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Disabled Prisoner Receives Settlement for Discrimination and Breach of Human Rights

The 55-year-old claimant used a wheelchair and faced significant difficulties performing his daily tasks and fully participating in important parts of prison life while he was incarcerated during 2019. The prison was made aware of his disabilities and the difficulties they created for him while living in the prison environment. His difficulties included: Entering and manoeuvring his wheelchair inside his cell - Using toilet and showering facilities - Cleaning his cell, collecting his meals and moving around the prison - Accessing work and library opportunities.

The claimant repeatedly raised the issues with the prison, but still little was done to assist him The claimant instructed Leigh Day's prison team to act for him in a claim for compensation. Before his release from prison, Leigh Day wrote to the Government setting out the issues faced by him. The claim was brought under the Equality Act 2010 and the Human Rights Act 1998 and alleged that the Ministry of Justice had unlawfully discriminated against the claimant by failing to take reasonable steps to avoid the substantial disadvantage that he suffered.

After the claimant had been released from prison, the Ministry of Justice eventually accepted that it had unlawfully discriminated against the claimant by failing to take reasonable steps to avoid the substantial disadvantage that he had suffered. It settled his claim for discrimination and a breach of his human rights suffered during his imprisonment and paid the claimant a sum of compensation.

Leigh Day solicitor Benjamin Burrows, who represented the claimant, said: "I am pleased that the prison has finally accepted that they failed our client. However, it is frustrating that this was only after his release from prison and after the commencement of legal proceedings. "Unfortunately, the needs of disabled prisoners are too often unmet and overlooked." Leigh Day's prison team have expertise in discrimination matters based upon a variety of protected characteristics. Please contact us if you believe that you or somebody that you know has been subjected to discrimination in prison and you would like Leigh Day to investigate your potential claim.

Half of Women Convicted Under Joint Enterprise Not Even Present a Scene

Zaki Sarraf, Justice Gap: A new study of more than one hundred women sentenced to long prison terms under joint enterprise has revealed that nine out of 10 engaged in no violence at all and half were not even present at the scene. The report calls for an immediate halt to the use of joint enterprise and secondary liability with women. Joint enterprise is a common law legal doctrine that allows for collective punishment of multiple defendants for a single offence often without taking account of the different roles played by the individuals. In 2016, in the case of R v Jogee, the Supreme Court found that the law had 'taken a wrong turn' when it came to joint enterprise. Lord Neuberger held that it was wrong to treat 'foresight' as a sufficient test to convict someone of murder.

The new report published by academics at Manchester Metropolitan University looks at the cases of 109 women sentenced to long prison terms for joint enterprise convictions. Despite the 2016 ruling of the Supreme Court, 16 women have been convicted under joint enterprise since 2016. Over three-quarters (77%) of the women subject to joint enterprise punishments have convictions for murder or manslaughter offences – as such, they are serving long or indeterminate prison sentences. Around 90% of the women convicted under joint enterprise did not engage in violence related to their conviction and there were no cases where the women used a deadly weapon such as a knife in the situations that lead to their convictions. The youngest girl in the research was charged at 13 years old and more than a third (34%) were under 25 years when charged including six who were under 16. Most of the women were serving long or indeterminate prison sentences at an average of 15 years, with almost half (47%) serving life sentences of up to 30 years.

'The experiences of the 109 women examined in our report paint a harrowing picture of injustice which is currently sanctioned by our legal system,' commented Becky Clarke, co-author of the report and senior criminology lecturer at Manchester Metropolitan University. 'These women are wrongfully convicted. We would argue that charging these women for violent crimes they did not commit is neither in the public interest, or delivering justice to victims and communities.' Clarke said that prosecutors relied on 'myths, stigmas and stereotypes to secure convictions with the defence teams and judges doing little to challenge their use'. 'There are some women caught up in these trials whose own experiences of violence, control, and mental ill health are silenced, the women's punishment further hides missed opportunities by state agencies to provide care or protection,' she continued.

Researchers flagged up the case of a woman who has experienced many years of sexual exploitation had a narrative painted by the prosecution that she 'manipulated men for sex.' The woman (Jenna) said: 'My abuse was used by the prosecution to paint a bad picture of me. I think also when used by the defence it didn't help. I just don't think they believed me.' 'This report gives those women in the criminal justice system that voice and dispels the notion that women convicted of joint enterprise murder are murderers,' said Gloria Morrison campaign coordinator of Joint Enterprise: Not Guilty by Association (JENGbA). 'The fact that they did not murder anyone is the very reason joint enterprise was the tool used to convict them,' she added. The report argues that the criminal justice system in the UK is inadequate in ensuring justice, accountability, addressing harm and preventing further violence. Moreover, the use of joint enterprise law and the failures of state institutions that are prioritising securing a conviction leads to injustice.

Killers Who Withhold Information on Their Victims Could Spend Longer Behind Bars

Ministry of Justice: Murderers and paedophiles who hold back information on their victims could now face longer behind bars after the Prisoners (Disclosure of Information About Victims) Act – known commonly as 'Helen's Law' - received Royal Assent today (4 November 2020). New law will also apply to paedophiles who refuse to identify those they abused. The new law follows the tireless campaigning of Marie McCourt, mother of Helen McCourt who was murdered in 1988 but whose killer has never revealed her body's location.

Parole Board guidance is already clear that offenders who withhold this type of information may still pose a risk to the public and therefore could be denied parole. However, the Prisoners (Disclosure of Information About Victims) Act places a legal duty on the Parole Board for the first time to consider the anguish caused by murderers who refuse to disclose the location of a victim's body when considering them for release. The law will also apply to paedophiles who make indecent images of children but do not identify their victims - such as the case of Vanessa George who abused infants at a nursery school but never formally identified which children she harmed.

