to account if they cause deaths. While the differences between Scots law and English law run deep – from the origins of some of our rules in Roman law compared with the mainly common law heritage south of the border – one of the most obvious variations between the two systems is the different words used for the same, or similar, crimes. The English have 'arson', we have 'fire-raising'; they have 'burglary', we have 'house-breaking'; they have 'manslaughter', we have 'culpable homicide'. It may not be a term that's in common usage, but few crimes are as serious as culpable homicide. A murder may have been committed in Scotland where the perpetrator intended to kill or was wickedly reckless. Where death is caused without such specific intention or wicked recklessness, a conviction for culpable homicide may follow.

A successful prosecution of an individual for culpable homicide operates on long-standing and fairly well-established lines in Scotland. Yet when it comes to convicting a company or organisation of culpable homicide, the lines are not nearly as clear-cut at present. While convictions are regularly secured for breaches of health and safety legislation generally, convicting a company or organisation of culpable homicide is seen to be much harder. The Corporate Manslaughter and Corporate Homicide Act 2007 was brought into force UK-wide to address these matters but some consider that that legislation does not go far enough to provide fully effective and workable law in this area. One of the stumbling blocks is reported to be in identifying the "controlling mind" within a company or organisation. While the board of directors may be the ultimate decision-making body, the day-to-day operations are usually, in medium to large organisations at least, carried out by managers using powers delegated from the board. Directors may be responsible for high-level decision-making but they may not know of, nor have practical control over, the incidental decisions taken by managers below them in the chain of command.

A Member's Bill being proposed for the Scottish Parliament aims to bring greater precision to Scots law in this area. Claire Baker MSP has launched a consultation on a proposed Culpable Homicide (Scotland) Bill that would create two kinds of statutory culpable homicide – where death is caused "recklessly" or by "gross negligence. My proposed legislation would introduce appropriate legal remedies for loss of life where the recklessness or gross negligence of employers, businesses or corporations is proved," explains Baker in the foreword to the consultation paper. "Critically, it would also provide a greater focus on health and safety in organisations and in the workplace, supporting a reduction in fatalities, and changing the culture in Scotland for the better."

This focus on improving health and safety at work is the key factor in Baker's proposal. She points to Scotland's record, which shows there are 17 work-related deaths on average each year, meaning a worker in Scotland is more likely to be killed in their job than a worker in

England. Baker also wants the families of those killed to receive justice. She feels culpable homicide convictions – and appropriate sentences – would recognise the severity of the crimes committed. Baker's proposed offences would be in addition to the existing offences under common law, rather than acting as a substitution for those. The definitions of "recklessness" and "gross negligence" should, Baker contends, follow those under the draft Scottish Criminal Code. Baker further proposes that "duty of care" should be defined in the legislation "to make it clear employers' responsibility to employees in this context". The phrase "duty of care" is a well-known and fundamental part of civil law but is not one traditionally associated with criminal law. "I also propose enabling the courts to 'aggregate' the actions of different officeholders at different times," adds Baker. "This provision is not in the Code, but I am convinced it is important that it be included to clarify liability of an organisation when an incident is the result of actions over a number of years." The consultation on Baker's proposed Bill closes on 15 February 2019. Companies and their insurers will be keeping a close look-out for reactions to the proposals from ministers, other MSPs and the wider legal and business community to study whether the proposal will receive backing and whether it might begin progressing through Holyrood.

One Million People Living in Housing Legal Aid Advice 'Deserts'

Jon Robins, 'The Justice Gap': Up to a million people live in legal aid 'deserts' with no access to housing lawyers and 15 million live in parts of the country where there is just a single lawyer, according to figures collected by the BBC. The BBC's Shared Data Unit, drawing on Ministry of Justice stats since 2011-12 before the implementation of the LASPO cuts, reports that there are just four legal aid providers for welfare cover in Wales and the South West while 41 cover London and the South East, and almost half of all community care legal aid providers are based in London. Nimrod Ben-Cnaan, head of policy at the Law Centres Network, told the BBC that the legal aid market was 'failing' as cuts 'shattered local ecologies of advice'. 'Legal aid deserts appear when there are not enough local providers of legal assistance, normally because of the Legal Aid Agency's preference of fewer, larger agencies, meaning that if those pull out of a local area there is little provision,' he said.

