May 1745 at the age of 66. However, many people at the time were led to believe she was already dead and a public funeral was held for her shortly after she was kidnapped. Her abduction did not seem to cause much distress to her nine children, perhaps a reflection of the relationship they had with their ill-tempered mother. The imprisonment of Lady Grange was only possible, it seems, because of the network of associates Lord Grange relied on. Many of his friends and supporters were involved in the complex plan to kidnap and imprison his wife for so many years. Ultimately, like her murderous father, Rachel Chiesley's downfall was her inability to control her temper.

What Decolonising the Curriculum Really Means

Throughout centuries of British imperialism, universities were not benevolent institutions who abstained from the violent massacring, plunder and invasion of 90% of the world's countries. We must first understand what is meant by 'colonial' education and its intrinsic link to academia. The way in which we come to know, understand and view the world – what academics term 'epistemology' – is learned throughout our lifetimes from many influences, known as formal and informal agents of social control. These include the state, the law, religion, our families, our neighbourhoods and public opinion. This process is known as socialisation, and it is ideologically reinforced through our education. The British education system itself is firmly rooted in colonial epistemology, which centres and upholds the British empire and the forms that it takes today. What this can look like in schooling is a whitewashed retelling of the history of empire that speaks only to its 'successes,' whilst omitting its evils, the voices of the oppressed and the lasting legacy of imperialism today. Within education, there exists a complex web of coded and overt systems through which some forms of knowledge are 'legitimised' – those which fit a narrow, conservative view of 'British values' and the government of the day's agenda. This is no accident. Education in Britain has and continues to be greatly intertwined with the state. Decolonisation typically refers to the withdrawal of political, military and governmental rule of a colonised land by its invaders. Decolonising education, however, is often understood as the process in which we rethink, reframe and reconstruct the curricula and research that preserve the Europe-centred, colonial lens. It should not be mistaken for 'diversification,' as diversity can still exist within this western bias. Decolonisation goes further and deeper in challenging the institutional hierarchy and monopoly on knowledge, moving out of a western framework. Within education there exists a complex web of coded and overt systems through which some forms of knowledge are 'legitimised' – those which fit a narrow, conservative view of 'British values' and the government of the day's agenda. This is no accident. Education in Britain has and continues to be greatly intertwined with the state. Throughout centuries of British imperialism, universities were not benevolent institutions that abstained from the violent massacring, plunder and invasion of 90% of the world's countries. In fact, some of the subjects we hold in high esteem were founded to support Britain's pursuit for global control.

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.

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Ceon Broughton Conviction for Manslaughter Quashed

1. This appeal concerns causation in gross negligence manslaughter. Louella Fletcher Michie ("Louella") was pronounced dead in the early hours of the morning of Monday 11 September 2017 at the Bestival Music Festival at Lulworth Castle. She had taken a controlled Class A drug, namely 2C-P as well as ketamine and ecstasy. The appellant, who was her boyfriend, had supplied the 2-CP and "bumped" it up either by giving her an increased dose or mixing it with ecstasy or ketamine. The pair had left the grounds of the festival for nearby woodland at about 16.30 during the afternoon of Sunday 10 September. There, Louella experienced a trip. It was intense, involving a bad reaction to the drugs. The prosecution case was that having supplied the drugs and remained with her, the appellant owed Louella a duty of care to secure medical assistance as her condition deteriorated to the point where her life was obviously in danger. He was grossly negligent in failing to obtain timely medical assistance, which failure was a substantial cause of her death.

2. On 28 February 2019 the appellant was convicted of manslaughter and of supplying Louella with the 2C-P. He had earlier pleaded guilty to supplying both her and a friend with 2C-P on another occasion at a different festival. He was subject to a suspended sentence for possession of two knives. He was sentenced to a total of eight and a half years' imprisonment; seven years for the manslaughter, thirteen additional months for the drugs offences, and five more on activation of part of the suspended sentence.

3. The appellant appeals against conviction by leave of the single judge on the ground that the prosecution failed to adduce evidence from which the jury could be sure that the appellant's negligence was a cause of Louella's death. He renews two grounds on which leave was refused, first, that the judge misdirected the jury on causation and secondly that no duty of care arose on the facts of the case.

65. (*Submission of no Case to Answe*r) At the conclusion of the prosecution case, the appellant submitted that there was no case to answer in respect of all four core issues: duty of care, breach of duty, causation, and gross negligence. On causation, the appellant submitted that in the light of Professor Deakin's evidence, in particular his first report from which we have quoted, any breach of duty by the appellant could only safely be regarded as having been a cause of Louella's death before 21.10, and that given that the jury could not be sure that there was an obvious risk of death until 21.10, there was no point at which the existence of duty was coterminous with causation. More generally, it was submitted that the various descriptions given by the Professor were such that the jury could not be sure that any alleged gross negligence was a cause of death. Moreover, that changes in the Professor's opinion meant that his evidence could not assist the jury.

