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Ministry of Justice Not Legally Bound to Ban Smoking in Prisons

R (on the application of Black) (Appellant) v Secretary of State for Justice (Respondent)

Justices: Lady Hale, Lord Mance, Lord Kerr, Lord Hughes, Lord Lloyd-Jones

Background to the Appeal: The issue in this appeal is whether the Crown is bound by the prohibition of smoking in most enclosed public places and workplaces ('the smoking ban'), contained in Chapter 1 of Part 1 of the Health Act 2006 ('the Act'). The issue affects all those residing in, employed to work at or visiting any Crown premises, including prisons.

Mr Black is serving an indeterminate sentence of imprisonment at HMP Wymott. He is a non-smoker, with a number of health problems exacerbated by tobacco smoke, and he complains that the smoking ban is not being properly enforced in the common parts of the prison. He issued proceedings for judicial review of the Secretary of State's refusal to provide confidential and anonymous access to the National Health Service Smoke-free Compliance Line to prisoners. This would enable prisoners to report breaches of the smoking ban to the local authority charged with enforcing it, provided that the smoking ban applied to Crown premises. Mr Black succeeded in the High Court, which held that the smoking ban did bind the Crown. The Secretary of State appealed successfully to the Court of Appeal, which reversed the decision, holding that the Crown was not bound.

judgment: The Supreme Court unanimously dismisses the appeal. It holds that Parliament must have intended that the Crown should not be bound by the smoking ban, since it would otherwise have made express provision for it in the Act. Lady Hale gives the only reasoned judgment, with which all the other justices agree.

Reasons for the Judgment: The classic rule is that a statutory provision does not bind the Crown save by express words or 'necessary implication' [22]. This is so well established that many statutes will have been drafted and passed on this basis. Any decision of the Supreme Court to abolish this rule or reverse the presumption would operate retrospectively. It should not therefore do so, although Parliament, perhaps with the assistance of the Law Commission, is urged to give careful consideration to the merits of abolishing the rule [35].

The rule is not an immunity from liability, but a rule of statutory interpretation. The goal of all statutory interpretation is to discover the intention of the legislation, gathered from the words used in the statute in the light of their context and purpose. A 'necessary implication' is one which necessarily follows from the express provisions of the statute construed in their context, including its purpose. It is not enough that a statute is intended for the public good, or that it would be even more beneficial for the public if the Crown were bound. It is not, however, necessary that the purpose of the legislation would be wholly frustrated if the Crown were not bound; it is enough if an important purpose of the statute would have been frustrated. The court may take into account the extent to which the Crown is likely voluntarily to take action to achieve the purpose of the statute [36]. The test to be applied in this case is therefore whether, in the light of the words used, their context and the purpose of the legislation, Parliament must have meant the Crown to be bound by the smoking ban in the Act [37].

There is no hint in the government publications preceding the Act that the Crown would not be bound by the smoking ban. It is intended to protect workers and visitors from the dangers of exposure to second-hand smoke when reliance on voluntary measures has not proved effective, and omitting Crown premises would deny statutory protection to many people [38]. There are significant differences between the enforcement of the smoking ban by environmental health officers under the Act and a voluntary ban on government premises, which can only be enforced through far less effective proceedings brought by individuals [39-40]. Notwithstanding these factors, however, there are powerful indicators in the language of the Act itself that the Crown is not to be bound by the smoking ban:

The Act does not say the smoking ban binds the Crown, as it could easily have done [43];

This contrasts with similar statutes, such as the Health and Safety at Work Act 1974, which contain express provisions on how and to what extent they apply to the Crown [44-45];

The Act itself has just such a provision in another Part, relating to the supervision of management and use of controlled drugs [46];

Almost identical provision to that is also made in the statute enacting the Scottish equivalent to the smoking ban, which shortly preceded the Act [47]; and

Even if it was desirable for the smoking ban to bind the Crown, the legislation is quite workable without this. The Crown could do a great deal by voluntary action to fill the gap [49].

Accordingly, the fact that where Parliament did mean to bind the Crown in the Act, it expressly said so and made tailored provision, is conclusive of the question of its lack of intention in relation to the smoking ban. With considerable reluctance, the Supreme Court therefore dismisses the appeal [50]

UK Ministers Blocking Appointments to Human Rights Watchdog

Owen Bowcott, Guardian: The Equality and Human Rights Commission is running short of board members and struggling to fulfil its duties because, lawyers allege, ministers are repeatedly vetoing appointments on political grounds. Several experienced candidates supported by the state-funded independent body are understood to have been blocked in recent months after, it has been claimed, intervention by Downing Street or the Cabinet Office. The EHRC is the government's advisory body on human rights and equality issues. Confirmation is contained in published minutes of its board meetings which warn that "current vacancies on the board … [have] presented immediate quorum issues".

Some former board members allege the difficulties date to the arrival of Theresa May as prime minister, at which point stricter selection criteria are said to have been imposed. The government's distraction over Brexit may also have delayed appointments. The shortage has coincided with the introduction of a new governance code on public appointments, which is said to have made it easier for ministers to pick their political allies.

Sarah Veale, a former head of equality and employment rights at the Trades Union Congress, sat on the board for several years. The EHRC tried to renew her appointment but she was notified of her dismissal in a letter from the education secretary, Justine Greening, this year. Veale, who has been awarded the CBE and previously sat on the boards of the Health and Safety Executive and Acas, the mediation service, said: "It was really quite extraordinary. I have been told [the decision not to reappoint] was because a political adviser in No 10 had noticed a tweet I made disapproving of some government policy. They are obviously determined to iron out any kind of dissent. The chair of the EHRC [David Isaac] had specifically asked to reappoint me. I fear that the board may be struggling to meet its quorum on some key committees such as the risk and audit committee. They have had to put one per-

son on three different subgroups. There have been concerns about too much political interference. Ministers are meddling in areas in which they have no legal, let alone moral right to interfere. The board may lose out on appointing good people in the future."

