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Robin Garbutt to Challenge Murder Conviction for Third Time

Will Bordell, Justice Gap: On the day of Robin Garbutt's conviction, the first line of a BBC News article reported: 'A shopkeeper who beat his postmistress wife to death at their North Yorkshire village store then claimed intruders had done it has been jailed for life.' But was this all there was to it, or is the man who has been locked up ever since serving a sentence for a crime he didn't commit? Will Bordell reports At the Melsonby post office in North Yorkshire, the till roll for the morning of 23 March 2010 shows an almost unbroken stream of transactions. Just a mile or so north of a major junction known as Scotch Corner, the post office was busy with customer after customer from around 5.00 a.m., an hour before sun-up. Robin Garbutt served all of them. Over three hours and at least 60 transactions later, Robin went back to the living quarters that were above and behind the shop. Not long after, he found his wife Diana lying dead on the bed in the spare room.

A guilty verdict was handed down by the jury at Teesside Crown Court in April 2011. The jury hadn't been able to reach a unanimous decision, so the judge eventually agreed to accept a majority verdict. Nearly 13 hours into their deliberations, by a 10-2 majority, Garbutt was convicted of his wife's murder. Now 55 years' old, he is serving a minimum of 20 years behind bars at HMP Frankland. Since that morning in March 2010, Garbutt has maintained his innocence. He has brought an appeal and has twice placed fresh evidence before the Criminal Cases Review Commission (CCRC), in an effort to have his conviction recognised as a miscarriage of justice. All those attempts have failed. Earlier this year, Garbutt made a third submission to the CCRC, based largely on fresh evidence about the murder weapon and DNA found at the scene. The CCRC has power to refer cases back to the Court of Appeal for reconsideration where it believes there is a real possibility that a conviction is unsafe.

The Man in the Balaclava - The Garbutts went to sleep in the spare room on the night of 22 March 2010. Partly packed suitcases, taken out in preparation for an upcoming trip to Las Vegas to see Diana's family, were spread out on the bed in the master bedroom. As was his habit every Monday, Robin had gone out on a trip to buy stock for the shop, and had brought back fish and chips for dinner. Diana, who was the postmistress, stayed up late doing the post office's accounts and preparing VAT returns. He didn't notice what time she came to bed. At trial, Robin Garbutt claimed that he served customers from early in the morning of the murder, just as usual. This was supported by the till roll. One customer, a Mr Hird, who was served at around 06:45, said that whilst he was in the shop, he heard a woman's voice calling out for Robin, and Robin replying to her.

The prosecution argued that Diana was already dead by this point. Garbutt was going about his ordinary business, serving customer after customer, having killed his wife in the middle of the night. No customer reported noticing anything unusual about his behaviour. Garbutt recalls going to open the post office's safe at 08:30, when the timer allowed him to do so. Turning around, he says he was confronted by a man in a balaclava holding a gun: 'Don't do anything stupid. We've got your wife.' This was the second time the post office had been burgled in the space of a couple of years. Another robbery had taken place in 2009, also on a Tuesday. This time, after emptying the safe, which contained around £16,000 according to Garbutt, the burglar left by the back door.

Nobody else saw the man in the balaclava. A number of witnesses told police they had seen a blue car driven erratically around Melsonby on the morning of the murder. CCTV footage also showed a car following Garbutt in eight different places in the course of his journeys to pick up stock the night before. That car had been sold by the end of the week. Immediately after the burglar left, Garbutt says he rushed upstairs to the spare room. Diana was dead. Almost as soon as Garbutt found her, he called 999. The time of the call was 08:37. The operator told him to get help. He ran to his neighbours, the Dyes, who kept him company until the paramedics arrived.

The Case Against Robin Garbutt - Two days later, police found a metal bar that they identified as the murder weapon. It was discovered on the top of a boundary wall near Nixon's Garage just down the road from the post office. It is thought that whoever killed Diana struck her on the head with it three times. Garbutt was initially treated as a significant witness, but was later charged with murder. No concrete evidence has ever connected him to the crime. No blood was found on his clothing. Forensic evidence did not link him to the metal bar. At trial, however, the prosecution presented a compelling case. This, they said, was a troubled marriage. In the previous few years, Diana had drunkenly kissed another man and had set up an internet dating account. A witness claimed she'd seen Garbutt walking across the village green the night before the murder, ominously carrying a dark holdall. He had apparently ignored her when she greeted him.

But there was more: the prosecution maintained that Garbutt was stealing money from the post office. On their case, he feared the consequences of a relief postmaster taking over whilst they were away in Las Vegas, and inevitably stumbling upon discrepancies in the accounts. He had invented the man in the balaclava: there were no eyewitnesses, and he hadn't pressed any of the post office's four panic buttons, as he ought to have done if there really had been a robbery.

