Neutral Citation Number: [2020] EWHC 1330 (Ch)

Case No: PT-2019-BRS-000080

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 27/05/2020

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

GEORGINA SARAH ANN LOUISE CHALLEN	**Claimant**
- and -	
(1) JAMES CHALLEN	**Defendants**
(2) DAVID CHALLEN	

- -
- -

Leslie Blohm QC (instructed by **Stephens Scown LLP**) for the **Claimant**
The Defendants did not appear and were not represented

Hearing date: 6 May 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii on the date shown at 10:30 am.

HHJ Paul Matthews :

INTRODUCTION

1. This is my judgment on a claim made by the claimant by claim form under CPR Part 8, issued on 6 September 2019, for relief from the so-called 'forfeiture rule' (preventing a person who is convicted of killing a person from inheriting any of the deceased's estate) under the Forfeiture Act 1982. It was argued before me on 6 May 2020, when Leslie Blohm QC appeared for the claimant, but the defendants (the sons of the claimant) neither appeared nor were represented. They had previously acknowledged service, and subsequently confirmed that they had no wish to take any active part in the hearing and would not be attending, although they supported their mother's claim. A significant consequence of granting the relief sought in this claim would be a reduction in inheritance tax paid by the estate of the deceased. Accordingly, on 17 December 2019 I directed that HMRC be contacted to see if they wished to take part in the hearing. The invitation was duly transmitted, but there has been no response to this invitation. The hearing was conducted by video conference call during the Covid-19 pandemic.

2. The evidence setting out what happened in this tragic case is contained in the witness statement of the claimant dated 18 February 2020, which she confirmed on oath during the hearing. This was unchallenged, and I accept it. It is not necessary for me in this judgment to set out all the details of the claimant's life, marriage to Richard Arthur Challen ("the deceased"), and the deceased's death, although I will refer to some aspects of this later on. It will suffice for introductory purposes to say that the claimant and the deceased had a personal relationship lasting some 40 years or more, from when she was a schoolgirl, through marriage and the birth of two children (the defendants) to 15 August 2010, when she beat him to death with a hammer, whilst he was eating. On 23 June 2011, having pleaded not guilty to an indictment of murder, she was convicted by the jury of that offence at the Crown Court at Guildford. She was sentenced to life imprisonment with a recommendation that she serve a minimum term of 22 years (later reduced to 18 years on appeal). On 28 February 2019, the Criminal Division of the Court of Appeal quashed her conviction for murder, allowed in part an application to adduce fresh evidence, and remitted the matter for retrial on the indictment for murder.

3. On 5 April 2019, the matter came before Edis J on a directions hearing. On that occasion the claimant pleaded not guilty to murder but tendered a plea of guilty to manslaughter by reason of diminished responsibility. That alternative plea was not accepted then and there. On 29 May 2019 (after having obtained expert medical evidence from Dr Joseph) the Crown indicated that it was willing to accept both a guilty plea to manslaughter and the not guilty plea to murder. On 7 June 2019 there was a further hearing before Edis J, at which the guilty plea to manslaughter was formally accepted, and she was sentenced to imprisonment for a term of nine years and four months (which by reason of credit given for imprisonment already served, was treated as fully served, and she was immediately released from custody). I shall have to consider the significance of these events in more detail later on.

THE 'FORFEITURE RULE'

Common Law

4. This case turns on the so-called 'forfeiture rule', and on the jurisdiction granted to the court under the Forfeiture Act 1982 to relieve from the effects of that rule. Prior to its abolition by the Forfeiture Act 1870, there had been a quite different earlier rule that the property of a person convicted of felony (including murder or manslaughter) was either forfeited to the Crown or escheated to the feudal lord. Once this rule went, the modern forfeiture rule evolved and took its place, as a manifestation of the old common law principle that a wrongdoer should not benefit through his or her own wrong.

5. In *Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147, a wife murdered her husband. He had assured his own life for £2,000, and he was the policyholder. But the policy was on the face of it held on trust for his wife. After the murder, the life assurance company refused to pay the victim's executors, relying on the fact of the murder by the wife. The Court of Appeal held that the trust for the wife failed, because she had murdered her husband, but that the policy still was an asset of his estate, and the company had to pay the executors.