At full strength the board of the EHRC is supposed to have 10-15 commissioners but it is currently down to eight participating members. Appointments to the EHRC are formally approved by the Department for Education, which is responsible for coordinating equality policy across the government. However, they are usually referred to Downing Street for consent. Published minutes from a meeting of the board in July noted: "Board members discussed strategic risk five (arrangements for oversight of delivery of strategic aims) and felt the amber rating was appropriate given the current vacancies on the board. This presented immediate quorum issues for the human resources and remuneration committee (HRRC) and audit and risk assurance committee (ARAC) and longer-term risks in terms of the board's breadth of expertise, and how the commission's independence of government was perceived." In May, the board minutes recorded "that the chair may need to call for volunteers to sit of ARAC, HRRC and the treaty monitoring CWGs if board vacancies were not filled."

The Guardian understands that several highly experienced lawyers were supported as candidates by the EHRC chair but have not been approved, despite their extensive experience. The only recent appointment was of the Conservative peer Kevin Shinkwin. He is in dispute with the government and the EHRC because he has not been appointed as a disability commissioner. It is understood he is not participating in the EHRC governance. A spokesperson for the EHRC said questions about appointments were a matter for the government. The EHRC recently asked to be given greater powers, including the right to make appointments to its board. A government spokesperson said: "All public appointments adhere to the governance code on public appointments."

Statement on Behalf of Families of The McGurk's Bar Bombing

Madden & Finucane: During a sentencing hearing yesterday 14/12/2017, of PSNI informant Gary Haggarty, at Belfast Laganside Courts, it was revealed that Mr Haggarty had provided significant information to the PSNI, several years ago, in relation to identifying the perpetrators of the McGurk's Bar bombing on 4th December 1971.

This information was not passed on by the PSNI to the families of those killed. It is also clear that this information was not considered during the production of several HET Reports into the atrocity, nor was it mentioned in several court cases involving the PSNI.

Our clients have long alleged that the PSNI have sought to protect the identities of some or all of those involved, whom, following confirmation at an Information Tribunal hearing in London in December 2016, they know were state agents. Our clients further allege this was done not only to protect these agents, but also to protect the reputation of the RUC, who contributed considerably to the cover-up which followed the bombing.

Niall Ó'Murchú of Madden & Finucane, stated: "Given the serious implications that this is likely to have, we can confirm that we have today written to both the Chief Constable of the PSNI and the Police Ombudsman Michael Maguire, to obtain clarity about what their respective offices did, and didn't do, in relation to these revelations. This is a matter of the utmost seriousness, and both OPONI and the PSNI have questions to answer."

Gerard Keenan, whose parents Sarah and Edward Keenan were both murdered in the bombing stated: This revelation that the PSNI recently had new and potentially important information about the McGurks Bar bombing is a shock. The Police Ombudsman had oversight of Gary Haggarty's debrief interviews and should have known about this as well.

Ireland: Supreme Court: Brian Rattigan Successfully Appeals Conviction For 2001 Murder

Seosamh Gráinséir, Irish Legal News: A man who was convicted of murdering another in Crumlin in 2001, has successfully appealed his conviction on the basis that the trial judge made impermissible comments to the jury that could have been construed as advocating the prosecution case. In the five-judge Supreme Court, the appeal was allowed on a 3:2 majority, with the leading judgment from Ms Justice Iseult O'Malley holding that there was a "real possibility" that comments made by the trial judge could have been interpreted by the jury as reflecting his personal opinions. The dissenting judges disagreed with this finding and were of the opinion that the comments were permissible. Mr Brian Rattigan, who was convicted in 2009 for the 2001 murder of Declan Gavin, challenged his conviction on two grounds: The applicability of s. 16 of the Criminal Justice Act 2006 / Comments made by the judge in directing the jury

The Criminal Justice Act 2006: The procedure provided for in s. 16 of the Criminal Justice Act 2006, which permits, "in certain defined circumstances, the use of out-of-court statements as evidence of the truth of the contents thereof". The certified question was whether s. 16 applied to statements of evidence made prior to the coming into force of the Criminal Justice Act 2006. Mr Rattigan's primary submission was that the newly-introduced procedure affected his fair trial rights to such an extent that it could not be regarded simply as a change in procedural or evidential rules and therefore should, in accordance with the principles of statutory interpretation, have been presumed not to apply retrospectively. Furthermore, given that he was charged in 2003 but did not stand trial until 2009, the appellant argued that it was unfair to allow the prosecution to benefit from its own blameworthy delay. Ms Justice O'Malley, with whom Chief Justice Clarke and Justice McKechnie concurred, rejected Mr Rattigan's arguments in relation to the applicability of the Act. Firstly, Justice O'Malley stated that the section did not offend any of his constitutional rights, nor did it breach the principle against retrospectivity since it brought about a change in rules of evidence that could only apply to trials taking place after the Act came into force. Furthermore, the delay in Mr Rattigan's trial was not to prevent a fair trial.

Comments made by the trial judge: The second issue concerned the trial judge's summing up to the jury. Counsel for the accused objected to a particular passage, at the end of what was otherwise described by counsel as a "model" charge, and applied unsuccessfully for a discharge of the jury. Mr Rattigan contended that in the particular passage the judge failed to maintain an impartial and fair role; that as a result his charge was unbalanced and unfair and effectively amounted to a direction to the jury to convict; and that the judge erred in refusing an application to discharge the jury. Justice O'Malley stated that this issue was more difficult to resolve in circumstances where, "from any point of view, the summary given by the trial judge of the legal principles and the facts of the case was flawless". Mr Rattigan contended that the trial judge delivered a statement of the prosecution case, and therefore discredited a defence of coincidence. Justice O'Malley emphasised that it was essential that the judge, "in giving the jury such instructions as the case requires, should fully respect the independence of their role. He or she should neither seek, nor seem to seek, to influence the jury's verdict by communicating, or seeming to communicate, personal views that appear to point to a particular verdict".

