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Cases in Brief

Actus reus—causation—corporate and gross negligence manslaughter—Crown inviting jury to draw inferences excluding non-negligent causation from variety of circumstances—whether case to answer

WTL LTD AND BODEN [2021] EWCA Crim 618; 28 April 2021

Dismissing a prosecution appeal, the trial judge had been right to accept a submission of no case to answer against WTL for corporate manslaughter and B, WTL's managing director, for manslaughter. Workers at WTL's plant were killed when wood dust from WTL's plant reached a sufficient concentration in the air to explode. It was common ground that there was evidence fit to go to the jury that the design and operation of the industrial process at the plant made the risk of explosion much higher because of the negligence of WTL and B. The prosecution alleged a number of "credible mechanisms" causative of the explosion in a range of credible scenarios (the latter agreed by the experts) but it was not possible to show which event actually caused the fatal explosion. In tort this problem had been addressed in cases where unsafe premises or work systems had increased the risk of a harmful event, usually a disease, with claims succeeding even where the individual claimant could not show that it was caused by the premises or work system: *Fairchild v Glenhaven Funeral Services Ltd (t/a GH Dovener & Son)* [2002] UKHL 22, [2003] 1 A.C. 32. The Crown had not submitted that this approach should be adopted in the criminal law – only submitting that the increase of risk of an event by fault was evidence from which it could be inferred that the event was caused by that fault when it transpired. The point for decision was whether that argument on causation could succeed where this was, in truth, the only evidence of causation. Of four credible scenarios agreed by both parties' experts, three depended on potentially negligently accumulated dust in the plant, but one, scenario three, related to the possible release of dust by a machine brought back into operation after maintenance on the day of the explosion; and while there was evidence that safety management generally, and the system for maintenance of machinery, were poor, the only evidence that these actually caused the failure of a machine was the prosecution expert's statement during re-examination that bringing machines back on stream was a known point of safety vulnerability that required proper safety management. Where the evidence on causation consisted of inferences from a variety of circumstances, the jury could only be sure if it could rule out any realistic possibility consistent with innocence: *R v. G and F* [2012] EWCA Crim 1756, [2013] Crim. L.R. 678; *Broughton* [2020] EWCA Crim 1093, [2021] 1 W.L.R. 543. In the absence of evidence (other than the statement of the expert in re-examination) that scenario three could not have happened without negligence, no reasonable jury could rule out a realistic possibility of non-negligent causation.

Alternative verdicts—whether second trial on more serious alternative count an abuse of process—true or forensic alternatives

DUNN [2021] EWCA Crim 439; 26 March 2021

At his first trial, D faced two counts relating to the same facts. Count 1 charged conspiracy to facilitate the commission of a breach of immigration law (maximum penalty 14 years' imprisonment), count 2 of participating in the criminal activities of an organised crime group (Serious Crime Act 2015 s.45(1) and (9) – maximum five years). The jury failed to reach a verdict on count 1 and convicted on count 2. He was re-tried and convicted on count 1. The judge at first instance (in response to an application by a co-defendant to leave only count 1 to the jury) accepted that there was considerable overlap between the counts, but they were legally

CONTENTS

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distinct. While the factual scenario was the same, count 2 should stand as an alternative to count 1. At the retrial, the judge rejected an application that the indictment be stayed as an abuse of process. On appeal, Dunn argued that the abuse application should have been allowed: if the counts were significantly different, it was an abuse to prosecute the more serious offence, the jury having convicted D of the less serious offence standing as an alternative; if the counts were so similar that any difference was de minimis, they ought not to have been on the indictment together. Rejecting the appeal, there was no question of autrefois convict, as they were not the same as a matter of law. The principle in *Elrington* (1861) 1 B & S 688 against re-trial on an aggravated form when a defendant had been previously acquitted of the lesser offence did not apply, as the more serious charge had been preferred along with the lesser one from the outset. As to *BJ* [2013] EWCA Crim 356, in that case, while the court said that there could not be convictions for both offences standing as alternatives, the court was referring to "properly mutually exclusive alternatives" – there, murder and manslaughter, offences identical save for mens rea. In D's case, the counts were not true alternatives, but rather "forensic alternatives" (*Akhtar* [2015] EWCA Crim 176; [2015] 1 W.L.R 3046) having different elements. The mens rea of the offence in count 2 was "reasonable suspicion", that of count 1 belief, which (contrary to D's submission) was not a de minimis difference (see *Buckley v Chief Constable of Thames Valley* [2009] EWCA Civ 365, [6]); and count 1 required a conspiracy, and that D was a party to it, whereas count 2 only required the taking of some part in the activities of an organised criminal group. Further, the judge was right to conclude that they were sufficiently different because of the different sentence provided for by Parliament.

Burglary—"dwelling"—meaning—hotel rooms—factors
CHIPUNZA [2021] EWCA Crim 597; 23 April 2021
While the guest was out at work, C entered a hotel room in circumstances suggesting that he did so with intent to steal. He was charged with two offences of burglary contrary to the Theft Act 1968 s.9(1)(a), count 1 on the basis that he had entered a dwelling (and would therefore, given other convictions, be liable for a higher sentence: Powers of Criminal Courts (Sentencing) Act 2000, s.111), count 2 on the basis that it was not a dwelling. He pleaded guilty to count 2, but was tried on count 1, the prosecution declining to accept the factual basis of plea. The only issue at trial was whether the room was a dwelling. The word was an ordinary, albeit somewhat old fashioned, word. The Court quoted Millett LJ in *Uratemp Ventures Limited v. Collins* [2001] UKHL 43 at [30], that " 'dwell' and 'dwelling' … mean the same as 'inhabit' and 'habitation' … and refer to the place where one lives and makes one's home." In most cases, it was obvious whether or not a building was a dwelling. Houses and flats were generally built to be lived in, to be used as dwellings. That no one was living there at the time of a burglary did not necessarily render a building other than a dwelling (cf *Hudson v CPS* [2017] EWHC 841 (Admin), [2017] 2 Cr.App.R. 21), although a building site or a newly built house might not yet be a dwelling, or an empty house now derelict might have ceased to be one. Hotels were not generally built to be used as dwellings. Their commercial function was to provide a temporary place to stay. Where no one has checked into it, a standard hotel room cannot be said to be a dwelling. Where someone lived in a hotel long-term and used it as their home, the hotel or a part of it may be a dwelling, as were rooms provided for staff to live in. In the present case, the most striking feature which pointed away from the hotel room being a dwelling was the transient nature of the hotel guest's occupation of it. She had arrived the previous evening, intending to stay for three nights. Other factors that pointed away from the room being a dwelling were that the guest's home address was distant, she stayed in different rooms in different hotels every week, she had no control over which room she had or even which hotel she stayed in, check-in and check-out times were determined by the hotel, she had no control over who went into the room when she was not there, hotel employees had a master key, she was bound by the rules of the hotel as to smoking, fire drills and so on and she had no choice over décor or furniture. These were all questions for the jury and the conviction was quashed because the directions they received on this point were inadequate.