6. The modern 'forfeiture rule' was expressed in the following terms by Fry LJ (at 156):

> "The principle of public policy invoked is in my opinion rightly asserted. It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud it seems impossible to suppose that it can arise from felony or misdemeanour..... This principle of public policy, like all such principles, must be applied to all cases to which it can be applied without reference to the particular character of the right asserted or the form of its assertion."

7. Similarly, in *Re Estate of Crippen* [1911] P 108, where Dr Crippen murdered his wife, and he was passed over as personal representative of her estate, Sir Samuel Evans P said (at 112):

> "It is clear that the law is that no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representative, claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence."

8. The principle is not confined to murder, however. In *Re Estate of Hall* [1914] P 1, the Court of Appeal held that the rule applied as much to manslaughter as to murder. But, as Phillips LJ (with whom Hirst LJ agreed) said in *Dunbar v Plant* [1998] Ch 412, 430, referring to these two principles stated by Fry LJ and Evans P,

> "What is important is that neither principle is absolute. It is not every criminal offence which will bring the principle into play."

9. So, in *Gray v Barr* [1971] 2 QB 554, CA, the defendant shot and killed the deceased during an altercation in the deceased's house, where the defendant had gone with a

loaded shotgun in search of his wife, who was not in fact there, but whom he (correctly) believed to be having an affair with the deceased. The defendant was acquitted of murder and manslaughter. The administrators of the deceased's estate sued the defendant for damages. One question was whether the defendant would be indemnified against any award of damages under an insurance policy covering damages awarded for legal liability in respect of bodily injury caused by "accidents". At first instance the judge (Geoffrey Lane J) held that any such claim under the policy was barred by public policy. The Court of Appeal dismissed the appeal.

10. Lord Denning MR held that, despite the jury's verdict of acquittal on the criminal charges, what the defendant had done amounted to manslaughter. He approved (at pages 568H-569A) the view of the judge below that:

> "The logical test, in my judgment, is whether the person seeking the indemnity was guilty of deliberate, intentional and unlawful violence, or threats of violence. If he was, and death resulted therefrom, then, however unintended the final death of the victim may have been, the court should not entertain the claim for indemnity."

11. Salmon LJ said (at page 581C-E)

> "Although public policy is rightly regarded as an unruly steed which should be cautiously ridden, I am confident that public policy undoubtedly requires that no one who threatens unlawful violence with a loaded gun should be allowed to enforce a claim for indemnity against any liability he may incur as a result of having so acted. I do not intend to lay down any wider proposition. In particular, I am not deciding that a man who has committed manslaughter would, in any circumstances, be prevented from enforcing a contract of indemnity in respect of any liability he may have incurred for causing death or from inheriting under a will or upon the intestacy of anyone whom he has killed. Manslaughter is a crime which varies infinitely in its seriousness. It may come very near to murder or amount to little more than inadvertence…"

12. Phillimore LJ said (at page 587H-588A):

> "In an age of violence—an age where the use of firearms is all too frequent it would I think be very odd if a man who had had in his hands a loaded shotgun from which a shot had been fired and had killed another at a time when he had just assaulted that other with the gun could recover on an insurance policy which protected him from liability if he was negligent in the use of the shotgun. This was in fact a grave case of manslaughter and in my judgment the judge was right in saying that the defendant could not recover against the Prudential on the grounds of public policy."

13. Here the Court of Appeal was saying that a deliberate act of unlawful violence, amounting to manslaughter, lay at the more serious end of the spectrum, and that the perpetrator could not expect to benefit from his act, in that case by recovering from an insurer under an insurance policy. In so holding, the members of the court referred to *Re Estate of Hall*, mentioned above. On the other hand, there might be cases of manslaughter which were little more than inadvertence, and to such cases the rule of public policy would not apply.