All this was supported by the expert evidence as to the time of death. Initially, the police and prosecution had suggested that Diana had still been alive at 06:45, but at trial they changed their tune. Rigor mortis and hypostasis in Diana's body apparently suggested that she had been killed some time before 08:45, but experts found it hard to be more specific. Heavy reliance was placed on one expert's analysis of the contents of her stomach, the partially-digested meal of fish and chips, which estimated the time of death as between 02:30 and 04:30. This, the prosecution argued, belied Garbutt's version of events.

Questioning the Prosecution's Narrative - Since his conviction, revelations about faults in the Post Office's Horizon computer software have indicated that postmasters and postmistresses were wrongfully prosecuted for theft and fraud. Yesterday, 39 such convictions were referred back to the Court of Appeal by the CCRC. Cases had been brought against them based on Horizon data that erroneously showed long-term cash shortfalls. Financial records from Horizon apparently showed the same pattern in Garbutt's case. Along with other analysis of the Melsonby shop's finances, which shows that it was in a healthier state than was made out at trial, the Horizon scandal has brought a key plank of Garbutt's alleged motive – his fear of the imminent discovery that he was siphoning money from the shop – into very considerable doubt.

Fresh evidence has also undermined the testimony of the eyewitness who had allegedly encountered Garbutt on the village green the night before the murder. What's more, the analysis of Diana's stomach contents, which was said to be capable of pinpointing the time of death, has been called into question and challenged on numerous occasions.

A Fresh Challenge - Garbutt's latest application to the CCRC largely rests on new evidence related to the police's investigation. Even at the time of Mr Justice Openshaw's summing-up to the jury at trial, he recognised that the police had shown 'a regrettable lack of profession-

alism' at the crime scene. Lamps that had been knocked over in the course of the struggle were put away in the wardrobe untested. A light-brown clump of hair on the pillow next to Diana's body wasn't collected or tested. Diana's hair was dark brown with red highlights; Robin's was grey. Now, newly discovered unaired footage from Tyne Tees Television, filmed after the murder but before the murder weapon was discovered on top of Nixon's Garage's boundary wall, shows no metal bar where the police allegedly found it. The prosecution had argued at trial that it was unlikely that a fleeing burglar would have left the murder weapon behind, and that Garbutt himself must have disposed of it there in the middle of the night. New DNA analysis further confuses the picture that the prosecution painted. When it was originally swabbed, the mixture of DNA found on the metal bar belonged to an unknown male and an identified policeman, as well as to Diana. Garbutt's DNA was nowhere to be found on it.

However, recent investigations are said to reveal that the policeman's DNA profile was also found in the area where the bar had struck the pillow next to Diana's body. Analysis suggests that the DNA is likely to have transferred from the bar. Garbutt's legal team, led by Martin Rackstraw at Russell Cooke, therefore believes that this shows there was cross-contamination of evidence at the scene. This could raise questions as to the metal bar's role in the murder and the police's involvement in its fortuitous discovery two days later. The latest application also emphasises that the analysis of Diana's stomach contents has been discredited. It argues that, if the jury had been given reason to doubt that evidence at the time, Mr Hird's evidence would have received more emphasis. He said he heard a woman's voice calling from the living quarters at around 06:45, suggesting that she was still alive whilst Garbutt was serving the morning's customers and fortifying his version of events. Garbutt's case is one of several hundred currently before the CCRC. Very few ultimately succeed in persuading commissioners that they should refer a case to the Court of Appeal. While he waits to hear whether his case will be in that small number, Robin Garbutt continues to serve his life sentence. He is likely to be in his late 60s before his release is even considered.

Alex Salmond – His Faith In Our Justice System

Jimmy Boyle, MOJO Scotland: Congratulations are due to Alex Salmond, having successfully defended himself against what he characterised as "false allegations"- and therefore false charges. There is no novelty in innocent persons being arraigned in Scotland's courts. Following upon his acquittal, Mr. Salmond declared that his faith in the judicial system, earlier expressed, has been, "much reinforced". I assume he was referring to the entire process from complaint to acquittal, rather than simply praising the trial judge and her colleagues.

I cannot be the only person who finds it peculiar, at the very least, that someone who insists the complaints against him are false, and that therefore the indictment he faced was equally false, can have faith "reinforced" in a system that he asks us to believe made common cause with dishonest complainers, acting in concert in order to cause him serious harms. Very peculiar. It is even more startling when one bears in mind that Mr. Salmond was not the least concerned for the victims of such false allegations when he was First Minister. In fact, he was content to ignore the complaints of the victims of these criminal designs because it did not matter to him on a personal or political level.

