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Victor Nealon and Sam Hallam, Shafted by Wastrel Law Lords Majority

The Supreme court this morning 30/01/2019 handed down their judgement on the appeals of Victor Nealon and Sam Hallam, who had been denied compensation for being wrongfully imprisoned..Wastrel law Lords, Hale, Mance, Wilson, Reed, Huges and Lloyed-Jones, ruled against Victor and Sam. However there were two powerful dissenting voices, lords Reed and Kerr, who would have emphatically upheld the appeals by Victor and Sam.

MOJUK have burned the first 58 pages of the judgement as not worthy of reading and reproduce the dissenting opinions of Lords Reed and Kerr, pages 59 through 83 of the full judgement.

Lord Reed: (dissenting) 140. I am grateful to Lord Mance for setting out the background to these appeals and the issues arising. Issue 1: Is article 6(2) of the Convention applicable to decisions under section 133 of the Criminal Justice Act 1988?

141. The terms of article 6(2) of the European Convention on Human Rights are set out in para 35 above. Read literally, the words "charged with a criminal offence" might suggest that the guarantee only applies in the context of pending criminal proceedings. But it has never been interpreted so narrowly. In the first place, the European court lon ago adopted the position that the character of a procedure under domestic law cannot be decisive of the question whether article 6 is applicable, since the guarantees contained in that provision could otherwise be avoided by the classification of proceedings. The case law on article 6(1) has therefore made it clear that the concept of a "criminal charge" has an autonomous meaning, with the consequence that article 6(2) is applicable to proceedings which may not be classified as criminal under domestic law, provided that they satisfy the criteria developed in cases such as Engel v The Netherlands (No 1) (1976) 1 EHRR 647 and Öztürk v Germany (1984) 6 EHRR 409. Secondly, it has also long been clear from the case law of the European court that the scope of article 6(2) is not limited to pending criminal proceedings as so defined, but extends in some circumstances to decisions taken by the state after a prosecution has been discontinued or after an acquittal.

R (Adams) v Secretary of State for Justice. 142. The case law of the European court concerning the scope of article 6(2), prior to the judgment of the Grand Chamber in Allen v United Kingdom (2013) 63 EHRR 10, was considered by this court in the case of R (Adams) v Secretary of State for Justice (JUSTICE intervening) [2011] UKSC 18; [2012] 1 AC 48. The implication of the court's decision in that case is that article 6(2) has no application to section 133 of the Criminal Justice Act 1988 ("the 1988 Act"). The first question which arises in this appeal is whether this court should follow that decision, as the Secretary of State submitted, or should depart from it, as the appellants invited us to do, in the light of the decision in Allen v United Kingdom that article 6(2) applies to decisions taken under section 133.

143. The judgments in Adams did not differentiate clearly between the question whether article 6(2) is applicable and the question whether it has been infringed. As a consequence, it is difficult to be certain which of the arguments accepted by the court were thought to bear on the former question, and which were concerned with the latter. The fullest analysis was carried out by Lord Hope, who based his conclusion at para 111 that article 6(2) had no "impact" on section 133 on three arguments, which were also advanced on behalf of the Secretary of State in the present proceedings. They can be discussed under the headings (a) lex specialis, (b) separate proceedings, and (c) not undermining the acquittal. It is necessary to consider each of these in turn.

(a) Lex specialis 144. Lord Hope considered that article 6(2) and article 3 of Protocol No 7 ("A3P7") stood in the relation of lex generalis and lex specialis respectively, so that the maxim lex specialis derogat legi generali applied: that is to say, that where a legal issue falls within the ambit of a provision framed in general terms, but is also specifically addressed by another provision, the specific provision overrides the more general one. This was, with respect, a questionable conclusion, since article 6(2) and A3P7 are concerned with different issues: article 6(2) is concerned with the presumption of innocence, whereas A3P7 is concerned with the payment of compensation to persons whose convictions have been quashed, and is silent about the presumption of innocence. Since they concern different issues, they are capable of applying cumulatively, rather than it being necessary to apply one to the exclusion of the other.

145. Lord Hope found support for the view that the maxim applied in the speech of Lord Steyn in R (Mullen) v Secretary of State for the Home Department [2004] UKHL 18; [2005] 1 AC 1. Referring to article 14(6) of the ICCPR, set out in para 16 above, and to article 14(2) ("Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"), Lord Steyn cited the report of the UN Human Rights Committee in WJH v The Netherlands (Communication No 408/1990) [1992] UNHRC 25, where the Committee said at para 6.2: "With respect to the author's allegation of a violation of the principle of presumption of innocence enshrined in article 14(2), of the Covenant, the Committee observes that this provision applies only to criminal proceedings and not to proceedings for compensation; it accordingly finds that this provision does not apply to the facts as submitted." Lord Steyn took from this that "article 14(6) is a lex specialis … [which] creates an independent fundamental right governed by its own express limits" (para 38).

146. Whatever the merits of that view may be in relation to the ICCPR, it might be doubted whether it is of assistance in deciding the scope of article 6(2) of the Convention, since it depends on the Human Rights Committee's statement that article 14(2) of the ICCPR applies only to criminal proceedings and not to proceedings for compensation. Whether that is true of article 6(2) is the very question in issue. In relation to that question, although Lord Steyn cited a number of European cases, such as Sekanina v Austria (1993) 17 EHRR 221, which demonstrated that article 6(2) could apply to proceedings for compensation, he concluded at para 44 that "the European jurisprudence cited throws no light on the question", and that "article 14(6) of the ICCPR (and therefore section 133 of the 1988 Act), are in the category of lex specialis and the general provision for a presumption of innocence does not have any impact on it". This analysis might be contrasted with that of Lord Bingham, who pointed out at para 10 that the fact that article 6(2) was not confined to criminal proceedings, as illustrated by Sekanina, indicated that the European court took a different approach from that taken by the Human Rights Committee in relation to article 14(2) of the ICCPR.

147. In support of his conclusion, Lord Steyn also referred to the Explanatory Report to Protocol No 7, prepared by the Steering Committee for Human Rights appointed by the Council of Europe. In relation to A3P7, the report stated at para 25: "The intention is that states would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent."

Lord Bingham, on the other hand, observed at para 9(4) and (5) that the Explanatory Report was prefaced with a statement that it did not constitute an instrument providing an authoritative interpretation of the text of the Protocol; that para 25 did not appear to be consistent with para 23, which suggested that a miscarriage of justice occurred where there was "some serious failure in the judicial process involving grave prejudice to the convicted person"; that the reference to "innocent" in para 25 was to be con-

trasted with the absence of any such word in A3P7; that the expressions used in the French and Spanish versions of A3P7 were not obviously apt to denote proof of innocence; and that a standard textbook on the Convention considered the interpretation of A3P7 put forward in para 25 to be too strict.

148. The question whether section 133 of the 1988 Act fell within the ambit of article 6(2) of the Convention did not, however, have to be decided in Mullen. Lord Hope returned to it in Adams. He accepted Lord Bingham's reasons for doubting whether Lord Steyn was right to find support for his view in the French text and in para 25 of the Explanatory Report, and therefore took a fresh look at the issue. His conclusion that section 133 fell outside the ambit of article 6(2) was based, as explained above, on the view that article 6(2) was excluded from applying within the scope of A3P7, since the latter was lex specialis relative to the lex generalis contained in the former. In forming that view, he relied on a passage in the court's judgment in Sekanina, in the section dealing not with applicability but with compliance. After explaining that "article 6(2) does not guarantee a person 'charged with a criminal offence' a right to compensation for detention on remand", the European court added at para 25: "In addition, despite certain similarities, the situation in the present case is not comparable to that governed by article 3 of Protocol No 7, which applies solely to a person who has suffered punishment as a result of a conviction stemming from a miscarriage of justice."