14. And, in *Re H* [1990] 1 FLR 441, the court applied *Gray v Barr* in this sense, holding that the claimant in a claim under the Forfeiture Act 1982 who killed his wife while he was severely depressed and on anti-depressant drugs was not even subject to the forfeiture rule, because he bore no responsibility for his actions. Peter Gibson J said (at 443-444, 446):

> "Mr Jackson [counsel for the claimant] submits that the forfeiture rule does not apply to every case of manslaughter. He pointed out that cases of manslaughter may vary enormously in gravity from the deliberate to the unintentional, and he submitted that in the light of recent authorities the appropriate test was that propounded by Geoffrey Lane J in *Gray and Another v Barr* [1970] 2 QB 626, 640: has the person been guilty of deliberate, intentional and unlawful violence or threats of violence?
>
> […]
>
> There is no authority binding on me that compels me to apply that test to a succession case such as the present case. I must choose between following the decision in *Re Giles (Deceased)* [[1972] Ch 544] and following Vinelott J in *Re K (Deceased)* [[1985] FLR 558] in applying the *Gray v Barr* test. I have no hesitation in taking the latter course. The concepts of public policy are not fixed and immutable. The recent cases show that the courts have come to recognise that so varied are the circumstances which may amount to manslaughter that it would not be just to apply the forfeiture rule in every case of proof of manslaughter."

15. The judge went on to say that in his judgment the forfeiture rule had no application on the facts of that case. It was not therefore necessary to decide whether the court's discretion under the 1982 Act should be exercised. This conclusion was criticised by Phillips LJ in *Dunbar v Plant* [1998] Ch 412, 437, as irreconcilable with the criminal court's acceptance of the guilty plea:

> "In my judgment the judge ought, on the facts of this case, to have held that the rule applied, but that in the circumstances the plaintiff should be relieved of its effect under the Forfeiture Act 1982".

The Forfeiture Act 1982

16. The Forfeiture Act 1982 was enacted in order to mitigate the effects of the rule, both in England and Wales and in Scotland. So far as relevant, it provides as follows:

> **"*The 'forfeiture rule'.***
>
> 1(1) In this Act, the "forfeiture rule" means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.
>
> (2) References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other and references in this Act to unlawful killing shall be interpreted accordingly.

Power to modify the rule.

2(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as "the offender") who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying [or excluding] the effect of that rule.

(2) The court shall not make an order under this section modifying [or excluding] the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified [or excluded] in that case.

(3) In any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying [or excluding] the effect of the forfeiture rule in that case unless proceedings for the purpose are brought before the expiry of the period of three months beginning with his conviction [relevant period].

[(3A) In subsection (3) above, the "relevant period" is the period of 6 months beginning with—

(a) the end of the period allowed for bringing an appeal against the conviction, or

(b) if such an appeal is brought, the conclusion of proceedings on the appeal.]

(4) The interests in property referred to in subsection (1) above are—

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased's will (including, as respects Scotland, any writing having testamentary effect) or the law relating to intestacy or by way of ius relicti, ius relictae or legitim;

(ii) on the nomination of the deceased in accordance with the provisions of any enactment;

(iii) as a donatio mortis causa made by the deceased; or

(iv) under a special destination (whether relating to heritable or moveable property); or

(b) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired in consequence of the death of the deceased, being property which, before the death, was held on trust for any person.

(5) An order under this section may modify [or exclude] the effect of the forfeiture rule in respect of any interest in property to which the determination referred to in subsection (1) above relates and may do so in either or both of the following ways, that is—

(a) where there is more than one such interest, by excluding the application of the rule in respect of any (but not all)[or all] of those interests; and

(b) in the case of any such interest in property, by excluding the application of the rule in respect of [all or any] part of the property.

> (6) On the making of an order under this section [modifying the effect of the forfeiture rule], the forfeiture rule shall have effect for all purposes (including purposes relating to anything done before the order is made) subject to the modifications made by the order.
>
> (7) The court shall not make an order under this section modifying the effect of the forfeiture rule in respect of any interest in property which, in consequence of the rule, has been acquired before the coming into force of this section by a person other than the offender or a person claiming through him.
>
> (8) In this section—
>
> "property" includes any chose in action or incorporeal moveable property; and
>
> "will" includes codicil.
>
> […]
>
> ***Exclusion of murderers.***
>
> 5. Nothing in this Act or in any order made under section 2 or referred to in section 3(1) of this Act […] shall affect the application of the forfeiture rule in the case of a person who stands convicted of murder."

