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In the Matter of an Application by Hugh Jordan for Judicial Review

Justices: Lady Hale, Lord Reed Lord Carnwath, Lord Lloyd-Jones, Lady Arden

Background to the Appeal: On 25 November 1992, Pearse Jordan was shot and killed by a member of the Royal Ulster Constabulary. In 1994, his father, Hugh Jordan, made an application to the European Court of Human Rights ("ECtHR") complaining that the failure to carry out a prompt and effective investigation into his son's death was a violation of article 2 of the European Convention on Human Rights ("ECHR"). An inquest commenced on 4 January 1995 but was adjourned shortly afterwards. On 4 May 2001, in Jordan v United Kingdom (2003) 37 EHRR 2, the ECtHR upheld the complaint and awarded damages of £10,000.

A fresh inquest into Pearse Jordan's death commenced on 24 September 2012, and a verdict was delivered on 26 October 2012, but Hugh Jorden then brought proceedings for judicial review, which resulted in the verdict being quashed: In re Jordan's Application for Judicial Review [2014] NIQB 11. In 2013, Hugh Jordan brought the present proceedings for judicial review seeking declarations that the Police Service of Northern Ireland ("PSNI") and the Coroner had violated his article 2 rights by delaying the commencement of the inquest and an award of damages under section 8 of the Human Rights Act 1998 ("HRA") in respect of the delay from 4 May 2001 until 24 September 2012. At first instance, Stephens J upheld the claim against the PSNI and awarded damages of £7,500 but dismissed the claim against the Coroner. The PSNI appealed against the declaration and damages award, and Hugh Jordan cross-appealed against the dismissal of his claim against the Coroner.

On 22 September 2015, the Court of Appeal ordered that the proceedings should be stayed until after the inquest had been completed. That order was subsequently withdrawn, and an order in similar terms was made on 10 June 2017, which Mr Jordan appealed against. Meanwhile, a further inquest had commenced on 22 February 2016, and a verdict was delivered on 9 November 2016. The stay was lifted on 23 October 2017.

The Supreme Court unanimously allows the appeal. Lord Reed, delivers the judgment.

Reasons For the Judgment: The Court of Appeal in Northern Ireland held that in so-called 'legacy' cases, which concern deaths that occurred in Northern Ireland during the 'Troubles', "the issue of damages against any public authority for breach of the adjectival obligation in article 2 ECHR [i.e. the obligation to investigate the circumstances of the death] ought to be dealt with once the inquest has finally been determined". This appeared to constitute general guidance, and, consistently with this, the Court of Appeal ordered that "the claim for damages for breach of the article 2 procedural requirement that an inquest be conducted 'promptly' should not be brought until the inquest has finally been determined". [16]-[17] The appeal was against this part of the Court of Appeal's order. [20]

After the hearing of this appeal, the Court of Appeal, in another legacy case, In Re McCord's Application for Judicial Review, clarified the remarks in Jordan, so that it appears that it intends the guidance to be confined to cases where damages are the only outstanding issue and where an inquest can be expected to begin in the near future, if not already under way. Further, the appropriateness of the stay should be kept under review, and it should be lifted if the claim for damages will otherwise not be determined within a reasonable time. [24]

Lord Reed states that "it must be borne in mind at the outset that, in cases of the present kind, it is the delay itself which constitutes a breach of the claimant's Convention rights" and that "[t]he breach does not crystallise only after the inquest has been concluded". [25] Section 7(1)(a) of the HRA, pursuant to which claims arising from such delay are brought, confers a statutory right on any person to bring proceedings against a public authority that acted in a way which was incompatible with their Convention right. [26] No court can take that statutory right away. [27] However, it can exercise powers of case management, including ordering a stay, but, when doing so, three important aspects of Convention rights must be borne in mind. [28]

First, Convention rights must be practical and effective. [29] Second, a stay will be unlawful if it results in a breach of the "reasonable time" guarantee in article 6 of the Convention. [31]-[32] Third, a stay also engages another aspect of article 6, namely the guarantee of an effective right of access to a court. It must therefore pursue a legitimate aim, and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. [33] This requires an assessment of the weight of the competing interests in the particular case: the risk of a proliferation of litigation, the avoidance of which was the legitimate aim pursued by the stay, against the importance to the claimant of obtaining monetary redress for the violation of his or her Convention rights without avoidable delay. There may be factors in individual cases which make the expeditious determination of the claim particularly important. The present case, for example, illustrates the importance of avoiding delay where proceedings are brought by claimants who are elderly or infirm, since Hugh Jordan's health has so deteriorated that his wife had to take over the conduct of these proceedings. [37]

On its face, the guidance given by the Court of Appeal in the present case involved no assessment of proportionality or consideration of individual circumstances. It was also liable to render the article 2 procedural right ineffective resulting in breaches of the reasonable time guarantee. [39] However, the McCord judgment resolved this. Nevertheless, it remains necessary to consider whether that general guidance should be applied in the circumstances of an individual case. In the present case, the stay was imposed without any evident consideration of its proportionality. It is uncertain whether it would have been imposed if proportionality had been considered in the light of all the relevant facts, including Hugh Jordan's declining health. The appeal is therefore allowed. [41]-[42] Refs in [ ] brackets are to paragraphs in the judgment.