149. As explained above, A3P7 requires the payment of compensation to a person who has suffered punishment as a result of a conviction which is subsequently reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice. As the court stated in para 25 of Sekanina, the situation of the applicant in that case was not comparable to that governed by A3P7: he was seeking compensation for having been remanded in custody pending a trial at which he was acquitted, whereas A3P7 applies to persons who have suffered punishment as a result of a conviction. That is all that the court said in the relevant passage. Lord Hope, however, read more into it, stating at para 111: "… the fact that the court was careful to emphasise in Sekanina v Austria, para 25 that the situation in that case was not comparable to that governed by article 3 of the Seventh Protocol is an important pointer to the conclusion that, as Lord Steyn put it in Mullen, para 44, article 14(6) and section 133 of the 1988 Act are in the category of lex specialis and that the general provision for a presumption of innocence does not have any impact on them." That conclusion (with which Lord Clarke disagreed: para 230) did not follow from Sekanina or from any other judgment of the European court, and the subsequent judgment of that court in Allen v United Kingdom has in my opinion demonstrated that it is incorrect.

(b) Separate proceedings. 150. The second strand in Lord Hope's reasoning concerned the relationship between the determination of a claim under section 133 of the 1988 Act and the antecedent criminal proceedings. He stated at para 109 that "the Strasbourg cases show that its jurisprudence is designed to protect the criminal acquittal in proceedings that are closely linked to the criminal process itself", and went on at para 111 to distinguish "comments on the underlying facts of the case in subsequent proceedings of a different kind, such as a civil claim for damages". He illustrated the point by reference to Sekanina, noting that in its judgment the court said at para 22 that the Austrian legislation and practice linked "the criminal responsibility of the accused and the right to compensation - to such a degree that the decision on the latter issue can be regarded as a consequence and, to some extent, the concomitant, of the decision on the former". Lord Hope concluded that the system laid down by article 14(6) of the ICCPR, and implemented by section 133, did not cross the forbidden boundary, stating at para 111: "The procedure laid down in section 133 provides for a decision to be taken by the executive on the question of entitlement to compensation which is entirely separate from the proceedings in the criminal courts."

151. This reasoning is also questionable. Although procedurally separate, compensation proceedings under section 133 are nevertheless based on the quashing of a conviction by the criminal courts, and are directed towards obtaining compensation for harm inflicted by the state as a direct consequence of that conviction. But for the outcome of the criminal proceedings, there could be no compensation proceedings. In the language used by the European court, the outcome of the criminal proceedings is therefore "decisive" for the compensation proceedings, since it is a prerequisite of a compensation claim that the conviction has been quashed. The time limit for bringing a claim is also directly linked to the conclusion of the criminal proceedings: a factor which was regarded as relevant in a series of cases concerned with compensation proceedings under Norwegian law, such as Hammern v Norway (Application No 30287/96) (unreported) given 11 February 2003, para 43. Furthermore, the decision whether to award compensation, even before the amendment of section 133, depended on an assessment of the circumstances in which the conviction was quashed, based on an examination and evaluation of the judgment of the Court of Appeal. In these circumstances, even prior to Allen v United Kingdom, the Strasbourg case law clearly indicated that the compensation proceedings were likely to be regarded as a sequel or, as it was put in Sekanina, a consequence and concomitant, of the criminal proceedings, and therefore within the ambit of article 6(2).

(c) Not undermining the acquittal. 152. Finally, Lord Hope considered that a refusal of compensation under section 133, prior to its amendment, did not have the effect of undermining the acquittal in the criminal proceedings. That conclusion is consistent with that of the European court in Allen v United Kingdom and later cases. However, it goes to the question whether article 6(2) has been violated, not to the question whether it is applicable.

153. Lord Phillips and Lord Kerr agreed with Lord Hope on this topic. Lord Judge CJ, with whom Lord Brown, Lord Rodger and Lord Walker agreed on this topic, also treated A3P7 as a lex specialis which ousted the application of article 6(2) to proceedings under section 133. In the present case, the courts below were therefore correct to take the view that they were bound by Adams to hold that article 6(2) was inapplicable.

(2) Serious Organised Crime Agency v Gale. 154. Before turning to the more recent Strasbourg jurisprudence, it is also relevant to note the case of Serious Organised Crime Agency v Gale (Secretary of State for the Home Department intervening) [2011] UKSC 49; [2011] 1 WLR 2760, decided by this court a few months after Adams. The case concerned the question whether civil recovery proceedings under the Proceeds of Crime Act 2002, undertaken following the appellant's acquittal of criminal charges, were compatible with article 6(2). In the course of his judgment, with which a majority of the court agreed, Lord Phillips was critical of the distinction which he perceived in the case law of the European court between claims for compensation brought by an acquitted defendant against the state under public law, and claims for compensation brought by an alleged victim against an acquitted defendant under the law of tort, commenting at para 32 that "this confusing area of Strasbourg law would benefit from consideration by the Grand Chamber". Lord Dyson was less critical of the Strasbourg jurisprudence, and provided an illuminating analysis.

155. As he noted, cases in which article 6(2) was held to apply to proceedings instituted after the discontinuation of criminal proceedings or following an acquittal included, first, cases in which there was a sufficiently close link between the criminal proceedings and the other proceedings to engage article 6(2), even if on an application of the usual Engel criteria the latter proceedings would be characterised as civil. Those cases were described in Ringvold v Norway Reports of Judgments and Decisions 2003-II, p 117, para 36 as concerning "proceedings relating to such matters as an accused's obligation to bear court costs and prosecution expenses, a claim for reimbursement of his (or his heirs') nec-

essary costs, or compensation for detention on remand, matters which were found to constitute a consequence and the concomitant of the criminal proceedings". The focus of the inquiry was on whether the proceedings were the "direct sequel" or "a consequence and the concomitant" of the criminal proceedings: ibid, at para 41. As Lord Dyson stated at para 125: "Claims by an accused person following a discontinuation or acquittal for costs incurred as a result of the criminal proceedings and claims for compensation for detention are paradigm examples of such proceedings. The link between such claims and the criminal proceedings is so close that article 6(2) applies to both of them. The claims for compensation flow from the criminal proceedings. But for these proceedings, there would be no claims."

156. As Lord Dyson explained, civil claims for compensation, brought against the defendant under the law of tort, are not linked in that way to criminal proceedings. The victim of a civil wrong has a right to claim damages, in order to obtain a remedy for the harm which he or she has suffered, regardless of whether the defendant has been convicted or acquitted of a criminal offence arising out of the same facts. The victim's claim is not dependent on the defendant being prosecuted at all. Furthermore, as the court pointed out in Ringvold, para 38, if civil compensation proceedings automatically fell within the ambit of article 6(2), that would have: "the undesirable effect of pre-empting the victim's possibilities of claiming compensation under the civil law of tort, entailing an arbitrary and disproportionate limitation on his or her right of access to a court under article 6(1) of the Convention."

157. A separate basis on which article 6(2) had been held to apply to proceedings instituted after the discontinuation of criminal proceedings or following an acquittal was that a sufficient link with the criminal proceedings was created by the language used by the court in the civil proceedings. An example was the case of Y v Norway (2003) 41 EHRR 87, where the civil court stated in its judgment that it found it clearly probable that the defendant had committed the offences against the claimant with which he was charged. The European court found that there had been a violation of article 6(2).

158. Lord Dyson contrasted that case with Moullet v France (Application No 27521/04) (unreported) given 13 September 2007, where the applicant was a public official who had been charged with accepting bribes. The criminal proceedings were discontinued on the ground that they were time-barred. The official was then dismissed on the basis that the evidence showed that he had taken bribes. That decision was challenged under administrative law, but was upheld by the Conseil d'Etat on the ground that it had been based on "accurate facts" and on reasons which were not "materially or factually incorrect". A complaint to the European court was unsuccessful. The court considered whether the Conseil d'Etat "used such language in its reasoning as to create a clear link between the criminal case and the ensuing administrative proceedings and thus to justify extending the scope of article 6(2) to cover the latter". It noted that the applicant was not "formally declared guilty of the criminal offence of accepting bribes". The Conseil d'Etat had confined itself to determining the facts "without suggesting any criminal characterisation whatsoever … In other words, the domestic authorities managed in the instant case to keep their decision within a purely administrative sphere, where the presumption of innocence the applicant relied on did not obtain".