66. In reply, the prosecution pointed to Professor Deakin's evidence that Louella would have stood a very good chance of surviving if she had received medical care, and his comment that as long as she was actually breathing when found, the chances of her surviving would be very high. The camera footage at 20.18 showed that Louella was making incoherent noises, was not aware of her surroundings and was (in Professor Deakin's opinion) seriously unwell and in need of urgent medical care. She appeared to him to be dead at 23.35. The prosecution argued that the appellant's negligence over five to six hours provided an explanation for Louella's death, the root cause of which was the drug consumption and then the resulting

effects. It was submitted that causation was properly a matter for the jury who should have the final decision on issues in relation to which expert evidence had been given. The respondent relied on Misra which was said to be similar (albeit in the context of medical negligence) in that the experts could not (as Professor Deakin could not in the appellant's case) definitively exclude the possibility that the patient would not have died even with appropriate medical care. This court concluded in Misra that there was a case to answer.

67. The judge rejected the submission of no case to answer. He acknowledged that Professor Deakin could not say beyond reasonable doubt that Louella would not have died in any event, but he did not think that her death was inevitable. She had a very good chance of surviving if she received medical help before she became unresponsive. The judge noted that the Professor had thought that it was very likely that Louella would have survived if she had received medical treatment before 21.10 and likely thereafter. He added: "The co-existence of a likelihood that the deceased could be saved with medical assistance and a breach of duty will be for the jury to decide. There is sufficient evidence of both a breach of duty before 21.10 and after that time; there is sufficient evidence that it was likely that the deceased could be saved both before and after that time.

68. With respect to the submission that causation could not be proved because Professor Deakin, adopting the criminal standard of proof, was unable to rule out that death would have supervened anyway, the judge accepted the prosecution submission that it was contrary to the decision in Misra. He concluded that the submission suggesting the Professor's evidence was unreliable given the changes in his opinion was a matter for the jury.

89. (Discussion) To establish the guilt of the appellant the prosecution had to make the jury sure that at the time when Louella's condition was such that there was a serious and obvious risk of death the appellant was grossly negligent in failing to obtain medical assistance and that such assistance would have saved her life. That she was having a bad trip, or the time had come when medical help was needed is not enough. In a case of this sort, as in medical cases involving health professionals, there needs to be a clear focus on when the condition of the deceased reached the threshold of serious and obvious risk of death, what the accused should have done then and the prospects of survival at that point.

90. The prosecution in this case did not fix on a time at which it was contended that Louella's condition posed an obvious and serious risk of death rather, as the judge explained in the summing up: "It will be necessary … for you to carefully consider the events, looking closely at the timing of the moving images on the Defendant's phone, between 17.53 and 23.24 and how the deceased appeared. The timing and content of messages between the Defendant and others and evidence of voice calls. It cannot be said that there was a duty of care or a breach of duty at the start, it's the Prosecution's case that as time went on you can be sure that a reasonably competent, prudent and sober person of the Defendant's age and experience would have known that he had created a state of affairs which had become life threatening, and would have appreciated her serious deterioration and obtain medical help for the deceased. It will be for you to decide if or when that time arose. The Defence say that it never arose and that in the circumstances at the time, he did all that was reasonable to help her."

91. In the passages dealing with causation, the judge linked the breach of duty with causation: You will have to assess the time from which he was in, in breach and medical aid was needed, what was the likelihood of survival? Are you sure that the failure to obtain medical help at that time was a substantial cause of her death?

92. The task of the jury was far from easy given that they had no help from the experts on the

mechanic where, when you take your car for a service, they tell you they're going to set it alight. You tell them that doesn't seem right, but they insist this is a well-thought-out policy, it's even been approved by Chris Grayling, and "we lead the world in repairing things by incinerating them". Then, one month later, when it's revealed there are three thousand charred vehicles blocking the entire town, they announce they're reviewing their policy, but it's not their fault, no one will resign, and in a poll, 41 per cent say they would still vote for them to carry on "fixing" their vehicles.