Allowing the appeal, Justice O'Malley held that the comments of the trial judge "went further than were desirable", and that there was "a real possibility that they may have been seen as reflecting his personal opinions and that they may well have influenced the members of the jury in their view of the defence case" Ms Justice Dunne's dissenting judgment, with which Justice Charleton concurred, Justice Dunne opined that that the trial judge's comments "remained within the dividing line of permissible comment"

Ethiopian Academic Acquitted of Terrorism Charges

Bindmans Solicitors: A member of an Ethiopian opposition movement banned by the Ethiopian regime has been acquitted of all charges of terrorism following a 3-week trial at Snaresbrook Crown Court. Tadesse Kersmo is a member of Ginbot 7 (now Patriotic Ginbot 7), set up after the 2005 elections when all those who won seats for the opposition were not allowed to take up their seats. Faced with persecution and false allegations he and his wife fled Ethiopia and sought asylum in the UK. The persecution did not end and Dr Kersmo had malicious spyware infected onto his computer while he sought sanctuary in the UK. Despite informing the British police of his work in 2013, Dr Kersmo was arrested in January 2017 for possession of documents. The British jury took only 2 hours to acquit Dr Kersmo, clearly accepting his account that he had documents for research to assist with his campaign of civic disobedience.

Not-So-Bright Spark

A lawyer who allegedly used his position to access a women's jail and make pornography with one of the inmates has been arrested. Andrew Spark, 54, has been charged with soliciting prostitution and other counts after investigators received a tip that Mr Spark was canvassing women prisoners for sex in exchange for money. According to police in Pinellas County, Florida, Mr Spark had sex with a 28-year-old inmate at least six times since June and filmed the encounters for an Internet porn series called Girls in Jail. He is alleged to have paid the woman for sex over at least three years. Mr Spark never represented the woman, but is alleged to have used his status as a local lawyer to gain access to the jail. Detectives are now investigating whether he engaged in similar activities at other jails – and if the crime is documented online.

Dennis Hutchings: What's Sauce for the Goose is Sauce for the Gander

The Divisional Court, sitting on, Wednesday 20th December, in Belfast, dismissed an application by Dennis Hutchings challenging a decision by the Director of Public Prosecutions that requires him to be tried without a jury. Dennis Hutchings was a soldier serving with the Life Guards Regiment in Northern Ireland. He has been charged with the offences of attempted murder and attempted grievous bodily harm with intent relating to the death by shooting of John Patrick Cunningham ("the deceased") on 15 June 1974 near Benburb, County Armagh.

The court handing down its' decision, was emphatic: 'That the administration of justice might be impaired if the trial were to be conducted with a jury.' Which is essence means Mr Hutchings will be tried by a 'Diplock Court'. These courts have been vehemently opposed by human rights groups as well as Nationalists and Republicans, Judges and to a lesser extent magistrates.

CCRC Refers Sexual Offences Conviction of Z on Grounds of Non-Disclosure

The Criminal Cases Review Commission has referred the sexual offences conviction of Mr Z to the Crown Court. Mr Z appeared at Lewes Crown Court in April 2007 charged with causing a child to watch a sexual act (pornography) contrary to section 12(1) of the Sexual Offences Act 2003, and with sexual activity with a child contrary to section 9(1) and (2) of the Sexual Offences Act 2003. He pleaded not guilty but was convicted and sentenced to a total of four years' imprisonment and ordered to remain on the Sex Offenders' Register indefinitely.

Mr Z tried to appeal but his application for leave to appeal was dismissed in September 2007. He applied to the Criminal Cases Review Commission in 2012. During the course of its detailed review of the case, the Commission used its statutory powers to obtain information from a

number of sources. During analysis of the CPS correspondence, and Social Services and Child Protection Team files, the Commission identified a body of relevant information that had not been disclosed to the defence at the time of the trial of appeal. The Commission has decided to refer the case for appeal on the basis that this new evidence, relating the credibility of a key witness, raises a real possibility that the Court of Appeal will quash the conviction. The Commission has anonymised the identity of Mr Z in order to protect the identity of other parties involved in the case. Mr Z is represented in his application to the Commission by Mr Mark Newby of QualitySolicitors Jordans, 4 Priory Place, Doncaster, DN1 1BP.

Neglect and Basic Failings Repeated: Inquest Findings Over the Year

INQUEST, Reflections on 2017: As ever the year's inquest findings have been frustratingly repetitive. The recurring themes of those on deaths in prison have been findings of neglect, basic mistakes in training and first aid, and an inability to cope with those suffering serious mental ill health. This was reiterated in the conclusion last week on the death of Craig Royce in HMP Chelmsford.

Responding to yet another damning report on mental health in prisons last week, we highlighted that tackling this means a dramatic reduction in the prison population, and investment in alternatives. Yet the justice minister's speech on prisons, delivered on Monday, made not one mention of mental health, self-harm or self-inflicted deaths.

We have been disturbed by the rising number deaths being referred to us of those in mental health settings, particularly of young women. Most recently, the inquest into the death of Katie Hamilton on a mental health ward in Leeds had an expert witness questioning the common sense of those tasked with her care and findings of neglect and basic failings are recurrent.

We've seen a series of police misconduct hearings against officers dropped, often in significant contrast with critical inquest findings, begging questions about the level of accountability of police and the effectiveness of sanctions against those who abuse their powers. Examples are listed at the end of our statement on the Angiolini review, a report which raised serious questions about the police misconduct hearing system.

We are also increasingly concerned about anonymity of police officers, most recently granted for officers at the inquest of Rashan Charles, despite the coroner rejecting the argument that there was a direct threat. And there have still been no murder or manslaughter convictions of police officers involved in a death, with the CPS once again deciding not to bring charges against officers involved in Sean Rigg's death in 2008.

Overall there is a long way to go, but we have been busy this year, working with families, lawyers, the media, politicians and policy makers to challenge and drive a change in culture and approach. Taking forward the recommendations of various reviews and improving access to justice for families will be our priority in the new year.