Mens rea—intoxication—offences of specific intent—where effect of intoxication on intent not primary defence—directions; Trial—footnotes in written directions on the law
AIDID [2021] EWCA Crim 581; 22 April 2021
At A's trial for murder, her defence was that she was asleep during the key assault leading to the death of the victim. There was evidence of heavy drinking by A. On appeal, it was argued that the judge's directions were defective in not giving adequate guidance to the jury as to the effect of intoxication on intent. The Court reviewed the following authorities: *Sheehan and Moore* (1974) 60 Cr.App.R 308; *Bennett* [1995] Crim LR 877; *Brown and Stratton* [1998] Crim L.R 485; *R v G (Paul)* [1999] Crim L.R 669; *McKnight*, 19 April 2000, *The Times* 5 May 2000; *Alden and Jones* [2001] EWCA Crim 3041; *The Queen v Lindsey White* [2017] NICA 49; *Narine Sooklal v The State* [1999] 1 W.L.R 2011, PC; *The Queen v Daniel Ward* [2018] NICA 40; *Campeanu* [2020] EWCA Crim 362, [2020] Crim. L.R. 1079 and *Mohamadi* [2020] EWCA Crim 327.
(1) The present state of the authorities was likely to create uncertainty for trial judges as to when it was necessary to give a direction on the relevance of self-induced intoxication. The position was straightforward if the accused's case was that he or she was too drunk to know what he or she was doing and had not formed the necessary intent. A direction was then clearly necessary. However, the difficultly arose when that was not part of the accused's case. In these circumstances, there was tension in the jurisprudence. On the one hand, cases such as *McKnight*, *Alden and Jones*, *White*, *Ward* and *Campeanu* tended to suggest that when the accused had not given this explanation or, alternatively, if self-induced intoxication has not been raised as a live issue, the direction need not be given. On the other hand, the decisions in *Sheehan and Moore*, *Bennett*, *Brown and Stratton*, *R v G (Paul)* and *Mohamadi* indicated that if there were evidence of drunkenness/intoxication which might give rise to an issue as to whether specific intention could be formed by the accused, a direction should normally be given to the jury that (a) a drunken intent was nevertheless an intent, but (b) that they had to feel sure, having regard to all the evidence, that the defendant had had the intent. In these authorities, the Court of Appeal reached the conclu-

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sion that a direction should be given, even though that was not the accused's defence.
(2) Juries in criminal cases were not limited in their consideration of the evidence to the arguments advanced by the prosecution and the defence. It was open to them to reach conclusions that did not match the contentions advanced by the parties. They were free, for instance, to reject an accused's account but nonetheless to acquit him or her because they concluded that they were unsure that one or more of the ingredients of an offence of specific intent had been made out. While a judge must avoid conjuring up fanciful factual scenarios, if there were sufficient evidence as to the consumption of alcohol or drugs such as to make it, viewed realistically, a potential issue as regards intent, then regardless of the nature of the accused's defence, in the Court's view the directions referred to in (1)(a) and (b) above should be given. Voluntary intoxication had to be treated like any other evidence suggesting the defendant might have lacked the state of mind necessary to support the offence (*Bennett*). In A's case, the direction given on intoxication, faithfully reflected that required by *Sheehan and Moore*, albeit briefly put, and the conviction was safe.
(3) The court, referring to Crown Court Compendium, December 2020 edition at 9-4, entirely supported the general approach of the editors of breaking down complex legal directions into a series of short questions, which needed to be answered in a logical order. The issues relevant to the relationship between intoxication and specific intent were set out carefully and sequentially in this extract, and were accurately distilled in the example direction provided in relation to an Offences Against the Person Act 1861 s.18 assault (9-6).
(4) The court deprecated the use of footnotes in written directions of law, a device used by the judge in A's case. Lawyers and judges were comfortable moving between the main text and footnotes, but not all jurors will necessarily be familiar with reading important information in this way.

Procedure—Crime and Disorder Act 1998 s.51—sending of indictable only offences—whether personal presence of defendant required—whether if presence required, indictment invalid—whether if presence required and indictment invalid, conviction required to be quashed
UMERJI [2021] EWCA Crim 598; 23 April 2021
U, who was subsequently convicted in his absence of conspiracy to cheat the public revenue, failed to attend the first appearance at the magistrates' court, when his case was sent to the Crown Court under the Crime and Disorder Act 1998 s.51. He was represented by counsel. The question before the Court of Appeal was whether the magistrates' court could send an absent but represented defendant for trial in the Crown Court under s.51 and, if not, whether the subsequent proceedings were invalid for want of jurisdiction. U's application for an extension of time in which to appeal was referred to the full court.
(1) U submitted that the phrase "[w]here an adult appears or is brought before a magistrates' court" at the start of s.51(1) required the physical presence of the defendant, and that this was not displaced by s.122 of the Magistrates' Courts Act 1980 s.122 (appearance by counsel or solicitor): *R (Lord Janner) v Westminster Magistrates' Court* [2015] EWHC 2578 (Admin) and *Tarry* [2017] EWCA Crim 97. Following an extensive analysis of case law, the history of the provisions relating to the transfer of indicatable only offences to the Crown Court, of the wording of s.51 and other relevant provisions (including particularly the Magistrates' Courts Act 1981 s.17A), and of the use of similar terms in other statutory contexts, the court concluded that the expression in s.51 did not require the physical presence of the defendant, in the absence of additional wording requiring particular steps etc to be taken in "the presence and hearing" or "the presence" of the defendant. The decisions in *Janner* and *Tarry* were not binding on the court. It was questionable whether the issue truly arose in either case, and, insofar as *Tarry* did decide that presence was required the conclusion was reached without consideration of the authorities and hence *per incuriam,* as was *Smith (Gordon)* [2015] EWCA Crim 1663. Section 122 of the Magistrates' Courts Act 1981 applied unless there was an express provision requiring the accused's presence and in s.51 there was none. While this judgment was limited to the expression in the context of s.51, it was untenable to argue, as a general proposition, that it *necessitated* the personal presence in court of the accused.
(2) If, contrary to the conclusion in (1) above, an accused could not lawfully be sent for trial under s.51 in his or her absence, this could not be raised unless an application had been made under Administration of Justice (Miscellaneous Provisions) Act 1933 s.2(2) and (3) for the indictment to be quashed. If the Crown Court had not been asked to quash the indictment, s.2(3) prevented this from being raised in the Court of Appeal.
(3) Even if both the conclusions above were wrong, the application of the principle in *Soneji* [2005] UKHL 49, [2006] 1 AC 340 as applied in *Ashton* [2006] EWCA Crim 794, [2006] 2 Cr. App.R 15 would not require the conviction to be quashed.

