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Man Charged With Assault After Farting in a Taxi

Lexology: A UK man has been charged with assault, following a fart in an Uber that triggered a brawl between the passenger and driver. An intoxicated, 35-year-old, James Mallett, was sitting in the back seat of an Uber on his way to Chasers night club in Kingswood, when he 'let one rip'. With the driver no longer the only one 'hitting the gas', Aleksander Bonchev, who had already experienced a night of unpleasant clients, ordered Mallett to leave the vehicle. The court heard that after experiencing verbal abuse from fares throughout the night, that the flatulence was the 'final straw'. Following being asked to leave the Uber, Mallett threatened to fight Bonchev before following through and striking Bonchev in the head. "He behaved in an unattractive manner that night," summarised defence lawyer Anthony Bignall, Bonchev responded by knocking Mallett to the ground in self-defence.

Police encountered Mallett later on in the night, noting that he had a cut on his bottom lip, and was "plainly intoxicated." While Prosecutor James Scutt alleged that Mallett had been abusive to police, his defence lawyer sought to describe him as a "polite, helpful, well-behaved and courteous" man. Mallett pleaded guilty to assault occasioning actual harm and was sentenced to a six month-jail term, a $900 AUD fine, and 120 hours of community service. His jail sentence has been suspended for 18 months.

The repercussions for Bonchev following the assault were quite severe, with him having to return to his native Bulgaria after sustaining a broken finger in the assault which rendered him unable to work, causing him to lose his job, accommodation, and car. "All because he was doing his job that evening." commented recorder Miss Alexia Power.

Could Farting Amount to Assault in Itself? In NSW, there appears to be no case of this specific nature that has been tested before the courts. In order to establish the offence of common assault, where no physical contact is made, the prosecution must prove the following elements beyond reasonable doubt: That you caused another person to fear immediate and unlawful violence (or force),That your actions were intentional or reckless to such consequence, and That the other person did not consent.

Whether a fart is capable of instilling fear of immediate and unlawful violence into a 'victim', with the requisite subjective elements of intention or recklessness is ultimately up for debate and would be decided on a case-by-case basis. In the US, a man who faced battery for passing gas and fanning it toward a police officer had those charges dropped. The Kanawha County prosecutor's office requested that the specific charge be dropped against the man, despite the complaint alleging: "The gas was very odorous and created contact of an insulting or provoking nature with Patrolman Parsons." Whilst 34-year-old Jose Cruz did not deny passing the gas, he claimed it was out of necessity rather than malice, detailing "I couldn't hold it no more."

Government to Define 'Degrading Treatment' in Law to Limit Deportation Challenges

Zoe Darling, Justice Gap: Under plans to speed up deportations, the Home Office is looking at defining 'inhuman and degrading treatment' in an attempt to prevent human rights challenges and judges from making 'subjective' decisions in cases concerning failed asylum seekers and foreign offenders. Article Three of the European Convention on Human Rights is often invoked in deportation cases. Judges in domestic courts and the European Court of Human Rights tend to define 'inhuman and degrading treatment' with reference to the specific circumstances surrounding the given case; however not has been argued that a concrete legal definition would curtail the ability of the courts to interpret Article Three on a case-by-case basis. Speaking to The Telegraph, a Whitehall source said that ministers want to do away with 'ambiguity' and 'reduce the scope for judges to answer philosophical questions'.

Another Whitehall source stated that no final decision has been made on this issue, though it is 'being discussed'. At the virtual Conservative Party Conference earlier this month, Patel promised the 'biggest overhaul of our [asylum] system in decades' in response to what she sees as a broken system susceptible to 'abuse' by so-called activist lawyers. Any statutory definition of Article Three ECHR would feature in the Fair Borders Bill, which is intended to completely revamp the existing asylum system. The Home Office plans to introduce the legislation before the Brexit transitional period ends on 31 December 2020.

This would not be the first time that government ministers have attempted to curb the use of human rights provisions in the context of migration. The Immigration Act 2014, introduced by then Home Secretary Theresa May, obliges the courts to weigh a specific list of 'public interest' considerations against Article Eight rights: the right to respect for private and family life. It was revealed in September that the Prime Minister is exploring ways in which the UK can 'opt out' of certain provisions in the Human Rights Act, the legislation which gives domestic effect to the ECHR.

An Inspector's Calls - Guardian View on Failing Jails

*Guardian Editorial:*To point out that the prison system in England and Wales is in a bad way is not to say anything original. Reports of overcrowding, filth, drugs and increasing rates of self-harm surface regularly. Prisons, some of which date from Victorian times, are understood to be unpleasant and dangerous. Periodically, a story of violence or mistreatment emerges that shocks people. The death of a newborn baby girl in a cell at HMP Bronzefield after her mother gave birth alone in September last year is one example. But broadly speaking, the public has learned to expect very little.

Peter Clarke's final report before he leaves the post of chief inspector of prisons in many ways covers familiar ground. Mr Clarke is careful to give credit where he believes it is due. At HMP Liverpool, for example, a damning report in 2017 was followed by a turnaround which he credits to new leadership. Parc young offenders institution, part of the only privately run prison in Wales (by G4S), is contrasted favourably with the "catastrophic failure" of Feltham. But pages of detailed description and statistical analysis make it painfully clear that these are exceptions. The rule that English and Welsh prisons do not work properly, and in many cases fail badly, is unchanged, with the lack of purposeful activity a particular sore point.

Many of the reasons to be disturbed by this are familiar. However, as Mr Clarke spelled out in an interview with the Guardian on Tuesday, Covid-19 has raised the stakes. Being confined in their cells for 23 hours a day has left many prisoners feeling hopeless. While the Prison Officers Association has welcomed the reduction in violence in men's prisons, Mr Clarke thinks the deteriorating mental-health situation is dangerous.

Releasing some prisoners early in order to reduce overcrowding and improve conditions remains the obvious solution, as it was in the spring when ministers announced it. But unlike in France, where the prison population fell by around 10,000 (14%) by mid-April due to early releases, the recent fall in the prison population of England and Wales (to 79,187 from 83,787 a year ago) has mostly been due to prisoners completing sentences – while closed courts have meant fewer criminals being sent to take their places. In August, early release arrangements were suspended.

