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Justice for David and Ashley Cohen

Claire Lewis, Sheffield Star: Two brothers serving life behind bars for murder are calling for a 'fair day in court' in a bid to clear their names. David and Ashley Cohen, who are behind bars at HMP Whitemoor in Cambridgeshire, were jailed in April 2008 after being found guilty of killing 53-year-old cab driver, Younis Khan, but have always denied responsibility.

In exclusive interviews with The Star, the men both called for the Criminal Cases Review Commission to reconsider its decision not to refer their case to the Court of Appeal. They claim a confession by prosecution witness Vincent Simmons that he lied during their trial casts a new light on the case against them and should merit an appeal or re-trial. He called the Cohen family and in recorded telephone conversations admitted that it was 'beneficial' for him to give evidence against the brothers during their trial because he never went to prison for offences he was facing jail for. The recordings were examined by the Criminal Cases Review Commission, but the case was not referred to the Court of Appeal.

By making the existence of the recordings public, the Cohen brothers hope their case will be looked at again. David, a dad-of-two whose 20-year-old son is studying criminology at university in a bid to take on the case, said he and Ashley had always maintained that Simmons was lying but had been unable to prove it until now. "I feel let down by the criminal justice system," he said. "All I want is a fair trial. I want a trial where the evidence used against me is not the cell confession evidence that is false. What I want is a re-trial or a fair day at the Court of Appeal, where they can assess what has happened. I believe the Court of Appeal will do the right thing."

Recalling the last decade spent behind bars, he said: "I have only got one life to live. I believe what has taken place is outrageous." He admitted to having a criminal history from his younger days but stressed that he was not a killer. "I'm not going to pretend I was as good as gold, I wasn't an angel, but I'm not a killer. They have me, my brother and our little brother all serving life and (we've) not killed anyone. I'm not going to lie, I'm not pretending to be anything that I'm not, but I'm not a murderer. My message to the family of Younis Khan is do they understand that by having my brother and me wrongly convicted they haven't received justice."

David, 38, from Upperthorpe, said that because he has never admitted murder or shown remorse while behind bars he may never be released unless his conviction is quashed. "Every day I wake up I think about it. I feel like I've let my family down for something I have not done. It messes with my head. It's an awful experience. I would not wish it on my worst enemy. If I had done something wrong I could accept it and deal with it and move on, but I can't accept this, and I'm stuck. It feels endless. I don't know where to turn. We have the evidence that shows the evidence in court against us was a lie. It was the main evidence. He (Simmons) is on tape as blatant as can be. If that's not good enough, what is? I'm never going to admit to anything I have not done. I'm fighting for one day to be released. As it stands right now, I don't know anyone who has got out on tariff who has maintained their innocence. I'm fighting all the way. I am a murderer on the say so of this fraudster, nothing else."

Ashley, whose daughter was three when he was jailed, said: "Every day is a struggle. My daughter was three. I have missed out on her life." He described prison as a 'ruthless place'.

"We are here together and think about this every day. We know we are in here and we are innocent. It's awful. We have to keep ourselves strong for our family out there." He said he 'feels sorry' for the family of Younis Khan for their loss but denied that he or David 'played any part' in his murder. "We did not play any part; we did not know the person, we did not know him, we did not even know he existed," Ashley said. He is confident the jury would have returned a different verdict if Simmons had not lied on oath. Ashley, 35, from Oughtibridge, said the brothers were disappointed at the level of the CCRC investigation into the tape recordings of conversations with Vincent Simmons, in which he explained how his 'manufactured' evidence came to exist and suggested people whom he claimed were involved.

David's partner, Lindsey, said: "During the murder trial jurors were told by the judge that Vincent Simmons was a very important part of the case but that he was known to be a dishonest man, yet in essence, the jurors were told during the trial to believe him. "If that's the case then the Criminal Cases Review Commission should believe him now when he is saying that he lied. Simmons was self-harming in prison; he was a desperate man. He saw this as his way out. "Two men have been locked up for ten years for something they have not done - their lives are slipping away. The admission that a key witness lied in court must make the conviction unsafe. People need to realise that this could happen to anyone and that's why we are fighting this - they deserve justice. My partner has lost 11 years of his life after being convicted of this horrendous crime."

David Cohen, A5715AL, HMP Whitemoor, Long Hill Road, March, PE15 0PR

Man Granted Contact Order With Daughters and Divorce From Wife

Scottish Legal News: A man whose wife made a false rape allegation against him and moved away with their children has been granted a divorce and a contact order in a case in which the sheriff found the children's negative views of their father were not independently formed and that the mother's witnesses, among them a head teacher, were unreliable. The parties married in 2009 and had two children, I and V, now aged eight and five respectively. They separated in October 2017. The family moved from Perthshire to Dumfries and Galloway, in July 2016, after the pursuer, X, had secured a new job.

The defender, Y, found it difficult to settle in and became depressed, for which she was prescribed medication. An animal lover, she kept chickens in their new home and became friends with a neighbour, CE, who shared her affection for animals. She told members of the pursuer's family she was unhappy with the marriage, in response to which the pursuer sought more time off in order to help with household tasks. But the defender was not receptive to the changes made and decided the marriage was over in the summer of 2017, taking steps to leave the pursuer. The parties stopped having sexual intercourse in July or August 2017, a decision made by the defender. These arrangements were made before the parties attended a wedding on 27 October 2017, that of the pursuer's brother.

A group of friends and family, among them the parties and their children, stayed overnight in Kildrummy House Hotel in Alford, Aberdeenshire on Thursday 26 and Friday 27 October. The parties had danced together at the wedding and with their children. They had consumed alcohol but were not incapable of consenting to sexual intercourse. In the early hours of 28 October 2017, they had consensual sexual intercourse in their double bed in a room in which their children were asleep in their own beds. In subsequent message exchanges with people upon their return from the wedding, the defender exhibited no anxiety.

On the night of 29 October or morning of the following day, 10 or 12 of the defender's 15 chickens were killed by a fox or other animal. The pursuer found the dead chickens in the morning at 9am and phoned the defender at 9:15am to tell her – she reacted with distress. At 9:30am she arrived at the home of CE, the neighbour. She was upset and distressed. She told the defender that she had been raped by the pursuer. The pursuer was never arrested over the allegation, by May 2018 there were no criminal proceedings.