CCRC Refers Human Trafficking Related Case of GB to Court of Appeal.

Ms B was arrested after she presented a false UK passport to an immigration officer at Gatwick Airport as she tried to catch a flight to Canada. After receiving legal advice, Ms B admitted in interview to being a Sudanese national and to using a false travel document to try to board a flight to Canada. In May 2008 at Lewes Crown Court, she pleaded guilty to an offence under section 25(1)(a) of the Identity Cards Act 2006 and was sentenced to 12 months' imprisonment.

Following her arrest in 2008, during the interview under caution in which she admitted the offence, Ms B also revealed that she had left Sudan for Ethiopia in 2006; was offered employment in Italy but when she travelled there, under arrangements made by the "employers", she was made to work as a prostitute. She became pregnant and wanted to leave but was beaten. With help, she eventually managed to escape from her "employers" and she was arrested whilst attempting to flee to Canada via the UK.

After the Home Office initially refused asylum to Ms B and her child (born in July 2008),

she was eventually recognised by the First Tier Tribunal of the Asylum and Immigration Tribunal and the Home Office as a victim of trafficking and, in December 2015, she and her child were granted asylum and leave to remain in the UK until 2021.

Ms B sought to appeal against her false passport conviction in 2012, but her appeal was dismissed. In November 2017, with the help of her solicitors, Ms B applied to the CCRC for a review of her conviction. Having considered the case in detail, the Commission has decided to refer Ms B's conviction to the Court of Appeal because it believes there is a real possibility that the Court will quash the conviction. The referral is based on new evidence and on new legal argument that: a change of law in the treatment of victims of trafficking was set out in the case R v GS [2018] EWCA crim 182 in light of that change of law, the Crown Prosecution Service, in accordance with their current guidance, and in light of the fresh evidence in Ms B's case, would now conclude that it was not in the public interest to prosecute her Ms B would suffer a substantial injustice if her conviction is upheld.

IRA Bombing Suspect to be Extradited for Belfast Murder Trial

Rory Carroll, Guardian: An Irish man accused of murdering four soldiers in an IRA bomb attack in Hyde Park in 1982 can be extradited to Northern Ireland to face charges over a separate bomb attack in 1972, a Dubin court has ruled. The high court on Friday 1st March 2019, rejected John Downey's attempt to avoid extradition, clearing the way for the alleged bomber to face trial in Belfast for the murder of two soldiers from the Ulster Defence Regiment a decade before the London bombing. L/Cpl Alfred Johnston, 32, and Pte James Eames, 33, died when an IRA bomb exploded in a car they were checking in Enniskillen, County Fermanagh, on 25 August 1972.

Downey , 67, was detained at his home in County Donegal, in the Irish Republic, last November under a European extradition warrant. Senior Sinn Féin figures protested against the prosecution, saying Downey had contributed to the peace process. Unionists said they welcomed it as overdue justice. Downey's Old Bailey trial for the Hyde Park murders collapsed in February 2014 because of a secret letter from the British government that guaranteed he would not face trial, a revelation that caused uproar.

Downey was one of 187 IRA suspects given "clear and unequivocal assurance" that they were no longer wanted by any police force in the UK, a concession by the British government to secure an IRA promise to decommission its arms as part of the 1998 Good Friday peace deal. Downey had pleaded not guilty to the murder of four soldiers from the Household Cavalry who died in the blast on 20 July 1982, along with seven of their horses. The bomb had been concealed in a car and was detonated as the soldiers rode past on ceremonial duties. The Police Service of Northern Ireland reopened an investigation into the Enniskillen attack after the collapse of the Old Bailey trial.