Now, understanding just how close he came to becoming another designed miscarriage of justice victim, will he throw his considerable weight and use his platforms to campaign for justice for such victims and changes to the law to prevent police, Crown Office & Procurator Fiscal Service and court personnel from continuing with the ways and means they employ to fit up their victims? Among these ways and means are sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995, that enable the Crown and courts to refuse defendants and jurors evidence – jurors later told they are masters of the facts when they have no idea what evidence has been denied them by this convicting device. The Rule in Moorov is used promiscuously as a means of manufacturing corroboration – a requirement the Scottish Government may seek to do away with.

Mr. Salmond advises he plans to release information denied him and the jurors at a later date. Was this information the subject of a section 275 ruling? If so, is it lawful to release this information to the community or would such a course comprise contempt of court? The Advocate Depute, prosecuting, resorted to what appears to be a habitual, standard Crown Office device, relied upon to achieve convictions whether relevant or irrelevant to the matter at hand, that has it that man has power, woman has not, therefore criminal misconduct is a given. The absence of investigation and evidence no longer relevant, if it ever was. The fact the victim accused has not committed a crime and the fact there is no crime, an irrelevance to Crown Office personnel.

This fabrication, this misandrist prejudice, is wholly unacceptable. It must be exposed for what it is: a means to convict only, and thereafter outlawed. Victims of fabricated indictments, miscarriage of justice victims and victims acquitted of false allegations and charges, will be surprised by the current First Minister's apparent belief that complaints of crime are "thoroughly investigated". The bitter irony of this fantasy will not be lost on our justice system's victims, viz. the victims of the men and women who conspire to ruin their lives by way of false allegations, fabricated indictments and designed miscarriages of justice.

Either the First Minister is ignorant of the facts or, as her predecessor, indifferent to the crimes perpetrated upon such victims. Scotland's sheriffs and judges allow our courts to be employed as instruments of abuse without regard to the community's view of this essentially criminal practice.

Speaking at the conclusion of the Salmond trial, Johanna Cherry QC MP is reported as saying there are, "serious questions about the background to these cases". Whether speaking in the particular or expressing a concern at the endless stream of miscarriages of justice designed by Scotland's corrupt justice system and its barbaric personnel, the fact of the matter is that there are indeed serious questions to be asked of this system and its defenders who are content to see lives ruined just because. Can we hope that lessons will be learned? I doubt it. Such is the arrogance and absence of empathy that characterises the legal profession, including judicial office holders, and the cowardice that characterises our politicians when confronted with the facts of this manner of crime.

[Jimmy Boyle - On the, 18 February 2010, was finally acquitted of the false, vile, charges for which he had by then served five years in prison. His ordeal had, by that date, lasted seven years. A vindictive campaign to destroy his life and livelihood had spawned the allegations that became the charges that became the wrongful convictions, founded on nothing, by which Jimmy's life was, indeed, destroyed. In 2009 the Appeal Court quashed the convictions but returned Jimmy to prison to await re-trial. And on 18 February 2010 that retrial ended in acquittal, of all charges. Justice? Not by any measure. Jimmy has been denied compensation by a state bureaucracy that declares, in the face of his acquittal, that he is "not completely exonerated". This bureaucracy openly affirms that it applies a different, more nuanced, meaning to the term "miscarriage of justice". He has been denied, and continues to be denied, the right to earn his living by a professional regulator that declares him guilty despite his exoneration by the court. This regulator, you see, applies a lower standard of proof. And even lower standards of fairness. And all the while, those who falsely accused Jimmy – and those who have facilitated this deception – remain untroubled by investigation of their actions, far less prosecution. Has he had justice? Not by any measure.]

CCRC Refer 39 Post Office Cases on Abuse of Process Argument

The Commission will be referring all those cases, which involve convictions for theft, fraud and false accounting, on the basis of the argument that each prosecution amounted to an abuse of process. (The details of the individual cases being referred are listed at the end of this release). The abuse of process argument is based on issues with the Post Office's Horizon computer system which may have had an impact on the cases referred. The argument arises out of two civil court judgments – the Common Issues Judgment of the 15th March 2019 (Bates v Post Office [2019] EWHC 606 (QB)), and particularly the Horizon Issues Judgment handed down on the 16th December 2019 (Bates v Post Office [2019] EWHC 3408 (QB)).

The 39 cases to be referred are among a total of 61[1] applications to the CCRC from Post Office applicants. In relation to the remaining 22 cases, the CCRC has further work to do before it will be in a position to announce decisions as to whether or not it can refer those cases.

Those involved in the Post Office cases at the CCRC will continue their work and the decision-making committee will convene again as necessary so that the remaining decisions can be made and communicated as soon as possible. Unusually, and because of the Covid-19 situation, the CCRC decision making committee met virtually using remote access IT technology over two days on the 24th and 25th March. The referrals will be formally made when the appropriate papers are sent to the relevant appeal courts (35 cases will be referred to the Court of Appeal as convictions obtained in Crown Court, and four will be referred to the Crown Court as magistrates' court convictions). Covid-19 restrictions may mean that that process may now take a some time to complete.