Adulterous Judge Who Had His Troublesome Wife Kidnapped and Exiled to St Kilda

Kate Scarborough, Scottish Legal News: During his lifetime, James Erksine, Lord Grange, Scotland's Lord Justice Clerk from 1710 to 1714, was best known for his eccentric opposition to the Witchcraft Act of 1735 which aimed to ensure there would be no return to the infamous witch hunts which had claimed the lives of so many women. Erskine was regarded as a pious Presbyterian, and was part of the religious Gestapo that ran Scotland. He had Jacobite sympathies, but never publicly admitted them due to his social standing. He was also a spectacular hypocrite of the sort Burns had in mind when he wrote Holy Wullie's Prayer. When his long-running affair with Fanny Lindsay, a coffee shop proprietor in Edinburgh's High Street, was discovered, Erskine's wife (who was well-known for her temper and erratic behaviour) became even more unhinged.

Lady Grange, or Rachel Chiesley, was known as a 'wild beauty' in her youth and it is likely that she was pregnant when she married Erskine three years before his appointment as Lord Justice Clerk. The marriage, which produced nine children, was not a happy one. And it appears that Erskine was somewhat afraid of his wife – perhaps for good reason. Bad temper ran in her family, it would appear. When Rachel was around 10 years old her irate father expressed his anger about having to pay his wife aliment by shooting the Lord President Sir George Lockhart of Carnwath. Over the years, Lady Grange's behaviour became increasingly erratic and, by 1730, tensions were at boiling point. In the spring of 1730, Lady Grange signed an official letter of separation from James Erskine. However, their troubles only increased.

Lord Grange did have a part to play in his wife's rising anger, as the discovery of his affair with Fanny Lindsay and the removal of Rachel's factorship of their estate in Preston only added fuel to the fire. After putting up with his wife's aggressive and irate behaviour for nearly 25 years, Lord Grange decided it was time to take action against her and, in January 1732, he had her abducted from her home. The abduction was conducted by two noblemen with a few of their men, and it was said to be a struggle to capture and imprison the feisty Lady.

As David Maclennan WS notes: "There was a struggle and she was thrown to the floor, gagged and even lost some of her teeth and hair. She was badly cut and bruised on her face which bled." Once captured, she was slowly taken across the country, never staying in one place for too long, towards the West Coast. The first place she was held for a lengthy period was the island of Hesker, where she remained for a few years. Thereafter, she was confined to the Isle of Hirta in the St Kilda archipelago. Lady Grange was imprisoned on Hirta in a Cleit, a stone storage hut, from 1734 for eight years. The structure still stands today. During this time she was said to have drunk all the whisky she could get her hands on and wandered the shores. The island inhabitants were kind and even helped to smuggle some letters to Edinburgh for her.

The letters to her lawyer told of the bleak and miserable conditions of her imprisonment. She was, at times, unaware of where she had been taken and was not provided with food or clothes. Her 'house' on the island of Hirta was little more than a stone hut with a soil floor and was barely weatherproof. A rescue attempt was made but, by the time the party reached the island, she had been moved. She was taken to Assynt in Sutherland and finally to the Isle of Skye where she died in

had happened in Beethoven's year, he'd have been downgraded from a predicted A to a C because Bonn Comprehensive didn't have any As the previous year. If the Premier League hadn't been completed this year, Liverpool should have been given fourth place, because, in spite of them being 137 points clear at the top, that's where they normally finish.

This is so efficient, no students need to bother learning anything, they're just given the grades that school got before, so the schools can be turned into flats. This should be the rule in every other area as well. So to make the justice system fairer, each town has to send the same number to prison every year. If Luton sent fewer this year than in 2018, the local council takes 40 random people out of Lidl and gives them all six years for armed robbery. But the way they dealt with these exams seems to fit a pattern. Because this government had the same approach for increasing NHS fees for foreign nurses. A decision the prime minister might as well have responded to by saying: "I am sick and tired of foreigners coming over here and saving my life as a sneaky way of earning money off our health system. If they can't be bothered to pay for the privilege, they don't deserve to save my life.

Eventually, someone spotted a flaw in this proposal so they abandoned it, and replaced it by announcing an end to the furlough scheme, because we could no longer afford to let people stay at home and not work, just because they'd been ordered to stay at home and not work. Boris Johnson was probably about to make a traditional Conservative speech, saying: "If someone has been put out of work because I've ordered them to stay at home, they should go and look for work somewhere else. Maybe there's a job in the toilet, or underneath the settee." Instead, they abandoned that and announced instead that all schools would reopen in June, which would also be when the world-beating, game-changing track and trace would be ready, until they abandoned both of those.

So they announced there was no need to wear a face covering, as they made no difference, until they amended that slightly to "Everyone HAS to wear a mask". Then every minister said something slightly different, such as: "In shops you must wear a mask and play a flute" or "if you have breathing difficulties you must wear one over your arse." So these people calling for Gavin Williamson, the education secretary, to resign are being thoroughly unfair. He was simply following the rules of his government, in proposing something mad, sticking to it despite the opposition of everyone, then cancelling it while saying no one could possibly have foreseen the thing that everyone foresaw. But they seem to get away with it, so they'll probably carry on like this. Next week they'll announce prisons will be turned into aquariums, and long-term prisoners have to paint themselves yellow and orange and pretend to be tropical fish.