The parties' children had stated their opposition to continuing a relationship with the pursuer and had put their views forth in pictures and words. They told people outside their family they were afraid of being taken away by their father and stated their opposition to contact with him and any members of his family. Among the persons told this were a Women's Aid worker in Dumfries, whom the children spoke to in November 2017 and a court child welfare reported, who interviewed them in March 2018.

The children's views were not genuine, independent and uninfluenced. Their opposition to contact with their father had been influenced by their mother. Both parties were found to have parental rights and responsibilities towards the children. It was determined to be in the best interests of the children to reside with the defender and also in their best interests to have contact with the pursuer.

In a written judgment, Sheriff Mohan said: "I was very surprised at the evidence that I only a day later told her mother that she was crying "tears of joy" at getting away. While I have no reason not to accept that I told the Women's Aid worker in those first few weeks that she "hated" her dad, I do not accept that as the child's genuine view, independently formed."

He added: "I have concluded that there is no reasonable basis for refusing a contact order. The evidence demonstrated that, while there were stresses at home, the pursuer had a healthy relationship with his daughters. He looked after them, albeit to a lesser degree than the defender. The defender trusted him to look after the girls over two weekends in September 2017, the month before separation. The pursuer provided for the children financially. He played a part in their health and development. They lived in the same household, at various locations, for all of their lives until 31 October 2017. The girls often went out with him [ ] and helped him with jobs. Even the defender – in texts to her mother in July 2017 – accepted his commitment to the family."

Do Civil Rape Cases Mark 'Destruction Of Justice'?

Stuart Waiton, Scottish Legal News: Men in Scotland are now at risk of being branded 'rapist' for political and ideological reasons, following the Stephen Coxen case. Coxen was tried for the rape of Miss M in 2015 in the High Court, the verdict was not proven and Coxen walked away a free man. Three years later in a landmark ruling a judgment has been made against this man, in other words, he has been found guilty and been asked to pay £80,000 in damages. Perhaps worse than the financial hit, Coxen has been branded a rapist.

The civil justice system is the place were individuals use the law in relation to one another, so it could be argued, this a private affair between Coxen and Miss M, but that would be to ignore how and why this case was carried out in a civil rather than a criminal court.

This is not the first case of this kind. In 2017 the footballer David Goodwillie was taken to a civil 'court' for rape and fined £100,000. On this occasion, Goodwillie's case did not even make it to the High Court due a lack of evidence. Nevertheless, despite this apparent lack of evidence the sheriff ruled against him. Stephen Coxen, on the other hand, had a trial and was then, essentially, put on trial for the same act a second time, thus breaching the principle of double jeopardy.

Some would argue that the civil justice system is different and therefore this is not a breach of this principle. Technically, they have a point. But the reality of the matter is that in both cases

the judgment about an extremely serious crime has been forced through the back door of the Sheriff Court. Just as the Goodwillie case set a precedent for rape being examined in a civil court. Coxen's case is the first case of its kind in more than 100 years. This risks taking us back not only to 'Victorian values' but to a pre-modern situation where our victim centred form of justice becomes based more upon vengeance and prejudice than upon justice.

The problem with a rape case being ruled upon in a civil court is that the weight of evidence in a civil case is 'the balance of probabilities' as opposed to the need to prove an act 'beyond a reasonable doubt'. Rape is clearly a criminal matter and should, as it has been for generations, be dealt with in the highest court of the land, overseen by a jury and needing corroborating evidence.

In a civil case, like Coxen's, the balance of probabilities benchmark means that guilt can be found by an individual, in this case Sheriff Robert Weir, based simply upon an opinion about the credibility of the witnesses – there is no need for concrete evidence. Sheriff Weir heard the story of a drunken night in 2013 that ended in sex between Coxen and the unnamed woman and drew the conclusion that Stephen Coxen 'took advantage' of Miss M, who was, in the sheriff's opinion, too drunk to give consent.

It would be harsh to blame the women in question for wanting to have a second trial and one that needs no corroboration. It may be harsh to even question the Sheriff's ruling, after all, this is a civil process and so long as you believe there is a 51 per cent chance that the alleged victim is telling the truth, Sheriff Weir would have to act accordingly. What is wrong however is that the Scottish criminal justice system deems it acceptable to put a man on trial for the same act twice and in a court where a guilty verdict is a far more likely outcome.

This is not a matter of taking the side of men or women, it is simply a matter of justice. Justice is, or should be, a universal system that treats everyone the same and is one that is based on objectivity and evidence. These principles of law, coupled with the need to prove guilt beyond a reasonable doubt have been the bedrock of criminal justice in this country and are some of the most enlightened and progressive aspects of modern society. But they are being lost.

So why is this happening? One reason is that the criminal justice system across the UK is becoming victim centred. This sounds reasonable, but not when it means that the scales of justice are unbalanced in an attempt to 'find closure' for victims at the expense of due process and evidence. The other is the concern about the difficulty of finding guilt in rape cases, something that has become more of a political issue as concerns and campaigns about sexual crimes and harassment heighten.

What we are now witnessing is the Scottish justice system, the state and the government all pushing to convict men of rape.

In the Goodwillie case, the woman in question was supported by the UK government agency, the Criminal Injuries Compensation Authority. She was awarded £11,000 for what they believed was a rape, before Goodwillie stepped into the Sheriff Court. In the case of Stephen Coxen, Miss M received the support of the Scottish Legal Aid Board. In other words, if we 'follow the money' it leads back to the state and government funding this new development.

What is more, the money for the Coxen case came from a special fund within the Legal Aid Board, set up specifically to pursue cases of gender-based violence. Here we find a further problem because the very idea of gender-based violence, or at least the understanding of this by the Scottish government, is both political and ideological and stems from a particular, one-sided, and often extreme brand of feminism.

In the Scottish government's Equally safe delivery plan, published in 2014, we are informed that gender based violence is a 'function of gender inequality, that is an abuse of male power and priv-

ilege', and that 'women and girls experience violence and abuse because they are women and girls – and because they continue to occupy a subordinate position within society in relation to men'.