SENTENCING CASE

Restraining order following acquittal
BALDWIN [2021] EWCA Crim 703, 14 May 2021
A restraining order had been made under s.5A of the Protection from Harassment Act 1997 following the appellant's acquittal for offences of making threats to kill, assault occasioning actual bodily harm, theft and criminal damage. The complainant had not attended to give evidence at trial and an application to adjourn was refused. The prosecution offered no evidence and not guilty verdicts were entered. The judge then raised the issue of a restraining order. After hearing submissions, the judge imposed a restraining order which prohibited the appellant from having contact with the complainant.
The appellant submitted that the judge had erred in making this order as: (1) The judge failed to hear evidence on the issue of whether the complainant required protection from the appellant; (2) The judge's decision was inconsistent with the other earlier finding that the complainant had chosen to avoid court and was not in fear of the appellant (this finding had led the judge to refuse the application to adjourn the trial), and; (3) The complainant's evidence was too dated to justify a finding that a restraining order was necessary, even when combined with the appellant's previous conviction.
After outlining (at [26]-[37]) the relevant statutory provisions and legal principles relevant to the imposition of re-

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straining orders following acquittal, the Court allowed the appeal. Where a judge is considering imposing a restraining order after an acquittal following no evidence being offered, natural justice and the Criminal Procedure Rules require that the person against whom an order may be made be given the opportunity to consider what order is proposed and why, and the evidence in support. They must also be able to adduce evidence against the making of the order.

Although in this case the judge was right to consider whether to make a restraining order, there was insufficient identification of the evidence upon which the judge relied when making the restraining order. The failure to identify the evidential status of the material that had been presented affected the judge's findings, and led to inconsistent findings of fact being made. The restraining order was therefore wrongly imposed.

If a court is considering making a restraining order of their own motion in a case where there has been no trial and no evidence has been offered, it must consider what evidence is relevant to the necessity of a restraining order, and which parts of that evidence are agreed or disputed. This is required in order to enable the defendant to respond to the proposed order. Witness statements are admissible in support of an order, but as the order will be a final order, the court is likely to need to hear oral evidence to resolve any relevant factual dispute. Once the relevant facts have been proved, in giving judgment about why a restraining order is necessary, the judge must identify the evidence justifying the necessity for making the order.

The fair assessment of the need to protect the complainant also requires information about their current situation. No such information had been presented to the judge. Such evidence would have been relevant to whether a restraining order was necessary, and the duration of any order imposed.

After setting aside the restraining order, the Court stated that there was current evidence showing a risk of harassment of the complainant by the appellant, an application could be made to the appropriate court to obtain an order against the appellant.

Features

By David Wurtzel[1]

Whatever Happened to *Rashid* Competence?

Alone among vulnerable persons in court who might benefit from the use of an intermediary, it is the defendant for whom the Court of Appeal has discouraged making an order. Before a judge even opens the papers, there is CPR.3F.13:

> Directions to appoint an intermediary for a defendant's evidence will thus be rare, but for the entire trial extremely rare.

On 5 April, The Criminal Procedure (Amendment) Rules 2021, 18.27 came into effect:

> The court must exercise its power to appoint an intermediary to facilitate a defendant's effective participation in the trial "by reason of age or physical or mental disability", and where "the appointment is necessary for that purpose."

As with witnesses under the 1999 Act, once an order is made, it cannot be varied or discharged without a change in circumstances (CPR.18.27(5)).

However, the long list of matters to which the judge can have regard keeps the existing case law intact. In particular the dicta in *Dean Thomas*[2] approved by *TI v Bromley Youth Court*,[3] which puts the burden on the intermediary—to be treated as a last resort when all else fails—to consider their need in the context of the issues in that case. Who is fully to inform the intermediary, who is not legally trained, of the issues is not set out.

The Court of Appeal in *Rashid Yahya*[4] stated that an intermediary should not be seen as a remedy for any deficiencies in the ability of the advocates to deal with vulnerable witness and defendant cases. In doing this, the court created the image of an ideal advocate who did not need the help of an intermediary because (and so a trial judge could assume) he or she had undergone specific training and could—and surely, it follows, wanted to—only question "in accordance with proper professional experience". This included, for example, no tag questions. One might call this "*Rashid* competence." Further, it would be difficult to imagine such competence in a vulnerable defendant case without having done training (*Grant-Murray*[5]).

At present training is, however, voluntary. The Court of Appeal's picture of the ideal advocate would have had a stronger factual basis if the Bar had taken on board the 2011 report of the Advocacy Training Council, *Raising the Bar.* It recommended ticketing for those who take cases involving vulnerable witnesses, in order to "assure standards" and to show to a "wider society that the Bar takes the topic very seriously". Ticketed advocates would have undergone a "higher level of professional training" and undertaken "suitably accredited course[s] every five years at least" thereafter in order to retain the ticket. The alternative was to make training compulsory. But ticketing, compulsory training, and indeed quality assurance all were unacceptable to the Bar. The report's recommendation went nowhere.

Over 3,000 advocates have now taken the ICCA course, which in fact was not yet rolled out on the date of the judgment in *Rashid.* It began development in 2013 and gained

1 David Wurtzel, Fellow Emeritus, City University of London and Bencher, Middle Temple.
2 [2020] EWCA Crim 117.
3 [2020] EWHC 1204 (Admin).
4 [2017] EWCA Crim 2.
5 [2017] EWCA Crim 1228.