Then they'll abandon that, saying no one could have predicted the findings of a report that concluded prisoners don't have gills. But never mind, because to save money on expensive training, heart surgeons will be chosen by the National Lottery, though you'll be restricted to liver transplants if you needed the bonus ball. To save further public money through efficiency, the library service will be merged with the navy, and the romantic fiction D to H section will be used as an aircraft carrier. nd none of them responsible for these schemes will ever resign. Priti Patel could be filmed making balaclavas out of the Queen's corgis to sell to the Continuity IRA to raise money for the Campaign to Fill the Sea with Plastic and Particularly Poisonous Whale-Killing Mercury, and she'd say she'd done nothing illegal, and Johnson would say he'd drawn a line under it, and what the British people wanted was to see her get back to being an incompetent psychopath as soon as possible.

In spite of all this, they remain slightly ahead in the polls, as if around 40 per cent of the population has now forgotten there are any other parties. So you might as well ask them which moon they'd prefer to go round the Earth. We're now run by a government that's the equivalent of a car

question of when Louella's condition was clearly life threatening (as the judge put it as short-hand for a serious and obvious risk of death). We have noted that Professor Deakin, on viewing the video taken at 20.18, described her as being "seriously unwell and in need of urgent medical care" rather than at serious and obvious risk of death. Nonetheless, having determined when that state of affairs existed there would have been no difficulty in concluding that the appellant should immediately have tried (or continued to try) to get help. It would necessarily take time to arrive and for treatment to commence. That is when the question of survivability would become relevant.

93. The appellant made attempts to get assistance. He told Ezra Campbell at 19.13 to "get the medics" to the forest and again at 20.25. He sent a Google Maps pin to Ezra Campbell at 20.39. Shortly after 21.00 a search was made of the Ambient Forest where, mistakenly, the searchers thought the appellant and Louella were located. It is not plausible to suppose that the appellant was acting in a grossly negligent way whilst actively seeking help for Louella at that time and it is for that reason that a good deal of attention was paid at trial and in Professor Deakin's evidence about the state of affairs when the video was taken shortly after 21.00. His opinion focussed on survivability at 21.10.

94. We respectfully agree with the observation made by the single judge, reflecting the submission advanced by Mr Kamlish, that the only evidence dealing with causation was that of Professor Deakin. None of the other experts gave evidence which went to that issue. It was not in doubt, even given the uncertainties surrounding the precise mechanism of death and the part played by the different drugs which Louella had taken, that the drugs caused the death and that medical intervention could have saved her. It was Professor Deakin who gave the evidence relevant to the issue of causation. In that he was in a similar position to the doctor who gave evidence in the trial of Morby in 1882.

95. Neither did the results of Dr Morley's internet searches add to Professor Deakin's evidence. Experts may, of course, rely upon the work of others in forming their opinions. The two peer reviewed papers dealing with six patients who had consumed 2C-P are examples of the type of material an expert may bring to bear in forming an opinion. But they said nothing about the chances of survival of a 2C-P taker who was at a serious and obvious risk of death. The fact that three of the patients needed nothing more than rest and the other three Valium suggests that the problems were of an entirely different order. Dr Morley was right to disavow reliance upon the newspaper report his searches had exhumed. A report of this nature is far removed from the type of material than an expert could pray in aid to support an expert opinion. Moreover, had it been found by the industry of the prosecution rather than Dr Morley it is inconceivable that it would have been admissible in evidence.

96. Like the jury, we are left with the Professor's evidence which, echoing Lord Coleridge's language in Morby, he gave "under a high sense of duty and responsibility". He was careful not to overstate his position. It is striking that in his original report the Professor expressly addressed himself to the criminal standard of proof, rather than scientific certainty, but found the evidence wanting. He was happy with the civil standard of proof, the balance of probabilities. The furthest he would go when pressed further was in suggesting that there was a 90% chance of survival at 21.10 if medical attention had then been provided. He used various epithets to describe the position then and thereafter, but it is abundantly clear that was the high-water mark for survival and that the chances diminished as time went by, albeit remaining good. The diminishing chances of survival were expressly referred to in the opening of the prosecution to the jury.