Met to Review all Ongoing Rape Cases After Second Trial Collapses

Rachel Roberts, Independent: The Metropolitan Police has launched a sweeping review into its investigation of sex crimes following the collapse of two rape cases in the past week. The force has confirmed the same detective was the investigating officer in both collapsed cases, and that he remains on full duty in the sexual offences investigation unit Scotland Yard said every case currently being considered for prosecution will be looked at again "to ensure that all digital evidence has been properly examined, documented and shared with the CPS to meet obligations under disclosure".

The prosecution against Isaac Itiary for alleged child rape collapsed on Tuesday following

last week's halted rape trial of student Liam Allan, 22, following problems relating to the disclosure of evidence. In the child rape case, the CPS offered no evidence against the defendant Mr Itiary at his trial at Inner London Crown Court. The Met said material had not been disclosed to Mr Isaac's defence team until lawyers asked for it, in a breach of procedure.

The defendant was charged in July this year, but police only disclosed further "relevant material" in response to the defence case statement submitted on 15 December. A CPS spokesman said: "On December 17 2017, the police provided new material to the CPS, which had previously been requested, and this was reviewed. "Prosecutors decided that there was no longer a realistic prospect of conviction and we offered no evidence against the defendant at a hearing today (Tuesday)." The Met announced a review of the Itiary investigation as well all other live probes by the Child Abuse and Sexual Offences (CASO) command, where Scotland Yard is in discussion with the CPS.

Commander Richard Smith, who oversees Met rape investigations, said: "I completely understand that this case may raise concerns about our compliance with disclosure legislation given the backdrop of the case of R v Allan last week. The Met is completely committed to understanding what went wrong in the case of Mr Allan and is carrying out a joint review with the CPS, the findings of which will be published. Rape investigations are by their nature very complex, and often hinge on the contradictory accounts of the alleged suspect and the complainant about what has taken place. We are reviewing all our investigations, where we are in discussion with the CPS, to assure ourselves that we are meeting our disclosure obligations in an acceptable timescale based on the volume of data that some cases involve."

Mr Allen's trial for multiple counts of rape was halted at Croydon Crown Court after it emerged that police had been too slow to disclose phone messages between the complainant and her friends that cast the prosecution's case into doubt. Announcing the review, Scotland Yard said: "As a precaution, every live case being investigated by the child abuse and sexual offences command, where the Metropolitan Police Service is in discussion with the Crown Prosecution Service, is being reviewed to ensure that all digital evidence has been properly examined, documented and shared with the CPS to meet obligations under disclosure." The Met was not immediately able to say how many cases will be reconsidered or which officer would have overall responsibility for the review.

Danny Steven Kay – Conviction for Rape Quashed

1. On 23rd September 2013, in the Crown Court at Derby before Mr Recorder Elsom the applicant was convicted by a majority of 10 to 2 of an offence of rape of A. He was acquitted of two further counts of rape of a different complainant, B. On 11th November 2013 he was sentenced by the trial judge to 4 years and 6 months' imprisonment.

2. He now applies for an extension of time of approximately 2 years and 5 months in which to apply for leave to appeal against conviction. His applications have been referred to the full Court by the Registrar.

3. The provisions of the Sexual Offences (Amendment) Act 1992 relating to the reporting of this case apply. No matter relating to a complainant in this case shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence unless waived or lifted in accordance with s.3 of the Act.

Facts: 4. The applicant is now 26 years of age having been born on 26th April 1991. In 2011, when aged 20, he was in a relationship with B, who was 4 years younger than him.

That relationship, which had been intermittent, finally ended in December 2011. B made an allegation that the applicant had assaulted her, making a witness statement on 24th December 2011. On 26th April 2012 he was sentenced for common assault of B. Subsequently, in early August 2012, she alleged she had been raped by the applicant towards the end of their relationship on two occasions.

5. Around the 1st of February 2012 the applicant approached the complainant A, who was also almost 4 years younger than him having been born on 11the July 1995, on Facebook. They exchanged messages on Facebook as well as their telephone numbers and arranged to meet in person. B noted the Facebook exchange and contacted A, advising her against involvement with the applicant. Nevertheless, A did meet the applicant in person after assuring B that she would be careful.

6. On 28th July 2012, in an ABE interview, A alleged that the applicant had raped her in early February 2012 on the sofa in his living room. The applicant was arrested. When interviewed on 3rd August 2012 he initially denied knowing A, but later recalled her when her workplace was mentioned. He said that they had had consensual sexual intercourse on one occasion. In evidence, he said that he had met A on 2 occasions and had consensual sexual intercourse with her on the second and final meeting.

7. On 3rd and 8th of August 2012, in ABE interviews, B alleged that the applicant had raped her on two occasions in December 2011. When interviewed, he denied he had raped her. In evidence, he said they had been in a sexual relationship but denied that there had been any act of sexual intercourse with B on the occasions he was alleged to have raped her.

8. The defence case at trial was that the only plausible explanation for the failure by both B and A to report matters promptly and the inconsistencies in the evidence, to which we shall refer, had been that they had concocted false allegations for their own purposes or had influenced or colluded with each other, thus impinging on their credibility and reliability.

9. Issues for the jury were whether, in the case of B's allegations, the acts of intercourse had taken place at all and, if so, whether they were acts of rape, and, in relation to A, whether they were sure that she had not consented and that the applicant had not reasonably believed that she had consented.

Discussion: 10. The admission of fresh evidence is governed by section 23 of the Criminal Appeal Act 1968. Evidence may be received if it is necessary or expedient to do so. The applicant must satisfy the court that (1) the evidence appears to be capable of belief; (2) it affords a ground for allowing the appeal; (3) it would have been admissible at trial; (4) there is a reasonable explanation for its not having been adduced at trial.

11. It is the applicant's case that this new material in relation to the Facebook conversation was not available until after conviction, that the collation and consideration of the papers took some time, the delay is not the fault of the applicant and it is in the interests of justice to grant the extension of time sought.