Justice Secretary & Lord Chancellor Rt Hon Robert Buckland QC MP said: Denying families a chance to lay their loved ones to rest is a cruelty beyond words, compounding their grief further. Helen's Law makes it absolutely clear that murderers and evil sexual offenders who refuse to disclose information about their victims should expect to face longer behind bars. Thanks to the tireless efforts of Marie McCourt and other campaigners more families should get the answers and

closure they deserve. The Prisoners (Disclosure of Information About Victims) Act has received Royal Assent and will come into force in the coming weeks. This follows a radical overhaul of sentencing policy recently outlined in a White Paper which seeks to better protect the public by ensuring dangerous criminals are kept in prison for longer Human rights legislation protects against arbitrary detention, and the proposed new law balances this with the need to keep the public safe. The proposals also take into account instances where, for example, a murderer may genuinely not know the location of a victim's body if it has been moved.

Clinton Young: The Lethal Price of an Unfair Trial

Merel Pontier, Justice Gap: There are three major players in the courtroom for a criminal case: the prosecutor, the defense lawyer, and the judge. Despite the different roles, all three share one responsibility: guaranteeing an impartial criminal process. But what if two of these roles are played by the same person? What if the prosecutor and the judge were puppets on a string controlled by the same hand? According to Merel Pontier, that is exactly what happened in Clinton Young's Texas death-penalty case – and he was almost executed because of it. Clinton Young was only 18 years old when he was present for two murders that took place over the course of three days in November 2001. It was just a few months earlier that Clinton had been released from a juvenile prison in Texas where he spent a traumatic two-and-a-half years surrounded by extreme violence, abuse, and corruption. After his release, he began hanging out with David Page, Mark Ray, and Darnell McCoy at apartments where drugs and petty crimes were common. These three men shared a long friendship, but Clinton was new in the group. They negatively influenced Clinton's choices as a teenager; and it was with this group that the events in late 2001 changed Clinton's life.

On November, 24 2001, all four men drove in a car with Doyle Douglas. When the car stopped, Douglas was shot in the head while sitting in the driver's seat – a story that is retold in four different versions by the living witnesses who were in the car. The police never went to where the murder took place, leaving a critical crime scene uninvestigated. After the murder, the four men parted ways, and Clinton and David Page left their small East Texas town to travel west. On November 26, 2001, in Midland, Texas, the second murder occurred after a man named Samuel Petrey was kidnapped at a grocery parking lot. Petrey was found murdered at a pumpjack – a 'nodding donkey' pump to extract oil – shortly after. Again, the police made a poor attempt in investigating the crime scene; no store clerks or witnesses were interviewed and no video evidence from the parking lot was obtained. After the murder, David Page went to the police and laid all blame on Clinton. The police investigated the crime scene at the pumpjack, and despite not finding any fingerprints or DNA connecting him to the murder, Clinton was arrested and charged with capital murder.

The prosecutor made secret deals with Ray and McCoy, and Page became the State's star witness and identified Clinton as the shooter in both murders. This unreliable testimony, lacking any forensic evidence, DNA testing, ballistic science, or other independent evidence, is what convicted Clinton. Since Clinton's conviction, forensic testing and Page's own admissions to framing Clinton to various prisoners, journalists, investigators, and even the prosecutors themselves, point to Page as the murderer murders.

Clinton's appeals proved unsuccessful. His direct appeal was denied in 2006, and a subsequent appeal was compromised due to a defense investigator, who preferred to smoke crack cocaine with the witnesses instead of interviewing them, filed fabricated statements as the basis for the appeal. In 2010, new evidence was discovered that showed prosecutors had made secret deals with Clinton's co-defendants – their testimony in exchange for a lenient

sentence – and hid this information at Clinton's trial. The trial court denied Clinton's appeals regardless. After Clinton lost all of his post-conviction proceedings the trial judge set an execution date for October 26, 2017. While Clinton awaited his execution, the prosecutor secretly interviewed David Page in prison. During the interview, Page admitted he kidnapped Samuel Petrey and admitted to lying at Clinton's trial. The prosecutor did not disclose Page's confession until after Clinton received a stay of execution.

In his fourth writ of habeas corpus attacking the scheduled execution, Clinton introduced new evidence: a pair of gloves found at the second crime scene that Page admitted to buying mere hours before the murders. When the gloves were tested for DNA and gunshot-residue, the only DNA detected inside the gloves belonged to Page. Moreover, gunshot-residue was found on the outside. The expert who tested these gloves concluded that given the location and amount of the detected gunshot-residue, the person whose DNA was found inside the gloves had fired a gun while wearing the gloves. Clinton has always maintained that Page wore gloves when he shot the second victim, and the expert testimony validates that claim. This writ finally persuaded the highest criminal court in Texas – the Criminal Court of Appeals (CCA) – to stay Clinton's execution just eight days before he was supposed to die by lethal injection. His case was remanded back to the trial court to resolve the issues related to Page's false testimony given at Clinton's 2003 trial.

In August 2019, while still waiting for the trial court to consider this new evidence, a shocking development came to light. The prosecutor on the case discovered that her predecessor Ralph Petty, who worked as a prosecutor on Clinton's case at trial and in his appeals from 2001 to 2017, had, while prosecuting Clinton for murder, secretly and simultaneously worked as a paid law clerk for the trial judge presiding over Clinton's case (here). In his role as a clerk for the judge, it is alleged that he drafted rulings in Clinton's case, advised the judge on legal matters, and had access to confidential case information that would otherwise not be accessible to a prosecutor. Petty, it seems, was working Clinton's case from both sides, the prosecution and the judge, which made the roles of the states and an impartial court one and the same.