97. We have referred to Gian (paragraph 22 above) and noted Miss Darlow's submission founded upon it that the jury is not required to assess evidence on the basis of scientific certainty, and nor are they bound to consider hypothetical possibilities. The relevant passages

from Gian are these: "21. Dr Jerreat's opinion was, throughout, clear. His opinion was that the victim had died of neck and stab wounds. He said in re-examination:- 'My opinion is that she has died of the neck and stab wounds and that the cocaine intoxication is not an event, but there are always cases that you cannot completely exclude and in theory these are possibilities. I do not think that has occurred in this case where you have clear bruising, you have a clear action in the stabbing and the removal of the neck. As I was asked, it was not a clean removal, it was not quick, it was very slow and it would have taken some time and this is all while the person is still alive. So it would be highly unusual that you would perform this process just as they were dying of cocaine intoxication.' 22. In our judgment, the judge was correct in refusing to withdraw the case from the jury merely on the basis that Dr Jerreat could not exclude a theoretical or hypothetical possibility that the victim had died from cocaine poisoning. There is ample authority for the proposition that the mere fact that as a matter of scientific certainty it is not possible to rule out a proposition consistent with innocence does not justify withdrawing the case from a jury. Juries are required to consider expert evidence in the context of all other relevant evidence and make judgements based upon realistic and not fanciful possibilities. (See Bracewell [1979] 68 Cr App R 44, Dawson [1985] 81 Cr App R 150 and Kai-Whitewind at paragraphs 88, 89 and 90). The Court of Appeal endorsed Boreham J's direction in Bracewell. In that case the defence raised the possibility that the victim had been strangled, recovered and then suffered a heart attack, a sequence of events which could not be ruled out as a matter of scientific certainty. The judge directed the jury not to judge the case scientifically or with scientific certainty but to decide whether, on the whole of the evidence, they were sure. The Court of Appeal endorsed that direction which correctly drew the distinction between scientific proof and legal proof. It pointed out that the medical evidence was only part of the material on the basis of which the jury had to reach a decision."

98. This extract demonstrates the hypothetical nature of the alternative cause of death being considered in Gian and also in Bracewell. It illuminates the reality that in many homicide cases determining the cause or causes of death does not rely exclusively on expert opinion but can be collected from surrounding circumstances.

99. Professor Deakin was not asked to consider hypothetical alternative causes of death of the sort canvassed in Gian and the cases therein cited. There were two concurrent causes of death in issue: first, the effect of the drugs taken by Louella and secondly want of medical attention after the time when her condition became obviously critical. There was no evidence beyond that of Professor Deakin of a non-expert nature which could help answer the relevant question.

100. It is unhelpful to attempt to contrast scientific certainty (put at 100%) with a different figure for legal certainty. Human beings asked the question whether they are sure of something do not think in those terms. In the context of causation in this very sad case the task of the jury was to ask whether the evidence established to the criminal standard that, with medical intervention as soon as possible after Louella's condition presented a serious and obvious risk of death, she would have lived. In short, had the prosecution excluded the realistic possibility that, despite such treatment, Louella would have died?

101. In our judgment none of Professor Deakin's descriptive language achieved that. Even his description of a 90% chance of survival at 21.10, were medical help available, leaves a realistic possibility that she would have lived.

102. Misra is a different case. The evidence in support of causation needs careful attention. The case is not authority for the proposition that causation is always a matter for the jury

erally good communication about the reasons for such actions by most prison managers. For some weeks, there was a sense of prisoners, children and staff 'being in this together'."

However, as the Inspectorate's SSV programme progressed inspectors identified "increasing levels of stress and frustration among many prisoners and evidence that prisoner well-being was being increasingly affected by the continuation of restrictions. Governors of individual establishments in the public sector were unable to make local adjustments to their regimes without permission from HM Prison and Probation (HMPPS) Gold Command, which delayed relaxation of restrictions which had already served their purpose in individual locations. This meant that 16 weeks after the restrictions were imposed, most of them were still in place."

Children in public sector custody lost face-to-face education and for some exceptionally vulnerable individuals in women's prisons, who usually benefitted from a range of specialist support services provided by external providers, the absence of these services was extremely damaging. For these prisoners, the long hours of lock up were compounded by the sudden withdrawal of services on which they depended, and self-harm among prisoners in prisons holding women has remained consistently high throughout the lockdown period."