12. The evidence is clearly capable of belief and would have been admissible at trial. The controversial areas are whether it affords a ground for allowing the appeal and the reasonableness of the explanation for it not having been adduced at trial.

13. It is submitted that the evidence of the full message exchange goes directly to the veracity of both A and the applicant. A deleted a total of 29 separate messages sent and received in February and March 2012 from the record. A comparison between the version of the messages in the exhibit before the jury and the full exchange reveals that the messages deleted were selective. In consequence, a number of significant and misleading impressions were given in the edited trial version.

14. The contact began on 1st February 2012, A responding to the applicant adding her as a friend, A indicating she did not mind and saying that she was only nearly 17. The ensuing messages, which were deleted from the version before the jury, were the applicant asking A whether she was single and her saying that she was. However, in the jury's version, the applicant had apparently responded 'me too' to her message that she was 17. This was something about which he was vigorously cross-examined. His evidence was that he never indicated he was the same age as her: the full exchange of messages reveals he was telling the truth.

15. Another, more significant consequence of the jury having the deleted version was that it supported A's account that the only contact after the alleged rape was to do with A's concern as to her pregnancy and the taking of the 'morning after' contraceptive pill. Although there was a gap in Facebook messages they resumed on 19th March with the applicant asking A for her phone number as his phone had deleted it. She immediately provided it ending her message with kisses. These messages were deleted from the version before the jury. Two days later, between 21st and 23rd March, there was another exchange of messages, whose edited version before the jury gave a very misleading context for his message "sorry", which was in fact in response to her asking him why he was ignoring her. Her response, again edited from the jury's version was "Dnt be". In its edited form before the jury, the context was capable of being construed as an apology for something that had happened between them. Far from being evidence supportive of A's account of events, the full version of the exchange not only undermined her account but also supported the applicant's version. Although the jury was aware of a large number of text messages being exchanged, there was no evidence of their content. The exhibit of the edited Facebook entries was of obvious significance in a case of one person's word against another and, indeed, during their deliberations, the jury requested a colour copy. Mr Rule submits that the full Facebook message exchange both contradicts the prosecution's case, based on A's evidence that after 17th February there was very little contact between the two of them both in terms of the frequency and nature of contact, and goes to support the applicant's case that he was being truthful and that the act of intercourse was consensual.

16. The applicant was aware prior to and at the time of trial that the Facebook messages exhibited were incomplete and that further messages existed. In his witness statement dated 5th April 2016 he states that "at the time of trial I believed I had tried everything I could to obtain this evidence. I contacted Facebook to no avail and I browsed through all the messages in my inbox folder. I was not aware that an archive folder existed and this was not obvious on viewing the webpage." The Respondent submits that no great expertise was required to locate the archive folder and there is no evidence as to why he left it until after the trial to seek assistance from his brother or someone with greater knowledge of Facebook than he had to assist him in his endeavours. However, the applicant was repeatedly urging the prosecution to obtain the full Facebook exchange and the police had his phone and laptop and could have accessed his Facebook account.

17. We have come to the conclusion that, in a case of one word against another, the full Facebook message exchange provides very cogent evidence both in relation to the truthfulness and reliability of A, who, in any event, gave a series of contradictory accounts about other relevant matters, and the reliability of the applicant's account and his truthfulness. We are, of course, mindful of the approach directed by R v. Pendleton [2002] 1 WLR 72, HL. We are satisfied that this further evidence does raise a reasonable doubt as to whether the applicant would have been convicted had it been before the jury, thus rendering the conviction unsafe. We also consider that there is, in the unusual circumstances of this case, a reasonable explanation for the failure to adduce the evidence at the trial.

18. The delay in bringing the appeal was not excusable. However, the overriding consideration is whether it is in the interests of justice that the time limit should be extended. Given our view as to the merits of the appeal and the reasons for the delays, we are prepared to grant leave, extend time and admit the fresh evidence which we find affords a proper ground for allowing the appeal. In the light of the new evidence, we consider that the conviction is unsafe and we allow the appeal.

19. In these circumstances it is not necessary to consider in detail the first ground of appeal relating to the direction to the jury on consent. In summary, the submission is that, firstly, the direction failed to differentiate between a demand by an offender, overbearing free will, and a desire or intention by a partner to have sex, thus setting the threshold for conduct that would qualify as constituting the offence at a level lower than the law properly provides. Secondly, it is argued that the terms of the direction removed as an issue of fact from the jury what was a vital second issue, namely, proof of no reasonable belief in consent.

20. Although the direction was not helpful in its precise terms, the Recorder made plain that the absence of consent and of any reasonable belief by the applicant of consent must be proved by the prosecution to the requisite standard. It was not left solely on the basis that if the jury believed A's evidence about the matter then the applicant was guilty. The Recorder went on to emphasise that it was for the prosecution to prove not only lack of consent but also that the applicant did not have a reasonable belief that she was consenting. Accordingly, there is no merit in this ground of appeal.

21.We note in passing and with some concern that the jury was not assisted by written directions as to the elements of the offence that had to be proved or a route to verdict. The Recorder relied solely on reference to the Indictment supplemented by his oral explanations and directions. Given the different issues relating to the two complainants and the nature and features of the case, we are of the clear opinion that, as is now directed in CPD VI 26K.12, written directions or a route to verdict would have been of great assistance.

Decision: 22. We quash this conviction. Having been informed that, in the event of the appeal being allowed, the Respondent would not seek a retrial we make no further orders.