Petty doesn't stand alone in his wrongdoing though; the trial judge in Clinton's case was inherently unfair, unethical, and negligent to due process by employing Petty to be a judicial clerk while also representing the state at Clinton's trial. It is example of prosecutorial and judicial misconduct that violates all ethical rules, statutes, the Texas Constitution, and of course the US Constitution. I'm not aware of case in any US jurisdiction that so grossly breaches a defendant's right to a fair trial and so flagrantly violates one's constitutional rights.

The CCA has reopened Clinton's case two other times in the past based on new evidence presented by Clinton's legal team in subsequent writs. The trial court in Midland time and time again held hearings in which they denied Clinton any relief. It is now clear why Clinton could never win in the trial court no matter how much evidence of his innocence was presented: the trial court judge and prosecutor were secretly and unlawfully working together against Clinton for almost two decades with the single goal of having Clinton executed. The only reason Clinton is still alive today is because the CCA – a court completely independent of the trial court – stopped his execution. Now the CCA will determine whether to reopen his case based on this recently discovered prosecutorial and judicial misconduct. The CCA could remand the case back to the trial court again, or could decide to vacate Clinton's conviction altogether. I have faith the CCA will make the right decision. This miscarriage of justice cannot continue any longer. Clinton deserves a new and fair trial in which he can present evidence of his innocence. Clinton has now spent 17 years on death row in solitary confinement; justice is long overdue.

Divisional Court Gives Guidance on Article 2 Inquests

Matthew Hill, 1 Crown Office Row: Susan Nicholson and Caroline Devlin were killed by the same man during the course of abusive relationships. They died in 2011 and 2006, but the man was not convicted – of murder and manslaughter respectively – until 2017. The inquest into Susan's death in 2011 resulted in a verdict of accidental death. Following the murder conviction, the Coroner applied to the High Court for this to be quashed, with the intention of holding a short inquest at which a fresh conclusion of "unlawful killing" would be recorded. However, the Claimants in this case – Susan's parents – sought to expand the scope of the inquest to consider what they thought, understandably, were police failings. They were successful; this post explains why, and examines the wider implications of the ruling.

Breaches of article 2: The Claimants argued that the inquest should be expanded as there were two arguable breaches of article 2 ECHR (the right to life) in the case. The first was a failure by the police to conduct an effective investigation into the death of Caroline; had this been done, they argued, Susan's murderer would have been convicted at an earlier stage, thereby protecting her life. Under article 2, the state has a duty to investigate all deaths in order to protect the lives of its citizens. The degree of investigation will vary, from basic death certification by a doctor to a full criminal investigation. In the recent case of DSD v Commissioner of Police of the Metropolis [2019] AC 196 the Supreme Court held that in investigations of crime involving the loss of life, operational failings within an investigation could amount to a breach of article 3 (and, by extension, article 2). However, for a breach to be identified a certain threshold of seriousness has to be met. Unhelpfully, that threshold was expressed in a number of different ways. In the present case, Popplewell LJ and Jay J held that the best formulation was that of Lord Neuberger: a "seriously defective" investigation would breach articles 2 or 3. Such a breach could be cumulative or a single failing [57].

The second argument advanced by the Claimants was that the police had failed to protect Susan's life in the face of the threat posed by her murderer. Here, they relied on the well-established Osman duty imposed by article 2. Such a duty arises where (1) the authorities know or ought reasonably to know of (2) a real and immediate risk to life, which (3) requires them to take measures which could reasonably be expected of them to avoid such a risk. The Court noted that this was a "stringent" test, and set out the matters that courts have considered to be relevant to it over the years [53].

Having identified these two duties under article 2, the Claimants had to establish that they were relevant to Susan's death (which does not seem to have been disputed), and that it was arguable that article 2 had been breached. This test is a low one, meaning that there was a "more than fanciful" or "credible" suggestion of a breach: see R (AP) v HM Coroner for the County of Worcestershire [2-11] EWHC 1453 (Admin), [60]) and R (Muriel Maguire) v HM Senior Coroner for Blackpool and Fylde [2020] 738 [75]. This is to ensure that article 2 is effective, as any arguable breach requires examination. In England and Wales, an inquest is the usual place for such scrutiny [62].

In respect of Susan's inquest, the Coroner had determined that she was unpersuaded that there were arguable breaches of article 2, and it was this decision that the High Court had to consider. The first question it had to address was the scope of its jurisdiction. Was it (as the Claimants argued) taking the decision afresh, on the basis that the question of whether or not there was an arguable breach of article 2 was a matter of law that would only allow for one correct answer? Or was it applying traditional judicial review principles, where the court refrains from considering the merits of the decision and focusses on whether the process by which it was reached was rational, fair and lawful, resulting in a decision that was reasonably available to the person or body that made it?

The Court provided a helpful and succinct summary of the competing authorities [69] to [86], before concluding that it did not really matter in the present case. It did not accept the "high watermark" of the Claimants' submissions that – whatever the context – the question of whether or not there was a breach of a convention right would always be a hard-edged question of law [87]. In the present case, the theoretically correct approach would be that of "anxious scrutiny" (judicial review on steroids), but given the circumstances, the result would be the same as if it were a straight legal question: the High Court must ask itself the same question as the Coroner (whether there was an arguable breach of article 2), using the same evidence (there being no dispute of fact), and while it would take into account the Coroner's reasoning this was not an area in which particular deference had to be shown to her expertise. In short, the Coroner was either right or wrong, and the High Court had to decide which [87 – 93].

Having considered its approach, the Court then evaluated the evidence. It found that it was arguable that there had been a breach both of the duty to investigate Caroline's death, and of the Osman duty to protect Susan. The Court stressed this was not a finding that there had been a violation of article 2, just an acceptance that there was enough evidence to show that it was arguable, and hence that these matters should be considered at the fresh inquest [94 – 106]. The Court then had to consider a cross-application from the murderer. He argued that the fresh inquest should examine whether Susan was in fact unlawfully killed. In effect, this was an argument that he should be allowed to argue his innocence and invite a finding from the inquest that would call into doubt his criminal conviction. This was dismissed on both procedural and substantive grounds.