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impetus after the then Lord Chancellor in September 2014 pledged that by March 2015 public funds would not be available to advocates in serious sexual offences cases who had not undergone training. That pledge came to nothing. The ICCA course remains voluntary and delegates are not assessed. The judgment in *Rashid* says that those who cannot properly carry out the enumerated tasks would be in "serious dereliction of duty to the court" and in "breach of professional duty". However, the author is unaware of anyone being reported for such a breach.

Regrettably, case-law suggests that as things stand there are a good many advocates who have no wish to show themselves as "*Rashid* competent". In *LeBrocq v The Liverpool Crown Court*[6] defence counsel told the jury that judicial vetting of questions (a procedure which has express Court of Appeal approval) is "basically pussy-footing around the issues and not putting them directly". He couldn't for example ask a tag question "in the way that you want to". In *Dinc*[7] the appellant counsel's criticism of the process "appeared to be the implicit assertion that the judge's directions to ensure the effective participation of the witness somehow prejudiced the defence as a matter of principle". In *RL*[8] counsel complained that the judge's rulings had "emasculated" his cross-examination.

6 [2019] EWCA Crim 1398.
7 [2017] EWCA Crim 1206.
8 [2015] EWCA Crim 1215.

In the event, subsequent Courts of Appeal have not taken a stern line with those who, according to *Rashid,* seem guilty of being in serious dereliction of duty. In *RT and Stutchfield*[9] defence counsel breached four of the ICCA's 20 Principles of Questioning, the ground rules, and carried on after the judge pointed out "I think we have done this point." When counsel then asked, "Are you going to continue to lie whilst giving your evidence to the court?" the witness refused to give further evidence. To the Court of Appeal this was "some unfortunate questioning". In *Mahmoud (Shuyab)*[10] leading counsel contended that one of the defendants only asked for an intermediary to avoid tough questions. Perhaps to demonstrate this, when cross-examining him he "repeatedly breached the rules by asking lengthy, leading or tagged questions". The intermediary had to intervene fifteen times. The Court of Appeal said that he had "laboured the point" and had "crossed a line". They left it at that.

The Divisional Court in *TI v Bromley Youth Court* noted that things had changed since 2017: a barrister who wants to work in the Youth Court now has to register with the BSB and be subject to "spot checks in respect of competence". In that limited sense, *Rashid* competence lives on. What action, if any, the BSB has taken in respect of those who fail the spot checks would be interesting to know.

9 [2020] EWCA Crim 15.
10 [2019] EWCA Crim 667.

The Law Commission's Review of Corporate Criminal Liability

By Robert Kaye[1]

The law of England and Wales has long struggled with the question of whether corporate bodies such as companies can be guilty of criminal offences requiring proof of fault. *Tesco v Nattrass* (1971), established that where a particular mental state is a required element of the offence, only that of a senior person representing the company's "directing mind and will" can be attributed to the company. In practice, this is normally limited to a small number of directors and senior managers, which restricts the scope of criminal liability.

Concern has been expressed that the "identification doctrine", as this rule is known, does not adequately deal with misconduct carried out by and on behalf of companies. In particular, prosecution authorities complain that it is disproportionately difficult to prosecute large companies for economic crimes committed in their names. Sir David Green QC, former Director of the Serious Fraud Office, has complained that "the e-mail trail has a strange habit of drying up at middle management level".[2]

In 2017, the Government expressed concern that

> the common law method of criminal attribution may have acted as an incentive for the most senior members of an organisation to turn a blind eye to the criminal acts of its representatives.

It also noted that "bodies that refrained from implementing good corporate governance and strong reporting procedures were harder to prosecute, and in some cases lacked a strong incentive to invest in preventative procedures".[3]

In 2017 the Ministry of Justice published a Call for Evidence on Corporate Liability for Economic Crime.[4] However, the evidence received was considered inconclusive by Government[5] and there was no clear consensus from respondents on what corporate liability offences should be created if the identification doctrine were replaced.

It is in this context that the Government has asked the Law Commission to review the law relating to the criminal liability of non-natural persons, including considering whether the identification doctrine is fit for purpose. The Commission will publish an options paper by the end of 2021. In the meantime, the Commission is consulting with stakeholders

1 Lawyer, Law Commission.
2 "SFO to consider extending company liability beyond bribery", *Compliance Week*, 24 September 2013.

3 HMRC, *Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion*, 2017.
4 Ministry of Justice, *Corporate Liability for Economic Crime – Call for Evidence*, 2017, Cm 9370.
5 Ministry of Justice, *Corporate Liability for Economic Crime – Call for Evidence: Government Response*, 2020.

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and the public about the existing law and the possible ways in which it might be reformed.

The identification doctrine: *Tesco*, *Meridian* and *Barclays*

In *Tesco v Nattrass,*[6] the issue for the House of Lords was whether the supermarket was liable for a misleading price indication under the Trade Descriptions Act 1968, or if it had the benefit of a statutory defence where the error was attributable to "another person" – that person being the company's own store manager.

While the five members of the Judicial Committee did not give consistent explanations as to who *would* be considered identifiable with the company, all agreed that a store manager would not be, in the absence of a delegation to him of full responsibility to act independently of their instructions.

The identification doctrine came to be much criticised by commentators. For Pinto and Evans,

> [t]he problem with the decision in *Tesco* is that the case has been understood as providing a practically exhaustive list of those whose acts or state of mind can be attributed to any corporation … A corporation that allows a degree of (but not full) autonomy to a subordinate employee (such as a store manager) will not, on Tesco principles, be liable.[7]

For Gobert,

> One of the prime ironies of *Nattrass* is that it propounds a theory of corporate liability which works best in cases where it is needed least and works least in cases where it is needed most. The directors and managers of small companies who are most likely to satisfy the *Nattrass* test are also likely to be directly involved in carrying out of the company's affairs and thus criminally liable in their own right... In large companies … the possibility of personal criminal liability is not much of a deterrent while the *Nattrass* test frustrates efforts to impose corporate liability.[8]

Meridian[9] was a New Zealand case heard by the Privy Council under its then jurisdiction as the final court of appeal for New Zealand. *Meridian* concerned the failure of two employees to disclose that the company had become a substantial security holder in another company.

Lord Hoffmann, giving the leading judgment, proposed that the rule of attribution for an offence should be found through normal rules of interpretation applied specifically to the offence in question, meaning that the corporation would be identified with different people for different offences, depending on the purpose of the offence. In the case of *Meridian* itself, the requisite knowledge was held to be that of the traders responsible for the acquisition.