Domestic Abuse Bill Would Create a 'Two-Tier System and Fail Migrant Women

Klara Slater 'The Justice Gap': The government's proposed Domestic Abuse Bill would fail migrant women by creating a 'two-tier system' with protections dependent on immigration status, campaigners heard this week. Speaking at the Human Rights Lawyers Association, Radhika Handa, policy adviser at Southall Black Sisters (SBS), highlighted the paradox that migrant women are at the most at risk of domestic violence, but the least likely to report it. The Bill's failure to address this, Handa argued, was epitomised by its 'woefully inadequate' allocation of only two out of almost 200 pages to migrant women. According to SBS, the Bill's suggested grant of £500,000 to support organisations was only enough to assist 154 women for 12 weeks.

Louise Hooper, a barrister at Garden Court Chambers who has joined a delegation of the Council of Europe's group of experts on domestic violence, argued that partners used residency status as a weapon, well aware migrant women were unable to access state support ('no recourse to public funds'), meaning there is nowhere else for them to go. As a result, 'migrant women don't leave abusive relationships and such abuse gets worse over time,' she said. Debaleena Dasgupta, human rights lawyer at Liberty, emphasised migrant women typically did not turn to the police for fear of being reported to the Home Office. A Freedom of Information (FOI) request, made by Liberty on 26 July 2018, revealed such fears are justified. All 43 police forces in England and Wales confirmed they had no formal policy of data sharing with the Home Office. Despite this, another FOI request revealed, 27 police forces referred victims and witnesses of crime to the Home Office for immigration enforcement.

Dasgupta argued that such practice prioritises immigration investigation over the original criminal allegation, meaning 'those who commit crimes against people with insecure immigration status are able to do so with near impunity'. Though immigration offences can be subject to criminal sanctions, the lawyer argued these are relatively trivial compared with the majority of abuse-related offences, thus this 'puts migrants beyond the protection of the criminal law'. These concerns have prompted SBS and the human rights charity, Liberty, to launch the first ever police super-complaint, calling for an end to these data-sharing practices. The 'super-complaint' system was launched in November last year and allows certain organisations to raise systemic problems on behalf of the public. The two organisations amassed more than 50 pages of evidence, which will now be reviewed by the College of Policing, the Independent Office for Police Complaints and Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services.

Before the super-complaint was published, Dasgupta explained how the National Police Chief's Council (NPCC) 'rushed through a new policy', which she argued was unclear and still allowed for data sharing with the Home Office. She closed by making clear that a robust 'firewall' was the only way to ensure data will not be passed on in such circumstances. Paramjit Ahluwalia, barrister at Lamb Building, went on to highlight the 'nexus' between perpetrators of crime and victims of domestic abuse. She explained: 'Abuse victims often only come to the police's attention once they are charged themselves.' However, once they are charged, they are pigeon-holed as 'defendants', with police 'typically looking no further'. She cited the case of Sally Challen, where the legal role of coercive control in murder is finally being addressed. Ahluwalia noted that despite the Bill's acknowledgement that 60% of women in custody have suffered domestic abuse, none of its provisions seek to address the link. The Prison Reform Trust is working on a possible defence akin to that available to trafficking victims. Handa emphasised the Bill provides an opportunity to place the victim at the centre of legislation. In its current form, the panel argued, such an opportunity will go to waste.

Revenge Murder Suspect's Complaints About Pre-Trial Detention: Violation Of Article 5

In Chamber judgment in the case of Šaranović v. Montenegro (application no. 31775/16) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 5 § 1 (c) (right to liberty and security) of the European Convention on Human Rights. The case concerned Mr Šaranović's complaints about his pre-trial detention for two and half years in Montenegro on suspicion of being behind the 2013 murder of the brother of the leader of a Serbian criminal organisation. He had allegedly arranged the murder out of revenge for his own brother's murder in Belgrade in 2009. Mr Šaranović himself was murdered outside his

house in 2017 and his wife continued the proceedings before the Court. The Court found in particular that the domestic legislation for reviewing detention had been clear but that it had not been applied consistently at the time. Such inconsistency had resulted in there being no legal basis for the applicant's detention between 16 November and 15 December 2014 because it had not been reviewed after the 30-day time-limit set down in the law. The Supreme Court has since clarified the situation by holding that it was mandatory for national courts to review detention within the statutory time-limits. Furthermore, with the exception of that one-month period, Mr Šaranović's pre-trial detention had been reviewed regularly. All his other complaints were declared inadmissible. No award of damages was made to the applicant as the Court considered that the finding of a violation was sufficient.

Ireland: Man Accused of Abusing His Sisters Granted Order Prohibiting Prosecution

Seosamh Gráinséir, Irish Legal News: A man who has been accused of sexually abusing his sisters between 1974 and 1985 has been granted an order prohibiting the Director Of Public Prosecutions from further prosecuting him in relation to the alleged offences. Finding that the lapse of time, together with the death of potential witnesses and others with no clear recollection, created a real or serious risk of an unfair trial Mr Justice Garrett Simons rejected the DPP's submission that the application was made out of time.