159. Similarly in Ringvold v Norway the court found that a domestic decision awarding compensation to a victim of sexual abuse, following the defendant's acquittal, did not fall within the scope of article 6(2). Although the domestic court had found that there was evidence "establishing that sexual abuse had occurred, and that, on the balance of probabilities, it was clear that the applicant was the abuser" (para 19), it "did not state, either expressly or in substance, that all the conditions were fulfilled for holding the applicant criminally liable with respect to the charges of which he had been acquitted" (para 38).

160. Lord Dyson commented at para 138 that the rationale of cases such as Y v Norway must be that if the domestic court chooses to treat civil proceedings as if the issue of criminal liability falls to be determined, then the fair trial protections afforded by article 6(2) should be respected. But if the decision in the civil proceedings is based on reasoning and language which go no further than is necessary for the purpose of determining the issue before that court and without making imputations of criminal liability, then the necessary link will not have been created.

(3) Allen v United Kingdom. 161. An opportunity for the Grand Chamber to consider this area of the law arose soon after Gale, in the case of Allen v United Kingdom. The applicant had been convicted of manslaughter. Her conviction was later quashed on the basis that, although the Crown case against her remained strong, a jury which had heard the fresh evidence might have come to a different conclusion. In terms of the categories subsequently adopted in Adams, it was a category 3 case. Her application for compensation under section 133 as originally enacted was unsuccessful, and her application for judicial review of that decision was dismissed. On appeal, the Court of Appeal held that there had been no violation of article 6(2): R (Allen) (formerly Harris) v Secretary of State for Justice [2008] EWCA Civ 808; [2009] 1 Cr App R 2. As was pointed out, article 6(2) could not possibly mean that compensation necessarily followed the quashing of a conviction on the basis of fresh evidence, otherwise A3P7 could not be in the terms it was. More controversially, Hughes LJ, giving the judgment of the court, expressed the view, applying dicta of Lord Steyn in the case of Mullen, that the phrase "miscarriage of justice" in section 133 of the 1988 Act was restricted to cases where the defendant was demonstrably innocent of the crimes of which he had been convicted: a view which was subsequently disapproved by the majority of this court in Adams.

162. When Allen reached the Grand Chamber of the European court, on a complaint directed not against the Secretary of State's decision to refuse the applicant's claim for compensation, but against the reasons given by the High Court and the Court of Appeal for dismissing her challenge to that decision, the European court was therefore considering section 133 in its unamended form. The Government contended that the complaint was inadmissible because article 6(2) had no application to decisions taken under section 133, as this court had held in Adams. The question whether section 133 fell within the scope of article 6(2) was therefore directly in issue. In deciding that question, the Grand Chamber court undertook a careful review of the court's case law, and considered the relationship between article 6(2) and A3P7.

163. The Grand Chamber began its assessment by explaining the justification, in accordance with the most fundamental principles of the Convention case law, for giving article 6(2) a wider application than a literal reading of the text would suggest. As it explained at para 92: "The object and purpose of the Convention, as an instrument for the protection of human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective." The need to ensure that the right guaranteed by article 6(2) is practical and effective entails that it cannot be viewed solely as a procedural guarantee in the context of a criminal trial, but has a second aspect (para 94): "Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged. In these cases, the presumption of innocence has already operated, through the application at trial of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair trial guarantees of article 6(2) could risk becom-

ing theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public."

164. The Grand Chamber reviewed how the court's jurisprudence in relation to the second aspect of article 6(2) had developed over time. In doing so, it did not attempt to justify or reconcile all of the decisions on their particular facts: a task which, in relation to some of the case law, might have been challenging. Instead, it sought to derive from the cases the underlying principles, and to explain how they had evolved. In some early cases in which the court had found article 6(2) to be applicable, despite the absence of a pending criminal charge, it had said that the judicial decisions taken following criminal proceedings, for example with regard to an obligation to bear court and prosecution costs, or compensation for pre-trial detention or other adverse consequences, were "consequences and necessary concomitants of", or "a direct sequel to", the conclusion of the criminal proceedings. Similarly, in a later series of cases, such as Sekanina v Austria, it had concluded that Austrian legislation and practice "link[ed] the two questions - the criminal responsibility of the accused and the right to compensation - to such a degree that the decision on the latter issue could be regarded as a consequence and, to some extent, the concomitant of the decision on the former", so that article 6(2) applied to the compensation proceedings. Developing this idea in subsequent cases, such as Hammern v Norway, the court had found that the applicants' compensation claim "not only followed the criminal proceedings in time, but was also tied to those proceedings in legislation and practice, with regard to both jurisdiction and subject matter", creating a link between the two sets of proceedings with the result that article 6(2) was applicable. In cases such as Ringvold v Norway and Y v Norway, concerning the victim's right to compensation from the applicant, who had previously been found not guilty of the criminal charge, the court had held that where the decision on civil compensation contained a statement imputing criminal liability, this would create a link between the two proceedings such as to engage article 6(2) in respect of the judgment on the compensation claim.

165. The Grand Chamber also cited its decision in OL v Finland (Application No 61110/00) (unreported) given 5 July 2005, in which an appeal was brought against a child care order, made on the basis of a psychiatric report stating that it was highly probable that the child had been sexually abused by her father, after the public prosecutor decided not to bring charges. In dismissing the appeal, the domestic court stated: "The public care order was based on the expert opinion resulting from the psychiatric examinations. However, it is unclear whether A has been subjected to sexual abuse. This possibility cannot be excluded, either. According to the examinations it is undisputed that A has become predisposed to sexuality, not suitable for a child of her age. It is also clear that living with a mentally ill mother has had negative effects on A's psychical development ..." The European court dismissed the father's complaint of a violation of article 6(2) as manifestly ill-founded, observing: "In this particular case, although the prosecutor did not prefer charges against the applicant, the decision to place A into public care was legally and factually distinct. Regardless of the conclusion reached in the criminal investigation against the applicant, the public care case was thus not a direct sequel to the former." Nor was a sufficient link between the two proceedings created by the language used by the domestic court: "the impugned ruling of the Supreme Administrative Court in no way stated that the applicant was criminally liable with regard to the charges which the prosecutor had dropped".

166. More recently, the court had expressed the view that following the discontinuation of criminal proceedings, the presumption of innocence required that the lack of a person's criminal conviction should be preserved in any other proceedings of whatever nature. It had also indicated that the operative part of an acquittal judgment must be respected by any author-

ity referring directly or indirectly to the criminal responsibility of the person in question.

167. The Grand Chamber then considered the specific context of judicial proceedings following the quashing of a conviction, giving rise to an acquittal, and stated at para 104: "Whenever the question of the applicability of article 6(2) arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link, as referred to above [ie in the discussion of the previous case law], between the concluded criminal proceedings and the subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment; to engage in a review or evaluation of the evidence in the criminal file; to assess the applicant's participation in some or all of the events leading to the criminal charge; or to comment on the subsisting indications of the applicant's possible guilt."