Police Made 'Appalling' Errors in Using Internet Data to Target Suspects

Vikram Dodd, Guardian: Police have made serious errors getting search warrants for suspected sex offenders, leading to the targeting of innocent people and children being wrongly separated from their parents, an official report has revealed. The errors – highlighted by the interception of communications commissioner, Sir Stanley Burnton, in his annual report to the prime minister – had "appalling" consequences and related to some of the most intrusive powers the state can use against its citizens. In one example, two children were separated from their parents for a weekend while the parents were questioned as suspects in a child sexual exploitation case. It later emerged that police had raided the wrong address due to an error on the documentation and the parents were innocent. Digital devices belonging to innocent people were also forensically examined by police, Burnton said. The errors identified were mainly because details were wrongly entered into software that helps police work out the location where a specific IP (internet protocol) address has been used. But IP addresses are routinely reassigned by internet providers. Burnton warned investigators not to rely on them when trying to work out who is hiding behind the anonymity of the internet to commit crimes. He wrote: "These [errors] are far more common than is acceptable, especially in cases relating to child sex exploitation. The impact on some victims of these errors has been appalling." Burnton said there were 29 serious errors by those entitled to use intrusive powers – not just police – making up 0.004% of the total number of applications.

Miscarriages of Justice: Compensation

Mr Barry Sheerman: To ask the Secretary of State for Justice, how many successful applications for compensation following a conviction being quashed there were in (a) 2014, (b) 2015, (c) 2016 and (d) 2017; and what the average compensation award was for those claims in each of those years.

Dominic Raab: The table below, gives the number of applications received in the financial years 2013/14 to 2016/17 and the number received so far in the financial year 2017/18. The third column gives the number of applications made in a particular year that were awarded compensation, though the decision to award compensation may not have been made in the year in which the application was made.

2017/18 Applications Received 27, Successful Applications 0
2016/17 Applications Received 51, Successful Applications 1
2015/16 Applications Received 29, Successful Applications 2
2014/15 Applications Received 43, Successful Applications 1
2013/14 Applications Received 45, Successful Applications 1

The average award among the five successful applications was £73,629.68. It would be inappropriate to provide figures for awards by year because recipients would be potentially identifiable.

One in Five Female Prisoners Homeless After Release

Rowena Mason, Guardian: One in five female prisoners are released into homelessness after the number doubled over the last year, figures requested by Labour show. Data from the Ministry of Justice show that 227 out of 1,087 women released from prison in the second quarter of 2017 had no accommodation recorded by their community rehabilitation company (CRC). In the same quarter of 2016, 103 were recorded as homeless. In total, almost a third of female offenders released under CRC supervision had "unknown or unsettled accommodation outcomes", according to written parliamentary answers.

Labour said the overall proportion of offenders released into homelessness was up by 12% over the past year, calling into question the effectiveness of the government's promises to rehabilitate prisoners. Imran Hussain, a shadow justice minister, said: "The Tories are presiding over a failing justice system that is putting public safety and confidence at risk. It is shocking that so many ex-offenders are being released without a roof over their head, despite homelessness being a major factor in reoffending. How can these people hope to turn their lives around when they don't even have anywhere to live? "This is yet another damning indictment of the failure of the community rehabilitation companies to meet even the most basic of needs of offenders. The Tories need to take urgent action to ensure that these probation companies that they privatised are fit for purpose."

An MoJ spokesperson said: "The justice secretary has been clear that we are committed to improving work across government to help prisoners and ex-offenders find a home, as well as a job, help with debt, or treatment for a drug addiction. "As part of this, we are working with the Department for Communities and Local Government to develop a pilot project enabling offenders to find – and stay in – private rented accommodation following release from prison, building on existing government support for those at risk of homelessness. "We will also shortly be bringing forward a strategy for female offenders aimed at improving outcomes for women in the community and custody, to add to the support already in place."

Shaw Report: Staff Shortages at HMP Woodhill Put Inmates' Lives at Risk

Eric Allison, Guardian: Prisoners' lives were still at risk owing to staffing shortages at a jail with the highest suicide rate in Britain, according to a report commissioned by the government and delivered in May. The study by the former prisons and probation ombudsman Stephen Shaw found that difficulties in recruiting and keeping staff had led to a "completely unacceptable situation" at HMP Woodhill in Milton Keynes. Twenty prisoners killed themselves at the prison between 2011 and 2016, by far the highest death toll in any UK prison over a comparable period. The next worst site for prisoner fatalities, HMP Leeds, had 11 deaths over the same period.

The Ministry of Justice commissioned Shaw to investigate the 20 deaths in February, and his unpublished report has been seen exclusively by the Guardian. It concluded that HMP Woodhill was still struggling with staff recruitment and retention problems that had plagued the prison since it opened in 1992, and that "until levels are stabilised, the vulnerability to further deaths or near misses will remain". Shaw, who was the prisons ombudsman for England and Wales until 2010, found that one in 10 of the prison's roughly 800 inmates were on a form of suicide watch, a ratio he said was "unique to Woodhill" and far higher than most prisons. The high level of observation on inmates was unsustainable, he found, and damaged everyday prison life, with activities often cancelled. Shaw found that six prisoners were on round-the-clock suicide watch, meaning 18 staff were taken away from normal duties on a daily basis. There were failings in the recording of data on inmates thought to be at risk of self-harm, Shaw found, due to the uniquely high number of prisoners judged to be suicidal at Woodhill.

Shaw's report concluded that although Woodhill operated a safer regime than before, the jail had gone too far in implementing safety procedures and that its high ratio of prisoners on suicide watch was unsustainable. Woodhill is converting from a local prison to a category B training establishment. It will no longer receive prisoners from courts, which should reduce the risk as these prisoners are considered the most vulnerable to self-harm. In May an inquest into the death of Daniel Dunkley, the 18th man to die at Woodhill, heard that the prison had repeatedly assured the prison and probations ombudsman that his recommendations following earlier deaths at the prison had been implemented. In fact, they had been ignored. The governor at Woodhill told the inquest that if the ombudsman's recommendations had been implemented then Dunkley probably would not have taken his own life. The jury concluded that the failure of Woodhill to put those recommendations into practice had caused Dunkley's death.