This feminist ideology that has been adopted by the government stems from a belief that we live in a patriarchal society based on gender inequality, enforced by men, who have power, over women, who do not. It is a highly contested ideology and one I suspect the vast majority of the Scottish electorate do not subscribe to. It is also an ideology that at its most extreme has resulted in the claim that 'all men are potential rapists' and that abuse of men by women is an impossibility: If power lies in the hands of men, the argument goes, it would be oxymoronic to believe in violence ie power, of women against men.

That this completely one-sided understanding of gender based violence has been adopted by the government is significant, as is the lack of political protest or opposition to it. The police and the criminal justice system more generally does not subscribe to this feminist doctrine, if it did so openly, it would no longer be possible to even suggest that there is a balance to the justice system. But it would be difficult to imagine that it does not influence how our system of justice operates.

The idea of gender based violence has become a political issue and tool, one where the idea of #believe has become uncoupled from criminal justice processes and become instead a moral position taken by 'right thinking people'. The Scottish government is now funding rape cases through the back door and there are rumoured to be more cases in the pipeline. The result is that every failed rape case can now be tried twice and many more men will be branded rapists based on the balance of probabilities and the pressure on sheriffs to #believe. What we are witnessing is the destruction of justice.

Dr Stuart Waiton is an academic and the author of Snobs Law: Criminalising Football Fans in an Age of Intolerance. This article first appeared in The Herald.

Woman Deprived of Fair Hearing Through Conduct of Trial Judge - Convictions Overturned

John Hyde, Law Gazette: The court ruled that His Honour Judge Stephen John had unfairly made comments during the woman's trial which indicated his belief in her guilt. He had urged her counsel to give 'robust advice' about her plea and withdrew the woman's bail and remanded her in custody the night before she was due to give evidence. He also threatened her 14-year-old daughter with custody if the teenager made any facial response to the testimony that was being given. This meant the woman doubted the fairness of the process and was thereby 'handicapped' in giving her evidence.

The woman was convicted at Kingston Crown Court in April of bringing cannabis, two mobile phones, two charging cables and a SIM card on a visit to her partner in prison. The handover had allegedly happened while she visited the prisoner with her teenage daughter. A search of the prisoner later revealed he had stashed these items on his person. The woman, who was jailed for 18 months, admitted smuggling in the SIM card but denied being responsible for the other items. In the appeal, her lawyers argued the judge's decision to hold her on remand overnight demonstrated a 'hostile attitude' and affected the quality of her evidence.

They submitted that when the woman gave evidence, the judge posed questions more akin to comment or cross-examination than attempts at clarification. HHJ John had already directed that the woman's teenage daughter sit at the back of the courtroom and not approach the dock. He warned the 14-year-old that if she responded in any way during the evidence, he would 'have the officer arrest you and take you downstairs. And I don't care if you're 14; you'll go into a cell same as anybody else.' When defence barrister Michael Haggar sought to

intervene, the judge replied: 'Don't lecture me Mr Hadder [sic], I'm speaking to her.'

The Court of Appeal said it was not appropriate for the judge to threaten the girl with custody at all - let alone for a facial reaction to the evidence. If he wanted to restrict her input, he could simply have not allowed her in the courtroom. Appeal judges found substance in four grounds of complaint, which taken together led the woman to think he had taken an adverse view of her case and that she would not get a fair trial. This may well have handicapped her in giving evidence and resulted in her not receiving a fair trial. The conviction was set aside and the prosecution opted not to seek a retrial.

Emmanuel Omotoso - Conviction Quashed Retrial Ordered

1. This appeal against conviction, brought with the leave of the SJ, concerns the admission of the appellant's bad character during his trial at the Crown Court in Harrow in June 2016 before His Honour Judge Arran and Jury, on two counts of possessing a firearm with intent to endanger life.

2. He was convicted of those two offences on 30 June 2016 and subsequently sentenced to an extended sentence of imprisonment.

3. The appellant had previous convictions from 2009 onwards for offences of robbery, possession of cannabis, obstructing a police officer, battery, two offences of possession of cocaine with intent, possession of a knife, possession of heroin with intent, assaulting a constable, possession of cocaine, common assault, threatening behaviour, possessing an offensive weapon, theft, and affray.

4. After the appellant had given evidence and the defence had closed its case, the Judge invited the prosecution to consider whether to apply to adduce evidence of the appellant's bad character. Mr Harounoff accepted the invitation and made the application on two bases.

5. First, he applied under s.101(1)(f) and s.105 of the Criminal Justice Act 2003 ('CJA 2003') to correct a false impression given by the appellant in his evidence that he was an auditor and was training to be a HGV driver ('gateway (f)'). Secondly, he applied under s.101(1)(g) and s.106, on the basis that the defence had made an attack on the character of a prosecution witness ('gateway (g)'). Although he had completed his evidence, the appellant could be recalled in order to deal with aspects of his convictions if necessary. It was agreed that his convictions for failing to comply with court orders were not significant.

6. The defence submitted that any application ought to be in writing. Furthermore, the application based under gateway (g) was made too late. It should have been made at the time of the cross-examination or at the close of the prosecution case. In any event, the cross-examination of the officer had not sought to question his honesty or integrity. Had the Crown raised its concerns at the time then defence Counsel could have made it clear that she was not alleging any bad faith on the part of the officer. He was questioned to highlight the failings in the investigation which may have been due to inadvertent mistake but which the jury needed to be careful about. The officer had said that he had spoken to a lot of different potential eyewitnesses, but that there was nothing further to disclose. None of those conversations were recorded. The evidence of Mr Westbrook – that he was not spoken to – contradicted the statement of the officer that he had been spoken to.

7. So far as the application under gateway (f) was concerned, the defence submitted that the appellant's evidence that he had been doing auditing was not given with a view to advancing positive good character, but as part of his evidence to show that he was not hiding from the police but simply getting on with his normal life. Any application in respect of gateway (f) should have been made before the appellant was cross-examined. It did not follow from what he had said that the jury would form a view that he was doing a professional job at the time. Had the issue been flagged

up at the time the appellant would have had the opportunity of correcting his evidence: The appellant had now clarified that he had meant to say that he was involved in stock-taking.