Jailed Solicitor's Conviction Quashed On Appeal

A solicitor jailed earlier this year for wilfully neglecting her 79-year-old mother has had her conviction quashed on appeal. In Kurtz v R, three Court of Appeal judges ruled that Oxford Crown Court erred in sentencing Emma-Jane Kurtz under section 44 of the Mental Capacity Act 2005 because the prosecution had not established that Kurtz could reasonably have believed that her mother lacked capacity to look after herself. According to the judgment, this is the first time the relevant provisions of the Mental Capacity Act had been considered by the Court of Appeal. Kurtz, a solicitor specialising in elderly care cases, was convicted in April after her mother, for whom she held enduring power of attorney, was found dead on a sofa at the family's Didcot home in 2014. She was sentenced to 30 months in prison.

The appeal judgment states that, at the Crown court, the trial judge directed the jury that a charge under section 44(1)(b) did not require proof of lack of capacity. However the appeal found that under the act it was not sufficient just to show that the defendant had been granted power of attorney and wilfully neglected the deceased. 'That means the judge misdirected the jury in a material way and we are satisfied that the appellant's conviction is therefore unsafe.' The judgment adds: 'We have every sympathy for the trial judge,' noting that he had

to interpret the statutory provision without Court of Appeal authority and against the background of criticism by the Court of Appeal over the drafting of section 44. However the failure to direct the jury that the offence created by the section applies only in cases where the neglected person lacks capacity - or the defendant reasonably believes to lack capacity - is fatal to the safety of the conviction.

Stansted 15 Convictions A 'Crushing Blow For Human Rights In UK'

Two of the activists convicted of terrorism offences for blocking the takeoff of an immigration removal charter flight at Stansted airport have spoken of their shock at the verdicts, describing the outcome as an "unprecedented crackdown on the right to protest". In a prosecution that has been condemned by human rights groups, Alistair Tamlit and Benjamin Smoke and the other members of the so-called Stansted 15 were convicted on Monday of endangering the safety of the airport in March 2017. The court had heard how they used lock-on devices to secure themselves around a Titan Airways Boeing 767 chartered by the Home Office, as the aircraft waited on the asphalt at the airport in Essex to remove undocumented immigrants to Nigeria, Ghana and Sierra Leone.

After nearly three days of deliberations, following a nine-week trial, a jury at Chelmsford crown court found the defendants, all members of campaign group End Deportations, guilty of intentional disruption of services at an aerodrome. They were found guilty under the 1990 Aviation and Maritime Security Act, a law passed in response to the 1988 Lockerbie bombing..

The verdict – described by Amnesty International as a "crushing blow for human rights in the UK" – came after the judge, Christopher Morgan, told the jury to disregard all evidence put forward by the defendants to support the defence that they acted to stop human rights abuses, instructing jurors to only consider whether there was a "real and material" risk to the airport. In legal arguments made without the jury present, which can now be reported, defence barristers had called for the jury to be discharged after Morgan gave a summing up which they said amounted to a direction to convict. The judge had suggested the defendants' entry to a restricted area could be considered inherently risky.

In interviews with the Guardian, Tamlit and Smoke described their dismay at the news but insisted that their actions had been justified by the "brutal" and "racist" deportation policy which they were protesting against. "We were charged with endangering life but we took the actions at Stansted to try to protect life. That point needs to keep on being put into the spotlight," said Smoke. "As a result of what we did 11 people who were on that flight are still in the UK appealing against their removals. That's something for us to hold on to." The group will be sentenced at a later date, are hoping that they will be given non-custodial sentences, though the offences carry a maximum sentence of life imprisonment. Their legal team has started preparing an appeal. Damien Gayle and Diane Taylor, Guardian.

Home Office Guilty of Harm, Not Us: Stansted 15 Respond to Guilty Verdict

'Out of control' Home Office should have been in the dock, not us: The Stansted 15 protesters, who stopped a government deportation flight from taking off in March last year, have been found guilty of breaching terror laws. After 9 weeks the jury found all fifteen defendants guilty of intentional disruption of services and endangerment at an aerodrome under the 1990 Aviation and Maritime Security Act – a controversial use of terror-related law. The Stansted 15 were accused by the government of putting the safety of the airport and passengers at risk, a charge rejected by all 15 defendants. The trial followed a peaceful action which stopped a chartered

deportation flight from taking off in March 2017. Sentencing will take place on February 4th. Responding to the verdict in a statement the Stansted 15 said: "We are guilty of nothing more than intervening to prevent harm. The real crime is the government's cowardly, inhumane and barely legal deportation flights and the unprecedented use of terror law to crack down on peaceful protest. We must challenge this shocking use of draconian legislation, and continue to demand an immediate end to these secretive deportation charter flights and a full independent public inquiry into the government's 'hostile environment'." "Justice will not be done until we are exonerated and the Home Office is held to account for the danger it puts people in every single day. It endangers people in dawn raids on their homes, at detention centres and on these brutal flights. The system is out of control. It is unfair, unjust and unlawful and it must be stopped."