With the sense of threat linked to the pandemic once again rising, it is not surprising that prisons do not top the agenda. Compared with the hungry children being championed by the footballer Marcus Rashford or families separated because their relatives are in care homes, prisoners and their families do not attract much sympathy. But that is no excuse for those whose job it is to run the system to do nothing. Ministers and civil servants must come up with a plan.

Solitary confinement is harmful, and has no place in a civilised country except as a short-term emergency measure or in exceptional cases. Its use in children's prisons this year has been an affront to human decency. The damage inflicted on people by prolonged separation from their families, in the absence of visits, is likely to be longlasting.

As a society, we cannot afford to risk further undermining our poor record on rehabilitation. Yet this is what we are in danger of doing, by leaving tens of thousands of prisoners (the vast majority of them men) locked all day in cells. To suggest that meaningful reform of prisons could take place in the midst of a pandemic would be naive. Allowing them to deteriorate amounts to an act of national self-harm.

Irish Courts Now Tend Towards Admitting Evidence Obtained Unconstitutionally

Source Irish Legal News: A landmark ruling five years ago has led to the Irish courts tending towards admitting evidence which has been obtained unconstitutionally, according to new research. The Irish Council for Civil Liberties (ICCL) has published a new report by Professor Claire Hamilton, a criminology expert at Maynooth University, which examines the impact of the majority decision in People (DPP) v JC [2015] IESC 31. Professor Hamilton surveyed solicitors and barristers about their experience of the new so-called "green garda" or "good faith" exception to the exclusionary rule. Her report suggests that the rule is now being applied in an "overwhelmingly inclusionary manner", with more than two-thirds of practitioners interviewed saying that they are now more likely to advise their clients to plead guilty in cases with unconstitutionally obtained evidence. Liam Herrick, executive director of ICCL, said: "ICCL is recommending that the courts clarify this issue urgently. We need new guidance that makes clear that if evidence is gathered in a way that breaches someone's constitutional rights it must be excluded from a trial."

Sext Messages Do Not Equal 'Blanket Consent'

Hugh Whelan, Justice Gap: Prosecutors have received new guidance that sexual messages must be discounted in rape and sexual assault cases. The first fully updated CPS Guidelines in eight years have been drafted to take into account of the rise of digital communication and 'hook-up' apps and follows concerns about the use of rape victims' mobile phones and a decrease in the number of successful convictions.

'There have been massive changes to the way people live their lives in the last 10 years and this has undoubtedly transformed the way people interact, date and communicate with sexual partners,' said Siobhan Blake, CPS rape lead. 'As dramatic technological advances have changed the way people meet and connect, it's vital those in the criminal justice system understand the wider, social, context of these changes.' To this end, the CPS consulted victim support groups to identify 39 'new rape myths', which have contributed to lower prosecution and conviction rates in cases involving the 18-24 age group. One common myth reads: 'If you meet men online or through hook-up apps you want sex and should be ready to offer sex.'

Blake said that explicit photos and use of such apps should not be taken as 'blanket consent' for sexual contact. 'The critical issue is around consent, and the giving and understanding of consent,' she said. 'We must not as a society or indeed as prosecutors get distracted by some of the peripheral behaviours that might seem quite unusual to us.'

Prosecutors are advised to be vigilant to these stereotypes in order to construct the strongest possible case. The guidelines also call for heightened sensitivity to the factor of trauma, which may impact the actions of victims following the alleged sexual offence. In addition, prosecutors are advised to maintain an appropriate balance between privacy and thoroughness, pursuing all reasonable lines of enquiry.

One example of this heightened sensitivity concerns sexual offences arising from 'chemsex', which occurs when the parties take drugs immediately before or during the sexual activity. Specifically, prosecutors are advised to be aware that victims in this context 'may be reluctant to engage with a prosecution for fear of disclosing offences they have committed with respect to the use or supply of prohibited drugs'.

Claire Waxman, the London Victims' Commissioner, welcomed the changes as 'a much-needed updated that will help to tackle pervasive myths and stereotypes around rape and the culture of disbelief'. The Guidelines form a part of an overarching five year strategy, set out in Rape and Serious Sexual Offence (RASSO) 2025, centred on increasing the number of convictions for sexual offences, which reached a record low in England and Wales at the end of July. The Guidelines are open for public consultation until 18 January 2021.

Redress for 'Historical' Child Abuse in Care: What Can Scotland Learn From Ireland?

Maeve O'Rourke, UK Human Rights Blog: The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill is currently undergoing parliamentary scrutiny. How survivors experienced Ireland's institutional abuse 'redress' schemes (the Residential Institutions Redress Board (RIRB) and the Magdalen Restorative Justice Ex-Gratia Scheme) over the past two decades can tell us a great deal about the elements of good practice in the Scottish Bill and the areas requiring amendment. The Scottish Bill improves greatly on some problems that have beset Irish redress schemes by proposing a non-adversarial approach, provision of legal and other assistance throughout a survivor's engagement with the scheme, freedom of expression for survivors, and a prohibition on the review body reducing the payment proposed at first instance.

However, the Bill's shortcomings include the waiver requirement, the five-year time limit for applications, the anticipated obligation on survivors to provide documentary evidence 'in all but exceptional cases', and the exclusion of corporal punishment from the scheme's scope. My recent correspondence to the Scottish Parliament's Education and Skills Committee discusses all of these issues. Here, I focus on the waiver. This requires that a survivor must trade their right to sue the State and any institution that has made 'fair and meaningful contribution' to the scheme in exchange for a payment of up to £80,000.

Scotland has the opportunity to use this redress scheme to support survivors who wish to pursue litigation against the State and/or other entities, by contributing to these individuals' psychological and financial security in the short term. Instead of the current waiver proposal, the Bill could direct the courts to reduce any future damages award by the amount already paid by the relevant Defendant under the scheme. This approach would recognise the absolute and inalienable human right of survivors of torture or other cruel, inhuman or degrading treatment to accountability for such abuse, and to compensation commensurate with the gravity of the harm suffered. Such recognition would strengthen current and future protections against torture and ill-treatment while redressing past failings.