8. The Judge indicated that he was minded to allow the application but directed that the prosecution should put the application in writing. Following this, the defence made further submissions, or perhaps more accurately, repeated its submissions, with the Judge repeating points he had already. He then gave his ruling which is the subject of the appeal

9. During submissions the Judge stated that the appellant could apply to be recalled but Counsel stated that she was not making such an application. The offer was repeated later by the Judge. The OIC in the case was then recalled and gave evidence of the appellant's previous convictions as set out above.

10. Following this, Tre Burgess then gave evidence as to his movements on the day of the incident that was consistent with the appellant's evidence. He admitted that he had been present in the Audi when guns had been thrown from the vehicle. He explained that he was in debt to someone after crashing their car and, as he could not afford to pay for the repairs, he had been forced to look after drugs for them. On the night of the incident this man had handed him another package to look after. He did not look inside. He took the package with him in the Audi when the appellant's uncle gave him a lift home. When he saw the police cars he panicked, told the driver that he had something on him, and threw the items from the car.

Consideration of the Appeal: 11. We start with four general observations.

12. First, when considering an appeal in relation to this type of application it is important for this Court to bear in mind what was said in R v. Renda and others [2006] 1 Cr App R 24 p.380: Several of the decisions or rulings questioned in these appeals represent either judgments by the trial judge in the specific factual context of the individual case, or the exercise of a judicial discretion. The circumstances in which this Court would interfere with the exercise of a judicial discretion are limited. The principles need no repetition. However, we emphasise that the same general approach will be adopted when the Court is being invited to interfere with what in reality is a fact specific judgment. As we explain in one of these decisions, the trial judge's 'feel' for the case is usually the critical ingredient of the decision at first instance which this Court lacks. Context therefore is vital. The creation and subsequent citation from a vast body of so-called 'authority', in reality representing no more than observations on a fact specific decision of the judge in the Crown Court, is unnecessary and may well be counterproductive. This legislation has now been in force for nearly a year. The principles have been considered by this Court on a number of occasions. The responsibility for their application is not for this Court but for trial judges. Finally, even if it is positively established that there has been an incorrect ruling or misdirection by the trial judge, it should be remembered that this Court is required to analyse its impact (if any) on the safety of any subsequent conviction. It does not follow from any proved error that the conviction will be quashed.

13. Secondly, there was a difference between the applications under gateways (f) and (g). Whether a defendant has given a false impression to the Jury (at least by what he or she says in evidence) can often be identified from looking at the transcript. In the present case the issue on the application of gateway (f) was relatively straightforward, and so was the likely impression on a jury. Whether a defendant has made an attack on another person's character under gateway (g) may or may not be apparent from the transcript of the evidence. As is made clear in Renda, the trial judge will be in a far better position to assess the nature and direction of a cross-examination than this Court, and transcripts even if available can never convey the full picture. However, in the present appeal we have not been provided with transcripts of any part of the cross-examination.

14. Thirdly, although the application under gateway (f) was made soon after the appellant had given his evidence, the application under gateway (g) was made after the close of the prosecution case. Whether the applications could and should have been made earlier is a matter to which we return later in this judgment.

15. Fourthly, it is common ground that it was the Judge who suggested that the prosecution consider making a bad character application. We do not regard this as objectionable in itself, provided that a judge is scrupulous in not taking on the function of the prosecutor or appearing to do so. Any such suggestion to the prosecution should be carefully expressed, not least because the judge may not be aware of what has been agreed between the trial advocates. In the present case, the Judge could not have known whether the appellant's character was to be put before the Jury under gateway (g) until the close of the cross-examination.

Conclusion: 16. Accordingly, we quash the conviction on counts 1/2. Agreed at the conclusion of the hearing that, if we adopted this course, there should be a retrial and we so order.

London Police Force Must Act Over Excessive Force Claim, Says Court

Damien Gayle, Guardian: City of London force must take disciplinary action against officer accused of clubbing Alfie Meadows over the head. The City of London police force has failed in an attempt to block disciplinary action against an officer who was accused of clubbing a student over the head and causing a life-threatening brain injury. The force was immediately criticised over its lawyers' attempt to persuade a judge that the Independent Office of Police Conduct had overstepped its role when it forced proceedings against PC Mark Alston, who is accused of using excessive force against 20-year-old Alfie Meadows in 2010. The incident occurred at a demonstration when violence broke out between police and protesters. Meadows, who was a second year philosophy student at the University of Middlesex, needed emergency surgery to save his life. He was subsequently cleared of violent disorder at the demonstration.

Lawyers for the City of London police had tried to argue that the case had no merit, and that the IOPC was "undermining public confidence" in the police by ordering forces to bring too many officers before gross misconduct disciplinary hearings. But at a hearing at the high court in London, Lady Justice Sharp and Mr Justice Garnham accepted the IOPC's case that it was up to a disciplinary panel, not the watchdog, to decide whether a case had merit.

Imran Khan QC, who represented Meadows, said that in his experience too few incidents of police misconduct were properly investigated, and "regrettably, this appears to be an attempt by the police to turn the clock back even further". He said: "This action shows that police forces are trying to shield themselves from accountability, which completely undermines principles of truth and accountability, which are essential for the public to have confidence in policing in the UK. Our client has had to battle for many years for justice and we will continue to support him in doing so."

Meadows also condemned the attempt to question the watchdog's powers. "That the police think they have no case to answer after almost killing me on a protest as a result of violent and dangerous policing is a damning indictment of how seriously they take police brutality," he said. "Their failure to acknowledge that they even have a case to answer is emblematic of the fact that the police remain unwilling to address the serious problems of police violence, abuse of power, and unaccountability."

In a skeleton argument submitted to the high court last Thursday, lawyers for the City of London police had argued that the case against Alston was "hopeless", given the evidence available. They also argued the case had broader significance because it reflected "wide-

spread concern" from police forces that the IOPC was directing them to bring gross misconduct hearings with no chance of success, "thereby damaging public and police officer confidence in the police complaints system. This cannot be in the public interest or in the interests of maintaining public confidence in and the reputation of the police service."

In response, the IOPC said that it was up to the disciplinary panel to decide whether the case had merit. "It has at times been alleged, and in some cases it has been held by the courts, that the IOPC had acted unlawfully by dismissing allegations of police misconduct at the 'case to answer' stage," the watchdog told the court. "The courts have repeatedly emphasised the focused nature of the IOPC's function in this regard, which must be carefully distinguished from making a decision on the substance of the allegations. The latter task falls not to the IOPC but to the relevant misconduct panel if a case to answer is identified." A City of London police spokesman said the force acknowledged the court's decision and would "comply with [their] statutory duty" to hold a disciplinary hearing for Alston.