Melanie Strickland, one of the defendants, said: "To be found guilty of a terror-related charge for a peaceful protest is devastating for us, and profoundly disturbing for democracy in this country. It's the Home Office's brutal, secretive and barely legal practice of mass deportation flights that is putting people in danger, and their 'hostile environment' policy that is hurting vulnerable people from our communities. It's the Home Office that should have been in the dock, not us." A man who was set to be deported on the flight but has since been granted a right to remain in the UK said: "The Stansted 15 have been found guilty of breaching a barely used terror law. Though the jury were convinced that their actions breached this legislation, there's no doubt in my mind that these 15 brave people are heroes, not criminals. For me a crime is doing something that is evil, shameful or just wrong – and it's clear that it is the actions of the Home Office tick all of these boxes – and the Stansted 15 were trying to stop the real crime being committed. 'As the Stansted 15 face their own purgatory – awaiting sentences in the following weeks – I will be praying that they are shown leniency. Without their actions I would have missed my daughter's birth, and faced the utter injustice of being deported from this country with having my now successful appeal heard. My message to them today is to fight on. Their cause is just, and history will absolve you of the guilt that the system has marked you with.'

Raj Chada, Partner from Hodge Jones & Allen, who represented all 15 of the defendants said: "We are deeply disappointed by today's verdicts. In our view it is inconceivable that our clients were charged under counter terrorism legislation for what was a just protest against deporting asylum seekers. Hodge Jones & Allen previously represented 13 defendants who protested at Heathrow in similar circumstances to the 15 at Stansted, yet they were not charged with this draconian legislation. We believe this was an abuse of power by the Attorney General and the CPS as they should never have been charged with these offences. The fact is that the actions of these protestors resulted in two people who were about to be wrongfully deported remaining in the UK."

Police Custody: Deaths and Serious Incidents Review

The Minister for Policing and the Fire Service (Mr Nick Hurd): On 30 October 2017, the right hon. Dame Elish Angiolini DBE QC's independent review of deaths and serious incidents in police custody was published, alongside the Government's substantive response. As part of their response, the Government commissioned the Ministerial Council on Deaths in Custody to play a leading role in considering Dame Elish's most complex recommendations. Today, as co-chair of the Ministerial Board on Deaths In Custody—alongside Jackie Doyle-Price MP and Rory Stewart OBE MP—I report on the progress made in delivering this work programme. We have made good progress in addressing Dame Elish's recommendations, although, of course, there remains more to do. First, we have focused on support for families, which includes work on the provision of legal aid for

bereaved families, making inquests more sympathetic to their needs and improving the information available immediately after an incident. Secondly, we have worked to ensure that organisations are held to account when a death in police custody occurs. We have reformed the Independent Office for Police Conduct to strengthen its independence and improve the timeliness of its investigations, and we have introduced reforms to strengthen the police discipline regime. Thirdly, and above all, we are committed to preventing deaths in police custody. We have significantly restricted the use of police stations as places of safety, the National Police Chiefs' Council is driving progress in national training and assessing the health of detainees, and the Government are investing record levels in mental health, among other measures.

Every death in police custody is a tragedy. The impact is devastating on their loved ones. Dame Elish's report has been a catalyst for change, and in my role as co-chair of the Ministerial Board on Deaths in Custody, I am determined that we sustain momentum in addressing the difficult issues at hand. We will deliver a year two work programme which will continue to prioritise preventing deaths in police custody and in the tragic instances that they do occur, holding organisations to account and improving support for families. I would like to thank Dame Elish again for her far-reaching contribution to this important issue, and Deborah Coles, who advised Dame Elish's review, for her continued passion to enact change. Most importantly, I would like to thank the families who contributed to Dame Elish's review and who continue to share their experiences so that we can learn from them.

High Court Dismisses Woman's Attempt to Prosecute Police Spy

An environmental campaigner who was deceived by a police spy into a sexual relationship has lost an attempt to have him prosecuted. The campaigner, known as Monica because she was granted anonymity, said the ruling by two high court judges was "appalling and hard to hear". She challenged a decision by the Crown Prosecution Service not to prosecute the undercover officer, Jim Boyling, for the offences of rape, indecent assault, procurement of sexual intercourse and misconduct in public office. She had a six-month relationship with Boyling while he was using a fake identity to infiltrate environmental and animal rights groups. He did not disclose his real identity during the relationship. She said she would never have consented to having a sexual relationship if she had known his real identity.