Helen Pitcher, Chairman of the Criminal Cases Review Commission, said: "This is by some distance the largest number of cases we will ever have referred for appeal at one time. Our team has got through a huge amount of work, particularly since the judgment in December, in order to identify the grounds on which we are referring these cases. The Covid-19 situation threatened to delay things but we used an IT solution to resolve that and we will continue to do whatever we need to in order to make decisions in the remaining cases as quickly as we reasonably can." Twenty seven of the 61 Post Office applications received to date have arrived since December 16th when the Horizon Issues Judgment was handed down. The referrals announced include applications received before and after that date.

Concerns Raised After PPS fail to Direct PSNI to Reopen UVF killing

Connla Young, Irish News: Prosecutors have said they will not order police to reopen an investigation linked to the murder of three Catholics killed by the UVF almost 30 years ago. Brian Frizzell (29) Eileen Duffy (19) and Katrina Rennie (16) were shot dead at a mobile shop in the Drumbeg estate in Craigavon in 1991. Portadown loyalist Alan Oliver was later identified as the gunman but has never been charged. The born again Christian has also been linked to a UVF gang which carried out dozens of sectarian murders in the Mid Ulster area. Loyalist James Thomas Harper was later convicted for his part in the triple murder and given a life sentence.

During police interrogation he identified Oliver as the killer and another loyalist Anthony 'Tony' McNeill as also being involved. He also claimed that former UVF commander Billy Wright and Mark 'Swinger' Fulton, another member of the organisation, were both involved in planning the attack At Harper's sentencing Lord Chief Justice Sir Brian Hutton said it was "unfortunate" that only he was before the courts. In 2018 the Public Prosecution Service confirmed that "no investigation file in respect of Oliver or McNeill was ever submitted to the DPP (Department of Public

Prosecutions) for a decision as to prosecution regarding this incident".

Last year solicitors acting for Brian Frizzell's family asked the PPS to review the killings with a view to directing the PSNI to reopen the case. The request came after BBC Spotlight broadcast fresh claims about the UVF in Mid Ulster last year. Solicitor Kevin Winters, of KRW Law, said: "The failure by the RUC to send a file on a leading suspect to the DPP was bad enough. "The latest letter from the PPS points to an ongoing lock down on investigating this case by the PSNI. "It's distressing to the affected families to learn that 'resources' prevents any sort of prioritisation in an atrocity crying out for immediate investigation now."

A spokesman for the PPS said "Whilst the Director recognises the enduring pain and distress that the family experience, he concluded that it would not be appropriate for the PPS to conduct a review of the case or for him to exercise his statutory power under the 2002 act. "This is because it is the role of police, and not the PPS, to review cases for potential evidential opportunities. Furthermore, the director was made aware of an ongoing police review relevant to this case and also of the fact that this death presently sits within the work queue of the PSNI Legacy Investigations Branch. The PPS will provide such prosecutorial advice to the PSNI and will assist with any of their enquiries.

Supreme Court Victory for Elgizouli - SSHD Failed to Comply With Data Protection Act

Background to the Appeal - The appellant's son is alleged to have been one of a group of terrorists operating in Syria, involved in the murder of US and British citizens. In June 2015, the US made a mutual legal assistance ('MLA') request to the UK in relation to an investigation into the activities of that group. The Home Secretary requested an assurance that the information would not be used directly or indirectly in a prosecution that could lead to the imposition of the death penalty. The US refused to provide a full death penalty assurance. Ultimately, in June 2018, the Home Secretary agreed to provide the information to the US without requiring any assurance whatever.

The appellant challenged the Home Secretary's decision by way of judicial review. Her claim was dismissed by the Divisional Court, which certified two questions of law of public importance: (i) whether it is unlawful for the Secretary of State to exercise his power to provide MLA so as to supply evidence to a foreign state that will facilitate the imposition of the death penalty in that state on the individual in respect of whom the evidence is sought; and (ii) whether (and if so in what circumstances) it is lawful under Part 3 of the Data Protection Act 2018 ('DPA'), as interpreted in the light of relevant principles of EU data protection law, for law enforcement authorities in the UK to transfer personal data to law enforcement authorities abroad for use in capital criminal proceedings.

Judgment - The Supreme Court allows the appeal. The majority of the Justices (Lord Reed, Lord Carnwath, Lord Hodge, Lady Black and Lord Lloyd-Jones) dismiss the challenge to the decision brought under the common law, but the Court unanimously holds that the decision failed to comply with the DPA. Lord Kerr would have allowed the appeal on both grounds. Lady Hale's judgment acts as a short guide to the other judgments.