Golubyatnikov and Zhuchkov v. Russia

The applicants, Dmitriy Golubyatnikov and Sergey Zhuchkov, are Russian nationals who were born in 1979 and 1978 respectively and live in Tikhoretsk (Krasnodar region, Russia). The case concerned their allegation that they had been ill-treated in police custody in order to force them into confessing to inflicting serious head injuries on a girl who later died. Both men allege that they were arrested in January 2005, beaten by the police with rubber truncheons and had gas masks placed over their heads to block their access to air. Mr Golubyatnikov says that he refused to confess and on the same day as his arrest was taken to hospital where he was diagnosed with multiple injuries, including fractured ribs. Mr Zhuchkov says that he ended up confessing and incriminating himself and the first applicant after two days of ill-treatment and out of fear for his life. He subsequently retracted his confession, and maintained that position at trial, pleading not guilty, as did the first applicant. Pre-investigation inquiries have repeatedly been carried out into the applicants' complaints of police brutality. However, the prosecuting authorities have refused to institute criminal proceedings, most recently in 2016, in respect of both applicants.

The courts relied, among other evidence, on Mr Zhuchkov's confession to convict the applicants in August 2005 of causing grievous bodily harm leading to death. Mr Golubyatnikov was sentenced to 12 years' imprisonment and Mr Zhuchkov to nine years' imprisonment. In those proceedings, the courts dismissed the applicants' allegations of ill-treatment as unfounded, relying on the refusals to institute criminal proceedings against the police officers. Mr Zhuchkov's allegation of unlawful detention was dismissed for the same reason.

Relying on Article 3 (prohibition of inhuman or degrading treatment), both applicants complained that they had been subjected to police ill-treatment and that the authorities had failed to carry out an effective investigation into their allegations. They both further complained under Article 6 § 1 (right to a fair trial) that their convictions had been unfair because they had been based on evidence which Mr Zhuchkov had been coerced into giving. Mr Zhuchkov made another complaint, alleging under Article 5 § 1 (c) (right to liberty and security) that he had been detained for over a day before his arrest had been officially recorded.

Violation of Article 5 § 1 - in respect of Mr Zhuchkov, Violation of Article 3 ill-treatment, Violation of Article 3 (investigation), Violation of Article 6 § 1: Just satisfaction: 25,000 euros (EUR), each, to Mr Golubyatnikov and Mr Zhuchkov for non-pecuniary damage; EUR 142 to Mr Golubyatnikov and EUR 313 to Mr Zhuchkov for costs and expenses.

Jailed Anti-Fracking Activists Freed on Appeal

Josh Gabbatiss, Independent: Three activists jailed for a protest at a fracking site in Lancashire have been freed on appeal. Simon Blevins, 26, Richard Roberts, 36, and Rich Loizou, 32, had their jail terms replaced with conditional discharges. The three men were initially convicted of causing a public nuisance after they climbed onto lorries bringing drilling equipment to Cuadrilla's Preston New Road site last July.

They were sentenced to up to 16 months in prison, while a fourth protester Julian Brock, 47, was given a 12-month prison term, suspended for 18 months. He did not challenge his sentence. Following the decision, Lord Chief Justice Lord Burnett said: "We have concluded that an immediate custodial sentence in the case of these appellants was manifestly excessive. In our judgment the appropriate sentence which should have been imposed on 26 September was a community order with a significant requirement of unpaid work. But these appellants have been in prison for six weeks. As a result, and only for that reason, we have concluded that the appropriate sentence now is a conditional discharge for two years."

The packed courtroom erupted with applause and singing after the decision was announced. Hundreds of protesters had gathered outside the Royal Courts of Justice prior to the verdict, including family members of the three men, environmental campaigners and former Green Party leader Caroline Lucas. After the ruling, Platon Loizou, father of Rich Loizou, said: "We are just delighted. Today justice has really been done. "We should not be here in the first place, but what's done is done. We have now got to concentrate our efforts on stopping fracking in this country." Rosalind Blevins, mother of Simon Blevins, thanked the thousands of people she said had shown support for their cause since the original ruling.

Hundreds of representatives from academia and trade unions have issued open letters in recent weeks, published in The Independent, slamming the "absurdly harsh" sentencing. "We are very happy about the decision to overturn the excessive sentence ... We need more, not less, direct action to challenge the government's support of the fracking industry," said Andrea Brock of the University of Sussex, who issued one of those letters with Dr Amber Huff.

Friends of the Earth and human rights organisation Liberty made submissions to the Court of Appeal on the original sentences, raising concerns that the decision was a violation of people's right to protest. At the initial sentencing, Judge Robert Latham had said that he could not suspend the jail terms handed to the three protesters as there was too great a risk of them reoffending. "Friends of the Earth intervened in this important case on the basis that these sentences were disproportionate," said Katie de Kauwe, the environmental group's lawyer said.

"We are very pleased that the Court of Appeal has today found that the custodial sentences were manifestly excessive and quashed them. This is a great outcome." Responding to the news, John Sauven, executive director of Greenpeace, said: "Today's verdict is a major cause for celebration not just for activists, but for everyone whose home, community and climate are threatened by reckless industrialisation". "This is still a country where dissent is tolerated and speech is free."

Domestic Abuse Victims Seeking Help Are Left In Squalor

Duncan lewis: A number of specialist legal practitioners and housing charities have revealed that many seeking housing when fleeing domestic abuse are being left with no choice but to live in poor quality accommodation. Many victims are leaving their homes with young children, having to live in dirty and unsanitary accommodation – with some evidence of mould, infestations and a lack of utilities. This raises a number of difficulties, not least the fact that they are more likely to feel forced

to return to their homes where their attackers may reside in favour of more sanitary living conditions.

Professionals acting on behalf of domestic abuse victims have seen this problem arise more and more in recent years, since the number of social housing options have decreased and alternative affordable housing is even more few and far between. With benefits capped and allowances that local housing authorities offer frozen, the only landlords willing to let properties for a reduced rate are arguably offering something of lower quality. If the state of the property is so poor, this can have a direct impact on the tenant's health.