On Friday 14th December 2018, the lord chief justice, Lord Burnett, and Mr Justice Jay dismissed her legal challenge, ruling that prosecutors had acted correctly when they had decided not to prosecute Boyling. They said Monica's lawyers had argued for a new understanding of the concept of consent in rape and sexual offences, but they ruled "it would be wrong for such a fundamental change in the understanding of consent to be brought about by judges rather than the legislature".

Monica said: "This decision was hard to hear. Employing well-paid state actors to infiltrate the lives, hearts and beds of women activists working toward positive social change, is as much an abuse of state power as it is of individual human rights. It is appalling, yet telling, that the high court judges feel unable to acknowledge this." Undercover officers who infiltrated political groups often had intimate relationships with women without disclosing their real identities. The CPS has prosecuted none of them. The legal challenge by Monica was the first to try to overturn the CPS's stance. Police chiefs have claimed the undercover officers were not permitted under any circumstances to have sexual relations with the people they were spying on.

Monica had been part of the Reclaim the Streets environmental group when she met Boyling in 1997. She started a relationship with him, believing that he shared her political views. He did not inform her that he was a member of an undercover police unit, the Special

Demonstration, that used fake identities to gather information about political activists during long-term deployments. She did not discover the truth until 2011 when Boyling's identity was revealed. Boyling deceived three women into intimate relationships while he was undercover. In May, he was dismissed from the police for gross misconduct. At least 12 women have received compensation from the police after discovering they had been deceived into intimate relationships with undercover officers. The Metropolitan police admitted the relationships were "abusive, deceitful, manipulative and wrong".

Either Way You're Fucked - Nominal Damages for Technical Unlawful Arrest and Detention

The latest decision of the Court of Appeal in Parker v Chief Constable of Essex Police [2018] EWCA Civ 2788 is important for all police lawyers. The facts are quite detailed but, essentially, where the police perform an unlawful arrest (which would result in unlawful detention), the arrested person will receive only nominal damages where they could and would have been lawfully arrested had the correct procedures been followed.

There is also a second element – which is that the question of whether the police have a reasonable suspicion for the purpose of making an arrest ought to be considered in the round; courts ought not to over-compartmentalise the issue by analysing each factor separately.

The first point is straight-forward to explain. A decision was taken to arrest Michael Parker, more commonly known as Michael Barrymore, following a re-investigation into the death of Stuart Lubbock at his home. In order to avoid inadvertent disclosure of information, officers involved in the operation were given limited information, save for the intended arresting officer DC Jenkins, who was briefed on the arrest plan and grounds. Unfortunately, DC Jenkins was delayed in traffic, with the result that a police sergeant ordered another constable, who had not been briefed on the grounds, to make the arrest.

The judge at first instance held, just about, that there were reasonable grounds for suspicion justifying Mr Parker's arrest. Unfortunately, those grounds were not known or held by the arresting officer, rendering the arrest unlawful – see O'Hara v Chief Constable of the RUC [1996] UKHL 6; [1997] AC 286 – a decision which should be etched on the inside eyelids of every arresting officer. The Chief Constable had, therefore, conceded the unlawfulness of the arrest but submitted that any damages ought to be nominal, because had Mr Parker been arrested by DC Jenkins – as he ought to have been – he could, and would, have been lawfully arrested and had therefore suffered no loss.

The Court of Appeal (overturning the decision of the High Court) agreed. It relied on the decision of R (Lumba) v Sec State for the Home Dept [2011] UKSC 12; [2012] 1 AC 245, which held that a person would suffer no loss or damage as a result of an unlawful exercise of a power to detain if the power could have been lawfully exercised [91]. Essentially, it was necessary to examine what would have happened had things been done as they should have been done [100]. Here, the Court of Appeal held that if the officers had been alert to their O'Hara obligations, either the arrest would have awaited DC Jenkins' arrival, or she would have sufficiently briefed the arresting officer – with the result that the arrest would have been lawful [107]. Or, put another way, if things had been done as they should have been done, a lawful arrest would have been effected [132]. In those circumstances, no harm had ultimately been caused. The court cautioned that this was not to encourage sloppy practice but, rather, reflected actual loss. It recognised the distinction to be drawn between those who would have been arrested in any event and those who would not [108].