Reasons For The Judgment Ground (i): Has the common law evolved to recognise a principle prohibiting the provision of MLA that will facilitate the death penalty? The majority answer this question "no". The reasons for considering that the common law has not developed so far are explained by Lord Reed and Lord Carnwath. Lord Carnwath finds that the power of the courts to develop the common law must be exercised with caution [193]. The death penalty as such has never attracted the attention of the common law: the key legal developments have come from Parliament and the ECHR, not from the domestic courts [194]. One recent development is section 16 of the Crime (Overseas Production Orders) Act 2019. This section confirms: (i) that this is an area in which Parliament

remains directly involved; and (ii) that, where the Act applies, there is nothing that specifically prohibits the Home Secretary from exchanging material in cases whether they have sought but have not received assurances that the information they exchange will not be used to facilitate the death penalty. This suggests that the common law has not developed as suggested by Lord Kerr [195]. Lord Carnwath also finds that powers to deport or extradite under domestic law are subject to review on public law grounds, but are not subject to an absolute prohibition on removal by reference to the possible consequences in the receiving state [198]. Finally, it is difficult to reconcile the DPA scheme with the development of an absolute common law prohibition as advanced by Lord Kerr [205].

Lord Reed agrees with Lord Carnwath for the reasons given in his judgment and for additional reasons. He finds that the common law is subject to judicial development, but such development must build incrementally on existing principles. This is necessary to: (i) preserve legal certainty; and (ii) ensure compatibility with the pre-eminent constitutional role of Parliament in making new law [170]. The development of the law proposed by Lord Kerr does not seem to Lord Reed to be an incremental step [171]. Lord Reed adds that judicial recognition of the value of life can have an important influence on adjudication in this context. This is because the courts are required to take a more rigorous approach when reviewing the exercise of discretion where life may be at stake [176-178]. Lord Reed refers to the respondent's submissions that the Home Secretary's decision-making complied with that higher standard of review [179]. He notes that the Home Secretary's decision might have been open to challenge on the ground that it failed to comply with the common law requirement of rationality, but declines to express a view on this [181-182].

Lord Hodge agrees with Lord Reed and Lord Carnwath that the common law does not recognise a right to life which can be used to prevent the Home Secretary from providing information to a foreign country in the context either of MLA or the sharing of intelligence [231-234]. Lord Kerr underlines the steadfast opposition by successive UK governments to the imposition of the death penalty in any circumstances, and the related long-standing policy not to provide MLA unless death penalty assurances are received [26]. He notes that the common law is not immutable but develops over time to reflect the changing values of society [102].

Lord Kerr summarises six factors favouring recognition of the common law principle in question at [141]: (i) the Bill of Rights; (ii) British contemporary values; (iii) European Court of Human Rights ('ECHR') jurisprudence (discussed at [107-124]); (iv) EU jurisprudence (discussed at [125-134]); (v) the fundamental illogicality of refusing to extradite or deport individuals for trial where there is a risk of the imposition of the death penalty, on the one hand, and facilitating precisely such an outcome by the provision of MLA without requiring assurances, on the other; and (vi) Judicial Committee of the Privy Council jurisprudence (discussed at [135-140]). Lord Kerr concludes that a common law principle should be recognised whereby it is deemed unlawful to facilitate the trial of any individual in a foreign country where, to do so, would put that person in peril of being executed [142]. This principle should be disapplied only if MLA is absolutely necessary as a matter of urgency in order to save lives or protect the nation's security [164].

Law must be responsive to society's contemporary needs, standards and values, which are in a state of constant change. That is an essential part of the human condition and experience. The adjustment to the common law proposed reflects the contemporary standards and values of our society [144]. Ground (ii): Is it lawful under Part 3 of the DPA to transfer personal data to law enforcement authorities abroad for use in capital criminal proceedings?

The Court is unanimous in holding that the Home Secretary's decision was unlawful under the DPA. The DPA requires the data controller to address his mind to the specific requirements of the Act and this was not done. The DPA is discussed by Lady Hale at [6-15], Lord Kerr at [152-159] and Lord Carnwath at [207-228].

Lady Hale outlines the basic structure of the DPA at [8-12]. She explains that Part 3 of the DPA makes provision about the processing of personal data by competent authorities for "law enforcement purposes." Sections 73 to 76 set out the general conditions that apply to such transfers. The data controller cannot transfer data unless the three conditions in s. 73(1)(a) are met [8]. Condition 1 is that the transfer is necessary for any of the law enforcement purposes [9]. Condition 2 is that the transfer is (a) based on an adequacy decision of the European Commission; (b) if not based on an adequacy decision, is based on there being appropriate safeguards; or (c) if not based on an adequacy decision or appropriate safeguards, is based on special circumstances [10]. She notes that this transfer was not based on an adequacy decision or appropriate safeguards, because there were none [10]. Nor does the transfer meet the special circumstances requirement: a transfer is based on special circumstances only if it is necessary for any of the five purposes listed in s. 76(1). This condition is not met [12].