17. The amendments in square brackets were made by the Succession (Scotland) Act 2016. They only apply to Scotland, but are included here because they were argued to be relevant to the interpretation of the remainder of the statute in its application to England and Wales. I deal with this aspect further below.

THE FACTS OF THIS CASE

18. The claimant was born to her parents late in life, after three older brothers. Her father died of a heart attack in her presence when she was six years old. She developed a submissive character, lacking in confidence. The claimant met the deceased when she was 15 years old and still at school. The deceased was 22. This was the one and only romance of her life. She was intensely attached to him. At 17 she became pregnant by him, and had an abortion. They were married when she was 25, and had two children, four and eight years later. The deceased was serially unfaithful to the claimant, both before and after marriage, going through periods of coming home late at night on a regular basis and also telling the claimant that "he wanted his own place so he could do as he pleased". He was also known to visit prostitutes, and on one occasion the claimant confronted him whilst he was leaving a brothel (which was subsequently raided by police).

19. The deceased's behaviour during their relationship and their marriage was by turns contemptuous, belittling, aggressive or violent. His response to any suggestion that she would divorce him was that he would limit access to their children. He would ignore her complaints about his behaviour or insist that she was mistaken and that she had not seen what she said she had seen.

20. The claimant sought medical help for domestic stress between 2006 and 2009. She felt undermined by the deceased. She was drinking excessively. On a number of occasions she had considered divorcing the deceased. In the autumn of 2009 she instructed a solicitor who presented a divorce petition. She left the home that she shared with the deceased and moved into another property nearby. By March 2010 the

stress of the divorce proceedings was increasing such that she was considering reconciling with the deceased. In April they had an email correspondence about a possible reconciliation. By May 2010 they were seeing each other for lunch on a weekly basis. They discussed the possibility of moving back to Australia, where they had spent a happy time when they were younger. Thereafter the claimant stopped the divorce proceedings, but the deceased insisted the claimant sign a post nuptial agreement including provision she would stop smoking and hand over the house to him if they divorced. This post nuptial agreement was prepared, but she was advised by her solicitor not to enter into it. Nevertheless, in order to get the deceased back, on 13 August 2010 she signed it.

21. The next day, 14 August 2010 the claimant went to see the deceased at the matrimonial home. They spent the morning clearing out the house, as a preparation for going to Australia. The claimant went out to the shops, and when she returned she noticed that the telephone had been moved. She called the last dialled number to hear a woman's voice. She asked the deceased about this but he answered "Do not question me". She then made something for him to eat. As he ate, she struck him on the back of the head repeatedly with a hammer which she had brought with her in her bag.

22. She covered his body and left a note which said "I love you, Sally". She went home and typed a note which she took back to the house and left in the kitchen. The next day she went to Beachy Head. From the car park she telephoned her cousin and told her that she had killed the deceased and that she was going to jump. The cousin called the police. As she walked towards the cliff edge she was approached by a chaplain. She said she could not live without the deceased and that she had killed him. After some four hours of discussion she agreed to leave with a police negotiator and was arrested.

23. The note which she had left in the kitchen said (in part):

> "Richard said he would take me back if I signed a post nuptial agreement. I said I would and we both saw solicitors yesterday. I then found out he was seeing someone and sleeping with them and had no intention of taking me back. It was all a game so he could get everything. He was going to get me to sign and then issue divorce proceedings. I can't live without him. Said it would take him time but he felt the same. Now I find he is seeing women and sleeping with them. He did this in order to get his own back on me. All those prostitutes and other women – how could he? Please look after David, James and Pepe. I am sorry but I can't live without Richard. All my love, Sally."