Mr Clarke noted the hard work over five months by prison staff to provide decent conditions for those in their care, "and for the most part they have been successful. Our SSV reports highlighted much notable positive practice." However, he added, "in some prisons, at certain times, conditions fell below an acceptable minimum, particularly in relation to time out of cell, time in the open air and showers. For example, some quarantined, isolated or shielded prisoners did not have access to time in the open air for a week or more and did not have a daily shower." Overall, Mr Clarke said: "In prisons, there is now a real risk of psychological decline among prisoners, which needs to be addressed urgently, so that prisoners, children and detainees do not suffer long-term damage to their mental health and well-being, and prisons can fulfil their rehabilitative goals. At the time of writing, HMPPS are in the process of implementing their recovery plan for prisons, which involves individual establishments applying for permission to move to a new regime stage and then implementing (when authorised to do so) Exceptional Delivery Models (EDMs). This is all set out in the National Framework for Prison Regimes and Services. This document also makes clear that 'progress will be slow and incremental, and restrictions may need to be re-imposed in the event of local outbreaks'. In light of the findings in this report, simply re-imposing the restrictions that were necessarily applied in the early stages of the outbreak would be too narrow an approach. We have seen many prison leaders who are convinced that they could have delivered more purposeful and more humane regimes without compromising safety, and who are frustrated by the restrictive approach they have been forced to take. Every establishment is different. Local initiative, innovation and flexibility which recognises those differences should surely be encouraged, and not stifled."

Government's Approach to Everything it Does: Make Deranged Choices and Watch Britain Burn

Mark Steel, Independent: Imagine if any student wrote an exam paper in the way the government has handled the issue of marking the exams. They'd write "The main cause of the First World War was the Mona Lisa, which was written in 1985 by Catherine the Great." Then they'd insist this was "fair and accurate" following a "robust process", until 15 million people screamed it made no sense. Then the student would say it wasn't his fault because his computer was broken. In the government's defence, how could anyone have worked out in advance that marking down students from a school because that school hadn't achieved such high marks before might be a problem? If a pandemic

Obtaining Evidence: Those considering bringing a private prosecution will require legal advice when it comes to deciding whether to commence one. When the CPS considers bringing a prosecution it assesses whether the Full Code Test is satisfied: whether there is sufficient evidence against the accused and whether it is in the public interest to bring the case to court. A private prosecution does not have to satisfy the Full Code Test but it is unlikely that a solicitor or barrister will advise bringing a private prosecution if the Test is not met.

As with the CPS, anyone considering bringing a private prosecution has to assess the strength of the evidence they believe they can assemble to support their case. At this stage, expertise in identifying the important evidence, obtaining it and analysing it is so important. Once proceedings have been issued, there are a number of methods for obtaining material for evidential purposes, these can include: Bankers Books Evidence Act 1879, which covers the use of bank statements and records as evidence A witness summons under Criminal Procedure (Attendance of Witnesses) Act 1965, s.97 Magistrates' Courts Act 1980 or para 4, Schedule 3 to the Crime and Disorder Act 1998. In order to obtain information from a potential witness or for them to provide a witness statement and attend court to give live evidence. Case management directions.: Such matters should be managed by those with the relevant experience, who can utilise the options available to obtain the material necessary to support a case.

Private prosecutions are seen as an efficient and cost-effective way of obtaining justice. Generally, someone bringing a private prosecution will be able to recover the reasonable costs of their investigation and prosecution from central funds. This can be the case even if the prosecution was unsuccessful. Under section 17 POA, the court can order payment from central funds "of such amount that the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings". If the court considers it inappropriate for the prosecution to recover the full amount it can order payment from central funds "of such lesser amount as the court considers just and reasonable". Section 18 enables a private prosecutor to recover costs from the convicted defendant.

Due to this, a private prosecution can be seen as a more attractive option than civil litigation. In a civil litigation case, the person bringing the claim may well be successful but will be left out of pocket if the defendant does not have the ability to pay the costs that he has been ordered to pay. What should also be remembered is that in a private prosecution the prosecutor is rarely made to pay the defendant's costs; even if the prosecution is unsuccessful. Section 19 POA allows a defendant to claim for costs if they have been caused financial loss due to an unnecessary or improper act or omission by a private prosecutor. But if a case has been built and managed properly this is unlikely to be an issue. Private prosecutions are recognised by both the law and the courts as a vital option for those seeking justice. As a result, the system has been developed in a way that ensures that justifiable costs can be recovered by those bringing such prosecutions.