The Court found there was no statutory provision that forbade this, as there would have been had the inquests merely been suspended, rather than quashed: see s. 11 and sch.1, para. 8 of the Coroners and Justice Act 2009. However, common law principles were sufficient to prevent it from happening. The Coroner had a discretion as to the scope of her inquest and she had been entitled to rule that it would not consider the murderer's purported innocence. Indeed, it would have been unlawful for her to have decided otherwise, both on Wednesbury and Padfield grounds – i.e. it would have been so unreasonable as to have been unlawful, and would have violated the principle that a public body can only use it statutory powers to promote the purpose and policy of the statute from which they derive (in this case the 2009 Act). It would not be appropriate for a coroner to allow her inquest to be used as a forum for a convicted murderer to have a "second go" at establishing his innocence. Nor, it should be added, is it a forum for the police to have a "second go" at proving criminal guilt: see R v HM Coroner for Derby and South Derbyshire, ex parte Hart Junior (2000) 164 JP 429.

Conclusions: The judgment helps to provide a checklist for use when claimants seek to use article 2 to expand the scope of inquests. First, identify clearly what the alleged breaches are, by reference to the applicable thresholds (such as a "serious" failure to investigate, or the Osman test). Second, consider whether they require the attention of an inquest, including by asking whether they are causally relevant to the death, and whether they have been fully investigated before. Third, examine the evidence of why it is arguable that article 2 has been breached. Fourth, invite the court to consider the matter with "anxious scrutiny", keeping in mind that (as in this case) this may be akin to taking the decision afresh as there may be only one rational answer. Such an approach should assist courts and coroners in ensuring that inquests fulfil their important role in meeting the state's duty under article 2 to investigate – and hence protect – life. It is to be hoped that in this case the inquest that will now follow may contribute to the prevention of further deaths in circumstances similar to those of Susan Nicholson and Caroline Devlin.

Police Officers and the Use of Force – are we Really Missing the Point?

The Court of Appeal has recently delivered an interesting and potentially very significant judgment in the case of Officer W80. The case concerned the use of force by a police officer and whether misconduct proceedings could subsequently be instituted against him on the basis of his honestly held but mistaken belief.

Facts:The facts of this case relate to the fatal shooting of Jermaine Baker in 2015 by a specialist firearms officer known as W80. Police had received intelligence that there was a plot to snatch two men from custody whilst in transit from the prison using a stolen vehicle. Further intelligence indicated that the men were in possession of firearms and intended to use them to free the prisoners from the van. The firearms officers, including W80, were instructed to intervene when the prison van had left for court. They approached the stolen car but could not see inside it as the windows were steamed up. Officer W80 opened the front passenger door and Mr Baker was sitting in the front passenger seat. The officer's account was that despite instructions to put his hands on the dashboard, Mr Baker's hands moved quickly up towards his chest where he was wearing a shoulder bag. W80 "believed at that time that this male was reaching for a firearm and I feared for the safety of my life and the lives of my colleagues. I discharged my weapon firing one shot". No firearm was found subsequently in Mr Baker's possession but police recovered an imitation Uzi machine gun in the rear of the car.

The officer relied upon the criminal law definition of self-defence in terms of relying upon an honestly held but mistaken belief. The IPCC (predecessor to the IOPC) reviewed the case and found a case to answer in relation to gross misconduct. In doing so the investigator applied the civil law test for self defence – that any mistake of fact could only be relied upon if it was a reasonable mistake to have made – which the IPCC considered the appropriate test for police disciplinary proceedings. The Metropolitan Police however disagreed and in 2018 this resulted in the IOPC directing them to bring disciplinary proceedings against W80. The officer challenged the decision to bring misconduct proceedings. At first instance Flaux LJ concluded that rather than civil law test, the criminal law test of self-defence was "to be applied in determining whether there is a case to answer, from which it follows that the IOPC applied the wrong test and its decision must be quashed". The IOPC then appealed that decision.

The Court of Appeal decision: The court traversed the various relevant statutory guidance and sources including The Police Conduct Regulations, the associated Standards of Professional Behaviour and the Code of Ethics published by the College of Policing. The relevant statutory requirement and the applicable standard of professional behaviour in terms of 'Use of Force' was properly identified as: "Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances". This standard was supplemented by the Code of Ethics, including paragraph 4.4: "You will have to account for any use of force, in other words justify it based upon your honestly held belief at the time that you used the force". Importantly, and perhaps somewhat surprisingly, the court took the view that the difference between the criminal and civil tests for self-defence was in fact not an issue in the case. Whilst those tests were undoubtedly important they said, they did not dictate the proper meaning of the standard. Ultimately the court's key conclusions were:

The meaning of the standard is not to be judged by specific reference to the facts of this case. It applies where force of any kind is used, for example in arresting citizens, restraining them and taking them into custody. Paragraph 4.4 of the Code of Ethics did not in any way point to the imposition of the criminal rather than the civil test for self-defence. It simply gave guidance as to how the officer was to seek to justify their use of force, namely by reference to their honestly held belief at the time.

Those words of the Code cannot override the plain words of the standard itself.

That honestly held belief was then to be judged by the disciplinary panel according to whether the force used was "necessary, proportionate and reasonable in all the circumstances". In determining whether an officer's belief was indeed honestly held, the reasonableness of that belief will be relevant. If the officer makes an honest mistake the disciplinary panel must still determine whether the use of force was, in the words of the standard "reasonable in all the circumstances". In many cases an honest mistake is also likely to be found to have been reasonable in all the circumstances, but there will be some cases where it will not. If accepted the submissions made behalf of officer W80 would prevent public scrutiny of the serious situation that arose in this case.