This development of the law was one the Law Commission welcomed. In a 2010 Consultation Paper on Criminal Liability in Regulatory Contexts, the Commission said: "It is clear from the decisions in *Pioneer Concrete*[10] and in *Meridian* that the courts now have the latitude to interpret statutes imposing corporate criminal liability as imposing it on different bases, depending on what will best fulfil the statutory purpose in question".[11] Consequently, it concluded there is no pressing need for statutory reform or replacement of the identification doctrine. That doctrine should only be applied as the basis for judging corporate conduct in the criminal law if the aims of the statute in question will be best fulfilled by applying it. "We encourage the courts not to presume that the identification doctrine applies when interpreting the scope of statutory criminal offences applicable to companies."[12]

However, that hope has not been realised. In fact, the courts have strongly reaffirmed the identification doctrine as the primary rule of attribution. In *Barclays v CPS*,[13] Lord Justice Davis (sitting as a Judge of the High Court) held that the "special rule" of attribution only comes into play when insistence on the identification principle would defeat Parliament's intention.

Thus, in that case, the court found that even the conduct of the Chief Executive and Chief Financial Officer[14] – both directors – could not be attributed to Barclays, because they did not have the authority to make the representations in question, the Board having expressly reserved the final decision to a subcommittee.

This judgment arguably tightens the already stringent identification doctrine. Most of the lords in *Tesco* considered that a Managing Director would constitute a directing mind and will. Prosecution practice has therefore been to identify someone culpable from among the Board's members. *Barclays* suggests that this is not enough, and it is necessary to show either that the Board collectively possessed the necessary *mens rea*, or that they had delegated to those executive directors an unrestricted authority to act in the field in question.

The lower court had said this in terms. Indeed, even an unrestricted authority to act might not be enough, since even though in relation to one charge the Chief Executive did have the authority to bind the bank to a deal of the size in question, the court held he did not have "authority to bind Barclays Bank to an agreement which related to the provision of non-existent advisory services the consideration for which was a camouflage for an additional commission"[15]. In other words, anything less than explicit permission to commit fraud might be insufficient. Needless to say, it is hard to conceive of circumstances in which such permission would be documented.

Alternative approaches

In recent years, UK Governments have sometimes sought to avoid the difficulties with the identification doctrine by legislating to make companies criminally liable on a different basis.

One approach has been to introduce legislation which seeks to target companies' "failure to prevent" other offences, such as bribery[16] or facilitation of tax evasion[17]. The Law Commission has been asked to consider whether similar failure to prevent offences should be introduced for other economic crimes, and, if so, which.

6 [1971] UKHL 1.
7 Pinto, A. and Evans, M. *Corporate Criminal Liability* (2008) 2nd ed., p. 55.
8 James Gobert, "Corporate Criminal Liability: four models of fault", 14 *Legal Studies* (1994) 393.
9 *Meridian Global Funds Management Asia v Securities Commission* [1995] UKPC 5.
10 In *Director General of Fair Trading v Pioneer Concrete UK Ltd* [1994] 3 WLR 1249, the House of Lords held that that a company could be found to be in contempt of court by disobeying an order as a result of a deliberate act by its servant on its behalf.
11 *Criminal Liability in Regulatory Contexts* (2010) Law Commission Consultation Paper No 195, para.5.103.
12 *Criminal Liability in Regulatory Contexts* (2010) Law Com 195 para. 5.110.
13 [2018] EWHC 3055 (QB).
14 It should be noted that the Chief Executive and one of his co-accused were both acquitted when tried individually. Proceedings against the Chief Financial Officer were discontinued as not being in the public interest.
15 *Barclays Plc and Barclays Bank Plc*, 21 May 2018, (unreported).
16 Bribery Act 2010, s. 7.
17 Criminal Finances Act 2017, ss. 45-46.

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A feature of these offences is that a company can avoid liability if it can show that it had "adequate procedures" to prevent bribery; or, for tax evasion, to show that it had reasonable prevention procedures in place, or it was not reasonable to expect it to have any such procedures.

It may be that "failure to prevent" more accurately represents the culpability of companies where employees offend but the company does not encourage their offending.[18] Equally, a criticism of "failure to prevent" offences is that they do not carry the same stigma as the substantive offence.[19]

A second approach, seen in the offence of corporate manslaughter, is to create a distinct offence for corporations. In that case the law allows courts to look at the decisions of senior management in assessing culpability.[20]

A third approach is for legislation creating criminal offences to indicate the basis on which a corporation might be guilty, something which the Law Commission recommended in 2015.[21] However, this is unusual. A rare example can be found in the Specialist Printing Equipment and Materials (Offences) Act 2015. The knowledge of the person supplying specialist printing equipment to be used for criminal conduct is attributed to the corporate body on whose behalf they are acting, even if they would not constitute a "directing mind and will".

Other jurisdictions have adopted alternative approaches. For instance, in Canada and Australia, federal criminal codes make specific provision for corporate criminal liability.

In Canada, since an amendment to the law in 2003, a company is criminally liable if

- with the intent at least in part to benefit the organization, one of its senior officers is a party to the offence; or
- having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or omission specified in the offence; or
- knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them.[22]

In Australia, Commonwealth law also allows the court to attribute a fault element to a corporate body on the basis of the conduct of a "high managerial agent", or by proving that a corporate culture existed which encouraged non-compliance or that the body failed to maintain a corporate culture that required compliance. However, these provisions are little used and a recent review by the Australian Law Reform Commission recommended that the first of these limbs be extended from high managerial agents to any employee acting within actual or apparent authority.[23]

Both the Canadian and Australian criminal codes make separate provision for offences which can be committed negligently, so that a corporate body can be liable on the basis of collective negligence even if no culpable individual can be identified.

Costs and benefits

A key consideration in any reform options, however, is that regard is had to the consequences of any legal change for business.

Legislation creating the offences of failure to prevent bribery and failure to prevent facilitation of tax evasion included requirements for government to provide guidance on steps companies should take to prevent their employees and agents from committing these offences. While this guidance is not binding, failure to follow it may make it harder for a company to show that it had adequate procedures in place in the event of a prosecution. A concern among businesses is likely to be that extending failure to prevent offences to cover a wider range of underlying offences will lead to increased costs of compliance in order for companies to be able to show that they had adequate or reasonable procedures in place to prevent misconduct by their employees. At the same time, a broadened rule of attribution may lead to concerns that firms will be held criminally liable for rogue employees acting in outright defiance of corporate policies. There is no perfect solution to this problem, nor one that will be seen as an improvement by all of those affected. Corporate liability does not exist in a vacuum. Indeed, the ability to form companies with a distinct legal personality exists precisely because it is socially and economically expedient. Legal considerations in this space inevitably therefore compete with moral, social and commercial concerns. It is also important to recognise that some, but not all sectors, are already subject to extensive regulation outside the criminal law.