One such case in which a mother fled abuse to be placed in a house by Homes for Haringey, the property had no electricity and an abandoned vehicle was left outside the front of the building. The mother argues that an infestation of mice was a contributory factor to her daughter's ear infection. When this first property proved unsuitable for the mother, the local council did respond by placing her in temporary accommodation, however this poses problems of its own. A family forced to leave their home, to then be passed on from place to place, only increases the strain and distress imposed by the situation.

Charities and legal professionals insist that more needs to be done to ensure victims are given appropriate accommodation as soon as possible, especially when proceedings are ongoing in relation to any abuse claims. As a rule, those who have suffered domestic abuse that seek housing should be placed at the top of the priority list, and the accommodation selected should be suitable. If a victim finds that this is not the case when they are placed in a property, it is important that they understand that they can challenge the placement. Many fear that if they do not take the first accommodation they are offered they will end up homeless.

With this in mind, the results of the Women's Aid Nowhere to Turn 2018 report revealed that 12% of women seeking emergency accommodation were left without refuge. It is these extreme cases which demonstrate the extent of the problem with accessing housing today. Anyone who is looking for housing and is struggling to get a placement from their local authority, or anyone who has been given subpar accommodation, should speak to a housing solicitor who will be able to advise on the best course of action.

Prison Pepper Spray Plan Risks Inmate Safety, Rights Body Says

Jamie Grierson and Damien Gayle, Guardian: The rollout of pepper spray to prison officers across England and Wales puts inmates at risk of inhumane treatment, the head of the UK's human rights watchdog has said. David Isaac, the chair of the Equality and Human Rights Commission (EHRC), said the use of Pava, a synthetic incapacitant pepper spray, to control behaviour in jails could cause pain and serious injury. Rory Stewart, the prisons minister, announced on Tuesday that £2m would be spent on arming every officer in adult jails with Pava, after a pilot by the Prison Service. Isaac said: "We understand that prison officers need methods to protect themselves and other prisoners but such protections must not be at the expense of the basic rights of prisoners. Everyone has the right to live without fear of inhumane treatment, and the use of Pava spray in a detention environment is a way of controlling behaviour that causes pain and can seriously injure." He said the EHRC wrote to and met the Prison Service last month to express its reservations about the rollout, and was disappointed there had been no further debate before the announcement. "Making Pava spray available to every prison officer increases the risk that it might be used inappropriately," Isaac said, adding that the EHRC would be asking the Prison Service again for information about the trial "so that we can assess the

adequacy of the restrictions and safeguards for Pava spray's use".

Nick Hardwick, a former chief inspector of prisons, echoed Isaac's concerns. "I heard today that staff are now going to be given pepper Pava sprays. What an admission of failure," he told the annual conference of the Prison Governors' Association. "I don't dispute that things have got so bad that that may be necessary, but we should resist the argument that greater use of force is any kind of a penalty compared with enough experienced staff creating relationships." Earlier, John Podmore, a former governor who turned Brixton prison in south London from Britain's worst performing jail into its most improved, said the move "is not going to help the control that's been lost in many prisons at the moment". He pointed out that some large prisons, such as Wormwood Scrubsin London, had 40 officers in charge of about 1,200 inmates. "Prisons run on cooperation; they don't run on coercion. They run on staff personal relationships and unfortunately there's currently … in many, many prisons a culture of conflict; and pepper spray will make it much worse. It's a downward spiral," he told BBC Radio 4. Podmore said the problem was that "we've got far too many prisoners with nothing to lose. They've got nothing on the inside and nothing on the outside, and that's what we need to address."

HMP Exeter – Very Violent Prison Needing Urgent Prison Service Support

HMP Exeter, holding more than 400 men from across the south west of England, was found by inspectors to be "very violent", with widespread illicit drug use and poor living conditions apparently regarded by staff as normal. Peter Clarke, HM Chief Inspector of Prisons, said the deterioration in conditions in Exeter, particularly in safety, was so severe that he invoked the Urgent Notification protocol for only the second time since it was ratified in November 2017. The protocol – invoked in Exeter in May 2018 – requires the Secretary of State for Justice to respond publicly with plans to improve the jail.

In the previous inspection, in August 2016, inspectors had found a serious decline in a number of areas. Mr Clarke warned in 2016: "Unless the regime at the establishment could be improved, violence reduced and the prevalence of drugs and other contraband addressed, further declines would be almost inevitable." In 2018, Mr Clarke said: "Unfortunately, despite a significant increase in staffing levels, my fears have proved founded…This unannounced inspection, carried out a mere 21 months after the last, found that not only did many prisoners feel unsafe but that the prison was in fact significantly less safe than at the last inspection, was less safe than similar prisons, and had reached a position where it now inevitably attracted our lowest possible assessment of 'poor'."

The rate of assaults between prisoners was the highest inspectors had then seen in a local prison in recent years, and had more than doubled since the 2016 inspection. The number of incidents involving the use of force by staff had risen and was also very high. Many violent incidents were serious and involved weapons. There was a concerning trend of prisoners throwing boiling water mixed with sugar at staff and other prisoners, which had occurred at least 25 times in the previous six months. Illicit drugs were prevalent, with 60% of prisoners saying it was easy to obtain drugs and around a quarter testing positive for drugs. Living conditions for many in the prison were very poor. Mr Clarke commented: "My sense was that the situation had come to be regarded by many staff as normal."

There had also been six self-inflicted deaths since the last inspection, and apparently another within weeks of the 2018 inspection. Self-harm had risen by 40%. Mr Clarke added: "In light of the very high levels of vulnerability, self-harm and suicide among prisoners at Exeter, it was

shocking to see that cell call bells were routinely ignored by staff." Inspectors were particularly appalled by the segregation unit, finding a young man with mental health issues being held in the only cell in use during a period of refurbishment. The report noted the prisoner "was effectively living in the middle of a building site, which was noisy and dirty due to the refurbishment work taking place." Staff had not even made the effort to find out his first name. Inspectors made 47 recommendations. 30 recommendations from the last inspection had not been achieved.