The criminal proceedings involve allegations of indecent assault and rape from HS's two sisters, alleged to have occurred between October 1974 and October 1978 in the case of "the first complainant"; and during the period between December 1977 and June 1985, in the case of "the second complainant". The statement of charges before the District Court set out 17 charges, Mr Justice Simons explained that there were only two incidents with an identifiable date specified in the statement of charges. It was alleged that: On 24 December 1977, HS indecently assaulted the second complainant contrary to common law and as provided for by section 6 of the Criminal Law Amendment Act 1935; On the date HS announced his engagement to his future wife, he raped the second complainant. Neither complainant alleged that she was aware at the time that the other had also been the victim of sexual assault at the hands of HS, and Mr Justice Simons said that legal significance of this was that neither complainant was capable of providing corroboration of the other's evidence.

HS asserted specific prejudice arising from the fact that a number of people expected to have been in a position to provide evidence in relation to these events have since deceased (HS's wife died in 2012) or have no clear recollection of the events (witness statements from the complainants' mother suggested she had no clear recollection).

Emphasising the need to protect the identities of the complainants, Mr Justice Simons said "[t]he use of this impersonal language should not be mistaken for any lack of sympathy on the part of the court for the complainants and the difficult circumstances of their early childhoods". The narrative of the complainants' childhood as set out in the various witness statements indicated that, aside from the sexual abuse, their upbringing was very difficult and traumatic – their father was described as an alcoholic who abused their mother, and the second complainant described life in their home as "a war zone". Mr Justice Simons said that he "could not but have genuine sympathy for the complainants in this regard", but that his task was to determine whether a fair trial could be carried out at this remove.

HS sought to restrain the further prosecution of criminal proceedings pending against him on the basis that there is a real risk that the trial would be unfair by reason of delay. Whereas the length

of time was not in itself a reason for granting an order of prohibition, Mr Justice Simons said that the very significant lapse of time since the alleged offences created a real risk of an unfair trial, and the death of potential witnesses had the effect of denying HS an opportunity to advance lines of defence. In addition, surviving witnesses have indicated to the Gardaí that they have no clear recollection of events – apparent from the mother's two witness statements.

Applying the test in SH v Director of Public Prosecutions [2006] 3 IR 575, as recently applied by the Court of Appeal in BS v Director of Public Prosecutions [2017] IECA 342, Mr Justice Simons concluded that there was a real or serious risk HS, by reason of the delay, would not obtain a fair trial. The DPP raised an objection that the judicial review proceedings were instituted outside the three-month time-limit prescribed under Order 84, rule 21 of the Rules of the Superior Courts. Setting out the chronology, Mr Justice Simons explained that a period of just over twelve months had elapsed between the date of the return for trial (1 June 2017) and the ex parte application for leave to apply for judicial review (10 June 2018). The DPP contended that time begins to run for the purposes of Order 84, rule 21 from the date of the return for trial – which, if correct, would mean that the application was made out of time and HS would have to persuade the court that an extension of time should be granted.

For the purposes of an application to restrain a criminal prosecution, Mr Justice Simons said that it was not clear from the case law as to the date from which time should be calculated. The Supreme Court CC v Ireland [2006] 4 IR 1 indicated that the time-limit ran from the date of indictment. The correctness of this approach has been queried in the High Court in Coton v Director of Public Prosecutions [2015] IEHC 302.

Mr Justice Simons said CC was binding on the High Court, and therefore he could not accept the DPP's submission that time began to run from the date of the return for trial. He said that even if he was in a position to adopt the alternative approach suggested in Coton, the late disclosure of the 7 December 2017 supplemental statement of the complainants' mother on 4 April 2018 was a sufficiently significant event so as to reset the clock for the purposes of judicial review proceedings. Mr Justice Simons said the letter of 23 April 2018 from the Chief Prosecution Solicitor was also relevant to the time-limit.

In circumstances where an indictment had not yet been formally served, Mr Justice Simons said that the three-month time limit had not begun to run. Even if he was incorrect in this finding, Mr Justice Simons said that any delay would be justified by the delay on the part of the DPP to disclose the supplemental witness statement.

James Bulger's Father Loses Bid To Overturn Venables' Anonymity

Haroon Siddique, Guardian: The father and uncle of the murdered toddler James Bulger have lost a legal challenge to overturn the lifelong anonymity protecting one of his killers, Jon Venables. Ralph and Jimmy Bulger argued that information about Venables that they claimed was "common knowledge" should be made public. But on Monday the president of the high court's family division, Sir Andrew McFarlane, ruled that the injunction granting anonymity should be maintained.