In a January 2020 admissibility judgment in the individual communication of Elizabeth Coppin v Ireland, the United Nations (UN) Committee Against Torture found the waivers signed by a participant in the two above-mentioned Irish redress schemes to be unenforceable. The Committee affirmed that Articles 12, 13 and 14 of the Convention Against Torture require the state to investigate each individual case where there is reasonable ground to believe that torture or ill-treatment occurred, and that Article 14 requires the state to allow civil proceedings concerning allegations of torture or ill-treatment. Finding the waivers to have no effect on Mrs Coppin's absolute rights under the Convention, the Committee highlighted that it had previously determined that collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress (general comment No. 3, para 20), including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available (general comment No. 3, para. 30).

The Scottish Government's assertion in its briefing papers that the waiver provides greater 'choice' to those who have experienced child abuse in care must be queried given survivors' unequal bargaining power. Survivors of care-related abuse and/or their family members generally need the limited financial support that is available from a non-adversarial scheme. Notwithstanding the good intentions expressed regarding it, a waiver takes advantage of a survivor's situation—which has arisen from the abuse and through no fault of their own. Some may argue that the waiver is the fair price that survivors, collectively, must pay in return for a scheme that offers financial settlements for claims that might not succeed at trial.

However, against this contention are the following arguments: (1) the Bill's proposed payments are minimal; (2) if a claim is not suitable for litigation, no interest is served by a waiver; (3) the reasons behind 'historical' abuse cases no longer being fit for trial frequently relate to the wrongdoers' failures and treatment of survivors, meaning that survivors in general do not owe something in return for limited payments; (4) there is an absolute right under international human rights law for survivors of torture and ill-treatment to obtain individualised accountability and redress; and (5) if we assume that in any given instance a person would have succeeded in litigation but was forced by circumstance to accept the scheme payment, the waiver has rewarded the wrongdoer for conditions the wrongdoer created.

A waiver creates conditions of vulnerability. Ireland's Magdalene Laundries survivors have not received all aspects of the promised redress scheme and the waiver is key to this situation. Following the Magdalene scheme's establishment in 2013, the Department of Justice decided to administer financial payments before providing other supports such as enhanced health and social care. The women had to sign a waiver to receive their payment. They were then left with little recourse when other elements of the promised scheme failed to appear. The scheme was a non-statutory administrative arrangement, making judicial review an unviable option (aside from the financial barriers to litigation). Several dentists have 'urge[d] the Council of the Irish Dental Association to publicly disassociate itself from this act by the Government and to speak out publicly on behalf of its members who do not accept the injustice we are expected to support.' Women have spoken out about the Government's failure to provide the promised healthcare. Nothing has changed.

Many survivors will not pursue litigation following an application to Redress Scotland. As acknowledged already in the briefing materials concerning the Bill, there are obstacles to litigating 'historical' abuse and personal preferences and circumstances will vary. Arguably, however, the waiver requirement disproportionately harms every applicant to the scheme and the general public, in addition to harming most obviously those who may have wished to litigate but felt obliged to take the scheme payment.

By forcing people to choose between a guaranteed financial payment and accountability, the waiver emits a message to survivors themselves, and to the general public about them, that they are interested in money above all else. This is simply untrue and degrading. If barriers to litigation are removed, individual cases may establish precedents that are of benefit to many in terms of truth-telling and legal interpretations and standards regarding the nature of and responsibility to protect from child abuse. There is every reason to believe that the waiver will prevent cases that could have enhanced legal protections from child abuse from being taken.

The Irish experience shows that the absence of legal cases due to the waiver may lead to revisionism by some institutions or individuals who contributed to the scheme and benefitted from the waiver's protection against suit. It is worth noting the response by the Rosminians (Institute of Charity) to the Irish Department of Education's 2015 proposal to retain but 'seal' for at least 75 years all records gathered by the RIRB. The priests opposed any retention of the records, rejecting the veracity of survivors' accounts of abuse generally and ignoring the fact that the RIRB made awards following an adversarial process:

Those who were involved in the Redress Scheme know well that it was purposely designed with a very low burden of proof to facilitate the State. The motivation was as much to do with politics as with justice. … Future generations will naively take as truth the submissions to the Redress Board and lead to the eternal besmirching of the names of good people. Injustice heaped upon injustice.

The Magdalene scheme waiver, meanwhile, has led to Irish Government officials making repeated statements to UN human rights treaty bodies to the effect that the State knows of 'no factual evidence to support allegations of systematic torture or ill treatment of a criminal nature' and that: 'No Government Department was involved in the running of a Magdalen Laundry. These were private institutions under the sole ownership and control of the religious congregations concerned and had no special statutory recognition or status'.

These contentions are disproved not only by extensive survivor testimony but also by the contents of the Government's Inter-departmental Committee to establish the facts of State involvement with the Magdalene Laundries, a substantial report of the Irish Human Rights Commission, and the report of the former President of Ireland's Law Reform Commission, Mr Justice John Quirke, on his proposals for the Magdalene scheme (these documents are summarised and cited here). The absence of litigation on the matter, however, continues to influence the State's official position and as a result the national historical record and other structures. Scotland has the opportunity to be world-leading in its response to so-called 'historical' child abuse in care. One would hope that lessons from Ireland will be learned—for the sake of survivors but also in the interests of children today and tomorrow, whose protection survivors invariably speak out for.

Relief From the Forfeiture Rule

Emma Loizou, Radcliffe Chambers: Two cases this year demonstrate the court's approach to claims for relief from the forfeiture rule. The first case concerns Sandra Amos' claim following her conviction of causing the death of her husband by careless driving. The second follows the case of Sally Challen, initially convicted of the murder of her husband. Mrs Challen's conviction was subsequently quashed by the Court of Appeal and her guilty plea to manslaughter was later accepted by the Crown. The cases provide guidance on the scope of the forfeiture rule, the availability of relief and the test to be applied. However, whether the court ultimately awards relief from forfeiture in any given case will likely turn on the particular facts. The forfeiture rule: the legal framework 3. The forfeiture rule is defined in section 1 of the Forfeiture Act 1982 ("the

Act"). It is a rule of public policy which in certain circumstances prevents a person who has unlawfully killed another person from benefitting from the killing, for example by inheriting under that person's will. It ultimately stems from the principle that a wrongdoer should not benefit from his or her wrong. Crime should, in theory, not pay.