Discussion: It is a trite observation that just because one standard operates in one area of the law that does not mean that other areas of the law have to use that same standard. As was observed in the case of Ashley v Chief Constable of Sussex [2008] UKHL 25 the rules and principles defining what constitutes a legitimate use of force and what amounts to self-defence must strike the balance between conflicting rights. The balance to be struck in civil or misconduct proceedings serves a quite different purpose from that served by the criminal law. In terms of the criminal law, the question is whether the use of force, whilst labouring under an honest but mistaken belief, should be categorised as a criminal act. In Ashley the conclusion was that it would strike entirely the wrong balance to allow force to be justified in a civil context by an honestly held but mistaken belief.

Despite its insistence to the contrary, it is arguable that in the W80 case the Court of Appeal has effectively reached the same conclusion, and for much the same reasons, but by a very different route. The reference throughout the judgment to the effect that officer W80's interpretation prevented scrutiny (and by implication eroded accountability) does suggest some deliberate attempt by the court at balancing conflicting rights in the particular context of misconduct proceedings. The conclusion reached seems to be that in the misconduct setting, a blanket tolerance of an honestly held but mistaken belief as an excuse or justification for the application of force also constitutes an unacceptable striking of that balance. The decision may well have been a little easier for some to bear had the court just come out and said that. Instead however, the court purported to treat the criminal/civil/misconduct distinction as almost an irrelevance, purporting to focus on the actual language used in the standard.

In the case of a particularly egregious mistake, it cannot be regarded as unconscionable that an officer should be expected to both account for their actions and to potentially face misconduct or gross misconduct proceedings. However, one of the most obvious and common scenarios will no doubt be the very situation that occurred here, i.e. where an officer mistakenly believes a suspect has a weapon. In that regard one would hope for a degree of common sense by professional standards departments, the IOPC and misconduct panels in applying the principles that emerge from this case – most especially where an officer genuinely but mistakenly fears potentially lethal force being used against them or their colleagues. Further Guidance from the College of Policing would also be welcome, with the simple point being that if they wanted to amend the standard to explicitly incorporate the criminal test for self-defence, they of course could. In the absence of doing that they ought to give clear and practical guidance as to how the standard ought to be interpreted. At present, many regard their silence as deafening.

Reaction: The decision has already proved to be hugely polarising. The judgment has been greeted with widespread consternation on behalf of police officers, with both the Police Federation of England and Wales (PFEW) and the National Police Chiefs' Council (NPCC) describing it as "disappointing". Given the potentially wide-ranging implications of the decision that some anticipate, many rank-and-file officers may well regard that sentiment as an

exercise in understatement. Supported by the PFEW, officer W80 has sought leave to appeal to the Supreme Court. Meanwhile, the IOPC welcomed the decision, declaring that it provided "clarity on an important principle of policing" and also stating that it provided "reassurance to the public" in terms of the police being held accountable for their actions. The charity INQUEST similarly welcomed it, albeit in more robust terms describing it as the Court of Appeal rejecting "police attempts to weaken accountability for use of force."

Conclusion: Whether the decision will have the huge practical implications upon day-to-day policing that the PFEW and the NPCC fear is unclear. Equally, whether this was indeed a deliberate attempt to 'weaken accountability' is questionable, as perhaps is the extent to which any member of the public would ever be 'reassured' by this decision. Perhaps as Sir Geoffrey Vos said in the course of delivering the judgment, it may be that in fact we are all missing the point and very little will change. We await the further appeal with interest.

Sotland: Law to Prevent Physical Punishment of children Comes Into Force

Scottish Legal News**:** Legislation that gives children the same legal protection from assault as adults cam into force on Saturday 7 November. The Children (Equal Protection from Assault) (Scotland) Act 2019 removes the defence of "reasonable chastisement" from the physical assault of children. The legislation, brought forward by John Finnie MSP and supported by Scottish ministers, was passed by the Scottish Parliament in October 2019. At the time the bill introduced, the law recognised a defence known as "reasonable chastisement" where certain forms of physical punishment were used. This could be relied on by a parent, or other person looking after a child. The bill abolishes this defence. Children's minister Maree Todd said: "I'm very pleased that Scotland has become the first part of the UK to legislate to ensure that children, without exception, have the same protection from assault as adults. "This outdated defence has no place in a modern Scotland. It can never be reasonable to strike a child. The removal of this defence reaffirms that we want this country to be the best place in the world for children to grow up so that they feel loved, safe, respected and can realise their full potential. "We have worked in partnership with organisations including children's charities, Social Work Scotland and Police Scotland on implementation of this act. As part of this, we will continue to promote positive parenting and build on the support we already offer to children and families."

The Value of an Apology

Benjamin Bestgen: An apology is one of the most direct ways to address a wrong and start the reconciliation process. Philosophers Linda Radzik and Colleen Murphy note that an effective apology: addresses the wronged group or person directly (where possible); acknowledges the fact that a wrong occurred and the responsibility of the wrong-doer; and expresses sincere remorse, regret and maybe even indicates a positive change in attitude and future behaviour by the wrong-doer. Insincere, forced, vague, guarded or incomplete apologies usually fail to achieve reconciliation and add further fuel to the underlying conflict.

In many countries lawyers caution clients against apologising, particularly if the client's position is that legally they have done nothing wrong. An apology could too easily be construed as an admission of liability: if you have done nothing wrong, why would you apologise? This ignores that people, despite not being legally responsible, sometimes feel sincere sympathy or moral responsibility for another's plight and wish to express how sorry they are that another person became the victim of a wrongful act, misfortune or accident. It also ignores that the injured party might find it helpful to simply have their hurt acknowledged. Receiving an apology can help them move on.