168. The Grand Chamber next addressed the argument that article 6(2) did not apply to section 133 of the 1988 Act because the latter fell within the scope of A3P7, which was argued to be lex specialis: the argument accepted by a majority of this court in Adams. The Grand Chamber had earlier mentioned the UN Human Rights Committee's communication in WJH v The Netherlands, which, as it noted, proceeded on the basis that article 14(2) of the ICCPR applied only to criminal proceedings. It also cited the Explanatory Report on Protocol No 7, including the passages to which Lord Bingham had referred in Mullen, observing at para 133 that the report itself provided that it did not constitute an authoritative interpretation of the text, and adding that the report's reference to the need to demonstrate innocence must now be considered to have been overtaken by the court's intervening case law on article 6(2). It concluded at para 105: "Having regard to the nature of the article 6(2) guarantee outlined above, the fact that section 133 of the 1988 Act was enacted to comply with the respondent state's obligations under article 14(6) ICCPR, and that it is expressed in terms almost identical to that article and to article 3 of Protocol No 7, does not have the consequence of taking the impugned compensation proceedings outside the scope of applicability of article 6(2), as argued by the Government. The two articles are concerned with entirely different aspects of the criminal process; there is no suggestion that article 3 of Protocol No 7 was intended to extend to a specific situation general guarantees similar to those contained in article 6(2). Indeed, article 7 of Protocol No 7 clarifies that the provisions of the substantive articles of the Protocol are to be regarded as additional articles to the Convention, and that 'all the provisions of the Convention shall apply accordingly'. Article 3 of Protocol No 7 cannot therefore be said to constitute a form of lex specialis excluding the application of article 6(2)." The lex specialis argument was therefore roundly rejected.

169. The Grand Chamber then applied the general principles set out earlier in its judgment to the facts of Allen. It identified the relevant question as being "whether there was a link between the concluded criminal proceedings and the compensation proceedings, having regard to the relevant considerations" set out in para 104 of the judgment. In that regard, it stated at paras 107-108: "107. … In this respect, the court observes that proceedings under section 133 of the 1988 Act require that there has been a reversal of a prior conviction. It is the subsequent reversal of the conviction which triggers the right to apply for compensation for a miscarriage of justice. Further, in order to examine whether the cumulative criteria in section 133 are met, the Secretary of State and the courts in judicial review proceedings are required to have regard to the judgment handed down by the CACD [the Court of Appeal Criminal Division]. It is only by examining this judgment that they can identify whether the reversal of the conviction, which resulted in an acquittal in the present applicant's case, was based on new evidence and whether it gave rise to a miscarriage of justice.

108. The court is therefore satisfied that the applicant has demonstrated the existence of the nec-

essary link between the criminal proceedings and the subsequent compensation proceedings. As a result, article 6(2) applied in the context of the proceedings under section 133 of the 1988 Act to ensure that the applicant was treated in the latter proceedings in a manner consistent with her innocence."

170. The critical factors in establishing the necessary link between the decision of the Court of Appeal in the criminal proceedings, and the subsequent proceedings under section 133, were therefore that the quashing of the conviction was a prerequisite of proceedings under section 133, and that in order to arrive at a decision on the claim it was necessary for the Secretary of State to examine the judgment of the Court of Appeal so as to determine whether the criteria in section 133 were satisfied. That reasoning applies equally, if not a fortiori, to section 133 in its amended form.

171. The only remaining question, therefore, in relation to the applicability of article 6(2) to decisions taken under section 133 as amended, is whether, as counsel for the Secretary of State submitted, this court should decline to follow the decision of the Grand Chamber. In counsel's submission, our doing so would encourage, or stimulate, further dialogue where the issue could be reviewed and addressed in full.

172. This court's approach to judgments of the European Court of Human Rights is well established. Section 2 of the Human Rights Act requires the courts to "take into account" decisions of the European court, not necessarily to follow them. In taking them into account, this court recognises their particular significance. As Lord Bingham observed in Kay v Lambeth London Borough Council [2006] UKHL 10; [2006] 2 AC 465, para 44: "The Strasbourg court authoritatively expounds the interpretation of the rights embodied in the Convention and its protocols, as it must if the Convention is to be uniformly understood by all member states." Nevertheless, it can sometimes be inappropriate to follow Strasbourg judgments, as to do so may prevent this court from engaging in the constructive dialogue or collaboration between the European court and national courts on which the effective implementation of the Convention depends. In particular, dialogue has proved valuable on some occasions in relation to chamber decisions of the European court, where this court can be confident that the European court will respond to the reasoned and courteous expression of a diverging national viewpoint by reviewing its position.

173. The circumstances in which constructive dialogue is realistically in prospect are not, however, unlimited. As Lord Neuberger of Abbotsbury MR explained in Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening) [2010] UKSC 45; [2011] 2 AC 104, para 48: "Where, however, there is a clear and constant line of decisions whose effect is not inconsistent with some fundamental substantive or procedural aspect of our law, and whose reasoning does not appear to overlook or misunderstand some argument or point of principle, we consider that it would be wrong for this court not to follow that line." There is also unlikely to be scope for dialogue where an issue has been authoritatively considered by the Grand Chamber, as Lord Mance indicated in R (Chester) v Secretary of State for Justice [2013] UKSC 63; [2014] AC 271, para 27: "It would have then to involve some truly fundamental principle of our law or some most egregious oversight or misunderstanding before it could be appropriate for this court to contemplate an outright refusal to follow Strasbourg authority at the Grand Chamber level."

174. No circumstances of the kind contemplated in those dicta exist in the present case. The Grand Chamber's conclusion was carefully considered, and was based on a detailed analysis of the relevant Strasbourg case law. It was consistent with a line of authorities going back decades. It was intended to provide authoritative guidance, and has been followed in numerous subsequent judgments, such as Cleve v Germany (Application No 48144/09) (unreported) given 15 January 2015, Kapetanios v Greece (Application Nos 3453/12, 42941/12 and 9028/13) (unreported) given 30 April 2015 and Dicle and Sadak v Turkey (Application No 48621/07) (unreported) given 16 June 2015. It did not involve any principle

of English law, or any oversight or misunderstanding. On the contrary, it is the reasons given in Adams to support the conclusion that article 6(2) has no application to section 133 of the 1988 Act which, with respect, are less than compelling. The lex specialis argument is unpersuasive, for the reasons explained at paras 144-149 above, and those set out by the Grand Chamber at para 105 of its judgment. The "separate proceedings" argument is equally unpersuasive, as explained at para 151 above, and at para 107 of the Grand Chamber's judgment. That is also the implication of Lord Dyson's analysis in Gale, where he explained at para 125 (quoted in para 155 above) why claims by a defendant for compensation for detention are a paradigm example of proceedings which are sufficiently closely linked to criminal proceedings for article 6(2) to apply. The "not undermining the acquittal" argument bears on compliance with article 6(2), not on whether it is applicable.

175. I recognise that the dicta which I have cited from Pinnock and Chester are not to be treated as if they had statutory force. Nevertheless, they are in my view persuasive. I find it difficult to accept that this court should deliberately adopt a construction of the Convention which it knows to be out of step with the approach of the European Court of Human Rights, established by numerous Chamber judgments over the course of decades, and confirmed at the level of the Grand Chamber, in the absence of some compelling justification for taking such an exceptional step. For my part, I can see no such justification.

Conclusion on issue 1 176. For the reasons I have explained, I would hold that decisions taken under section 133 fall within the ambit of article 6(2). I would therefore depart from the decision in Adams in so far as it adopted the contrary view.

Issue 2: Is section 133(1ZA) incompatible with article 6(2)? 177. Once it has been established that there is a sufficient link between proceedings under section 133 and the antecedent criminal proceedings, the court must determine whether the presumption of innocence has been respected. The approach to be adopted to this question was the second area of the law which was reviewed by the Grand Chamber in Allen v United Kingdom.

178. As the court observed, there is no single approach to ascertaining the circumstances in which article 6(2) will be violated in the context of proceedings which follow the conclusion of criminal proceedings. In particular, the court explained in para 121 that in cases concerning applications by a former accused for compensation or costs, where the criminal proceedings were discontinued, it had been held that a refusal of compensation or costs might raise an issue under article 6(2) "if supporting reasoning which could not be dissociated from the operative provisions amounted in substance to a determination of the accused's guilt", but that no violation had been found where domestic courts had described a "state of suspicion" without making any finding of guilt. In Sekanina, however, the court drew a distinction between cases where the criminal proceedings had been discontinued and those where a final acquittal judgment had been handed down "clarifying that the voicing of suspicions regarding an accused's innocence was conceivable as long as the conclusion of criminal proceedings had not resulted in a decision on the merits of the accusation, but that it was no longer admissible to rely on such suspicions once an acquittal had become final."