Emma Loizou has experience in a broad range of commercial and chancery work. She has appeared in the First-tier Tribunal, the County Court and the High Court. She accepts instructions across chambers' core practice areas. "having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case." There are strict time limits to the court's power to modify the forfeiture rule where a person stands convicted of unlawfully killing another. Proceedings for relief under section 2 must be brought within three months of the "conviction". This time limit has been described as "immutable" with no statutory power to extend it. "There was no logical basis to apply the forfeiture rule to all cases of manslaughter including those which involved inadvertence, but to exclude a case of causing death by careless driving. Where the application of the rule in the latter case is unjust, the appropriate course is for the court to exercise its powers to modify the forfeiture rule." It is worth briefly mentioning that relief from the forfeiture rule under section 2 is not applicable where a person stands convicted of murder.

(Amos v Mancini) Mrs Amos, whilst driving her husband home at his request, collided with a vehicle in front of her and caused a four-vehicle shunt. Initially her husband did not appear seriously injured, but he died in hospital later that evening. Mrs Amos pleaded guilty to causing his death by careless driving at the earliest opportunity. She was convicted and given a suspended sentence. She sought a declaration as to whether the forfeiture rule applied to her offence and, if it did apply, modification under section 2 of the Act. The application of the forfeiture rule. The first question for the court was whether the forfeiture rule applied in cases of causing death by careless driving. There was no direct authority on this particular point. HHJ Judge Jarman QC considered there was no logical basis to apply the forfeiture rule to all cases of manslaughter including those which involved inadvertence, but to exclude a case of causing death by careless driving. Where the application of the rule in the latter case is unjust, the appropriate course is for the court to exercise its powers to modify the forfeiture rule under section 2. Relief from the forfeiture rule. The second question for the court was whether justice required the effect of the forfeiture rule to be modified. The judge considered the conduct of Mrs Amos and of the deceased and the material circumstances of the case in accordance with section 2 of the Act, among which he made reference to the following: (1) the remarks made by the court when sentencing Mrs Amos; (2) Mrs Amos' significant, but brief lapse of concentration when driving; (3) the intention she and the deceased shared when jointly purchasing their former matrimonial home; and (4) the lack of opposition by the two beneficiaries of the residuary estate. The judge concluded that it would be unjust for the forfeiture rule to apply so as to deprive Mrs Amos of the deceased's share in their former matrimonial home and to the gift in his will. The judge said such deprivation would be "significantly out of proportion to her culpability in the offence in question". He therefore exercised his discretion under section 2 and granted Mrs Amos relief.

(Challen v Challen) In Challen, Mrs Challen had killed her husband with whom she was in a relationship for about 40 years. Her original conviction for murder was quashed by the Court of Appeal. Mrs Challen subsequently tendered a guilty plea to manslaughter by reason of diminished responsibility, which was accepted by the Crown. The claim before HHJ Paul Matthews concerned her application for relief from the forfeiture rule. "The test under section 2 of the Act requires the court to take all the relevant circumstances into account and decide whether justice requires that the

forfeiture rule be modified in the particular case. However, before the court exercises its discretion under the Act it has to determine first whether the forfeiture rule applies at all."

The three issues before the judge were (1) the timing of the application for relief; (2) the test to be applied; and (3) the merits of the application. The timing of the application Since the time limit is triggered on "conviction" under section 2 of the Act, it is important to know with some certainty what "conviction" means in these circumstances. In Challen the timing point was particularly significant since if "conviction" meant (i) when Mrs Challen first pleaded guilty to manslaughter or (ii) when the Crown indicated it was willing to accept her plea, then her application would have been out of time. However, if it meant when her plea was formally accepted and she was sentenced, then it was in time. The judge concluded that the defendant's position is definitive at the point of sentence and therefore it is only at that point that the three month time limit starts to run. "Conviction" in section 2(3) of the Act refers to the point of sentence.

The test to be applied. The test under section 2 of the Act requires the court to take all the relevant circumstances into account and decide whether justice requires that the forfeiture rule be modified in the particular case. However, before the court exercises its discretion under the Act it has to determine first whether the forfeiture rule applies at all ("the Threshold Question"). The merits of the application. In relation to the Threshold Question, the judge observed that the evidence established that Mrs Challen was suffering from psychiatric illness as a result of the coercive control exercised by the deceased. This illness was sufficient to reduce the offence from murder to manslaughter by reason of diminished responsibility. However, the judge considered that the killing was still deliberate as opposed to accidental. The judge held that the forfeiture rule applied in the circumstances.

The judge then went on to consider whether to exercise his judicial discretion and disapply the effect of the forfeiture rule. He noted that the main features of the case included Mrs Challen's lengthy relationship with the deceased and the deceased's conduct towards Mrs Challen, which included infidelity, violence, humiliation, isolation and gaslighting. The judge referred to the deceased's coercive control over Mrs Challen, noting that such control was made a criminal offence in 2015, though it was not an offence at the time of the killing. He commented that the deceased had "undoubtedly contributed significantly to the circumstances in which he died". The judge also mentioned the effect of disapplying the forfeiture rule. Mrs Challen would inherit the estate of the deceased rather than her two sons. Consequently there would be tax advantages since it would amount to an exempt transfer for inheritance tax purposes. Mrs Challen's intentions were for her sons to benefit from the tax-free inheritance she would have obtained. The judge concluded that the justice of the case required him to disapply the forfeiture rule. However, he cautioned that every case must be decided on its own merits. The facts of this case were so extraordinary, "with such a fatal combination of conditions and events" that he did not expect them easily to be replicated in any other.