Continued Severe COVID Regime Restrictions Risk Psychological Decline in Prisoners

Continued severe regime restrictions in prisons – at times amounting effectively to solitary confinement – have created "a real risk of psychological decline among prisoners, which needs to be addressed urgently." Publishing a review of short scrutiny visits (SSVs) undertaken between April and July, Mr Clarke said: "The restrictions imposed in March 2020 undoubtedly helped to prevent the spread of the virus. While many of these limitations were extreme, there was a high level of acceptance and cooperation among prisoners, supported by gen-

whatever the underlying evidence. No issue should be left to a jury unless there is sufficient evidence upon which it can be satisfied so it is sure. It is true that the two prosecution experts who gave evidence on causation spoke in varying descriptive language, including the balance of probabilities. That said, amongst the evidence by one expert was that he was "as certain as one can be he would have survived". There was evidence of the general statistical chances of dying from the relevant condition even with appropriate medical treatment (contested but coalescing around 5%); but at two points in the judgment (paragraphs 21 and 74) there is reference to the view of one of the experts that the fact that the victim was a 31-year-old man in otherwise good health was a factor which reduced his statistical chance of dying and that he was in fact doing well before the negligence supervened.

103. In our view, this is one of those rare cases (as was Morby) where the expert evidence was all that the jury had to assist them in answering the question on causation. That expert evidence was not capable of establishing causation to the criminal standard. Miss Darlow's final submission that at 21.10 Louella was deprived of a 90% chance of survival was an accurate reflection of Professor Deakin's evidence but, for the reasons we have explained, that is not enough. Put another way, if an operation carried a personal 10% risk of mortality, both patient and clinicians would be able confidently to say that the chances of survival were very high or very good (to take two phrases used by the Professor) but none could be sure.

104. In respectful disagreement with the judge, we conclude that the appellant's main argument, that the case should have been withdrawn from the jury, is established. Applying the Galbraith test (R v. Galbraith [1981] 1 WLR 1039), taken at its highest, the evidence adduced by the prosecution was incapable of proving causation to the criminal standard of proof. The appeal against conviction for manslaughter must be allowed.

'Procedural Muddle': Family Case Came Before 15 Judges

A family case involving allegations of controlling and coercive behaviour came before at least 15 judges, the Court of Appeal has revealed in a judgment highlighting the importance of judicial continuity. In R v P (Children: Similar Fact Evidence), the court set aside a case management decision to exclude evidence in family proceedings ahead of a fact-finding hearing. The case concerns a father's application for contact with his two young children. The mother opposes contact, alleging that the father subjected her to extreme coercive and controlling behaviour, and sexual abuse including rape. To support her case, she wanted to rely on evidence which she argued showed similar coercive and controlling behaviour by the father towards another woman. The evidence was excluded.

The father began proceedings in October 2017. Lord Justice Peter Jackson said: 'It is unnecessary to describe the extremely difficult procedural history in full. It is enough to say that there has unfortunately been no judicial continuity, with the case coming in front of at least 15 judges, that the parents have both been unrepresented at times, that the papers that were before the judge ran to 1,600 pages, that the mother now has an intermediary, and that a fact-finding hearing listed [this month] was the sixth occasion on which such hearing had been listed. It is not at all surprising that the judge, who was new to the case, was determined that that hearing should go ahead if possible.'

The father's relationship with the other woman 'was played out in an unsatisfactory way against repeated attempts to hold a fact-finding hearing', Jackson LJ said. Last November the matter came twice before another deputy judge, whose order did not relate to the question of the disputed evidence. Jackson said the 'procedural muddle' arose in part from a lack of judicial continuity. When

the matter came before a judge in a remote hearing in June, 'there were substantial difficulties in establishing connections, so that the hearing started about two-and-a-half hours late with the mother's counsel attending by telephone. By that stage, only half an hour of hearing time remained'.

Jackson LJ said the father was aware of the allegations for over a year and the allegations were contained in professional reports that the court directed should be gathered. He said: 'Applying these principles, it is clear that the judge's decision cannot stand. No doubt, at least in part because of the difficult circumstances in which the hearing was taking place, the necessary analysis concerning whether the disputed evidence should be admitted was simply not carried out. Moreover, the judge was mistaken (as was the district judge in September 2019) about the stance that had been taken by the court previously.' Jackson LJ set aside the family court's order. The case was reallocated to High Court level 'because of the history of the case and the importance of the underlying issues'. Lord Justice Hickinbottom and Lord Justice David Richards agreed.

Capacity and Serious Medical Treatment

Naima Asif, Pump Court Chambers: Introduction, this case concerned a young woman, K, who was assessed to lack capacity. K was diagnosed with cancer. The proposed treatment was "complex", "intrusive" and was described as a "life-altering complexion". An urgent application was brought to the Court by University Hospital Coventry and Warwickshire NHS Trust ('the Trust'). The Trust was seeking an order that K, "lacks capacity to consent to medical treatment for her cancer, and further, that it is in her best interests to undergo a combination of radiotherapy and chemotherapy with the aim of further trying to cure her or at least to provide palliative and symptomatic relief". The Court was asked to consider questions of capacity and best interests relating to K.