Describing it as a "wholly exceptional case", McFarlane said: "There is a strong possibility, if not a probability, that if his identity were known he would be pursued resulting in grave and possibly fatal consequences … My decision is in no way a reflection on the applicants themselves, for whom there is a profoundest sympathy. The reality is that the case for varying the injunction has simply not been made."

Venables and Robert Thompson were 10 when they carried out one of the UK's most

notorious child murders. They were convicted of killing two-year-old James in 1993. Before their release on parole, they were given new identities, protected by a court order. Venables has since been sent back to prison on charges related to indecent images of children. In February last year, he was jailed for three years and four months after admitting surfing the dark web for extreme child abuse images and possessing a paedophile manual.

Challenging the 2001 injunction, solicitor-advocate Robin Makin, for the Bulgers, told the high court that something had “gone wrong” with Venables’ rehabilitation and that the claimants, as victims, should be able to scrutinise his handling by the authorities. He stressed they did not want the order to be discharged altogether but wanted it to be varied so that some information could be revealed without the threat of prosecution. This included names used by Venables prior to his return to custody in 2017, his whereabouts and activities up to that date, and details of any release from custody – and subsequent recall to custody – following his 2018 conviction. Makin argued that such details would help inform public debate about rehabilitation of offenders and help protect the public from Venables.

The attorney general’s office had, along with Venables, opposed variation to the injunction, which it argued was both necessary and justified. McFarlane said he was not convinced that Venables’ identity was already public and even if it were that did not justify giving it “a higher profile than is currently the case”. The judge said the injunction was designed to protect Venables from “being put to death”. However, he said he would permit “any agreed relaxation regarding the Ministry of Justice’s ability to disclose, from time to time if JV [Venables] is in custody or out on licence”. McFarlane denied the Bulgers leave to appeal but, speaking after the hearing, their lawyer said they would consider applying directly to the court of appeal to challenge the decision.

Makin said: “The authorities seem to be hell-bent on protecting JV regardless of the risk to others, and this has been a primary driving force behind Ralph and Jimmy’s application.” He accused the authorities of being out of touch with what information was already public and said that if they really wanted to protect Venables they should be taking action against social media companies such as Facebook, Google and Twitter, on whose platforms he said the convicted murderer had already been identified. James’s mother, Denise Fergus, distanced herself from the application when it was lodged, saying she feared it could lead to vigilante action.

Queen v Blerim Hajdarmataj - Conviction of Assault by Penetration, Quashed

On 22 June 2016, following a trial before Her Honour Judge Peters and jury in the Chelmsford Crown Court, this Appellant was convicted in his absence, by a majority of 11-1, of an offence of assault by penetration, contrary to Section 2 of the Sexual Offences Act 2003. The Appellant had fled during the course of the trial. On 16 September 2016, again in his absence, the Appellant was sentenced to eight years' imprisonment. He was arrested on a European Arrest Warrant on 29 November 2016 and returned to England on 10 February 2017 and at that stage he was sentenced to three months' imprisonment for the Bail Act offence in addition to the existing sentence.

The Appellant seeks permission to appeal his conviction on the ground that the judge admitted bad character evidence during the trial. In 2013, the Appellant was acquitted of rape in circumstances said to be very similar to those in the instant case. The Appellant sought leave to appeal his conviction on the basis that the evidence was wrongly admitted. The Single Judge referred the application to the full court. His application was heard before us on 15 February 2019. The Appellant was represented by counsel Ms Vine, who represented him at the first trial, but was unavailable to represent him at the second trial. Having heard argument, we granted the Appellant leave to appeal

and quashed his conviction. On the application of the Crown, we ordered a re-trial. We further ordered that the case should not be reported until the conclusion of any further criminal proceedings. We now give the reasons for our decision.

Analysis: It is helpful to begin by distinguishing two discrete questions: firstly, the evidence of previous offending (or other bad character) given in an earlier trial which has resulted in an acquittal, and secondly admission in evidence of the acquittal itself. We are here principally concerned with the first issue. We note, however, that where such evidence of previous offending is admitted as bad character evidence, the second issue will often arise. This question was addressed in R v H (JR) (1990) 90 Cr App Rep 440, and is helpfully digested in the 2019 edition of Archbold at paragraphs 4-400/401. Lord Lane CJ made it clear that fairness to both sides must be the guide on this point. We have considered recent authority on the point, in particular R v Preko [2015] EWCA Crim 42, and R v Mellars [2019] EWCA Crim 242. In our view, where the evidence of a complainant was the essence of the case in the trial leading to an acquittal, and where accuracy or credibility was the critical question before the acquitting jury, it may be appropriate to adduce the acquittal, as well as the previous complainant's evidence, if the latter is to be admitted as bad character evidence in a subsequent trial. The second jury will necessarily hear that there was a first trial, and that the witness was the complainant in that trial. If they are not told of a conviction, they may in any event conclude there was an acquittal. Or they may wrongly infer there was a conviction, which would be a highly prejudicial matter. There must also be a risk that, despite the warnings they will have received, a juror or jurors will be tempted to search on the internet for the result of the first trial. If the fact of acquittal is admitted, the jury will be directed that it is not relevant to their considerations. They must assess the evidence for themselves.