Comment: The two cases provide useful guidance on the scope of the forfeiture rule and the time limits in which an application for relief must be brought. Amos confirms that the forfeiture rule is applicable to cases of causing death by careless driving, as it is to cases of manslaughter. Challen confirms that an application for relief under section 2 must be brought within three months from the point of sentence. It is only at that point that the individual's position is definitive and there is a "conviction" which triggers the time limit. The cases together suggest that the court will approach an application for relief by considering first, whether the forfeiture rule applies to the case at all and second, whether the court ought to exercise its discretion to modify the rule in the circumstances. It is the answer to the second question which is likely to be more difficult to anticipate. Though the two cases provide examples of the court's approach to the exercise of its discretion, their usefulness should not be overstated. Whether the court exercises its powers to modify the rule in a future case is likely to be highly fact-sensitive, turning on the particular circumstances of the case.

Cairns Family Have no Confidence in Police Service of Northern Ireland (PSNI)

Exactly one year ago today, BBC Spotlight exposed shocking evidence of collusion between the RUC and mid Ulster UVF in the murders of Gerard (22) and Rory Cairns (18), at their home near Lurgan on 28 October 1993. A convicted UVF murderer, Laurence Maguire told Spotlight that RUC agents Billy Wright and Robin Jackson had planned the murders a year previously with information provided to the UVF by the RUC. The brothers were murdered with high velocity rifles imported from South Africa by a UDA intelligence officer on the payroll of, and with the full knowledge of his handlers in the Ministry of Defence.

A full 12 months since Spotlight was broadcast, the PSNI has not contacted the family or arrested Maguire, the gunmen who murdered the Cairns brothers, or the security force handlers of Wright and Jackson who conspired to murder them. The Secretary of State believes that the PSNI, which has been hopelessly inactive, can effectively investigate these murders and has refused a public inquiry. The Cairns family have no confidence in the PSNI and have now lodged judicial review proceedings in the High Court, challenging the refusal of the Secretary of State to establish a public inquiry. The family of Gerard and Rory Cairns and the wider public deserve the whole truth.

INQUEST Response to 147 Deaths in Police Custody

The Independent Office for Police Conduct (IOPC) has today 22/10/20, released their annual statistics on deaths during or following police contact in England and Wales. In the financial year 2019/20, the IOPC recorded a total of 147 deaths during or following police contact. Of these deaths 18 were in or following police custody, three were police shootings, 24 related to road traffic incidents, 54 were apparent suicides following custody and there were 107 deaths following police contact defined as 'other'.

The IOPC report includes the following data: Of the 18 deaths in or following police custody, 14 people were White, three were Black and the ethnicity of one person was unknown at the time of publication. 11 of the 18 people were identified as having 'mental health concerns' and 14 were known to have a link to alcohol/or drugs. Two people were detained under the Mental Health Act. Eight of the 18 people who died in or following police custody had force used against them either by officers or members of the public before their deaths. Of the people who were physically restrained, six were White and two were Black. Of the 24 road traffic fatalities, 19 were pursuit related. Of the 63 apparent suicides, seven people had been detained under the mental health act and 47 had known 'mental health concerns'. Of the three fatal shootings, two were terrorism related.

Of the 'other' deaths following police contact (107): Six people were under 18. 89 people were White, six were Black, seven were Asian and one person was from an 'Other ethnic group'. The ethnicity was 'unknown' for four people. Nine had force used against them, of which seven people were White, one was Black and the ethnicity of one person was 'unknown'. Half of those who died (54) were reported to be intoxicated by drugs and/or alcohol at the time of the incident or had known issues in this area. The number of deaths in or following police custody has increased slightly over the last year. There have been some fluctuations in this category over time, with notable increases recorded in 2010/11, 2014/15 and 2017/18. However, the IOPC report that this figure is in-line with the average over the 11 year period.

Deborah Coles, Director of INQUEST said: "Three years ago this month, Dame Elish Angiolini's independent review of deaths in police custody was published. The review was the first and only of its kind, and made urgent recommendations which had the potential to save lives. Yet the number of deaths in custody remain at the same level as ten years ago. Black men are still disproportionately affected. The link between deaths and mental ill health, intoxication and restraint continue to raise concerns. It is clear that not enough is being done. At a time of increased visibility of the role of police in our communities, we must see more action to protect lives. We repeat our point that ultimately to prevent further deaths and harm, we must look beyond policing and redirect resources into community, health, welfare and specialist services."

Last year (2018/19) the IOPC recorded a total of 276 deaths during or following police contact, see media release. In 2017/18, the IOPC statics showed the highest number of deaths in or following police custody for 14 years. Since the end of the IOPC statistics reporting period on 31 March 2020, INQUEST casework and monitoring has recorded a further six deaths in or following police contact, excluding road traffic incidents and cases not being investigated by the IOPC. In October 2017 the landmark Independent review of deaths and serious incidents in police custody by Dame Elish Angiolini QC was published. In December 2018, the Home Office published a report on progress on deaths in police custody. There have been no further progress reports.

Black people are subject to 16% of use of force by police, despite comprising 3% of the population (Home Office data on use of force, April 2018 to March 2019). Analysis of available data by INQUEST shows: the proportion of deaths in police custody of people from Black and Minority Ethnic groups where restraint is a feature is over two times greater than in other deaths in custody. More information on race and deaths in custody is available on our website.

INQUEST is the only charity providing expertise on state related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians. Our specialist casework includes death in police and prison custody, immigration detention, mental health settings and deaths involving multi-agency failings or where wider issues of state and corporate accountability are in question, such as the deaths and wider issues around Hillsborough and Grenfell Tower. Our policy, parliamentary, campaigning and media work is grounded in the day to day experience of working with bereaved people.