Indeed, lawyers and mediators find that in many cases, an apology is a crucial part of what the victim wants as a means of redress, often more important than purely monetary compensation. Scotland enacted the Apologies (S) Act 2016 to address and manage the risk of incurring liability by apologising. Other countries like Canada, Australia, New Zealand or Hong Kong have similar laws, some differentiating between a partial apology (expressing regret and saying sorry) and a full apology (includes an admission of responsibility). As lawyers we should remain mindful that, questions of liability aside, a sincere apology can be a way of calming the waters and navigating the way towards resolution.

Rough Sex Excuse in Women's Deaths is Variation of 'Crime of Passion'

Diane Taylor, Guardian: Men who kill women are increasingly using the "sex game gone wrong" excuse as a contemporary variation on the traditional crime of passion defence, research has found. In one of the first academic studies into the issue, Prof Elizabeth Yardley, a criminologist at Birmingham City University, found that the normalisation of bondage, domination and sado-masochism (BDSM) across various media had generated a "culturally approved script" for men who kill women. She said that the sex game gone wrong defence was a new variation on the crime of passion defence. Men accused of killing women have previously used the defence that they committed "a crime of passion" – used to illustrate the legal defence of provocation – to argue they should be tried for the lesser crime of manslaughter.

At least 18 women have died in an alleged sex game gone wrong in the last five years with a ten-fold increase in rough sex claims in court between 1996 and 2016. Data gathered by the campaign group We Can't Consent To This, and shared with Yardley for her research, found at least 60 cases of UK females killed by males since 1972 until the present day where the man claimed the death happened during a sex game gone wrong. Two of the high profile victims of this form of killing were Natalie Connolly who was killed by her boyfriend John Broadhurst in 2016 after he caused her 40 separate injuries. He said her death was due to a sex game wrong. Broadhurst was originally tried for murder, but was cleared by the jury on the judge's direction at the close of the prosecution case. He admitted manslaughter by gross negligence for failing to get medical help.

Grace Millane was murdered by strangulation in Aukland, New Zealand, by a man she met on the dating app Tinder. The man who was found guilty of murdering Millane has begun an appeal against his murder conviction and sentence. Yardley identified that there was an over-representation of victims in younger age groups – 16-34. She also found that many perpetrators had previous convictions for violence. She concluded that the normalisation of BDSM "has enabled abusers to justify and excuse fatal violence against women using formal sex equality and women's liberation against them".

The domestic abuse bill, which it is hoped will become law before the end of the year, includes an amendment invalidating the courtroom defence of consent where a victim suffers serious harm or is killed. Concerns have been expressed about non-fatal strangulation as well as fatal. We Can't Consent To This has called for a new offence of non-fatal strangulation to be introduced, arguing that current legislation is not well suited to prosecuting this offence. Alleged perpetrators are currently charged with the lesser offence of common assault or not prosecuted at all.

Research from Lucy Snow at London Metropolitan University, in partnership with We Can't Consent To This, surveyed 82 women about their experience of violence during sex. Of those interviewed 45 had experienced non-consensual strangulation, choking or pressure on the neck from a partner or ex-partner. A total of 32 had experienced it from someone they were dating.

Fiona Mackenzie, founder of We Can't Consent To This, said: "Strangulation of women is

now culturally normalised as an expected sex act through news and magazines, through social media like Tumblr, Instagram and now TikTok, platforms with a large market with children."

The Centre for Women's Justice is backing calls for a new offence of non-fatal strangulation to be created and included in the domestic abuse bill. Harriet Wistrich, a solicitor who is founder and director of the centre, said: "Non-fatal strangulation is frequently used as a tool to exert power and control. It is a form of intimate terrorism." Dr Helen Bichard, of North Wales Brain Injury Service and the Walton Centre NHS foundation trust, warned that strangulation could lead to serious injury such as brain damage or stroke. "I am extremely concerned by the cultural normalisation of strangulation," she said. "We all protested when George Floyd was killed by the same method of carotid restraint; why are we passively allowing young women to risk his fate? The law must send a strong signal that this is simply unacceptable.

Potential Merits of a Public Inquiry Into the Death of Pat Finucane

Colum Eastwood (SDLP): I want at the outset to recognise Geraldine Finucane and her family. I also want to recognise John Finucane, who is a Member of this House. That family have been put through the wringer for decades. They make it clear that they do not believe that this murder is any more special or deserving of truth and justice than another, but there is a particular point about Pat Finucane's murder that goes right to the heart of the British involvement in Northern Ireland. Let us just take a moment to remember, in all the conversation, debate and politics around the issue, what actually happened to Pat Finucane, a human rights solicitor from Belfast.

On 12 February 1989 Pat was with his wife and three children having dinner one Sunday afternoon. Loyalist paramilitaries used a sledgehammer to beat his front door in. They went to the kitchen and they murdered him. They shot him with 14 bullets, in front of his children. Mr Finucane's now adult son Michael said that the image of the attack is "seared into my mind. The thing I remember most vividly is the noise; the reports of each bullet reverberating in the kitchen, how my grip on my younger brother and sister tightened with every shot."

What happened on that night? Here is what we know. Brian Nelson was a force research unit agent linked to the Ulster Defence Association—an agent of an organ of the British Army, which, of course, told John Stevens when he investigated this case and others that it never had any agents in Northern Ireland. We now know irrefutably that that was total and utter balderdash. We know that two gunmen entered that house and murdered Pat Finucane. We know that one of them, Ken Barrett, was a Royal Ulster Constabulary agent, and that William Stobie, who supplied the gun, was also an RUC agent. So three agents of the British state were involved in the fingering of Pat Finucane, the planning of his murder, the supplying of the gun and the pulling of the trigger. We also know that David Cameron, the former British Prime Minister, said that there were "shocking levels of…collusion" involved in what happened to Pat Finucane. We know that the offices of Lord Stevens, an eminent former police officer in this country, were firebombed when he investigated the case—I wonder who did that. He also said as recently as last year that the state held back oceans of information on Pat Finucane's case.