24. I have already mentioned the original criminal proceedings, the appeal quashing the murder conviction and ordering a retrial, and then the acceptance by Edis J of the claimant's plea of guilty to manslaughter. According to the notes I have seen, in his sentencing remarks the judge said this:

> " … you were not delusional. You felt trapped and manipulated because you were trapped and manipulated. Your psychiatric state was abnormal, whether it was personality disorder, bipolar, adjustment or all three. You were capable of thought, what you were unable to do was control your behaviour. Your reaction was to that of a situation which you perceived accurately. All of this appears to

> have led you to carry a hammer on more than one occasion when you knew you were going to see your husband at the former matrimonial home. I think because you knew you might come under intolerable pressure and you wanted a weapon to be able to cut through the situation and resolve it once and for all by killing him. You were consumed by the hope that none of that would happen. In that sense you did not plan or premeditate the killing, as you hoped it would never happen. But you knew in the state you were you could be exposed to a level of stress that could cause you to lose control, and wanted to be ready if that happened. …"

25. In addition to the evidence of the claimant herself, there were before the court witness statements from Harriet Wistrich, her solicitor at the appeal against the murder conviction and at the retrial, and from each of her two sons, the defendants. In her statement, Ms Wistrich sets out some of the details of the criminal proceedings. In their witness statements, the defendants made clear that they did not wish to take part in these proceedings, but nevertheless supported their mother's claim.

THE ISSUES

Timing of the application

26. There are three issues which arise in the present case. The first relates to the timing of the application. The second relates to the test to be applied. And the third relates to the merits of the application. As to the first of these, section 2(3) of the Forfeiture Act 1982 provides (in England and Wales) that:

> "In any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying the effect of the forfeiture rule in that case unless proceedings for the purpose are brought before the expiry of the period of three months beginning with his conviction".

27. This three month time-limit has been judicially stated to be immutable, in the sense that there is no statutory power to extend it. *Re Land* [2007] 1 WLR 1009 was a case of a claim under both the Forfeiture Act 1982 and (by amendment) under the Inheritance (Provision for Family and Dependants) Act) 1975 by a man who had been convicted of the manslaughter of his mother. The claim had been amended to add a claim under the 1975 Act because it was thought that the operation of the Forfeiture Act 1982 was excluded by the time limit of three months. HHJ Norris QC (as he then was), sitting as a judge of the High Court, held that

> "10. … The Forfeiture Act is concerned with the adjustment of property rights and confers upon an individual a right to apply to the Court within a defined period. It is a form of limitation period similar to that applying to applications for reasonable provision to be made out of the estate or for rectification of a will, but (unlike the statutes which confer those rights) the Act gives the Court no discretion to extend the time for commencement of the action."

28. The application in the present case was made, as has been already noted, on 6 September 2019. On 5 April 2019 the claimant pleaded not guilty to murder but tendered a plea of guilty to manslaughter by reason of diminished responsibility. On

29 May 2019 the Crown indicated that it was willing to accept a guilty plea to manslaughter. On 7 June 2019 the guilty plea to manslaughter was formally accepted and she was sentenced to imprisonment. Accordingly, if "conviction" in section 2(3) refers to the time when the guilty plea to manslaughter was publicly accepted by the prosecution and the claimant was sentenced, then this claim is in time. If however "conviction" in that provision refers to the time when she first pleaded guilty to manslaughter (5 April 2019) or when the Crown indicated that it was willing to accept that plea (29 May 2019), then the claim is out of time. In *Re Land*, the judge considered that the relevant date for "conviction" within the meaning of section 2(3) was the date of his guilty plea to the manslaughter of the deceased (and presumably its acceptance by the court) on 27 April 2004 rather than the date of his sentence on 21 May 2004. But the point appears to have been assumed, and not to have been argued. I will come back to this point.

The original conviction for murder

29. There is a further point in the present case, which arises from the fact that the original conviction for murder was on 23 June 2011, and no application for relief under the 1982 Act was made within three months of *that* date. In *Rossdale: Probate and Administration of Estates*, 5th ed 2016 by Dew, Bedworth and Beer, 295, the learned editors say:

> "It is unclear at what date time begins to run when a murder conviction is reduced to manslaughter on appeal. On a strict reading of the Forfeiture Act 1982 it would appear that the three month time-limit runs from the original conviction, although it is arguable that the court should postpone the period for an application to 3 months after an appeal, as this would be the first date upon which an application could be made (although such an argument would have limited prospects of success).
>
> One way in which the problem could be avoided would be for a person to make an application within three months of the initial conviction, that application being stayed pending the outcome of the appeal."