Domestic Abuse

One of the reasons this story line is so important is that it focuses on mental and psychological abuse and coercive control and how devastating this can be, rather than looking at physical abuse. Abuse can be gradual, insidious and sometimes hard to identify. The government published the following guidance to help people recognise this type of abuse: Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Some examples given of coercive control are set out in the Safe lives Guidance for Multi Agency Forums include: Controlling or observing victim's daily activities, including: being made to account for their time; restricting access to money; restricting their movements (including being locked in the property). Isolating the victim from family/friends; intercepting messages or phone calls Constant criticism of victim's role as a partner/spouse/parent. Threats of suicide/homicide/familicide. Preventing the victim from taking medication/accessing care (especially relevant for victims with disabilities). Using children to control their partner, e.g. threats to take the children. Extreme dominance; a sense of 'entitlement' to partner/partner's services, obedience etc. – no matter what. Extreme jealousy ("If I can't have you, no one can"), giving the victim cause to believe they will act on this.

Successful Appeal Against UK Home Secretary's Tamil Tigers (LTTE) Terrorism Ban

Binmans Solicitors: The Proscribed Organisations Appeal Commission ('POAC') handed down its judgment in Arumugam and Others v SSHD (PC/04/2019), finding that the Home Secretary had acted unlawfully. The appeal was brought by members of the Transnational Government of Tamil Eelam against the decision of the Home Secretary to refuse their application to remove the Liberation Tigers of Tamil Eelam ('the LTTE') from the list of organisations proscribed under the Terrorism Act in the UK. The appeal was brought on the basis that the Tamil Tigers were not involved in terrorism, and their continued proscription prevented proper public debate regarding the establishment of an independent Tamil state.

In its open judgment POAC found that the information presented to the Home Secretary when he (at the time) made his decision to maintain the LTTE on the list of proscribed organisations "materially misstated" the conclusions reached by the Proscription Review Group (the expert body whose role it is to assess the threat posed by groups who are considered for proscription under the Terrorism Act 2011). POAC also found that the submission inaccurately summarised the views of JTAC ('the Joint Terrorism Analysis Centre'). POAC therefore concluded that the decision to maintain the LTTE on the list of proscribed organisations was flawed.

Visuvanathan Rudrakamaran, Prime Minister of the TGTE commented: Today we have taken a significant step in our legal fight. This paves the way for the next steps towards our greater goal of achieving justice for the Tamil cause. Today's decision amounts to a victory for us Tamils in our struggle for justice. It also shows that the Tamils as a People have the capability to challenge unjust actions coming from any quarters, however powerful they may be. Speaking on behalf of the Transnational Government of Tamil Eelam (TGTE), the aims the LTTE stood for and the objectives of the TGTE are the same, namely, the establishment of an independent state of Tamil Eelam. Removal of the "terrorism" label is essential for the people to campaign for an independent state. Removal of that label will enable us to expose the structural genocide being perpetrated on the Tamils by the Sri Lankan State under the cover of fighting "terrorism." POAC will now hear submissions from the parties as to what steps should be taken in response to the TGTE's successful appeal. The TGTE argue that the Home Secretary should immediately remove the LTTE from the list of banned organisations.

Failures by Manchester Police, Contributed to Unlawful Killing of 4 month Old Alfie Gildea

INQUEST: The inquest into the death of four month old Alfie Gildea, who was unlawfully killed by his father, concluded today with a detailed conclusion identifying a series of failings which contributed to his death. The coroner found that Greater Manchester Police (GMP), Children's Services and the Health Visiting team all failed to assess the risk to Alfie or recognise coercive and controlling behaviour by Alfie's father. It was further concluded that the GMP failed on multiple occasions to assess Alfie's father as a serious and serial abuse perpetrator, recognise he was in a controlling relationship with Alfie's mother and ensure disclosure under Clare's Law*.

Alfie died on the 14 September 2018, two days after his mother found him unresponsive. Samuel Gildea, Alfie's father, later pleaded guilty to manslaughter after admitting an 'act of deliberate and unlawful violence which involved rigorous and violent shaking,' as well as coercive and controlling behaviour towards Alfie's mother, Caitlin. The medical cause of Alfie's death was a head injury. Samuel had been left to care for Alfie for less than 30 minutes whilst Caitlin attended a doctor's appointment. He is now serving a sentence of 19 years' imprisonment.

Samuel had 20 previous convictions and was last imprisoned in 2010. The inquest heard that

Caitlin, who met Samuel in 2016, knew that he had been in prison for burglary. She also had concerns about his mental ill health. From July 2018 onwards, Caitlin was asked on various occasions by police officers if she knew about his past, and Caitlin confirmed that she did. However, nobody checked with her the extent of her knowledge. She was not aware of his past involving domestic violence, including six separate occasions of abuse involving three previous partners. Caitlin told the inquest that had she known, she would have never allowed him near her children.

When Alfie was two months old, Samuel physically assaulted Caitlin by dragging her by her hair from the garden to the house. When speaking to the police, Caitlin disclosed that Samuel had attempted to strangle her two weeks previously. Despite the severity of the threats and violence of these incidents, GMP categorised the situation as of medium risk. The Multi Agency Referral and Assessment Team (MARAT) accepted at the inquest that they should have instituted a Child and Family Assessment. Children's Social Care and Health Visitors were both informed in part of what had happened but did not enquire in depth, which the coroner found to be a failing which probably contributed to Alfie's death. Nobody discussed the situation with Caitlin face to face in July or August 2018, with all interaction with services taking place over the telephone. Caitlin did not feel protected and continued to feel terrified of Samuel. According to GMP's domestic abuse policy, Samuel should have been recognised as a serial perpetrator because of his history.

Caitlin McMichael, Alfie's mother said: "Alfie was such a happy and contented baby with the most heart-warming smile. I am devastated that nothing can bring Alfie back. I wish that someone had taken the time to speak with me face to face, rather than receiving numerous impersonal phone calls from different services. The police who investigated his death did so with enormous dedication. I just wish that the police officers who came to me before had interrogated their records in the same way. Had such critical information regarding Samuel's past been shared, Alfie could still be alive today."

Selen Cavcav, Senior Caseworker at INQUEST said: "What has been exposed in this inquest is not an isolated problem around individuals not doing their jobs properly but part of a systemic issue around police's understanding of domestic violence and the culture surrounding this. With a disturbing surge in domestic abuse across the country throughout the duration of the COVID-19 pandemic, such inadequate systems must be urgently addressed to prevent further harm."