A few weeks before Pat's murder, Minister Douglas Hogg stated in the House of Commons that a number of lawyers in Northern Ireland were "unduly sympathetic to the IRA". What did they expect to happen after that statement? We know that in 2001, at the Weston Park negotiations, the two Governments—the Irish and British Governments —and all the political parties in Northern Ireland agreed to set up a number of public inquiries. The British Government prevaricated. In 2004, Judge Cory recommended that there was sufficient evidence in the case of Pat Finucane to allow a public inquiry, because of the "sufficient evidence of collusion" that he found. All the other inquiries that he recommended have happened and have reported, apart from this one; this is

the only one outstanding. Over an 18-month period in 2010-11, the family were in long conversation with the British Government and Downing Street. The conversation was not about whether there should be a public inquiry, but about the nature of that public inquiry. We then had the de Silva review and, more recently, the Supreme Court ruling that the British Government had not delivered their international obligation to have an article 2 compliant investigation.

There is absolute clarity that there were "shocking levels" of collusion, in David Cameron's words. Let us think for a second about what that means. It means that a previous British Government murdered a human rights lawyer in Belfast in front of his family and that they have denied every single opportunity to give the family what they absolutely deserve, which is the full truth in the matter. It would take a long time for anybody in this Chamber to convince me of the righteousness of the British Government, the British state or the British Army. But British MPs should ask themselves a simple question: "What would you do?" What would the Minister do if he had a family in his constituency whose father was murdered in front of their eyes for no crime other than being a human rights lawyer?

I believe in a different kind of constitutional settlement for Northern Ireland, but I recognise the reality that the British Government have jurisdiction in Northern Ireland as it stands. The British Government have a responsibility to the citizens of Northern Ireland. They have a responsibility not to murder them. They have a responsibility not to cover up their murder and they have a responsibility to do everything in their power to get to the truth of what happens when something like that is done. I have very little faith that this British Government will do the right thing in this case. They absolutely should, but this is the same British Government, of course, that put out a statement on 18 March, moving themselves as far away as possible from the Stormont House agreement—another international agreement that they are prepared to break, it seems. They are seemingly prepared to sacrifice victims at the altar of political expediency, to throw some red meat to the Back Benches of the Tory party, and to abandon the opportunity for all of the victims of our terrible conflict to have the full truth of what happened. In my view, there is no chance whatsoever for my community to move forward in the spirit of reconciliation unless we get to the full truth of what happened during the conflict. I implore the Government, once and for all, to live up to their commitments in Weston Park, to live up to the promises that were made to Pat Finucane's family and to live up to the needs of the community of Northern Ireland, who need to be able to move forward. We do not want to live in the past anymore. We want to move forward, but we have to do that on the basis of truth, justice and democracy. It cannot be held back any longer.

Patients With Autism and Learning Disabilities 'Routinely' Restrained

Kyran Kanda, Justice Gap: The use of restraints on patients with autism and learning disabilities in hospitals in England have risen to alarmingly high levels, according to new research. Data from NHS Digital indicates both children and adult inpatients are routinely subjected to physical restraint, seclusion, segregation and chemical 'coshing'.BBC File on 4 has reviewed the data and concluded that in 2019 there were 3,225 reported cases of seclusion – where individuals are confined to their rooms by themselves – and 850 of these cases related to children. In the first seven month of 2020, there were 2,000 reported incidents of secluding patients.

These figures follow the CQC's report, Out of Site: Who Cares?, on the use of restrictive practices in care services for people with a learning disability or autism (see here). The review was launched after Health Secretary, Matt Hancock, apologised to 19-year-old 'Bethany' (not her real name) who was kept in seclusion for 21 months at St Andrew's Hospital in Northampton, fed through a hatch-way, and left with a biro pen in her arm for 4 weeks. The CQC report, published last month, showed that inspectors had visited 100 different hospitals and treatment units and

found that some patients were held in seclusion for 13 years, whilst others were routinely restrained either physically or chemically. It is particularly concerning that the practice of restraining patients has increased from 22,000 incidents in 2017 to 38,000 incidents in 2020. This equates to an average of 100 restraints a day, or 1 restraint every 15 mins. Harriet Harman, Chair of the Joint Committee on Human Rights, told the BBC that people 'are not supposed to be subject to inhumane and degrading treatment'. She called this a 'human rights abuse' and called on the Government for immediate action, noting that the 'figures are shouting out for action'.

NHS Digital have suggested that the increase in figures can be explained by improvements in the quality and completeness of reporting. However, Dan Scorer, Head of Policy at Mencap, has suggested that not all treatment units are fully disclosing their use of restricted practices so the real figures could be much higher than these reports. In addition, there has been a worrying rise in the use of 'proning', or holding patients face down on the floor. This practice is a violation of government guidance as it risks serious injury or, in the worst cases, death. Yet there were 4,000 reported incidents of proning in 2019, and 2000 reported incidents in 2020 as of July.

After the Winterbourne View scandal, the Government launched its Transforming Care programme with the aim of reducing the number of in-patients with autism and learning disabilities. The deadline to meet those targets has now been missed twice. There remain 2060 people in hospital with learning disabilities and autism, and the data obtained by File on 4 suggests that their care is falling far below acceptable standards. The Joint Committee on Human Rights has called for a specialist unit in No 10 to dedicate itself to this issue and drive a cultural change that will truly transform care. The government has resisted those demands as duplicating resources and has instead created a taskforce that will develop a new policy on segregation in hospitals. The Department of Health also told the BBC, 'government policy is that any kind of restraint should only be used as a last resort, and there is active work to reduce use of restrictive practice in mental health settings'.