In Sekanina, the domestic court rejected the applicant's claim for compensation for detention, saying that, in acquitting him, the jury took the view that the suspicion was not sufficient to reach a guilty verdict, but "there was, however, no question of that suspicion's being dispelled" (para 29). The European court said that this left open a doubt as to the correctness of the acquittal and was incompatible with the presumption of innocence.

179. To give one other example, in cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal,

the court had emphasised that while exoneration from criminal liability ought to be respected in the civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of article 6(2).

180. Turning to consider the circumstances in Allen itself, the court observed that the applicant's conviction was quashed on the ground that it was "unsafe", because new evidence might have affected the jury's decision had it been available at trial. The Court of Appeal did not itself assess all the evidence in order to decide whether guilt had been established beyond reasonable doubt. Nor had it ordered a retrial, since the applicant had already served her sentence. In these circumstances, although the quashing of the conviction resulted in a verdict of acquittal being entered, it was not "an acquittal 'on the merits' in a true sense". In that respect, the court contrasted the case with Sekanina and the similar case of Rushiti v Austria (2001) 33 EHRR 56, "where the acquittal was based on the principle that any reasonable doubt should be considered in favour of the accused". The court observed, at para 127, that "in this sense, although formally an acquittal, the termination of the criminal proceedings against the applicant might be considered to share more of the features present in cases where criminal proceedings have been discontinued."

181. The court next considered whether the criteria laid down by section 133 as originally enacted were themselves incompatible with article 6(2). As it observed, there was nothing in the criteria which called into question the innocence of an acquitted person, and the legislation did not require any assessment of the applicant's criminal guilt.

182. The court next considered the approach adopted by the domestic courts in the case before it. They had been entitled under the Convention to conclude that more than an acquittal was required in order to establish a miscarriage of justice, "provided always that they did not call into question the applicant's innocence". In that regard, the court referred to the view expressed by Lord Steyn in Mullen (subsequently adopted by the minority in Adams) that a miscarriage of justice, within the meaning of section 133(1), would only arise where the person concerned was innocent, and that section 133 therefore required that the new or newly discovered fact must demonstrate the applicant's innocence beyond reasonable doubt. The court observed that "what is important above all is that the judgments of the High Court and the Court of Appeal did not require the applicant to satisfy Lord Steyn's test of demonstrating her innocence".

183. The difference in the present case is that the insertion of section 133(1ZA) into the 1988 Act has had the effect of introducing a test that the fresh evidence has to establish beyond reasonable doubt that the applicant did not commit the offence. In the present proceedings, the Divisional Court and the Court of Appeal considered this test to be compatible with article 6(2), since it did not require the applicant to establish his innocence, but imposed a narrower requirement, namely that he demonstrate that his innocence had been established by a new or newly discovered fact "and nothing else", as the Court of Appeal stated at para 48. The refusal of an application under section 133 did not, therefore, in their view cast doubt on the person's innocence generally. The Court of Appeal observed that a focus on the new or newly discovered fact and nothing else was central to limiting eligibility for compensation to a narrower category of cases than the entire corpus of cases where a conviction was quashed. It also considered that the European court's observations about Lord Steyn's test in Mullen were directed to the dangers of imposing a general requirement of having to demonstrate innocence, which was not what was required by section 133.

184. I do not find this an easy question, but I have respectfully come to a different conclusion from the courts below. In the context of decisions made under the amended section 133, the distinction between a requirement that innocence be established, and a requirement that innocence be established by a new or newly discovered fact and nothing else, appears to me to be unrealistic. A person who can make

a valid application under section 133 is, of necessity, someone whose conviction has been quashed because of the impact of a new or newly discovered fact: that follows from the terms of section 133(1). In most cases which satisfy that criterion, there will not be any other reason for the quashing of the conviction. A decision by the Secretary of State that the new or newly discovered fact does not establish the person's innocence does not, therefore, usually leave open a realistic possibility that he or she has been acquitted for some other reason, which that decision leaves unaffected. On the contrary, the implication of the decision is likely to be that, although the new or newly discovered fact has led to the quashing of the conviction, the person's innocence has not been established. The decision therefore casts doubt on the innocence of the person in question and undermines the acquittal.

185. The idea that there is a meaningful distinction between assessing whether innocence has been established by a new or newly discovered fact, and assessing whether innocence has been established in a more general sense, also appears to me to be unrealistic for another reason. Normally, at least, the significance of a new piece of evidence can only be assessed in the context of the evidence as a whole. That is illustrated by the present cases. The photograph of Mr Hallam in Mr Harrington's company does not in itself tell one anything about his guilt or innocence of the murder. It is only when considered in the context of the alibi evidence that its significance becomes apparent. In Mr Nealon's case, the presence of an unknown male's DNA on the victim's underwear tells one nothing in itself about Mr Nealon's guilt or innocence of an attempted rape. It is only in the context of her evidence about the behaviour of her attacker and her contact with other males on the day in question, and the evidence of other witnesses eliminating the most likely alternative explanations of the presence of the DNA, that its significance can be assessed. There is no material difference, in these situations, between asking whether the applicant's innocence has been established by the new or newly discovered fact, and asking whether his innocence has been established.

186. The majority of this court have reached the same conclusion as the courts below, but for somewhat different reasons. As I understand their reasoning, they emphasise that, in Allen v United Kingdom, the Grand Chamber found no violation of article 6(2) in the judgment of the Court of Appeal upholding the refusal of compensation under section 133 in its original form to an applicant who, in terms of the domestic categories subsequently adopted in Adams, fell into category 3, and failed to fall into category 2. They consider that it must, or at least may, be equally compatible with article 6(2) to require the applicant to demonstrate that he falls into category 1.

187. I accept that the implication of the decision in Allen v United Kingdom is that it is not necessarily incompatible with article 6(2) to refuse compensation under section 133 in cases falling within the category later described in Adams as category 3: that is to say, cases where the fresh evidence renders the conviction unsafe in that, had it been available at the time of the trial, a reasonable jury might or might not have convicted the defendant. The effect of the decision of this court in Adams, confining compensation to cases in category 2 (where the fresh evidence so undermines the evidence against the defendant that no conviction could possibly be based upon it), has been held in later cases before the European court to be compatible with article 6(2): see, for example, ALF v United Kingdom (Application No 5908/12) (unreported) given 12 November 2013. It is not a violation of the presumption of innocence to say that a case falling within category 3 (or category 4: cases where something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted) does not constitute a miscarriage of justice. Nor is there any objection under article 6(2) to other criteria for the award of compensation that do not require the applicant to establish his or her innocence: for example, criteria precluding compensation where successful appeals are brought within time, or

where convictions are quashed because of misdirections. The problem which arises under article 6(2) when compensation is confined to persons in category 1 - cases where the fresh evidence shows clearly that the defendant is innocent of the crime of which he was convicted - as under section 133 as amended, is quite specific. It is that it effectively requires the Secretary of State to decide whether persons whose convictions are quashed because of fresh evidence have established that they are innocent. In Allen, the Grand Chamber found at para 128 that there was nothing in the criteria set out in section 133 as it then stood which called into question the innocence of an acquitted person, and that the legislation itself did not require any assessment of the applicant's criminal guilt. I doubt whether the same could be said of section 133 in its amended form.

188. In cases falling within category 2, the person has received an acquittal "on the merits", in the language used by the European court: the Court of Appeal has assessed all the evidence and has concluded that, allowing the defendant the benefit of any reasonable doubt, only a verdict of acquittal could reasonably be arrived at. The principle in Sekanina therefore applies, and it is no longer permissible to rely on suspicions regarding the defendant's innocence, as the Secretary of State must do when refusing an application for compensation under the amended section 133 on the ground that the fresh evidence does not demonstrate the applicant's innocence. Furthermore, the implication of para 128 of the European court's judgment in Allen - a category 3 case - is that even in cases where there has not been an acquittal "on the merits" in that sense, as may be the position in the present cases, it is nevertheless impermissible for the criteria for awarding compensation to "[call] into question the innocence of an acquitted person or to require any assessment of the applicant's criminal guilt". If the appellants' criminal guilt is to be assessed, they are entitled under the Convention to the protections afforded in criminal proceedings, including the benefit of the presumption of innocence.