Ruth Bundey of Harrison Bundey Solicitors, who represents Caitlin, said: "It is unacceptable that it took Alfie's death before the information of Samuels previous domestic abuse history was scrutinised by Greater Manchester Police. Crucial information was available to show that Caitlin was in a controlling and coercive relationship. This was not recognised or contextualised by GMP, Children's Services or the Health Visitors Team, and had a proper risk assessment ensued, Alfie's death could probably have been prevented."

Divorcing A Parent

Hannah Martin, Palliant Solicitors: A spoilt teenager may selfishly cry "I wish you weren't my mum / dad anymore!" for dramatic effect, but in other families this can be the genuine plea of an abused child. Their desire to cut ties and to restrict the abusive parent's involvement in their lives is usually understandable but is not always easy to do. There have been many high profile cases in the US of children 'divorcing' their parents; here in the UK either the child, a parent or a Local Authority with parental responsibility, may seek to decrease the abusive parent's ability to exercise control or influence over the child's life. This parental responsibility is defined in section 3(1) of The Children Act 1989 (CA) as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'.

The issue of restricting this parental responsibility was raised very recently in the case of F v G [2020] EWHC 2396 (Fam). An appeal was allowed against an order which had restricted the father's contact to only 10 minutes on Skype twice per week and very significantly restricted his parental responsibility following findings of significant domestic abuse. The appeal was allowed because the Judge had failed "to weigh in the balance the harm that could be caused to the children by the immediate loss of their relationship with the father, which had to be set against the risks to the children and the mother of contact continuing." In every case of restricting parental responsibility, these are the factors which must be weighed in the balance. The court must also consider the parent's right to respect for family life under Article 8 ECHR and the court's ability to proportionately restrict this right to protect the child.

How Does it Work? When an adoption takes place, parental responsibility is removed completely from the birth parents and is given to the adoptive parent(s) by way of an Adoption Order. This change is clear cut. When an application is made to limit or restrict a parent's parental responsibility, things are more complicated. Parental responsibility in these cases can be restricted by way of a Prohibited Steps Order (PSO). A PSO is an order that a specific step cannot be taken by the parents which they would ordinarily be able to take in relation to their child. This order can be for common things such as changing the child's school or doctor. However, when there have been serious incidents of abuse, the parent/guardian/child/local authority may want to restrict it further or remove it entirely, effectively to prevent the parent from obtaining any information about the child or being involved in their life.

In the case of H v A (No 1) [2015] EWFC 58, the father was in prison for abuse of the mother and children. He even made attempts to abuse them while in prison, including an attempted murder by trying to have her house burnt down. The mother sought three orders in respect of her three children; (i) to revoke an order allowing the father indirect contact; (ii) to revoke the father's parental responsibility and (iii) an application pursuant to s 91(14) CA 1989. Since the father and mother were married at the time of the children's births, his responsibility could not be removed but could be entirely restricted. Mr Justice MacDonald said: Within this context all three children have, in my judgment, a continuing and acute physical and emotional need for a family and home life that is stable, secure, and safe from further trauma instigated by the father. In particular, all three children need to be brought up in an environment that is not only free from any risk that their father will locate them and again attempt physically to harm them but also as free as reasonably possible from the anxiety that their location might be disclosed.

The order given by the judge included a restriction on the father's ability to access the children's school records. This may seem like a harmless connection to the children, but it was deemed to be both a risk and a worry for the children, who had suffered such serious abuse in his care. Whilst he wanted to see the records and felt it was his right to do so as a parent, the judge noted what Lord Justice Ryder had reiterated in Re D (A Child) [2014] EWCA Civ 315, that "the concept of parental responsibility describes an adult's responsibility to secure the welfare of their child, which is to be exercised for the benefit of the child not the adult". The trauma suffered by the children included an ongoing worry that the father would locate them via school records, and this concern was given sufficient consideration. The judge in this case went on to say that the court has a high responsibility not to impose such a significant restriction without good cause and that reasons for imposing a restriction must be given. The restriction must specifically address the mischief it is designed to address, must be based on evidence, and must give sufficient weight to any benefit to the child of having that parent in their life.

Once it has been determined that it is necessary to restrict a parents Parental Responsibility a PSO can be made and the range of restrictions available is at the court's discretion. In the case of P v D & Ors [2014] EWHC 2355 unprecedented orders were granted which brought PSOs into the digital age. The father was in prison for multiple counts of rape and extreme violence against the mother and three daughters. The mother sought to limit the father's parental responsibility so he could not have any involvement in the lives of their children. The father was prohibited from – making contact by letter, telephone, Skype, text message, email, any means of electronic communication, or through any social networking sites, including Facebook; – accessing or attempting to access any email, Facebook or other electronic account operated by any of them, whether under his own name or otherwise; – holding himself out as being any of them in any electronic mail, social networking or other communications.

As well as these modern restrictions there were orders prohibiting any direct or indirect contact and prohibiting communication of any kind with relevant health or educational establishments, thus restricting all parental responsibility. Baker J's explanation for doing so was: In some cases, it is necessary for the court to make a prohibited steps order restricting a parent from taking steps that he or she would normally be entitled to take in the exercise of parental responsibility. That power extends, in very exceptional cases, to making an order prohibiting a parent from taking any steps in the exercise of parental responsibility. In making such an order the court gave sufficient weight to the criminal findings of physical and sexual abuse, and of the father's harassment of the mother and three children. It was satisfied that Z's need for emotional stability and welfare outweighed the father's Article 8 convention rights. It was satisfied that while the normal position of the court is that the father's heritage and influence is a positive and important factor in a child's life, the safety of the child is more important. Overall, the court has demonstrated a willingness to restrict, even completely, the parental responsibility of a parent for the benefit of the child. In acting in the best interests of the child, appropriate and proportionate orders can be made to protect against both objective threats and personal fears. In doing so, the court demonstrates just how far it has come since the days of 'patria potestas' and 'mother knows best'.