The decision in R v Z removed a bar to the admission of evidence given in a previous trial which ended in acquittal. The earlier position of the law had been laid down by the Judicial Board of the Privy Council in Sambasivam v Public Prosecutor, Federation of Malaya (1950) AC 458. In that case, Lord MacDermott had stated: "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim " Res judicata pro veritate accipitur" is no less. applicable to criminal than to civil proceedings."

In the leading speech in R v Z, Lord Hutton overturned that aspect of Sambasivam. The critical passage in his speech reads as follows: "A consideration of the authorities and of the textbook writers and commentators leads me to the following conclusions. (1) The principle of double jeopardy operates to cause a criminal court in the exercise of its discretion, and subject to the qualification as to special circumstances stated by Lord Devlin in Connelly's case, at p. 1360, to stop a prosecution where the defendant is being prosecuted on the same facts or substantially the same facts as gave rise to an earlier prosecution which resulted in his acquittal (or conviction), as occurred in Reg. v. Riebold [1967] 1 W.L.R 674 and the cases cited by Lord Pearce in Connelly's case, at pp. 1362-1364, and see also Reg. v. Beedie [1998] QB 356 . (2) Provided that a defendant is not placed in double jeopardy as described in (1) above evidence which is relevant on a subsequent prosecution is not inadmissible because it shows or tends to show that the defendant was, in fact, guilty of an offence of which he had earlier been acquitted. (3) It follows from (2) above that a distinction should not be drawn between evidence which shows guilt of an earlier offence of which the defendant had been acquitted and evidence which tends to show guilt of such an offence or which appears to relate to one distinct issue rather than to

the issue of guilt of such an offence. Accordingly the judgments in G. (An Infant) v. Coltart [1967] 1 Q.B. 432 should not be followed. I would wish to add that the issue which arose in Reg. v. Hay (1983) 77 Cr.App.R. 70 as to the effect of a prior acquittal when the Crown on a subsequent prosecution seeks to rely on part of a confession, the other part of which the earlier jury has not accepted, does not arise in the present case and therefore, without intending to cast any doubt on the decision, I express no opinion upon it." (p505 A-D)

Hence, the effect of R v Z is simply to remove the bar to the admission of such evidence. However, in our judgment it does not define the basis for admission. At the time when R v Z was decided, such evidence could only be admitted as "similar fact" evidence, and the report in R v Z makes it clear that it was on such a basis the Crown sought to introduce the evidence of previous complainants. However, as the judge in the instant case observed, the law on admissibility of bad character evidence has changed radically since then, with the introduction of the provisions in Part 11 of the Criminal Justice Act 2003. We have considered very carefully whether the terms of the revocation of the earlier bar on such evidence laid down in R v Z can properly be said to be the basis of a continuing requirement, after the commencement of the 2003 Act, for "striking similarity" in the relevant evidence or indeed any other particular requirement before admission. Ms Vine for the Appellant made no such submission to us and we can see no basis for any such conclusion.

Modern criminal procedure requires a number of safeguards to be in place to ensure fairness. These are too numerous and too well-known to require extensive re-statement, but principal ingredients are disclosure of any relevant "unused material", or records of any previous account given in interview and of any previous witness statements, in order to check consistency. Those safeguards are present for a reason and should be an obvious port of call where the Crown seek to adduce the evidence of an earlier complainant in a later trial. It is for the Crown to satisfy the court that the admission of such evidence will not cause injustice, the more so since it is the Crown's application to introduce the evidence. Absence of these safeguards may well be relevant to the judge's decision on admission, or discretionary exclusion of the evidence.

If the relevant solicitors representing the Defendant on the "second" trial have the unused material and/or previous statements from a first trial because, as here, they represented the relevant Defendant in the first proceedings, then it may well be their duty to produce them if requested to do so, pursuant to Criminal Procedure Rule 15.4(1), depending on the content of the defence statement. However, that will depend on the accidental circumstance of previous representation and retention. It must not divert from the duty of the prosecution who will be advancing the application to admit.