The second element of the case concerned reasonable suspicion. The Court of Appeal held that courts should not over-compartmentalise the information and seek to analyse (and possibly

undermine) each, piece by piece, following Armstrong v Chief Constable of West Yorkshire Police [2008] EWCA Civ 1582 and Buckley v Chief Constable of Thames Valley [2009] EWCA Civ 356 [115]. In the real world, police officers are bound to weigh all material, not just selected parts, in deciding whether there were reasonable grounds for suspecting and arresting a person [116]. The Court of Appeal upheld the High Court's finding that there was reasonable suspicion to arrest – but indicated obliquely that the High Court was, perhaps, a bit cautious in its finding [117]-[119].

Commentary: This is undoubtedly an important case for all practitioners – and affirms the application of Lumba to police arrests and detention. Importantly, issues of causation cannot be relied upon to cure unlawfulness. As the court said in Lumba, there is no causation element in the tort of false imprisonment (unlike in negligence): false imprisonment is actionable per se, without proof of damage. It is no defence to an unlawful arrest that an officer could and would have acted lawfully. It may be that part of the justification for a claimant's bringing a claim for unlawful arrest and detention and/or a breach of article 5 is that they seek a declaration that the police have acted unlawfully. That remains unaffected. However, such a victory may be pyrrhic where a court goes on to find that the failures were technical rather than substantive. In such circumstances, damages are likely to be nominal – reflecting, as the Court of Appeal said, the lack of any real loss.

It might be said that the extension of Lumba in this way undermines the importance of interferences with fundamental rights. Or that it encourages what the Court of Appeal said it should not – sloppy practice. It certainly may affect other elements of police law claims – for instance a failure by police officers to conduct detention reviews required by Police and Criminal Evidence Act 1984 s40. It is worth recalling the definition of nominal damages from The Mediana [1900] AC 113, 116 (HL) (Earl of Halsbury LC): 'Nominal damages' is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed.

That is what Parker affirms – the principle of injuria sine damno, that the police's violation of legal rights without harm, loss or damage merits nominal damages only.

Inquest Rules Woman's Death in HMP Bronzefield Due to Neglect,

Eric Allison, Guardian: A woman's death in prison was caused by neglect and a lack of basic healthcare, an inquest jury has ruled. Natasha Chin, 39, was found unresponsive in her cell at HMP Bronzefield in Surrey in 2016. She had been in the prison for less than 36 hours. After telling staff she was unwell and being placed on the jail's specialist drug and alcohol wing, Chin vomited continuously for nine hours but did not receive medical attention or her prescribed medication.

The prison, run by outsourcing giant Sodexo, is the most expensive women's prison in England. The prison and probation service annual report and accounts 2017/18 show that at Bronzefield the cost per prisoner is £66,294, at least £10,000 more expensive than any other women's jail.

The jury at Woking coroner's court were told that on the morning of her death, her condition worsened and she started vomiting profusely. Chin had a history of depression, poor physical health, and alcohol and drug dependency. Despite her ongoing condition, healthcare staff failed to respond to requests by prison officers to attend to her. Expert medical witnesses told the inquest that if Chin's condition been properly monitored and responded to, her vomiting would have been less severe. If she had been transferred to hospital, it is likely she would have survived, they said. After three weeks of evidence, the inquest jury concluded that her death was caused "by a systemic failure, which

led to a lack of basic care", and that the death was "contributed to by neglect".

Since Chin's death, there have been three further deaths of women found unresponsive in cells at Bronzefield. The inquests into these deaths are awaited. Chin's sister, Marsha, said her family were shocked to learn of the inadequate care provided to Natasha and the fact that prison staff and management could have prevented her death. "We can only hope that changes are made to ensure no other family has to lose a loved one in such circumstances," she said.

Deborah Coles, director of the Inquest charity, said: "HMP Bronzefield is the most expensive women's prison in England. Despite this, they failed to provide Natasha with even a basic duty of care. We need to dismantle failing women's prisons and invest, not in private companies, but specialist women's support services in the community."

A spokesman for Sodexo said: "We are extremely sorry that Natasha died whilst under our care and acknowledge mistakes were made." He added that many improvements had been made since her death and that its systems were now more robust, with a new head of healthcare. "We realise that this does not bring comfort to the family and our thoughts continue to be with them," he said. "We will continue to review the care we provide at the prison and use any recommendations made as a result of the inquest to make further improvements."