Lord Carnwath agrees that there has been a breach of the DPA. He focuses on the provisions governing transfers of personal data to a third country in ss. 72 to 78 of Part 3. S. 73 deals specifically with transfers of personal data to a third country and prohibits such transfers unless a number of conditions are met. As Lady Hale, he notes that Condition 2 is that the transfer must be based on an adequacy decision, or on there being appropriate safeguards, or on special circumstances. There was no adequacy decision here, hence the discussion centres upon whether there were appropriate safeguards or special circumstances sanctioning the transfer [209-213]. S. 75 defines the circumstances in which a transfer is based upon there being appropriate safeguards, discussed at [214-219]. Lord Carnwath concludes that the information in question was transferred without any safeguards at all [220]. The lawfulness of the transfer therefore stands or falls on the "special circumstances" condition [221]. The circumstances in which a transfer is based on special circumstances are defined in s. 76, discussed at [221-224]. Lord Carnwath concludes that the Act requires a specific assessment under the section, and that this did not take place [225]. The decision was based on political expediency, rather than consideration of strict necessity under the statutory criteria [227]. It was consequently unlawful under the DPA.

Lady Hale raises a further issue under s. 76(2) DPA, which concerns the special circumstances gateway. S. 76(2) provides that: "subsection (1)(d) and (e) do not apply if the controller determines that fundamental rights and freedoms of the data subject override the public interest in the transfer" [12]. Lady Hale finds that these fundamental rights and freedoms include the rights protected by the European Convention on Human Rights, the most fundamental of which is the right to life [13-14]. This points towards an interpretation of s. 76(2) which would not allow the transfer of personal data to facilitate a prosecution which could result in the death penalty [15].

Lord Carnwath sees the force of Lady Hale's comments. He concludes that, at least, failure to consider this point is a further reason for holding that the Home Secretary's decision cannot stand [228]. Lord Hodge also sees the force of Lady Hale's comments, but as the point was not fully argued, he reserves his position on it [230].

Lord Kerr agrees that there is a breach of the DPA, but for different reasons. He notes that it is common ground that provision of MLA involved the "processing" of personal data falling within Part 3 DPA. Such processing is only lawful where it complies with the data protection principles in section 34 DPA. Unlike the other justices, Lord Kerr held, under ground 1, that the transfer of material to the US authorities without obtaining death penalty assurances was contrary to the common law. He therefore concludes that it follows that the first and second data protection

principles in s. 34 – requiring processing that is lawful and fair – are not met [152-153].

Lord Kerr goes on to discuss s. 73 DPA [154]. He agrees that there was no adequacy decision and no appropriate safeguards [155]. Transfer on the basis of special circumstances can only occur following an assessment of what is strictly necessary. Such an assessment was not made [158], hence the transfer of data breached s. 73.

Woman 'Loitering' at Train Station Wrongfully Convicted In Shambolic Case

Lizzie Dearden, Independent: No one knows why Marie Dinou was "loitering between platforms" at Newcastle Central railway station on Saturday morning. She did not tell the police who questioned her, the lawyer who saw her in custody, or the court that found her guilty of an offence under new coronavirus laws. The 41-year-old is not believed to have spoken a word between the moment of her arrest and the moment she was fined £660 in the first known case of its kind.

Her conviction is to be quashed after police admitted that the wrong law was used to prosecute her, and the case "shouldn't have happened". The Independent has learned that Ms Dinou was not even in the courtroom when a judge found the offence proven after reading statements from British Transport Police (BTP) on Monday. She was in the cells of North Tyneside Magistrates' Court as punishment for refusing to give her name and address, after spending two days in police custody. Ms Dinou is not known to have undergone a mental health assessment, and a nurse was not present at court because of coronavirus. "Defendant refuses to identify herself, sent back to cells and proved in absence," read a short official account of the hearing. Ms Dinou was convicted of committing an offence under Schedule 21 of the Coronavirus Act 2020.

Despite having no record of her income or means, the judge fined her £660 and ordered her to pay a £66 victim surcharge and £85 in costs. The indictment said Ms Dinou had "failed to provide BTP officers with [her] identity or reasons for [her] journey", and "failed to comply with a requirement" under the new law."Officers approached Ms Dinou and engaged with her in an attempt to understand her reasons for essential travel, but following several more attempts by officers to explain and encourage she refused to speak to officers," a BTP press release said on Wednesday."Having explored all options, Ms Dinou was arrested on suspicion of breaching the restrictions imposed under the Coronavirus Act 2020."

But official guidance issued to officers by the College of Policing and National Police Chiefs' Council states that "there is no power to 'stop and account'" under the new laws.Coronavirus Act 2020 came into force on 25 March and had been drafted at a time when the threat was perceived to mainly come from people entering the UK from abroad.The law enables health officials to direct people to hospitals or testing centres, and gives powers for police to enforce their instructions.Schedule 21 creates an offence of "failing without reasonable excuse to comply with any direction, reasonable instruction, requirement or restriction" imposed as part of the act.But the law can only apply to "potentially infectious persons" and is separate to the newer Health Protection Regulations that allow police to enforce the UK lockdown.