189. So far as the European court's comments about Lord Steyn's speech are concerned, the court appears to me to have understood that Lord Steyn required the applicant's innocence to be established by a new or newly discovered fact. Its comments seem to me to provide some support for my conclusion. The critical question does not however turn on how the court's references to Lord Steyn's speech are to be construed, but on how the approach to article 6(2) laid down by the court applies to section 133 in its amended form. For the reasons I have explained, the criterion laid down in section 133(1ZA) is in my opinion incompatible with article 6(2).

190. Counsel for the Secretary of State submitted, however, that a violation of article 6(2) was avoided by means of the Secretary of State's statement, in each of the decision letters, that nothing in the letter was intended to undermine, qualify or cast doubt upon the decision to quash the conviction, and that the applicant was presumed to be and remained innocent of the charge brought against him. I am unable to agree that this statement ensures that article 6(2) is respected. The application of a test which in substance infringes the presumption of innocence is not rendered acceptable by the addition of words intended to avoid a conflict with article 6(2), if the overall effect is nevertheless to undermine a previous acquittal. The point is illustrated by the case of Hammern v Norway, where the operation of a statutory test which required the applicant to prove that he did not perpetrate the acts forming the basis of the charges was incompatible with article 6(2), notwithstanding a statement in the decision that "I should like to stress that the refusal of a compensation claim does not entail that the previous acquittal is undermined or that the acquittal is open to doubt". The European court commented at para 48 that it was "not convinced that, even if presented together with such a cautionary statement, the impugned affirmations were not capable of calling into doubt the correctness of the applicant's acquittal, in a manner incompatible with the presumption of innocence". That comment is equally apposite in the present case.

191. Finally on this issue, counsel for the Secretary of State submitted that, in order for this court to find that section 133(1ZA) was incompatible with article 6(2), it would have to go significantly further than did the European court in Allen, contrary to the principle expressed in R (Ullah) v Special Adjudicator [2004] UKHL 26; [2004] 2 AC 323, para 23. That argument cannot be accepted. The conclusion which I have reached is based on principles which were already well-established before the case of Allen, and which received the approval of the Grand Chamber in that judgment.

Conclusion on Issue 2. 192. For these reasons, I conclude that the definition of a "miscarriage of justice" introduced by section 133(1ZA) of the 1988 Act is incompatible with article 6(2) of the Convention, and would have made a declaration to that effect.

Lord Kerr: (dissenting) Introduction

193. I agree with Lord Reed that the appeals in these cases should be allowed and that the declaration of incompatibility which he proposes should be made.

194. It is important to keep clearly in mind that the focus of the case is on the compatibility of section 133(1ZA) of the 1988 Act with article 6(2) of ECHR. The starting point for any discussion of this question must be whether the article is engaged by decisions taken under section 133. For the reasons so compellingly given by Lord Reed, such decisions do fall within the ambit of article 6(2). Inasmuch as the decision in Adams suggested otherwise, it should not be followed. In any event, as Lord Reed has demonstrated, the decision in that case conflated the questions whether article 6(2) was engaged and whether it had been breached.

195. Lady Hale agrees that article 6(2) is engaged - see para 77 of her judgment. Lord Mance in paras 35-53 of his judgment discusses whether article 6(2) should be "applied" to decisions taken under section 133. As he has pointed out, recent case law from the Strasbourg court has focused on the question whether there is a sufficient link between the impugned decision and the second aspect of the article 6(2) obligation. But, on Lord Mance's analysis, the focus is not concerned with the question whether the article was engaged but rather on whether it has been violated. I do not construe his judgment, therefore, as suggesting that this species of decision lies outside the ambit of article 6(2).

196. Lord Wilson agrees (albeit with reluctance) with Lord Reed, that, if article 6(2) has the meaning ascribed to it by the ECtHR, in particular in the Allen case, section 133(1ZA) of the 1988 Act is incompatible with it. Although he declines to follow the case law of Strasbourg on the question of the meaning of article 6(2), I detect nothing in his judgment which suggests that he would find that decisions made under section 133 did not fall within its ambit, if interpreted in accordance with that case law.

197. Lord Hughes has said that article 6(2), in its second aspect, applies and thus governs subsequent proceedings when there is a link between them and the previously concluded criminal proceedings. In contrast to Lord Mance, it would appear that Lord Hughes considers that the existence of a link was prerequisite to the engagement of article 6(2). But, Lord Hughes' judgment does not appear to me to be inconsistent with acceptance that the link is present where a decision under section 133 requires to be taken.

198. At para 99(c) of his judgment Lord Hughes sets out four considerations said to be indicative of the likelihood of the existence of a link, all of which, apart possibly from the final one, seem to be present in this case. They are present where: (i) an analysis of the criminal judgment must be undertaken; (ii) where a review or evaluation of the evidence in the

criminal file must take place; (iii) where there has to be an assessment of the applicant's participation in some or all of the events leading to the criminal charge; and (iv) where comment must be made on the subsisting indications of the applicant's possible guilt.

199. Plainly, scrutiny of the criminal judgment must underpin any decision under section 133; likewise, a review of the evidence against an applicant is indispensable; and this must include an assessment of his participation in the events which led to the criminal charge. The only possible debate is as to whether "comment … on subsisting indications of the applicant's possible guilt" requires that a statement be made by the decision-maker or merely that a judgment be reached by him on these questions: does contemporaneous information lead to the conclusion that the applicant has been fully exonerated; or that he could never have been properly convicted; or whether sufficient new material has been adduced which rendered the conviction unsafe on the basis that a jury might or might not have convicted him had such material been produced at his trial. It seems to me that the decision under section 133 will inevitably require a judgment to be made on those issues and, if that is what is required to meet Lord Hughes' final criterion, the decision plainly comes within the ambit of article 6(2).

200. Lord Lloyd-Jones does not directly address the question of the engagement of article 6(2) as opposed to its possible violation but, as with Lord Wilson's judgment, I detect nothing in his judgment which is counter indicative of acceptance that article 6(2) is at least engaged by decisions made under section 133.

201. In light of all this, it appears to me that there is general agreement among the members of the court - or, at least, no overt dissent, that decisions made under section 133 fall within the ambit of article 6(2). The question to be concentrated upon, therefore, is whether the context set by section 133(1ZA) involves an inevitable conflict with the article. Put more simply, if a decision as to whether a person whose conviction has been quashed is to receive compensation only if he shows that he was innocent, is such a requirement compatible with article 6(2)?

Innocence. 202. There has been much erudite discussion in the judgments of other members of the court about the nature of innocence and the inaptness of the criminal trial to investigate and pronounce upon the question whether a defendant is innocent, as opposed to not being proved to be guilty. I do not propose to add to that discussion beyond observing that, inevitably, there will be many who are charged with or tried on criminal offences who are truly innocent but are unable to establish their innocence as a positive fact. That undeniable circumstance must form part of the backdrop to the proper approach to the application of article 6(2) of ECHR.

203. It seems to me that much of the jurisprudence on the "second aspect" of the sub-article has been influenced, albeit perhaps not explicitly, by the dilemma that this presents. The opportunity to proclaim one's innocence and the right to benefit from the recognition and acceptance of that condition lies at the heart of much of the dispute in this case and much of the case law of the Strasbourg court on the subject. But an inevitable sub-text is that establishing innocence as a positive fact can be an impossible task. This is especially so if conventional court proceedings do not provide the occasion to address, much less resolve, the issue.

204. On the other hand, those who have been acquitted simply because the properly high standard for criminal conviction has not been met, but against whom real suspicions as to guilt remain, should not be able to shelter behind the shield of innocence that article 6(2) establishes. In particular, they should not be immune from civil suit from their victims when a less onerous burden of proof as to their involvement in the activity alleged in the criminal proceedings is involved.