7,300 People Referred To Counter-Terrorism Programme

Source: Scottish Legal News:More than 7,300 people in England and Wales were referred to the Prevent programme in 2017/18, a 20 per cent increase that includes a sharp 36 per cent in rise in referrals for concerns about right-wing extremism. A total of 7,318 people were referred to the UK's counter-terrorism programme in 2017/18 due to concerns that they were vulnerable to being drawn into terrorism, up from 6,093 in 2016/17. Of the referrals, 3,197 (44 per cent) were referred for concerns related to Islamist extremism and 1,312 (18 per cent) were referred for concerns related to right-wing extremism. The majority (57 per cent) were under the age of 20, and the overwhelming majority (87 per cent) were men.

The largest proportion (42 per cent) of referrals left the process with no further action, but 2,902 (40 per cent) were signposted to alternative services and 1,314 (18 per cent) were discussed by Channel, the programme supporting those vulnerable to radicalisation. A total of 394 people subsequently received support through Channel, most of whom (76 per cent) have since left the process, mostly (84 per cent) with no further terrorism-related concerns.

The controversial Prevent programme was launched in 2006, but has been stepped up in recent years in a bid to tackle radicalisation. It took a major step forward under then Home Secretary Theresa May with the Counter-Terrorism and Security Act 2015, which places a statutory obligation on schools, universities, prisons, local authorities and hospitals to prevent radicalisation within their walls.

Civil liberties group Liberty has called for an independent review of the programme, saying that it "leads in practice to very real human rights violations", including "rights to education, freedom of expression, freedom of religion and belief, freedom from discrimination and privacy, and ... the special protections afforded to children by virtue of the Convention on the Rights of the Child".

Randox Review Reverses 40 Convictions... And Counting

A review of the Manchester forensic lab Randox Testing Services involving 10,500 cases has so far resulted in the quashing of 40 drug-driving convictions. 50 further cases have already been dropped. Two employees have been arrested by Greater Manchester Police on suspicion of perverting the course of justice and six others interviewed under caution.

"This is a national scandal which has had a devastating impact on the lives of the many people we are representing," said Andrew Petherbridge of Hudgell Solicitors. "People have lost their driving licences, and as a result lost their employment, struggled to pay bills such as mortgages and rents, and some have been unable to travel to see their families and children."

"It was devastating to me," explained Luke Pearson, whose wrongful conviction was overturned in February. "I needed to travel to sites as part of my job as a scaffolder as we worked across the country, so as a result of me being banned I lost my job. I'd even been offered a job as a foreman for a company and they were prepared to give me a company car to travel around sites, but of course that opportunity was lost when I was banned."

On top of the £2.5m the data manipulation is likely to cost Randox for re-testing of samples by other laboratories, the affair has eroded public trust in the police and possibly in forensic science itself. Chief Constable James Vaughan, National Police Chiefs' Council (NPCC) lead on forensics, said the re-testing was taking longer than expected thanks to a "chronic shortage" of scientific expertise and accredited laboratories, with resultant knock-on delays in unrelated sexual assault cases. This was clearly foreseen by the Forensic Science Regulator Gillian Tully who wrote a year ago that the re-testing process would be lengthy because of a limited number of skilled experts. Forensic toxicology expertise has been lost since the closure of the Forensic Science Service in 2012. The review, begun in January 2017, is likely to take 3 years to complete.

Wrongful Convictions Have Stolen at Least 20,000 Years From Innocent Defendants

University law professor Jeffrey Gutman looked at compensation for the wrongly convicted. Between lawsuits and state statutes that award fixed compensation for wrongful convictions, state and municipal governments have paid out $2.2 billion to exonerees. That's about what Americans spend every year to fight indigestion. Of course, this is nowhere near the total cost of wrongful convictions. To calculate that, you'd need to look at how much it costs to investigate, convict and imprison the wrong person; the effects the wrongful conviction had on that person, his or her family, and his or her community; and any crimes the real culprit committed after authorities apprehended the wrong suspect. More than half the exonerees in the database have never been compensated. In states that have statutes that dictate the sum to be paid to the wrongly convicted, exonerees on average receive $69,000 per year in prison. Those who sue do better: They average more than $300,000 per year. But lawsuits are also much less predictable.

As is often the case with the criminal-justice system, race is a factor. Black people are more likely to be wrongly convicted — they make up 12 percent of the population but 46 percent of exonerees, and collectively represent 56 percent of the life years lost to prison.

Hostages: Sally Challen, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.