The Shaw report was commissioned after families of the deceased Woodhill inmates tried to launch a high court judicial review into why measures to prevent suicide had not been put in place at the jail. The high court refused their civil claim in May, the same month Shaw handed his findings to the Ministry of Justice. Jo Eggleton, a solicitor at the law firm Deighton Pierce Glynn who represented the families of 11 men who died at Woodhill and obtained Shaw's report under the Freedom of Information Act, said the families had been invited to make representations to Shaw but he had already submitted his report when he met them in July this year. "An important opportunity to listen and learn from the families was missed," she said.

Deborah Coles, director of the civil rights group Inquest, said Shaw's review did not come about from the prison service's desire to learn from the record number of deaths but because the families of the bereaved challenged the prison's repeated failures. She said society should not accept that suicides were something that simply happened in prisons and that the underlying issues that criminalised some of society's most vulnerable people must be addressed. Coles added: "We welcome the change of function of the prison and the actions of staff to prevent further deaths. Along with

the families of the bereaved, we are relieved the deaths have stopped, but this is too little, too late. In 2014, a coroner raised concerns that the staffing levels and failed risk assessment tools could lead to future deaths, yet it took three years, 14 further deaths, inquests and this report before changes were made and still, many of the problems remain."

A spokesman for the Ministry of Justice said every death in custody was a tragedy and its deepest sympathies were with the families and friends of those affected. He said that in undertaking his report, Shaw met some of the families and representatives of the deceased and his report was shared with them. The spokesman added: "Since the report, the governor has continued to improve safety at Woodhill with a robust and focused approach to deaths in custody. The prison has also recruited an extra 30 officers, following a targeted campaign to boost numbers on the frontline."

Many National Archives Files Are 'Lost' - But Release Still Reveals British State Brutality

Simon Basketter, Socialist Worker: Every six months the National Archives release previously classified documents. In among the eating or driving arrangements of politicians, and gossip about diplomacy lies long forgotten information about the workings of the British state. There is the odd insight into the chaos of actual government, such as whether to have a disgraced US president visit. In the case of former Tory prime minister Margaret Thatcher, it was decided that Richard Nixon was a bit toxic. Others are concerned with how to deal with the fallout from a nuclear accident. They show that after the 1986 Chernobyl disaster the British government didn't have a clue. It gave out the phone number of the pool of government drivers as the helpline number for information about radiation poisoning.

But there is a serious, recurring problem. The rate of document releases from the archives has increased recently but so has the amount of files that are missing or officially withheld. This year some 190 of the 490 files scheduled for release from the Prime Minister's office have been retained by the government. Withheld files include dossiers on the 1988 Lockerbie bombing, the Scott arms-to-Iraq Inquiry, and the basing of US cruise missiles in Britain. Even dozens of government files covering Britain's European policy in the early 1990s have been held back. Of the 45 European files due to be released, the Cabinet Office has retained 38. Worse, about another 1,000 files have gone missing after being removed by civil servants, according to a Freedom of Information request.

Officially they are "misplaced while on loan to a government department". Documents on Britain's war in Northern Ireland, British colonial rule in Palestine, tests on polio vaccines and much more have supposedly vanished. Documents can be hugely important in fighting miscarriages of justice. In 2014 investigators uncovered a1977 letter from the then home secretary, Merlyn Rees, to the prime minister of the day, James Callaghan. In the letter, Rees claimed that ministers had given permission for torture to be used in Northern Ireland. The information had been withheld from the European Court of Human Rights. The same year the government said it could not release information about the CIA's "extraordinary rendition" programme because the files had suffered "water damage". They were water boarded, so to speak.

In 2013, it emerged that more than one million documents that should have been declassified were being unlawfully kept at a high-security compound in Buckinghamshire. Their existence came to light when Kenyans who had been tortured during the 1950s Mau Mau rebellion took the government to the high court. In other instances, papers from within files have been carefully selected and taken away.

Documents on Britain's war in Northern Ireland and British colonial rule in Palestine

have supposedly vanished. Foreign Office officials removed a small number of papers in 2015 from a file concerning the 1978 murder of a dissident Bulgarian journalist. The Ministry of Defence refused to consider a number of files for release under the Freedom of Information Act on the grounds that they may have been exposed to asbestos. The files concerned arms sales to Saudi Arabia, operations by British special forces in Indonesia and torture techniques. Perhaps most symbolic is the fate of the file on the infamous Zinoviev letter – in which MI6 officers nearly 100 years ago plotted to bring about the downfall of the first Labour government. It has vanished after Home Office civil servants took it away. The Home Office declined to say why it was taken or when or how it was lost. Nor would it say whether any copies had been made. The letter was originally published as a slur in 1924 in the Daily Mail newspaper. It took the British state 75 years to admit it was a fake – but it is still covering it up.

Freemasons Blocking Reform, Says Police Federation Leader

Vikram Dodd, Guardian: Reform in policing is being blocked by members of the Freemasons, and their influence in the service is thwarting the progress of women and people from black and minority ethnic communities, the leader of rank-and-file officers has said. Steve White, who steps down on Monday 01/01/2018 after three years as chair of the Police Federation, told the Guardian he was concerned about the continued influence of Freemasons. White took charge with the government threatening to take over the federation if it did not reform after a string of scandals and controversies. Critics of the Freemasons say the organisation is secretive and serves the interests of its members over the interests of the public. The Masons deny this saying they uphold values in keeping with public service and high morals."

White told the Guardian: "What people do in their private lives is a matter for them. When it becomes an issue is when it affects their work. There have been occasions when colleagues of mine have suspected that Freemasons have been an obstacle to reform. We need to make sure that people are making decisions for the right reasons and there is a need for future continuing cultural reform in the Fed, which should be reflective of the makeup of policing." One previous Metropolitan police commissioner, the late Sir Kenneth Newman, opposed the presence of Masons in the police. White would not name names, but did not deny that some key figures in local Police Federation branches were Masons. White said: "It's about trust and confidence. There are people who feel that being a Freemason and a police officer is not necessarily a good idea. I find it odd that there are pockets of the organisation where a significant number of representatives are Freemasons."