The Law Commission's role will be to set out the forms which reform might take. This will allow Government and ultimately Parliament to decide where the balance lies between giving businesses a fair chance to prosper and ensuring that those companies which incentivize misconduct are held to account.

18 Law Commission (2010) *Criminal Liability in Regulatory Contexts, Law Commission Consultation Paper* 195, paras. 7.46-7.49.

19 Mark Dsouza, "The Corporate Agent in Criminal Law – An argument for comprehensive identification", (2020) 79 *Cambridge Law Journal* 1: 91-119.

20 Corporate Manslaughter and Corporate Homicide Act 2007, s.1.

21 Law Commission (2010) *Criminal Liability in Regulatory Contexts*, Law Commission Consultation Paper 195, para. 5.110.

22 Criminal Code, s. 22.2. as amended by An Act to amend the Criminal Code (criminal liability of organizations) S.C. 2003, c. 21.

23 Australian Law Reform Commission, *Corporate Criminal Responsibility* (2020).

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Juror Misconduct

By Sarah Bergstrom[1]

This article examines the ways in which the current law seeks to preserve the integrity of the jury trial and ensure that jurors comply with their solemn duty to "faithfully try the defendant and give a true verdict according to the evidence".

Prevention – exhortation and instruction

It has long been the practice for the judge to give the jury an oral "homily" at the time the jury is sworn in, the minimum ingredients of which are now specified in the Criminal Practice Direction (VI) 28G.

Following suggestions from the senior judiciary in *Davey*[2] that jurors needed further help and guidance on their legal responsibilities and duties, and research conducted at the request of the Lord Chief Justice and the Criminal Procedure Rule Committee by Professor Cheryl Thomas QC, the Criminal Practice Direction now requires the judge's oral homily to be supplemented by each juror being given a three-page form entitled *Your Legal Responsibilities as a Juror.*[3] This is in Easy Read format, with pictures and clear simple explanations next to them, to make it easy for jurors of all intellectual abilities to understand and follow.

In *Thompson*[4] the Lord Chief Justice highlighted the collective responsibility of the jury, stressing that as part of this, it is the duty of any juror who is aware of improper behaviour by other jurors to report it promptly to the trial Judge.[5] This duty ensures that the jury is self-regulating and is one of the points which the Criminal Practice Direction requires judges to mention in their homily; and it is also reinforced by explicit mention in *Your Responsibilities as a Juror.*

The primary aim is to prevent juror misconduct from occurring by ensuring jurors know what is expected of them, and what to do if other jurors fail to respect their responsibilities. The law reinforces this by punishing those who are found to disregard the instructions it contains; and here too, there have been important recent changes.

Punishing misconduct

Historically,[6] juror misconduct was punished as contempt of court at common law, under which the court could "act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally".[7] This antique legal instrument could be brought to bear in one or other of two ways. One was "contempt in the face of the court", where the court in which the incident occurred could punish the misbehaviour then and there; in modern times this procedure being regulated by the Criminal Procedure Rules.[8] Or it could be dealt with at greater leisure by the Attorney General instituting proceedings for a civil committal for contempt of court under the Civil Procedure Rules.[9]

This second form of procedure would take place in the Divisional Court,[10] usually sitting in the Royal Courts of Justice in London and with a High Court Judge and a senior Lord or Lady Justice from the Court of Appeal. By statute, the maximum penalty which could be imposed for such a contempt was (and is) two years imprisonment and/or a fine.[11]

Between 2011 and 2013, four cases involving jurors were prosecuted by the Attorney General under this procedure. In one of the cases, *Dallas*, a juror in a trial in Luton Crown Court conducted internet research which led her to an article about the defendant's bad character, which she subsequently revealed to other jurors. The Divisional Court said that misuse of the internet by a juror is always a most serious irregularity, and an effective custodial sentence is virtually inevitable.[12] All four of the cases in the Divisional Court resulted in jurors being committed to prison for contempt (the practical equivalent of a sentence of imprisonment).[13]

The procedure for committal for contempt was beset by various problems. One was the practical difficulty of investigating alleged juror misconduct. This was seriously complicated by s.8 of the Contempt of Court Act 1981, which made it a statutory contempt to: "obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings". To obtain the names and addresses of the jurors a request had to be made via the Registrar of Criminal Appeals to the Vice President of the Court of Appeal Criminal Division (CACD) – a procedure under which the Vice President could also give directions as to the investigation to ensure that s.8 of the Contempt of Court Act 1981 was not breached.

Other problems stemmed from the fact that the proceedings, though criminal in substance, in form were civil, not criminal. Although Art.6 of the ECHR gave the defendant some protection, the process was inherently unsatisfactory in that the juror could be sent to prison without any of the protections afforded by the Police and Criminal Evidence Act 1984 or the prosecutor's duties of disclosure afforded to a defendant in a criminal case. The position on legal aid and bail was also confusing. The whole process was covered by the Civil Procedure Rules[14] and the civil rules of evidence. The only right of appeal was to the Supreme Court.

These concerns, together with concerns about the increasing availability of the internet and the widespread use of social media readily available to jurors, led the Government in 2012 to refer the matter to the Law Commission. Its report[15] in 2015 led to legislation, intended to "ensure that the