A useful parallel is to consider the position on a retrial of such allegations following a first inconclusive trial. There, no question would arise but that the Crown should produce the relevant unused material or any previous statements, in interview or otherwise. In addition, on a retrial, it would be normal to obtain a record of the evidence given by the relevant witness or witnesses in the first trial, whether by means of a transcript or access to the recording of the evidence, leading to a note agreed by counsel covering any relevant points. In our judgment it will normally be essential in support of such an application as this for the Crown to produce evidence of what was said in the earlier trial by one suitable means or another. If resort to a recording is impossible or sensible cooperation cannot produce an agreed note, then a transcript would normally be necessary. The safeguards required for the giving of such evidence following an acquittal cannot normally be less than those required for a retrial, where there has not been an acquittal.

Each case, of course, must turn on its facts and the trial judge must consider the safeguards on a case-by-case basis when looking at admissibility under one of the gateways, and on any application to exclude as a matter of discretion. It would normally be relevant to consider the question

of the admission of the fact of acquittal when considering admission of such evidence.

Conclusions: Following the approach laid down above, we reached the conclusion that the admission of the evidence of SD in the Appellant's trial constituted an error. His conviction is thereby rendered unsafe, and for that reason we have quashed it. We stress that our conclusions in no way preclude an application on any re-trial to introduce this evidence, provided the proper safeguards are in place. That will be an open question, entirely for the consideration of the judge on the re-trial.

Impact of Social Media on Trials Was ‘a Manageable Problem’

Aqsa Hussain,Justice Gap: The negative impact of social media on the fair running of criminal trials was ‘a manageable problem’, according to a government report published yesterday. The Attorney General’s Office launched a call for evidence in the wake of a 2015 ruling (R v F & D [2015]) in which the judge discharged the jury due following comments posted on social media.

The consultation considered how social media users were breaching anonymity orders and reporting restrictions without knowing the consequences. Such breaches could put victims’ lives at risk and also prejudice jury members during the course of a trial resulting in the social media user being held in contempt of court – an offence which carries a fine or up to two years imprisonment.

According to the report, most respondents ‘agreed that this was a manageable problem, although one which has shown some growth’. The consultation elicited only 24 respondents and the report noted that ‘the relatively low volume of responses’ suggested the scale of the problem was ‘more limited in scope’ than the concerns raised in R v F & D suggested.

‘We launched this call for evidence with the goal of discovering whether the legal process was at risk due to social media, and whether people working in the criminal justice system have the tools they need to manage that risk,’ commented the Solicitor General, Robert Buckland QC. ‘I am pleased to say that our respondents reported that this risk is relatively minor, and that they are already confident that they can mitigate the risk where it does arise. We need to guard against any future proliferation of the threat, however.’

The government has proposed a public legal education campaign to promote the safe use of social media in the context of criminal trials; clearer guidance on what being held in ‘contempt’ really; and ensuring media organisations and the public better understood anonymity and reporting restrictions especially in the context of young people arrested but not yet charged. Current legislation only gives them anonymity post-charge.

It also recommended working with social media companies including Facebook, Google and Twitter to flag up and remove contemptuous or otherwise unlawful posts. Respondents questioned whether such companies should be legal liable where its users’ posts amounted to contempt or a criminal offence’.

The 2015 case concerned two teenage girls on trial for murder and, whilst local and national news coverage was fair, there were concerns about comments were posted beneath articles on Facebook, including threats to the teenage girls and attacks on the court process. Mr Justice Globe held that these formed a serious threat to the fairness of the trial, ordered a retrial and imposed reporting restrictions under the Contempt of Court Act 1981 banning the media from further reporting until the conclusion of the retrial. As a result, the Attorney General launched its call for evidence. Prosecutors and the judiciary noted that in a limited number of cases in which defendants and interested parties shared information ‘in the full knowledge and intention of disrupting the trial process, which could amount to either a criminal offence or contempt of court, which can be managed by existing powers’.

However, for the majority of contempt cases, social media users were 'not seeking to maliciously interfere' with a trial but simply did not appreciate the consequences of their actions. The evidence suggested that most those who posted prejudicial material or breached anonymity might 'not have given much thought about the potentially serious consequences of their actions'. 'Public Legal Education can help people understand the rule of law and the importance of an effective legal justice system, as well as ensuring they understand the laws in this area. There needs to be a more widespread understanding about the appropriate use of social media to ensure that people "think before they post".'