The Masons deny any clash or reason police officers should not be members of their organisation. Mike Baker, spokesman for the United Grand Lodge, said: "Why would there be a clash? It's the same as saying there would be a clash between anyone in a membership organisation and in a public service. We are parallel organisations, we fit into these organisations and have high moral principles and values." Baker said Freemasonry was open to all, the only requirement being "faith in a supreme being". He said there were a number of police officers who were Masons and police lodges, such as the Manor of St James, set up for Scotland Yard officers, and Sine Favore, set up in 2010 by Police Federation members. One of those was the Met officer John Tully, who went on to be chair of the federation and, after retirement from policing, is an administrator at the United Grand Lodge of England. Masons in the police have been accused of covering up for fellow members and favouring them for promotion over more talented, non-Mason officers.

White said: "Some female representatives were concerned about Freemason influence in the Fed. The culture is something that can either discourage or encourage people from

the ethnic minorities or women from being part of an organisation." The federation has passed new rules on how it runs itself, aimed at ending the fact that its key senior officials are all white, and predominantly male. White said he hoped the new rules would lead to an end to old white men dominating the federation: "The new regulations will mean Freemasons leading to an old boys' network will be much less likely in the future."

White came to be chair of the Police Federation after Theresa May went to its 2014 conference and ripped into it. The federation had to decide whether it would adopt a package of 36 reforms, with May, who was then home secretary, threatening that if it failed to do so, it would be taken over by the government and forced to. The Metropolitan police federation was the only local body in the organisation, which represents rank-and-file officers, not to back a package of reforms. In 2014 federation members felt the body that represented them was failing them and was distant. White said the organisation had been turned around during his time in office: "We have gone from being almost irrelevant to being the trusted voice of the frontline and the service. I think we had an organisation that shouted and bawled about everything, which became irrelevant to members and risked being wound up." White beat the Met officer Will Riches to the chairmanship via a coin toss, after the two candidates won the same number of votes. White, who had served as a firearms officer in Avon and Somerset, came into office promising to end a culture of drinking by federation officials using members' money.

White said more reform of policing was needed: "There should be future radical reform of the police. The 43 forces need to operate more as a single entity. We have to break down the political barriers caused by PCCs [police and crime commissioners]." White has written a paper advocating a national body to drive through reforms and impose them on forces if necessary: "We need a new governance board at a national level to drive reforms to policing and make sure it happens." The National Police Chiefs' Council's lead for ethics and integrity, the chief constable Martin Jelley, said: "While we recognise that there has been concern in the past around serving officers also being Freemasons, it is clear that concern over real or perceived threat to impartiality of this has decreased. Regular external scrutiny of the police service by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services has not raised this as an issue of concern. "Strict guidelines require officers to declare anything which might be deemed a conflict of interest in their force's register of interests. If convincing evidence ever came to light which clearly showed that Freemasonry was adversely affecting the integrity of the police service then we would take appropriate action."

Observer View On Miscarriages Of Justice

The right to a fair trial is a linchpin of the rule of law and a free and democratic society. So it is right that the collapse of two rape prosecutions in recent days, both due to police failure to disclose relevant material to the defence, has cast a fresh spotlight on whether that right is under jeopardy. The obligation of police and prosecutors to disclose unused material that might support the defence case is critical to ensuring a fair trial. Indeed, a failure to disclose relevant information to the defence team is one of the most common causes of miscarriages of justice. In the cases of Liam Allen and Isaac Itiary, both accused of rape, the Met police failed to hand over relevant text messages to defence lawyers in a timely fashion. When this finally happened, both cases were dropped, but not before Itiary had spent four months in jail awaiting trial and Allan two years on bail. The attorney general rightly labelled this an "appalling failure" of the criminal justice system.

There are competing narratives about what lies behind this. Some hold up these cases as a sign that the pendulum has now swung the other way in a police force once notorious for its failures to take rape allegations seriously. Angela Rafferty QC, the chair of the Criminal Bar Association, has suggested that "unconscious bias" against those accused of rape is holding the police back from properly scrutinising complaints in sexual offence cases. But it is irresponsible to imply police failures in disclosure are a problem specific to rape prosecutions. In July, a joint report on disclosure by the police and prosecution service inspectorates raised concerns about disclosure practices within the police and CPS across all types of cases. To cast this as a problem about rape plays into the myth that false and malicious rape allegations are rife and that the criminal justice system is loaded against accused rapists. Evidence suggests false allegations of rape are rare and there remain other, bigger problems in the way in which rape allegations are investigated and prosecuted, including the lack of specialist support for women reporting rape. Others have argued this is about austerity: police and CPS budgets have been cut significantly since 2010 and the number of police officers has declined by more than 20,000 even as recorded crime has increased. Not only that, the government has instituted massive cuts to legal aid.

There is no question that our criminal justice system is becoming more and more stretched. The result is that access to justice is impeded for growing numbers of people. But the story does not start and end with government cuts. Rules around disclosure were first introduced in the 1990s after a series of high-profile miscarriages of justice, such as the wrongful convictions of the Birmingham Six. Twenty years later, the amount of data involved in criminal cases has ballooned, thanks to the proliferation of computers, tablets and mobile phones. This makes the investigation and prosecution of criminal offences far more complex and time-consuming than ever, while the massive volume of data confronting the police in all sorts of cases makes meeting their obligations on disclosure increasingly difficult. The implications of this accelerating burden on the criminal justice system have never been properly debated; rather, they have been shoved into the "too difficult" box.

Police cultures also impede disclosure. The role of the police is to act as an impartial investigator; it is the CPS whose job it is to prosecute a case. But the nature of police work means detectives and officers have to develop theories about their cases. Some officers may wilfully conceal evidence that undermines the case they have constructed. But basic human psychology – none of us much likes to be proved wrong – means that many more may be blinkered by unconscious bias that draws them away from evidence that undermines their case theory. This has led some to question whether it is right to leave disclosure decisions to the police. At the very least, the police need proper training, but it has been found to be inadequate across the majority of police forces.

Hostages: 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, 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.