On a more positive note, inspectors found that the prison was now much better staffed, the day-to-day regime was generally more predictable, and there had been improvements in health care and resettlement activity. Overall, though, Mr Clarke said: "My judgement was that without significant intervention and support from HM Prison and Probation Service (HMPPS), the urgently needed improvements to safety in HMP Exeter were unlikely to materialise. This was directly relevant to my decision to use the Urgent Notification protocol."

Stephen Stubbs, Andrew Davis and Clinton Evans – Should the Judge Have Recused Himself?

These appeals raise the question whether a judge who has presided at an aborted trial by jury ought to have recused himself from sitting on an appeal against conviction by the defendants following their conviction on the same charges at a further trial by jury in which he played no part.

2. On the 25 July 2013, following a trial before Jones J and a jury, the three appellants, Stephen Stubbs, Andrew Davis and Clinton Evans, were each convicted on one count of the murder of Jimmy Ambrose, a police officer, and on another count of the attempted murder of Marcian Scott. Evans was also convicted on two further counts alleging firearms offences. They were each sentenced to life imprisonment for murder and ten years' imprisonment for attempted murder. Evans was also sentenced to three years' imprisonment on each firearms count. All sentences were to run concurrently.

3. This was the third trial of this matter. The first trial took place before Allen J and a jury in 2002. The appellants were convicted but their appeals against conviction were allowed and a retrial ordered. The second trial took place before Isaacs J and a jury in 2007. It was aborted on the first day of the judge's summing up.

4. The charges arose out of a shooting incident which is alleged to have occurred on 29 March 1999 outside the Club Rock nightclub in Bay Street, Nassau. In interview all three appellants admitted their presence in the vicinity of the incident. A central issue was identification. The evidence implicating Stubbs came mainly from Marcian Scott, John Campbell, both eye-witnesses, and from Officers Ryan and Duncombe. The evidence implicating Davis came mainly from Scott and Campbell. The evidence implicating Evans came mainly from Campbell and Officers Burrows and Robinson. Scott made a deposition at the preliminary inquiry and gave oral evidence at the first trial. However, he died on 29 June 2006, between the first and second trials.

Discussion: 23. Mr Knox is correct in his submission that the fact that a judge has previously made a decision adverse to the interests of a litigant is not, of itself, sufficient to establish the appearance of bias. As Floyd LJ observed in Zuma's Choice Pet Products Ltd v Azumi Ltd [2017] EWCA Civ 2133 (at paras 29, 30), the fair-minded and informed observer does not assume that because a judge has taken an adverse view of a previous application or applications, he or she will have pre-judged, or will not deal fairly with, all future applications by the same litigant. However, different considerations apply when the occasions for further rulings do not arise in the same proceedings, but in a separate appeal.

24. In the present case, during the second trial of the appellants Isaacs J had made rulings on issues of mixed questions of fact and law or involving the exercise of judicial discretion. In particular, first he had ruled against a submission of no case to answer. In doing so he had necessarily concluded that there was sufficient evidence on which a reasonable jury properly directed could convict the appellants. Secondly, he had ruled that Scott's deposition should be admitted in evidence. In doing so he held that the statutory provision under which the application was made was not unconstitutional, that Scott's evidence was sufficiently reliable for it to be in the interests of justice to admit it and that, in the exercise of his discretion, it was fair to admit it. Thirdly, in a further exercise of judicial discretion, he permitted dock identifications of all three appellants. These were concluded rulings on intermediate issues of major significance in the proceedings.

25. The Board is conscious that the application for Isaacs JA to recuse himself seems to have arisen unexpectedly, perhaps because those organising the listing had had no reason to be aware of his prior connection with the case. Moreover, the judgment of Conteh JA suggests that it may well not have been clear at the time of the Court of Appeal's ruling upon recusal that the issues on which Isaacs J. had had to rule at the second trial were to some extent revisited in the grounds of appeal. But it is now apparent that as a member of the appellate court he was required to address essentially the same issues on which he had ruled at the second trial. So far as concerns the issue whether there was a case which could properly be left to the jury, it is of course the case that the appeal involved an examination of the evidence given at the third trial which would not have been identical to that given at the second trial. Nevertheless, the prosecution evidence is accepted to have been in substance the same at the second and third trials, the issues for decision on appeal remained essentially the same as those decided by Isaacs J at the second trial and the submissions advanced by the parties were very similar.

26. In the same way, the decisions at the second and third trials on the admissibility of Mr Scott's evidence were not identical. Isaacs J ruled at the second trial that the deposition of Mr Scott was admissible but not the transcript of his evidence at the first trial in May 2001, whereas in the third trial Jones J held both admissible. Furthermore, the Court of Appeal recorded in its judgment of 8 July 2016 that the objections against the admissibility of the deposition and the transcript of Mr Scott's evidence at the first trial "have now in the instant appeals morphed into a constitutional challenge". However, the point made on behalf of Stubbs and Davis at the second trial and on the appeal was essentially the same: that by virtue of article 20(2)(e) of the Constitution, a defendant has an entrenched right to cross-examine those persons who come to give evidence against them as the prosecution's witnesses. That submission was rejected by Isaacs J at the second trial and by the Court of Appeal. Moreover, the Court of Appeal in dismissing this ground also found that Jones J was correct to have admitted in evidence both the deposition and the transcript of evidence. As a result, the issues for decision were substantially the same.

27. Similarly, the issue of whether a dock identification should have been permitted or should have been refused (given what had occurred at the preliminary enquiry and the first trial), arose both in the second trial and before the Court of Appeal, albeit in the latter case only in the grounds of appeal of Stubbs and Evans.

28. In addition, the admissibility of Stubbs' interview and the issue whether it should be edited to exclude reference to Evans arose both in the second trial and before the Court of Appeal.

29. The proximity of these issues and the arguments advanced by the parties would weigh heavily in the mind of the fair-minded and independent observer.

30. Mr Knox submits that the strength of the prosecution case against these appellants was such that it is hardly surprising that both Isaacs J and Jones J rejected the submissions of no case to answer and that none of Isaacs J's other rulings involved any conclusive imputation or finding against the appellants. The first part of this submission misses the point that we are here concerned not with the merits of the substantive case for the prosecution but with apparent bias. The appellants were

entitled to a hearing before an independent and impartial tribunal and the possibility, even probability, that such a tribunal might have come to the same conclusions, if that were the case, is irrelevant (Millar v Dickson [2002] 1 WLR 1615 per Lord Bingham at para 16). The second part is also flawed. The rulings made by Isaacs J in the second trial were on intermediate issues but they were not provisional in character nor were they subject to any procedure for review. On the contrary they were final rulings made after full oral argument and were subject only to the possibility of an appeal in the event of a conviction. Moreover, they governed the subsequent course of the trial. Accordingly, Sengupta and Hksar v Hossain are unable to assist the Crown in the circumstances of this case.