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Serious Self-Harm Incidents Surge 2,000% in Brook House Immigration Removal Centre

May Bulman, Independent: Self-harm incidents have surged twentyfold in a year at a detention centre holding asylum seekers who have crossed the Channel on small boats, with incidents occurring more than daily despite the number of detainees having reduced significantly, The Independent can reveal. Campaigners have warned of a "crisis of self-harm in immigration detention" after new figures revealed there were 80 incidents requiring medical treatment in Brook House, a removal centre near Gatwick Airport, in August and September of this year, compared with five in the same period in 2019. This is despite the fact that over the same period, the number of detainees in the facility have reduced to around a third of its normal capacity – from 294 to around 100 - as the Home Office released large numbers of people at the start of the coronavirus pandemic. It comes after a High Court judge ruled that the Home Office was failing to adequately screen asylum seekers to identify whether they are victims of trafficking before placing them in detention, in a potential breach of the law.

The data, obtained through a freedom of information request by campaign group No Deportations, also reveals there were 161 hunger strikes recorded in Brook house in August and September, compared to just nine during the same period in 2019. While the facility previously held people with a range of immigration backgrounds, since March it has been used mainly to detain asylum seekers who arrived on small boats, as part of Priti Patel's pledge to make crossings "unviable" by deporting migrants soon after they arrive. Charites and lawyers said the "dramatic surge" in self-harm incidents and meal refusals was largely the result of the Home Office prioritising speedy removals over their responsibility to ensure they do not detain vulnerable people who have experienced trafficking or torture.

The home secretary has been warned that her approach has meant people are not getting adequate access to legal advice before removal, nor the opportunity to disclose themselves as victims of trafficking or torture before they are detained. A man who spent 18 days in Brook House in September told The Independent people around him in the facility were "losing their minds", with self-harm occurring around him on a routine basis. "The situation is really bad in there. Many of the detainees try to harm themselves. The mood is really bad. People spend the whole day thinking," said the man, who wanted to remain anonymous. "One guy on my wing made some cuts on his chest. He told me he didn't want to go back to Spain because he had spent six months there on the streets, stealing from rubbish bins, and no one cared about him. "He didn't want to go back to that situation. He said it's better for me to die here than go back there. He had never tried to harm himself before." The asylum seeker, who had been facing removal to Germany – where he was told he wouldn't be granted asylum – but was released from detention after a lawyer intervened, said there were around a dozen detainees on hunger strike at any given time."We are not criminals. Everyone in there has their own story of trauma. We don't want to leave our countries, but once we arrive they put us in a jail," he added. "We came to Europe because we heard it's a place of humanity, of human rights. We just need protection because our countries aren't safe. It's really unbelievable that we are being treated like this."

A High Court judge ruled on Friday 13/11/2020, that the Home Office was likely to be acting unlawfully in its decision at the start of the pandemic to curtail asylum screening interviews by asking a narrower set of questions than those that are identified in the published policy guidance. The Home Office's decision has meant asylum seekers are no longer asked about their journeys to the UK, meaning experiences of trafficking on route may not be documented before someone is detained. Mr Justice Fordham said this posed a "serious risk of injustice and irreversible harm" and ordered as an interim measure that from Monday all asylum seekers are asked to outline their journeys to the UK, with a full hearing due to take place in December.

Bella Sankey, director at Detention Action, said: "Our immigration detention centres are filled with survivors of war, torture and human trafficking. Evidence shows our system frequently pushes people to the point of self-harm and attempted suicide. But to see such a dramatic surge in incidents occurred in the run up to a politically-driven escalation of deportations raises serious safety concerns that Priti Patel must now answer."

Celia Clarke, director at Bail for Immigration Detainees, said the "shocking" figures exposed a "crisis of self-harm in immigration detention" which ought to "shame the UK government". She added: "People seeking safety arriving at the shores of the UK are met with unrelenting hostility from ministers, journalists and far-right vigilantes, before being locked up in detention centres and threatened with deportation. "Many have undergone severe trauma not only in their home countries but during life-threatening journeys. It is no wonder that so many find it too much to cope. No humane government would continue to operate a detention system that drives people to such desperate measures on such a horrifying scale." A Home Office spokesperson said: "The welfare of detained individuals is of the utmost importance and we take any incidence of self-harm seriously. Everyone on arrival has a vulnerability assessment and access to legal representatives and 24-hour healthcare. "If there are concerns that an individual may self-harm or if there are wider mental or physical health concerns, a tailored support package is put in place which can include round the clock observation. "The public rightly expect us to maintain a firm and fair immigration system, which immigration detention plays a crucial role in."

Inquest Touching Upon the Death of Patrick Mcelhone 7th August 1974

The inquest touching upon the death of Patrick McElhone has been listed for hearing commencing on 30th November 2020 at Omagh Courthouse. The inquest, which has been scheduled for 1 week, will be heard by the Honourable Mrs Justice Keegan. Mr McElhone, who was 24 years old, died on 7th August 1974 near his home in Limehill, Pomeroy, Co. Tyrone after sustaining a fatal gunshot wound in an incident involving a military patrol. The inquest into Mr McElhone's death will be the first legacy inquest of the Lord Chief Justice's plan to be heard. Patrick A. McElhone, 22-year-old Catholic civilian, single, was a farmer who was shot in disputed circumstances by a soldier on his family farm at Limehall, 3 miles from Pomeroy. Earlier that day Mr McElhone was driving a tractor in a hay field and was questioned by soldiers. At 6:00PM, Mr McElhone went in for tea and some of the same soldiers with their faces blacked went into the farmhouse and ordered him out. Mrs McElhone said she heard a soldier say to her son: "you are not being very helpful to the army".

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.