The facts: On 20 May 2020 K was referred by her local hospital to the Applicant's University Hospital Coventry. Dr S, Consultant Oncologist, saw K in the presence of her mother (Mrs W) and her stepfather (Mr W). K was provided with "easy-read literature about her diagnosis and treatment". Dr S concluded that whilst K was able to understand some of the concepts she was unable to retain them sufficiently well to be able to weigh and evaluate the contemplated treatment. The Court noted that without the treatment K would die within a year and her death would be painful. Conversely, the treatment "contained a 30-40 % chance of being effective, i.e. there is a 30-40% prospect of her survival for more than 5 years, after which it is considered that she would have a normal life expectancy". However, the treatment would trigger early menopause and render her infertile. There was consensus among the treating clinicians that treatment was in K's best interest. K had also been"enthusiastically cooperative".

The proceedings, K and Mrs W attended the hearing and both participated. The Court heard evidence from Dr H, who appeared on behalf of the Official Solicitor. Dr H's evidence revealed that K had a real understanding that she had a condition, which was "serious" or "bad", but he did not believe that she understood that it was a condition she might die from. Dr H also stated that that he had informed K that following the treatment "she would not be able to have babies". The Court "sensed" that Dr H was not completely sure whether K had grasped this information. Mrs W reiterated what the medical professionals had said.

Despite the broad consensus, the Court stated that the Trust had properly decided this case should come before the Court for three principal reasons: this was a highly intrusive treatment over a considerable period of time one impact of the treatment involved the premature onset of menopause for a woman in her late thirties who did not have children; and the treatment plan was onerous and there was a distinct possibility that K may withdraw her cooperation

to treatment when it became more distressing. The Court was satisfied that having regard to s.4 (3)(a) and (b) of the MCA 2005, it was highly unlikely K would regain capacity during the course of the treatment and/or before the start of the treatment. Accordingly, the Court granted the declaration sought by the Trust.

Take away points: The Court commended the approach taken by the Trust and stated, "the advantage of bringing the application pre-emptively is that it allows careful planning in circumstances which may become very difficult". The Court further stated that the judgment provided an opportunity to assist Trusts more generally as to the kind of circumstances in which applications should be brought to the Court and referred to the wider guidance available in Serious Medical Treatment, Guidance [2020] EWCOP 2.

Bringing a Private Prosecution

Nicola Sharp of Rahman Ravelli outlines the procedure for bringing a private prosecution and the issues that have to be considered before going ahead. For many, a private prosecution can be the most suitable course of action. It gives the person bringing the prosecution the scope to control both the speed of proceedings and the direction the prosecution takes. A private prosecution can be a quicker solution than relying on the police or other enforcement agencies, all of whom have a heavy caseload and huge demand on their resources. It is also an important option if the authorities have decided not to investigate or their investigation has failed. Under section 6(1) Prosecution of Offences Act 1985 (POA), private prosecutions can be brought by any individual or company.

The Crown Prosecution Service (CPS) may learn of a private prosecution via a defendant, the prosecutor or the court. A request to intervene can be made at any stage by any of these parties. But there is no obligation on someone bringing a private prosecution to notify the CPS, the Director of Public Prosecutions (DPP) or any state agency; although certain offences do require the consent to prosecute of the DPP or the Attorney General. If in such a case the DPP gives consent to prosecute then the CPS will take over and conduct the prosecution. The DPP does have the power, under section 6(2) POA, to take over private prosecutions but is not obliged to do so.

Although brought by a person or organisation rather than a state agency, a private prosecution will proceed as any prosecution does that is brought by the Crown (known as a public prosecution). Anyone considering a private prosecution needs to determine whether it is more appropriate to pursue a private prosecution rather than rely on the state agencies. They should also assess whether bringing a private prosecution may be a cheaper, more effective and / or quicker way of reaching a financial settlement than would be the case under civil proceedings.

Private Prosecution Procedure: A private prosecution is begun in the same way as a public prosecution, with a charge sheet (an information) laid into magistrates court. The magistrate or a clerk will check it is in the correct form. If it is, they then issue a warrant or summons so the defendant has to attend court on a certain date. R v West London Justices ex parte Klahn [1979] is the leading case on this aspect of a private prosecution. It held that when considering whether to issue a warrant or summons, the court must consider whether: the ingredients of an offence known to the law are prima facie present: the offence is 'out of time': the court has jurisdiction: the informant has the necessary authority to prosecute: the allegation is vexatious. But as the court often has only limited information on which to make this assessment, these issues are commonly considered once the prosecution has begun. The magistrates court is not obliged to make enquiries into these issues before issuing a summons, although it should not issue one if there is material before the court that persuades a magistrate that it would be wrong to do so.