The Strasbourg jurisprudence 205. It would be idle for me to recapitulate on the extensive examination of the case law of ECtHR that has been undertaken by the other members of the court. I consider that Lord Reed has convincingly demonstrated (in paras 161-175 of his judgment) that there is a "clear and constant" line of jurisprudence from that court which establishes that the relevant question is "whether there was a link between the concluded criminal proceedings and the compensation proceedings, having regard

to the relevant considerations" set out in para 104 of the judgment in Allen. For the reasons that Lord Reed has given, I consider that such a link is clearly established. The "relevant considerations" in this context will, of course, include the circumstances of the applicant's ultimate acquittal of the charge against him. If this is on the basis of a doubt as to whether he should have been acquitted, he will not be able to avail of the article 6(2) protection; if, on the other hand, he can show that he ought never to have been charged or convicted, he will.

206. I do not agree with Lord Mance's proposition that "the real test is, or should be, whether the court in addressing the civil claim has suggested that the criminal proceedings should have been determined differently" (para 47 of his judgment). There are two fundamental objections to that formulation of the test. The first is that it would cut out a swathe of deserving applicants when they have not been able to prove that they are innocent when they are in fact. The second is that their fate is determined on the phraseology which happened to be chosen by the court.

Conclusion. 207. For these reasons and those much more fully expressed by Lord Reed, I would make the declaration of incompatibility which the appellants seek. (Ends)

Comment from Simon Hattenstone, Guardian Columnist

Disgusting, Just another example of how Britain is becoming more and more punitive and unjust. The idea that people who have their lives destroyed by being wrongfully imprisoned should not be compensated is shocking. And the notion that it is for people like Sam Hallam and Victor Nealon, who have suffered horrific miscarriages of justice, to prove their innocence rather than for the state to prove their guilt is counter to the very concept of British justice – innocent till proven guilty.

Comment from Daniel Machover Hickman & Rose

"This is a deeply disappointing decision which re-enforces the unfair principle that innocent people who have been wrongly convicted of crimes cannot be properly compensated for the terrible impact this has had on their lives, even after fighting through to a second successful appeal. It means that victims of long-running and egregious miscarriages of justice can be victimised twice over: once by the trial court which found them guilty; then again by a Government minister, which prevents them getting their lives back on track. This decision means someone seeking compensation for a miscarriage of justice must, in effect, themselves come up with new facts which not only fatally undermine the miscarriage of justice, but conclusively prove their innocence. This can be extremely difficult, indeed all too often impossible, to do. As the minority of the Court rightly implied, the judgment of the majority is unfair and regressive. It creates too restrictive a compensation regime by which many people who obviously deserve compensation for terrible miscarriage of justices are left in the cold. In making this decision the Supreme Court has damaged the public trust in the judiciary in this important area of law in upholding the rights of those such as Andrew Adams."

Comment from Michael Naughton, University of Bristol

R v Hickey and Others (the case known as the Bridgewater Four) states that the presumption of innocence is returned to successful appellants. Wednesday's Supreme Court ruling works counter to this, requiring victims of miscarriages of justice to prove not only some-

thing that they cannot prove (I cannot prove that I didn't kill Jill Dando, for instance), but something which they are not required to prove in law. In this light, Wednesday's judgement is revealed as a pernicious form of political violence that compounds the forms of social stigma and psychological and financial harm that victims of wrongful convictions and their families suffer. It highlights, too, that the State cares nothing for the untold damage caused to innocent men and women in this country, by its agents in the guise of the police, prosecution, and so on, who are simply cast aside to survive on their own devices if they have the audacity to challenge their wrongful convictions and reveal such State abuse. This decision must be challenged in the interests of us all - if they can do this to one of us, they can do this to any of us.

Comment from Paddy Hill "Birmingham Six"

"If the Police can take you from your home and family depriving you of your life and liberty without consequence then no one is safe. I have said it for many years. This can happen to anyone. Don't wait till it happens to one of your own before you asks questions about what is done in your name to innocent people. Compensation does not give you your life back but it is a recognition of the wrong done to you by the state. For the state to renege on this shows our courts, and the Lords responsible for this judgement have no interest in justice, or basic common decency. Innocent men and women who are wrongfully convicted get none of the support they require from the state. They want to brush us under the carpet. We are the guilty secret at the heart of the failure of the British Judicial system. It is no surprise that our fight goes on for justice".

Comment from Mike O'Brien 'Cardiff Three'

"I feel the decision in the Supreme Court today insinuates that victims of miscarriages of justices got off on a technicality when in fact their innocence should not be in doubt. I feel very angry the supreme court has denied genuine victims of a miscarriage of justice compensation they rightly deserve this matter has to go to the echr courts as the law is clear on this matter that innocent people are entitled to compensation, its a disgrace".

Comment from Emily Bolton, Centre for Criminal Appeals

"The Supreme Court was wrong not to declare this shameful law incompatible with the presumption of innocence. "Miscarriages of justice destroy lives. Victims of them can never be truly 'compensated' but the current law needs to be scrapped. The Government should act to ensure all miscarriage of justice victims get the apologies they deserve as well as the support they need to help rebuild their lives".

Comment from Sue Stephens Progressing Prisoners Maintaining Innocence

The Supreme Court's concern is always to uphold the 'infallible' Justice System, but at what price to hundreds of wrongfully convicted people and their families? If these two cases do not deserve acknowledgement and compensation, then no-one does. Never innocent enough it would seem.

Comment from Naima Sakande Women's Justice Advocate

"Compensation is a form of apology. What the Supreme Court has essentially said, is that no apology is owed by the state to those it has wrongfully imprisoned. Miscarriage of justice victims deserve better and the British judiciary has to be brave enough to face up to it's mistakes. This decision is a tragedy for justice.

"Detective Chief Inspector Guilty of Plotting With Police Colleague to 'Fit Up' Two Suspects

Adam Forrest, Independent: Elizabeth Belton, a former detective chief inspector, was found guilty of conspiracy to pervert the court of justice and sentenced to two years in prison. Her West Yorkshire Police colleague, PC Judith Mulligan, was given a 12-month sentence, suspended for two years, for her role in the conspiracy. Leeds Crown Court heard that the pair had plotted to corrupt an identification procedure in an effort to secure convictions against two men. Judge Tom Bayliss QC told Belton she had "driven a coach and horses" through police procedures designed to ensure integrity in the justice system. "The public must be able to trust the police to uphold their rights," he said. "How can the public do that when senior police officers are subverting those rights?" He added: "I think you, Elizabeth Belton, got carried away. You were showing off to your friend and you were throwing your weight around with junior colleagues."

Belton sent a string of incriminating text messages to Mulligan boasting about interfering with an investigation, the court heard. The corruption took place in September 2013, after two men tried to break into Mulligan's home in the Pudsey area of Leeds. Officers were unable to find any forensic evidence at the police constable's house and the investigation hinged on Mulligan's identification evidence. The officer had first described two teenage suspects wearing dark clothing for the burglary, but officers stopped and arrested two men aged in their thirties. Mulligan later changed her description of the suspects, stating they were older. The court heard how Mulligan and Belton arranged for photographs to be taken of the two arrested men and sent to the police constable prior to the identity procedure. Belton sent text messages to Mulligan saying: "You've fit him up lol." Her texts also described the suspects as "little sh*ts" and stated: "They deserve it. I hate burglars". The two men charged with attempted burglary were subsequently jailed for 12 months and 28 months.

The offence did not come to light until two years after the incident when Belton's text messages were found by a detective constable who was investigating an unrelated case. The prosecution said the messages were direct evidence of a plan to corrupt the identification procedure. A third defendant, former police sergeant Mohammed Gother, was found not guilty of corrupting an identification procedure.