Six Out of 10 women Leaving Prison to Homelessness

Noah Robinson, Justice Gap: Six out of ten women leave prison to live on the streets often 'with just £46, a plastic bag, [and] nowhere to live', according to a new study. The Safe Homes for Women Leaving Prison initiative was set up by the London Prisons Mission following its work at HMP Bronzefield, the largest women's prison in Europe, to ensure that no woman is discharged from prison to homelessness or to unsafe accommodation.

The report quotes a 2019 report by the Independent Monitoring Board on Bronzefield which surveyed 116 women and revealed 62% expected to be homeless on release. The most recent IMB report on women's resettlement found only 41% of women had housing to go to on release and that prisons discharging people back to London had 'the most difficult challenge to find them suitable housing'. The same report revealed quarter of women interviewed had lost their home as a result of imprisonment, often as a consequence of a very short prison sentence.

John Plummer, coordinator at the London Prisons Mission, called the Safe Homes report 'a damning indictment' of a system that was 'failing vulnerable women, society and the taxpayer'. 'We have an absolute duty as a society to ensure women in prison can continue their recovery and rehabilitation in safe homes when discharged,' he said. 'This duty is not being met. As a result, vulnerable women with complex needs are being placed at risk of abuse and exploitation every day and subjected, alongside their families, to great ongoing distress.'

According to a 2016 report by the Prison Reform Trust, 60% of prisoners said that having a place to live would stop them reoffending. Accommodation is recognised by the National Offender Management Service as key to reducing reoffending for women. Dr Amanda Brown, a GP at Bronzefield, explained that vulnerable women repeatedly re-offended 'in order to return to custody so that they have a bed to sleep in and feel safe at night'. This is further supported by a 2020 HMP Inspectorate of Probation report that found that almost two thirds of those without settled accommodation had reoffended (65%) compared to 44% with settled accomodation.

Jenny Earle, director of the Prison Reform Trust's programme to reduce women's imprisonment, described efforts under the government's 2017 Homeless Reduction Act to prevent homelessness as 'insufficient, patchy and intermittent'. According to the study, a review of the statute's 'duty to refer' anyone at risk of homelessness on release to their local authority under the legislation was desperately needed. The initiative highlights the concern that the duty to refer did not extend to cover short custodial sentences that result in women losing their accommodation, women with caregiving responsibilities, those escaping domestic abuse, as well as 'the dearth of suitable social housing'. The report also calls for an agreed target time period for women to be in settled accommodation post-release and an increase in the prison discharge grant from £46 to to £80.

Beyond Reasonable Doubt?: David Morris and the Clydach Murders

BBC News: It was a brutal mass murder which shocked a close-knit Welsh community to the core. Three generations of one family were beaten to death in their home in Clydach, near Swansea, in June 1999, leading to South Wales Police's largest ever murder hunt. BBC Wales Investigates reveals new evidence and questions the safety of the conviction of David Morris. A senior MP has called for a review into the conviction of the man jailed for the 1999 Clydach murders. David Morris is serving a life sentence for killing a family of four. Former shadow chancellor John McDonnell says his conviction should be reviewed by the Criminal Cases Review Commission (CCRC), after a BBC investigation spoke to new witnesses and experts. South Wales Police said Morris was convicted twice at two trials after an "extensive investigation".

Relatives of the victims also said they had no doubt Morris was responsible. Mr McDonnell said the case was "increasingly looking toward a miscarriage of justice". "The CCRC [Criminal Cases Review Commission] should fulfil its responsibility and immediately review the case in light of this potential huge breakthrough of new information from witnesses." "Nobody would wish for anyone who is innocent to spend time in prison," Mr McDonnell said. A conference call to discuss the case has been organised between Mr McDonnell, Morris' defence team and other interested parties. Mandy Power, her 80-year-old mother Doris and Mandy's children Katie, aged 10, and Emily, aged eight, died at their home in Clydach, Swansea. They had been beaten to death with a metal pole. Fires were then started in different parts of the house on the night of Saturday 26 into the morning of Sunday 27 June 1999. Morris has always maintained his innocence. In a new programme, BBC Wales Investigates interviewed people not called to give evidence at either of his trials. It also spoke to experts either involved in the original investigation or who had studied the case.

The Criminal Cases Review Commission declined to comment on the details of the case. It said it could only consider re-examining a case at the request of a convicted party. "[David Morris] is welcome to make an application should he feel he has new information that he thinks may have a bearing on the safety of his conviction," a spokesman said.

CCRC Invites Proposals for New Justice Research Projects

Criminal Cases Review Commission (CCRC) is the independent public body which investigates alleged miscarriages of justice in England, Wales and Northern Ireland. The CCRC Research Committee exists to promote and manage serious independent academic research which makes use of CCRC casework records and data to study matters relevant to miscarriages of justice and the wider justice system.

They are inviting new proposals for research projects. Such projects can be of any length and on any subject, provided that the research is of arguable benefit to the CCRC and to the wider criminal justice system.

They would be would be particularly interested in any research proposals which relate to the following subjects:

Young people in the Criminal Justice System
Human trafficking / modern slavery cases
Digital evidence in the Criminal Justice System
Cases involving expert medical evidence
Historical sexual abuse cases
Mental health and the Criminal Justice System
Impact of the Coronavirus Pandemic on the fairness of trials / safety of convictions
Issues of race and ethnicity in the Criminal Justice System

Funding: The CCRC is not in a position to offer any funding. However, the CCRC can offer access to data, relevant contact details, support for funding applications if appropriate, and publication of resulting theses/reports/papers on its website and, where appropriate, reference to relevant findings in its annual report. The CCRC will also report any relevant findings to the appropriate public bodies and agencies as part of its remit to disseminate such information to key stakeholders to improve the Criminal Justice System to prevent miscarriages of justice.

Deadline for submissions and criteria: The current deadline for submissions is 29th January 2021. The CCRC would be happy to consider research proposals from PhD students with an agreed supervisor; but unfortunately we cannot consider proposals from undergraduates or from students who are yet to enter university.

Serving Prisoners Supported by MOJUK: Walid Habib, 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.