1 Sarah Bergstrom is a barrister and a Senior Legal Manager in the Criminal Appeal Office which supports the Court of Appeal Criminal Division. This article is written entirely in her personal capacity and any views expressed are her own.
2 *Attorney General v Davey & Beard* [2013] EWHC 2317 (Admin), 1 Cr.App.R 1 – especially at [6].
3 26G.5.
4 [2010] EWCA Crim 1623, 2 Cr.App.R 27.
5 At [6].
6 In *Attorney General v Fraill & Sewart* [2011] EWHC 1629 (Admin) 2 Cr.App.R 21 the Divisional Court referred to its use as long ago as the reign of Henry VII.
7 Introduction to the Criminal Justice & Courts Bill – Contempt of Court (clauses 51, 52 and 54-62), see also the Law Commission, *Contempt of Court Consultation*.
8 Crim PR 48.5.
9 Part 81 of the Civil Procedure Rules.
10 Brought under the Rules of the Supreme Court Order 52. This gives the High Court or the Court of Appeal a power to punish for contempt of court which may be exercised by an order of committal.
11 Section 14 of the Act.
12 See [8]–[24].
13 *Attorney General v Fraill & Sewart* [2011] EWHC 1629 (Admin) 2 Cr.App.R 21, *Attorney General v Dallas* [2012] EWHC 156 (Admin), 1 W.L.R 991, *Attorney General v Davey & Beard* [2013] EWHC 2317 (Admin), 1 Cr.App.R 1.
14 Under Pt.81 of the Civil Procedure Rules.
15 Law Commission (No. 340) *Contempt of Court (1): Juror Misconduct and Internet publications.*

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law and criminal procedures strike a balance between the public interest in the administration of justice, the defendant's right to a fair trial, the rights of publishers to freedom of expression and the rights of jurors."[16]

The new statutory criminal offences

By ss.71-74 of the Criminal Justice and Courts Act 2015 four new juror misconduct criminal offences were created, which now form ss.20A-D of the Juries Act 1974.

The four offences are (i) a juror researching information,[17] (ii) disclosing to another juror information so obtained,[18] (iii) conduct showing that the juror intends to try the issue otherwise then on the basis of the evidence [19] and (iv) disclosing[20] or soliciting jury deliberations.[21] (This last offence replaces s.8 of the Contempt Act 1981).

The offences are indictable only and prosecutions can only be instituted by, or with the consent of, the Attorney General. By virtue of the fact they are criminal offences, the juror concerned now has all the protections afforded to a defendant in a criminal case and they have the right to appeal the safety of their conviction or sentence to the Court of Appeal Criminal Division.

The current position of contempt of court

Apart from the repeal of s.8 of the Contempt Act 1981 the rest of the law of contempt remains intact – including, theoretically, the procedure for committal – although since the introduction of the statutory juror offences it has not been used. Contempt in the face of the court, by contrast, is still in use. If in the Crown Court the juror misconduct is *minor* and *clear* then the amended Criminal Practice Direction confirms that the juror should be dealt with summarily under the procedure set out in the Criminal Procedure Rules.[22] An example of this in practice is a case in Carlisle Crown Court in 2018, when a juror admitted being in contempt of court and was fined £1,000 for playing on his phone during deliberations.[23]

Dealing with alleged juror misconduct during the trial

Where juror misconduct comes to light during the trial, two issues face the trial judge: (i) whether the trial can fairly continue; and (ii) how to deal with the alleged juror misconduct. The Criminal Practice Direction at 26M[24] deals comprehensively with both of them.

The Practice Direction confirms that the primary concern of the judge should be (i) *the impact on the trial.*[25] In many cases, the juror can simply be isolated and discharged and the trial can properly continue. In other cases, the entire jury might be contaminated by the misconduct and have to be discharged. In determining how to proceed, the Criminal Practice Direction gives helpful assistance to trial judges by setting out a stepped approach which judges are expected to follow.

When undertaking a fact-finding exercise, the judge has a statutory power to order surrender, search and seizure in relation to jurors' electronic communication devices.[26] Once ordered, those powers can be exercised by court security officers.[27] However, there is obviously a limit to any fact-finding investigation that can sensibly be undertaken by a trial judge and if the matter is not *minor* and *clear* then it is likely to call for a criminal investigation by police.[28]

How is juror misconduct handled when it comes to light after the trial?

Once the trial has ended and the jury has returned verdicts and been discharged the trial judge has no further jurisdiction in relation to a jury irregularity. If the defendant has been convicted, only the Court of Appeal can quash the conviction.[29]

Post-conviction allegations of juror misconduct should be brought to the attention of the Registrar of Criminal Appeals or lodged in a Notice of Appeal. The Registrar[30] and the prosecution[31] both have a duty to inform a convicted defendant of any matter which might give rise to a ground of appeal. In practice, if such allegations were not known about at trial, in the Court of Appeal the applicant will rely on s.23 of the Criminal Appeal Act 1968, to adduce them as fresh evidence and argue that the resulting conviction is unsafe.[32] Grounds of appeal might also include complaints as to how alleged juror misconduct which was known about at the trial was managed by the trial judge.

The investigation of alleged misconduct

The first hurdle for any convicted person is to establish that juror misconduct has occurred. Until recently this was difficult because investigating or disclosing jury deliberations (which start when the jury are sent into retirement to determine their verdict(s)) was in principle forbidden by s.8(1) of the Contempt of Court Act 1981.

The matter was – and in principle still is – further complicated by the common law rule derived from *Mirza*[33] that the need to protect the confidentiality of jury deliberations generally prohibits complaints about discussions in the jury room being utilised as grounds of appeal. In this context, use can be made of two types of complaint alone: (i) a complete repudiation of the juror's oath to try the case according to the evidence (as by tossing a coin or the use of a Ouija board to determine the verdict)[34] or (ii) where extraneous material had been introduced into jury deliberations (such as through internet research or unauthorised visits to a crime scene). In such cases an appeal court has the power to investigate, but this does not mean the court will necessarily use those powers.

Prior to the new statutory juror offences, if the grounds raised alleged juror misconduct that might fall within the *Mirza* and *Thompson*[35] exceptions, the Court would often refer the case to the Criminal Cases Review Commission (CCRC) for investigation, using its powers under s.23A of

16 Para.2, Introduction to the Criminal Justice & Courts Bill, Contempt of Court (clauses 51, 52 and 54-62).
17 Section 71 inserts Section 20A of the Juries Act 1974.
18 Section 72 inserts Section 20B of the Juries Act 1974.
19 Section 73 inserts Section 20C of the Juries Act 1974.
20 Section 74 inserts Section 20D(1)(a) of the Juries Act 1974.
21 Section 74 inserts Section 20D(1)(b) of the Juries Act 1974.
22 Crim PD 2015 Division VI – Trial at 26M.27-26M.29.
23 Reported by *BBC News* on 21 March 2018: https://www.bbc.co.uk/news/uk-england-cumbria-43490590.
24 Crim PD 2015 Division VI – Trial.
25 At 26M.5.
26 Juries Act 1974 s.15A (inserted by s.69 of the Criminal Justice and Courts Act 2015).
27 Juries Act 1974 s.54A (inserted by s.70 of the Criminal Justice and Courts Act 2015).
28 Crim PD 2015 Division VI – Trial at 26M.27-26M.29.
29 *Thompson* [2010] EWCA Crim 1623, 2 Cr App R 27.
30 Crim PD 2015 Division VI - Trial at 26M.50.
31 Crim PD 2015 Division VI - Trial at 26M.52, see also *Makin* [2004] EWCA Crim 1607, 148 SJLB 821.
32 See, for example, *Mears* [2011] EWCA Crim 2651.
33 [2004] UKHL 2, 1 AC 1118 HL; affirmed in *Smith and Mercieca* and followed by the Court of Appeal in *Thompson*.
34 See Para.4 of the judgment.
35 [2010] EWCA Crim 1623, 2 Cr.App.R 27.