Self-Harm Rate Among Children in Custody Soars By 37% in Three Years

May Bulman, Independent: Rates of self-harm among children in custody have soared by 37 per cent in three years, fuelling concerns that there is a lack of support for vulnerable people in the youth justice system. An analysis of government figures shows there were 108 incidents of self-harm for every 100 young people in custodial settings – which include those in young offenders institutions (YOIs), secure training centres (STCs) and secure children's homes – in 2016-17, compared with 79 per 100 in 2013-14. The rise was particularly stark in STCs and secure children's homes, which accommodate young offenders aged between 12 and 17 who are deemed to be the most vulnerable. Self-harm incidents increased by 159 per cent, from 306 to 794, despite the number of youths in these facilities falling by 32 per cent, from 390 to 267. Campaigners said the rise could be attributed to a shortfall in mental health support in youth custodial settings, as well as austerity cuts to children's services in the community.

Shadow justice secretary Richard Burgon said the figures were deeply troubling. "Far too many children are being sent to custody when what they really need is help and support, including for their mental health," he said. "The state has a special responsibility for children in its custody and this situation cannot be allowed to continue." Recent Ofsted reports have raised concerns about self-harm in STCs, with one citing a lack of detail and rigour in practices in measuring young offenders' mental health, and another noting there is not enough account of trends in behaviour which could lead to self-harm. The Independent reported a year ago that children in custody were facing a significant shortfall in mental health provision as a result of reduced services in STCs, with some given no access to psychology services and having to wait more than half a year for treatment.

Carolyne Willow, director of children's rights charity Article 39, described the rise as appalling but

not surprising, saying it was inextricably linked to the waning support for disadvantaged children in the community, which she attributed largely to austerity. She cited a report published by the National Audit Office (NAO) this week which warned that more children in the community were being exposed to neglect and abuse as local authorities struggle to meet demand. Ms Willow said: "The wider critique of how austerity is impacting on children in the community needs to be applied to those who end up in custody, because here we consistently see extreme forms of unmet need. It's appalling that so many children are in the most serious way showing that they're profoundly distressed and in need of adult help, but they are locked alone in cells for up to 22 or 23 hours a day. Prison is no place for children. They need to be in a completely different environment where they have skilled and supported professionals who can meet their needs."Andy Bell, deputy chief executive of the Centre for Mental Health, said the figures could be explained in part by the fact that because the youth custody population had been reduced – from 3,000 in 2010 to approximately 1,000 today – the levels of vulnerability were higher than ever. "There are thankfully fewer children in custody now than there used to be, but now we need to ensure that we take the opportunity of a vulnerable child being in a secure setting to provide them with the most effective support possible and prioritise their safety and wellbeing," he said.

A Ministry of Justice spokesperson said: "The number of children entering the youth justice system continues to decline and as a result a higher number of those in custody have complex needs and might be prone to self-harm. We have responded to this by putting 300 frontline staff through degree-level specialist training and have employed additional psychologists and support staff for the most vulnerable children to ensure they feel safe and supported."

Death of Meirion James in Dyfed-Powys Police Custody Caused by Excessive Restraint

INQUEST: The inquest into the death of Meirion James concluded Thursday 24th January 2019, with the jury finding that he died of positional asphyxia following excessive restraint. This resulted in his death in the custody of Dyfed-Powys Police on 31 January 2015, after failures to communicate "significant information" and follow procedures. Meirion was 53 years old and was a dearly loved son, brother and uncle. Fluent in several languages including his native Welsh, he had worked as a translator as well as a school teacher. He was passionate about poetry, literature and music. Meirion lived with bipolar disorder throughout his adult life. In late 2014, he stopped taking lithium, his primary psychiatric medication for the preceding 29 years, because of side effects on his kidneys. His mental health started to deteriorate.

On 30 January 2015 Meirion was involved in a road traffic incident near Llanrystud. Attending police officers described Meirion as behaving erratically, having "lost all sense" and appearing to experience an acute psychotic episode. He was detained under section 136 of the Mental Health Act 1983 and taken to Aberystwyth Police Station where, shortly after his arrival, it was feared that he had taken an overdose of medication. Officers escorted Meirion directly to Bronglais Hospital, but failed to inform hospital staff that he was detained under section 136. Because of this he was discharged later that day without a full mental health assessment, which is mandatory for those detained under section 136. Whilst he was at Bronglais Hospital, Meirion's sister phoned both the treating doctor there and Meirion's GP, desperately hoping to secure a psychiatric assessment for him.

In relation to 30 January 2015 the jury found that: The detaining officer failed to inform the custody sergeant at Aberystwyth Police Station that he had detained Meirion under section 136 – and the related failure to secure a full mental health assessment for Meirion contributed to his death. Insufficient weight was given to Meirion's sister's call to Bronglais Hospital. As a matter of professional courtesy, the hospital doctor could have called Meirion's GP to obtain further information and the GP could have called the hospital after his conversation with Meirion's sister. Shortly after his discharge from Bronglais Hospital, in the early hours of 31 January 2015, Meirion called 999 to report had he had assaulted his elderly mother. The jury heard the harrowing recording of this call, in which Meirion could be heard in a state of acute distress repeatedly pleading for medical help for his mother. Attending police officers gave disturbing evidence about dramatic fluctuations in Meirion's mood and his repeated expressions of delusions about Satan and the Mafia. Meirion was arrested and taken to Haverfordwest Police Station where he arrived just after 5am. He was placed on constant observations, with an officer sitting directly outside his open cell door. Shortly before 8am Meirion was seen by a doctor, who – on the information she had at the time – advised the custody sergeant that the constant observations of Meirion could be stopped. Instead Meirion was put on 30 minute intermittent cell checks.

The jury heard distressing evidence that on 13 separate occasions between the reduction of the observations and the fatal restraint, Meirion could be seen on CCTV (not viewed by officers at the time) pulling clumps of hair out of his own head, as well as other clearly disturbed behaviour. Evidence suggested that the officers and custody staff members on duty viewed this behaviour as childish, rather than a worrying deterioration in Meirion's mental health. One officer could be heard on CCTV describing Meirion as a "fucking idiot". Meirion's requests to see a doctor again were ignored. At around 10.30am, an Inspector entered Meirion's cell with a civilian staff member. A comment appeared to provoke Meirion to rush towards and out of the cell door. An alarm was sounded and seven police officers and staff members restrained Meirion outside the cell. Despite having been trained of the dangers of doing so, they restrained Meirion on his front in the prone position with pressure to his back and neck. Three of the seven had had training less than a fortnight before about the dangers of prone restraint and positional asphyxia, which highlighted the 2008 death of Sean Rigg who also died following restraint during a mental health crisis. The jury further found that: Mr James died as a result of excessively long restraint in the prone position. Overall, there was a "failure to pass significant information and follow procedures", from the initial incident at the roadside on 30 January 2015 to the point of Mr James' death.

Diana Vaughan-Thomas, Meirion's sister, said: "Meirion was my much loved brother and a wonderful son and uncle to our mother and my children. It's been a painful 4 year wait for this inquest, and a tough few weeks hearing the evidence about what happened to Meirion. He shouldn't have died. I hope that lessons will be learned so that this won't happen to anyone else in the future, and that Meirion can rest in peace now."

Deborah Coles, Director of INQUEST said: "There were many missed opportunities to safeguard the life of a man in mental health crisis. All the police officers knew about the risks of restraint and positional asphyxia and yet they continued to restrain Meirion in the prone position for an excessive length of time, resulting in his death. This case calls into question either the quality of the training or the officers' adherence to it. That a man can die in this way despite repeated recommendations arising from previous deaths is utterly shameful."

Clare Richardson of Deighton Pierce Glynn, solicitor for the family, said: "The jury in this case heard shocking evidence, both about the missed opportunities as Meirion's mental health deteriorated in the days and hours before his death and about the fatal restraint on 31 January 2015. Four years after Meirion's death, this inquest jury has finally confirmed the link between the dangerous restraint and the death. No family should have to wait this long."

Hostages: Sally Challen, 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, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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 Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.