31. In the course of his submissions Mr Knox placed great emphasis on the fact that if a retrial had taken place following the discharge of the jury in the second trial, there could have been no objection to Isaacs J sitting as the trial judge at that re-trial. This is correct. Indeed, it is often the case that, following an aborted trial, a retrial takes place before the same judge and a different jury. However, this does not assist the respondent. While this process may involve the same judge revisiting the rulings he made at the first trial, this is essentially a repetition of one stage of the judicial process in circumstances where the earlier rulings were rendered of no effect by the aborted trial. There is no prejudice to a defendant in these circumstances. If a previous ruling against the defendant is repeated at the re-trial the defendant is in no worse a position and, if there are good grounds, he will be able to appeal the ruling to an independent and impartial appellate tribunal. On the other hand, where, as here, one is concerned with an appeal, very different considerations apply. An appellant is entitled to be heard by an independent and impartial appeal tribunal without any appearance of bias by way of pre-determination or pre-judgment. For the same reason, the common case of a judge who has to make successive rulings in the same proceedings (see para 16 above) is not analogous to the present case. In the former the high desirability of judicial continuity is an important factor, whereas in the present case this consideration is entirely absent.

32. The respondent also relied upon the observation of Lord Bingham in Locabail (at para 25) that the greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be. A similar point was made by Conteh JA in the Court of Appeal in the present case. He noted that seven years had passed since the aborted trial and stated that "[t]his length of time should be sufficient to assuage any apprehension of bias in the informed and critical but reasonable observer". In the same way Isaacs JA considered the passage of time to be relevant to the objections to his sitting on the appeal. The Board considers, however, that in the context of this case, the passage of time could have done little to diminish the concern which would legitimately be created in the mind of a fair-minded and informed observer in relation to the participation of Isaacs JA in the appeal. This was a notorious and memorable case. Nothing occurred in the interim period to alter the situation. Moreover, even if at the time of the recusal hearing memory was faint or obscure, the appeal hearing would inevitably bring back to the judge a full recollection of his part in the second trial and the rulings he made on that occasion.

33. Finally, contrary to the view of the Court of Appeal, the fact that Isaacs JA was not sitting alone to hear the appeal cannot assist the respondent. The whole point of the appeal was that three judges should consider the issues afresh and without any pre-determination or pre-judgment. If there were valid grounds requiring Isaacs JA to recuse himself, they apply with equal force whether he sat alone or in company. Each member of the Court of Appeal will have played a full part in the deliberation and resolution of the issues raised on the appeal. The mutual influence of each member of the court over the others necessarily means that if any of them was affected by apparent bias the whole decision would have to be set aside (In re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700 per Lord Phillips MR at para 99).

34. In the present case the Court of Appeal was clearly concerned that submissions based on apparent bias should not be accepted too readily. It may well be that the members of the court were influenced by their experience of wholly unmeritorious applications for recusal in other cases. In this regard, we note that one ground of appeal advanced by Evans before the Court of Appeal in the present case was that the trial judge should have recused himself "after sharing emails with the Crown with reference to the trial to the exclusion of the appellant and/or his counsel". It appears from the judgment of the Court of Appeal that this refers to no more than one unsolicited email sent by prosecuting counsel to the judge containing a list of authorities he proposed to cite the next day which had not been copied to the other parties, and for which the prosecutor was duly reprimanded when it was brought to the judge's attention. The Board wholeheartedly agrees with the Court of Appeal that a judge should not recuse himself unless there is a sound reason for recusal, lest unmeritorious applications for recusal become the norm and result in damage to the administration of justice. In particular, it is necessary to stand firm against illegitimate attempts to influence which judge shall sit in a particular case. The Board is also conscious that the limited size of the Court of Appeal in some jurisdictions, such as the Bahamas, can make it difficult to avoid accidental listings before judges who have had some prior involvement with parties or with earlier stages in the proceedings. However, for the reasons stated above, the Board is of the clear view that the complaint made by the appellants is well founded. In its view, the decisions of Isaacs J made during the second trial would lead a fair-minded and informed observer to conclude that there was a real possibility that he had pre-judged issues which fell for consideration on the appeal to the Court of Appeal and that the appellants did not have the appearance of a fresh tribunal of three judges to consider their appeals. In reaching this conclusion, the Board has not been influenced by the decision of the High Court of Australia in Livesey and expresses no view on whether that decision should be followed.

Disposal: 35. Having heard argument from all parties on the apparent bias ground, the Board came to the unanimous view that the appeal should be allowed and the decision of the Court of Appeal set aside on that ground. The Board invited further submissions from all parties as to the future conduct of the appeal. Counsel for all three appellants told us, on instructions, that it was the wish of the appellants that the Board should proceed to decide the appeals on the substantive grounds. In doing so, however, they very properly accepted the difficulties the Board might face in following that course. It would, in principle, be open to the Board to exercise the powers of the Court of Appeal of the Commonwealth of the Bahamas. The Board is mindful of the extraordinary delays which have occurred in these proceedings, which continue some 19 years after the offences are alleged to have been committed, and of the understandable anxiety of the appellants that they should be brought to a conclusion as soon as possible. However, the Board considers it inappropriate to address the further grounds of appeal in circumstances where the decision of the Court of Appeal dismissing the appeals is of no force or effect. Furthermore, the appellants' counsel were without instructions to waive those grounds of appeal which had been refused leave below. Accordingly, the Board proposes humbly to advise Her Majesty that the appeals should be allowed on this ground, the decision of the Court of Appeal quashed and that the case be remitted to the Court of Appeal for the appeals to be reheard. In order to assist the making of arrangements for that rehearing, at the conclusion of the oral hearing the Board indicated the advice it proposes to tender. Nothing in the Board's conclusions on the present issue involves any assessment, even of a preliminary nature, of whether any of the other grounds of appeal relied upon has substance.