As to whether juries were being prejudiced by what they may saw on social media, judges told the review that they were confident that the directions they provided to the jury about disregarding the comments or posts they might see were effective. Both the judiciary and CPS felt that trial judges had 'the tools to manage the posts without discharging the jury or imposing stringent reporting restrictions'. Such steps 'mitigated the risk of prejudice' but could cause 'an unnecessary delay and additional drain on resources.'

Number of People in Jail for Terrorism Offences Falls For First Time Since 2013

Jamie Grierson, Guardian: There were 221 people in custody in Great Britain for terrorism-related offences at the end of December, a decrease of 1% on the 224 in the previous year and the first fall since the year ending December 2013, according to Home Office statistics. Forty-nine prisoners held for terrorism-related offences were released from custody in Great Britain in the year ending 30 September, of which 26 had been sentenced to four years in prison or more. Police and security services face a surge in the number of convicted terrorists released from prison as they either complete their sentence or become eligible for parole.

The lowest number of arrests for terrorism offences in five years was also recorded in the year to December. There were 273 arrests for terrorism-related activity in the period, a decrease of 41% compared with the 465 arrests in the previous year. This was the lowest number of arrests since the year ending December 2013. However, each of the past five years the number of arrests has been above the annual average of 258 arrests over the whole time series. Elsewhere in the figures, the highest proportion of under-18s arrested on suspicion of terrorism offences – 6% – was recorded last year.

Guardian analysis of data compiled by the Sentencing Council last year revealed more than 40% of the sentences for terrorism offences handed down over a 10-year period were set to be served by the end of 2018. Among those released on parole in 2018 was the Islamist preacher Anjem Choudary, who was jailed in September 2016 for five and a half years.

The government's refreshed counter-terrorism strategy, Contest, pledged to expand a Home Office programme developed for individuals who are engaging in terrorism to disengage and reintegrate safely back into society. The so-called desistance and disengagement programme focuses on those who have already engaged in terrorist-related activity. This can mean people in prison, or recently released from prison, for terrorist-related offences, as well as people who have returned from Syria or Iraq.

The deputy assistant commissioner Dean Haydon, counter-terrorism policing's senior national coordinator, said: "We are still seeing an unprecedented level of activity across counter-terrorism policing, and the demands upon our national network have increased by about a third since the start of 2017. "We may have seen a reduction in the number of arrests in the last 12 months, but we should put that into context by saying that we also prevented 14 Islamist-related and four extreme rightwing plots since March 2017, and are running a record number of more than 700 live investigations. "The fall was also expected, as the annual arrest stats in 2017 were inflated by the sharp increase in arrests carried out following the terror attacks in London and Manchester. "The step-change in terrorist activity is matched only by an increased effort from police and security services, who are working tirelessly to bring people to justice – which is evidenced by the impressive conviction rate achieved in the last year."

Newcastle Rape and Trafficking Trials Collapse Over Police Failings

BBC News: One woman and 13 men were found not guilty after Northumbria Police did not secure evidence properly or meet strict investigations guidelines. The force said it had apologised to the alleged victims for "police failings which resulted in the cases not going ahead at court". The 14 defendants had denied the charges against them. Northumbria Police's head of safeguarding Ch Supt Scott Hall said: "We will now conduct a review to understand how the failings occurred." The force said its Professional Standards Department would also launch an investigation. It said if any if misconduct issues were identified they would be "addressed appropriately". Three linked trials were due to take place as part of the force's Operation Optic. The operation had investigated allegations that the group had groomed, raped and trafficked three girls, including one aged 12, in Newcastle between 2010 and 2014. The first of the trials, which started in January at Newcastle Crown Court, saw five juries sworn in over eight weeks after four had to be discharged. It ended on Tuesday 05/03/2019. after concerns about the gathering of evidence were raised. Judge Robert Adams said the investigation "must be transparent and it must be fair". "There must be integrity and the process must stand up to scrutiny," he added. "During the last week a number of officers were cross-examined about the investigation process and in relation to how the recording of inquiries were made or, as the case may be, not made." The prosecution said it had decided not to proceed as there was no "reasonable prospect of conviction in each case". Reporting restrictions had been imposed until the completion of the last trial, meaning no details could be reported until now.

Sally Challen's Son Launches Public Appeal for Her Murder Charge to Be Downgraded

In his first interview since the court case, her youngest son, who has become the family's spokesman, said he was launching an online petition via Change.org, appealing to the public to implore the CPS to accept a manslaughter plea from his mother, which would ultimately result in her release because of time served. David Challen, an account manager said he was launching the campaign in conjunction with Justice for Women, the charity, "to make a real statement to stand up for women who are discriminated against in the criminal justice system".

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.