Matthew Scott, a criminal barrister at Pump Court Chambers, told The Independent that both the charge and court procedure may have been unlawful. "I do not understand how they can say that she has committed an offence under the Coronavirus Act because that act doesn't require somebody to give their details to a police officer, and doesn't require them to state the purpose of their journey," he added. Mr Scott questioned why police could not have fined Ms Dinou for being away from home without a reasonable excuse under the Health Protection Regulations. "If the district judge decided the case on the basis of written statements because she refused to say anything in court, that on my view is procedurally irregular and incorrect, particularly on a first appearance." More than half the court buildings in England and Wales have been closed because of coronavirus, and those still operating are only dealing with urgent matters including remand hearings and coronavirus-related cases. Police have been instructed to use enforcement as a last resort as they grapple with the rapidly drawn up new laws, which underwent little parliamentary scrutiny.

A legal firm routinely instructed by police forces, 5 Essex Court, said in its guidance that the Coronavirus Act only creates a criminal offence if people refuse a direction to a "place suitable for screening and assessment". The document says that officers identifying a "potentially infectious person" must have regard to public health guidance on symptoms – which Dinou did not have – or contact with infected people. On Thursday evening, BTP said it had conducted a review with the Crown Prosecution Service (CPS) that "established that Marie Dinou was charged under the incorrect section of the Coronavirus Act 2020". In response to questions from The Independent, the force said it had asked North Tyneside Magistrates' Court for the case to be relisted and the conviction to be set aside. "Having reassessed the matter, BTP will not pursue any alternative prosecution," a spokesperson said. Ms Dinou had been suspected of a railway ticket offence, but the Coronavirus Act was used to prosecute her instead.

Deputy Chief Constable Adrian Hanstock said: "There will be understandable concern that our interpretation of this new legislation has resulted in an ineffective prosecution. "This was in circumstances where officers were properly dealing with someone who was behaving suspiciously in the station, and who staff believed to be travelling without a valid ticket. Officers were rightfully challenging her unnecessary travel. Regardless, we fully accept that this shouldn't have happened and we apologise. It is highly unusual that a case can pass through a number of controls in the criminal justice process and fail in this way." The senior officer added: "BTP and the CPS will undertake a more detailed review of the case to ensure that any lessons to be learned are integrated into our shared justice processes." BTP said it has shared official guidance on how to enforce the new laws with officers "to help them interpret the new legislation

Hague Court Orders Dutch State to Pay Out Over Colonial Massacres

Daniel Boffey, Guardian: An Indonesian man forced to watch his father's summary execution by a Dutch soldier when he was 10 years old has spoken of his gratitude after a court in The Hague ordered the Dutch state to pay compensation to victims of colonial massacres in the 1940s. Andi Monji, 83, who travelled to the Netherlands to tell his story to the court, was awarded €10,000 (£9,000) while eight widows and three children of other executed men, mainly farmers, were awarded compensation of between €123.48 and €3,634 for loss of income. The cases concerned men killed by soldiers in the Indonesian province of South Sulawesi between December 1946 and April 1947 during so-called "cleansing actions" as the Dutch sought to repress moves towards independence. The court found that 11 men had been killed as a result of misbehaviour by Dutch soldiers, mostly by summary executions. One man was randomly shot.

Japan occupied the then Dutch colony of the Dutch East Indies during the second world war, and after its capitulation the nationalist leaders Sukarno and Hatta proclaimed the Republic of Indonesia on 17 August 1945. For the following four years, the Netherlands fought to prolong its 350 years of colonial rule of the country, often through barbaric means. The Dutch state had argued for the claims to be struck out given the time that had passed since the acts were committed.

Monji's father was executed on 28 January 1947 in the village of Suppa. More than 200

men are believed to have been executed by the Dutch military that day. Monji, who still lives in Suppa, said: “I’m grateful for the court’s ruling. I was 10 years old when I was forced to witness my father being executed by Dutch military after first being heavily beaten. I was crying. I’m also grateful that I had the chance to travel to the Netherlands to attend the court hearing so I could explain the court what had happened.”