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the Criminal Appeal Act 1968. That power remains, but since juror misconduct can now constitute a criminal offence, it will often now be more appropriate for a police-led criminal investigation into potential juror offences to take place instead of a CCRC investigation.[36]

The new fourth offence of disclosing or soliciting information about jury deliberations[37] which has now replaced s.8 the Contempt of Court Act 1981 conveniently contains important investigative exceptions of which there was no equivalent in s.8. These statutory exceptions allow alleged juror misconduct to be disclosed to the police, a judge of the Court of Appeal Criminal Division, the trial judge or member of court staff and the Registrar of Criminal Appeals once the jury has been discharged. They apply if the person making the disclosure reasonably believes that an offence may have been committed or the alleged misconduct might afford a ground of appeal.[38]

The effect of juror misconduct on the safety of a conviction

The leading case on the effect of alleged juror misconduct in the retiring-room is *Thompson*,[39] where the Court of Appeal considered six unrelated appeals brought on this ground. The Court expressly stated as a general proposition that if the first exception set out in *Mirza* has been made out (complete repudiation of the oath), then the conviction will inevitably be unsafe and any resulting conviction will be quashed,[40] and if the second exception is established (introduction of extraneous material) then the conviction "may" be.[41]

Before making a final determination in these cases the Court invited the CCRC to investigate in two of them. In five of the six, the Court found the resulting convictions were not unsafe. The only appeal allowed was *Blake.* Here the juror misconduct fell under the second *Mirza* exception, because it appeared that a juror had introduced extraneous material by conducting his own experiments to test the validity of the evidence.[42]

In principle, two of the other cases came within reach of the second *Mirza* exception, but in neither case was the conviction quashed. In *Thompson* itself, there was an allegation of a juror misusing the internet, but the Court found that even if that allegation was correct, there was no evidence that the jury did not follow the directions of the judge, given the notes sent by the jury and supplemental directions given in response to them; and so the conviction was not unsafe.[43]

In *Allen,* there was an allegation that the jury wrongly knew (through members of court staff conducting jury management), that the Defendant was facing a second trial (this amounting to extraneous material). After two investigations by the CCRC, the Court concluded that this allegation could not be substantiated and the convictions were therefore safe.[44] The other three cases did not fall within either of the *Mirza* exceptions. *Crawford* involved a complaint from a juror about being pressured by other jurors to agree with them on a guilty verdict and *Kasunga* disquiet about the basis of sentence.

Although the legislative changes in 2015 have now made it easier for allegations of juror misconduct to be investigated by the police and dealt with appropriately if confirmed, this has not changed the Court of Appeal's approach to juror misconduct in the retiring room as a ground of appeal against a conviction. So if the misconduct or alleged misconduct does not fall within one or other of the two exceptions under *Mirza* the appeal is sure to be dismissed. In *Turford*,[45] for example, three conjoined cases involving dissenting jurors who were discontented with the verdict were referred by the Registrar to the Court for summary dismissal, and dealt with in this way.[46]

An appeal is also likely to fail, obviously, if the police investigation into some form of juror misconduct which might have fallen under one of the *Mirza* exceptions concludes that it did not in fact take place.

Gooda[47] was one of the first cases of alleged juror misconduct to be so investigated after the new statutory juror offences were introduced. The grounds of appeal in this case alleged that a defendant in the case had engaged in jury tampering and that members of the jury may have engaged in prohibited conduct by meeting that defendant in private and discussing verdicts and payment. The Court awaited the outcome of a full police investigation, which did not result in any charges being brought. In the light of this, the Court concluded that the convictions were safe and the fresh evidence relied upon was "hopeless". A similar case is *Bermingham,*[48] where one of the grounds of appeal was that extraneous material was introduced by a juror and then shared with other jurors. The Registrar referred the matter to the Metropolitan Police, who then investigated.[49] The police and the Court concluded that there was no evidence that research had been conducted and the appeal on this ground failed. Although other grounds were also raised, they too were rejected and the conviction was upheld as safe.

However, the failure of the police investigation to substantiate the allegation of misconduct is not conclusive, and the Court of Appeal has shown it will draw its own conclusion in determining whether juror misconduct under one of the *Mirza* exceptions has been established and if so, whether the resulting conviction is unsafe. In *McAleer*[50] after a police investigation had concluded with no charges against jurors being brought, the Court still accepted "fresh evidence" of juror misconduct[51] involving a juror accessing the internet in direct violation of the trial judge's directions, discovering a previous conviction and informing at least two other jurors. The Court remarked this was in clear contravention of the new statutory juror offences (despite no charges having been brought) and accordingly quashed the conviction and ordered a re-trial.

In doing so, the Court once again affirmed the principles and exceptions set out in *Mirza* and *Thompson* and confirmed that the common law prohibition which exists to protect the confidentiality of jury deliberations is still paramount.

36 Criminal Practice Direction VI Trial 39M.13-15.
37 Juries Act 1974 s.20G(2) (inserted s.74 of the Criminal Justice and Courts Act 2015).
38 Juries Act 1974 s.20F.
39 [2010] EWCA Crim 1623, 2 Cr.App.R 27.
40 At [4].
41 At [5].
42 At [78]–[85].
43 At [29]–[30].
44 At [46]–[47].
45 *Turford* [2015] EWCA Crim 2151.
46 Under s.20 of the Criminal Appeal Act 1968.
47 [2018] EWCA Crim 2957.
48 [2020] EWCA Crim 1662, 12 WLUK 116.
49 At [30].
50 [2018] EWCA Crim 856.
51 Under s.23 of the Criminal Appeal Act 1968.

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