Liesbeth Zegveld, the claimants’ lawyer, said: “We’re pleased with the ruling. It wasn’t easy; it took eight years of proceedings. It’s a pity that the Netherlands government hasn’t been more forthcoming, as many of our clients passed away during the proceedings. “Nevertheless, for those still alive and all the families, the court’s recognition of their suffering and their entitlement to compensation is important.” The court recognised in its ruling that the sums granted the relatives of victims were “disproportionate” to the suffering caused

Coronavirus Situation in English and Welsh Prisons

In England and Wales, the situation is grave. The number of confirmed coronavirus infections continue to rise. Last week the Justice Secretary Robert Buckland revealed in parliament that there are nearly 2,000 prisoners who had health conditions that, were they living in the community, would result in their being shielded. Instead, they are in unhygienic, over-crowded prisons, where social distancing and shielding is impossible. For some, prison risks being a death sentence. There are reports that at least one prison is breaching guidelines by placing prisoners who have tested positive for coronavirus in cells with prisoners who have not. There are also reports that a quarter of prison staff are absent due to coronavirus-related issues.

The president of the Prison Governors’ Association, told The Daily Telegraph that 'Prisons are now at the point where a decision must be made and implemented immediately on early release of prisoners'. While the situation remains very unpredictable, there is no sign, at time of writing, that the Justice Secretary is willing to make this necessary call. Indeed, the government instead appears to be directing its energies into expanding prison capacity, including in immigration detention centres, army barracks, and police and court cells, rather than taking the decisive steps needed to prevent needless deaths and infection in prisons. The scale of the potential coronavirus crisis in prison requires action of an appropriate seriousness and ambition. It is time for the Justice Secretary to show that he is up to this challenge.

Domestic Abuse Isn’t Caused By Coronavirus – We’ve Been Ignoring Women For Years

Glosswitch, Independent: It starts small, with employers assuming that female employees can’t trusted to work from home, or governments advising women to avoid “nagging” during lockdown. It ends with a “domestic abuse surge” which is blamed, not on perpetrators and the choices they make, but on the unique circumstances in which they find themselves (somehow these circumstances are always “unique”). As Annie Brown writes, “domestic abuse was an epidemic long before we heard of coronavirus”. What the current pandemic has done is place it into sharper focus, since families in isolation are more at risk than ever.

Lockdown is not a cause of abuse, but a means by which it is made visible, its consequences suddenly accelerated. It’s a distinction we need to make clear – for the our ability to deal with it now relies on an understanding of its roots. Right now, we are witnessing a particular urgency in efforts to support victims of domestic abuse. Priti Patel, the home secretary, has announced that victims may leave their homes during lockdown to seek help at refuges; domestic abuse experts are calling on the UK government to provide emergency funds to house those in need; in France, the government is pledging to house victims in hotels.All of this makes sense and is welcome at a time of crisis – yet this particular crisis has been ongoing for years.

However generous Patel’s announcement, a decade of cuts has already forced one in six women’s refuges to close. Instead of ploughing resources into ending male violence, we have long treated it as a fact of life, every bit as apolitical as coronavirus. Now we’re reaping what we’ve sown. Pre-lockdown times saw women in the UK killed at a rate of two per week. This should have been enough to prompt emergency measures. Instead it became normalised. We’d see the isolated incidents, but not the near misses; never the thousands of at-risk women lowering their voices, bowing their heads, hiding their friendships and money and hopes. Such women voluntarily live locked-down lives, if the alternative is no life at all. It’s only now, when a pandemic places the spotlight on nice, quiet families in nice, quiet homes, that we see the fragility that’s always been there.

The cause of the current rise in abuse is not Covid-19; it’s the outcome of years of neglecting victims of “normal” abuse on the basis that it’s just that: normal. Domestic abuse is not an invisible virus. It does not flourish because there is no known cure. It flourishes because we’ve been unwilling to tackle the root causes: inequality, misogyny, male entitlement, the erosion of social support networks. The “normal” times – the “before” times of two, perhaps three, weeks ago – should never have been accepted as such. What today’s victims of violence live with, they have always been living with. Now we can see it up close, let’s not look away again.

Domestic Abuse in the Time of Coronavirus

[Council of Europe Secretary General Marija Pejčinović Burić has expressed concern about an increase in domestic violence during the lockdowns due to the corona virus. Reports from member countries in the past few weeks already have shown that women and children are now at greater risk of abuse within their own homes.]

Anyone can be a victim of domestic abuse regardless of sex or gender identity, cultural heritage or ethnicity, sexual orientation, religion or belief, or disability. There are different kinds of abuse that can happen in different contexts. The most prevalent type of domestic abuse occurs in relationships, but the definition of domestic abuse also covers abuse between family members, such as adolescent or adult child to parent violence and abuse and abuse between siblings. People with disabilities are more vulnerable to domestic abuse for longer periods of time, and experience more severe and frequent abuse than non-disabled people. Perpetrators are not all the same and the factors that lead them to using violence and aggression in their intimate relationships can be as individual as the people themselves. There is an increasing understanding that domestic abuse is a child safeguarding issue, and the damaging effects that either witnessing or experiencing it can have on children are well documented.

Serving Prisoners Supported by MOJUK: Walib Habid, Giovanni Di Stefano, 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, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.