30. The way in which the editors see the problem arising is not quite what happened in this case, because here there was no reduction from murder to manslaughter on appeal. Instead, on the appeal the conviction for murder was quashed and a retrial ordered. Nevertheless, the argument can still be made that a defendant who was convicted of murder "stands convicted of an offence of which unlawful killing is an element", and therefore the conditions for the application under section 2(3) of the Act are fulfilled. For myself, I do not think this can be right. In the first place, the 'conviction' referred to has to be one for an offence where it is possible for the court on application to give relief from the forfeiture rule, otherwise there is no point in the time-limit in section 2(3). Yet section 5 of the Act provides that nothing in the Act affects the application of the forfeiture rule in a case where a person stands convicted of murder. So a conviction for murder, in my judgment, is not a 'conviction' within section 2(3) of the Act.

31. Secondly, even if a conviction for murder *were* such a 'conviction', once the appeal is allowed and the conviction quashed, that person no longer "stands convicted of murder". It is notable that the legislation uses that term, rather than, for example, "has

been convicted of murder". So section 5 can no longer apply after the appeal has been allowed and the defendant has thereafter been convicted of an unlawful killing offence less than murder. If that is right, it would be ridiculous for section 2(3) to require an applicant to have made an application within three months of a murder conviction which has subsequently been quashed. Moreover, the 'conviction' within section 2(3) of the Act has to refer to a *subsequent* conviction for an unlawful killing offence less than murder, otherwise (on the quashing of the murder conviction) the forfeiture rule no longer applies at all, and there is no need for *any* application under the Act.

32. A further argument might be made, in a case (which is not this case) where the defendant is charged with murder, and tenders a plea to manslaughter, but is convicted of murder, the conviction of murder being quashed on appeal and manslaughter substituted. In such a case, it may be said that the defendant was *guilty* of manslaughter, an offence where unlawful killing is an element, at least from the time of the murder conviction, on the basis that the greater includes the less. It may well be true, in common parlance at least, to say that the defendant was at all times 'guilty' of manslaughter. What matters here, however, is whether the defendant, at any time before the appeal is allowed and a conviction for manslaughter substituted, "*stands convicted* of an offence of which unlawful killing is an element".

33. If a murder conviction will not do for this purpose (as I have already held) then the defendant in the case postulated does not qualify until the Court of Appeal substitutes the conviction for manslaughter. Thereafter that defendant "stands convicted" of such an offence as will engage the public policy forfeiture rule, but also will permit of an application to the court to modify or exclude its operation. In any event, as I have said, that is not what happened here. The conviction for murder was quashed and a retrial ordered. Between the allowing of the appeal and the conclusion of the retrial, the current claimant was still charged with murder, but did not stand convicted of anything.

34. In my judgment, where there is an initial conviction followed by an appeal, and then a subsequent conviction, it is the *subsequent* conviction which is the relevant one for the purposes of section 2(3) of the Act and the time-limit provided for. So, for these reasons, I respectfully disagree with the passage cited from *Rossdale.*

The meaning of 'conviction' in section 2(3)

35. I return therefore to the question of the actual event or events which constitutes or constitute the 'conviction' for the purposes of section 2(3). The word 'conviction' may mean different things in different contexts. For example, in *S v Recorder of Manchester* [1971] AC 481, a 16 year old boy pleaded guilty to attempted rape before a juvenile court. The magistrates adjourned the case for inquiry reports. On the adjourned hearing, his legal representative referred to evidence of the boy's mental condition, and asked for the boy to be permitted to withdraw his plea of guilty and to substitute a plea of not guilty. The magistrates held that they had no power to permit this, and went on to make a hospital order on the plea of guilty. The Queen's Bench Divisional Court dismissed a first appeal. The boy appealed further to the House of Lords, which allowed his appeal.

36. Lord Reid (with whom Lord Guest agreed) said (at 489C-D)

> "Much of the difficulty has arisen from the fact that 'conviction' is commonly used with two different meanings. It often is used to mean final disposal of a case and it is not uncommon for it to be used as meaning a finding of guilt. It is proper to say that a plea cannot be changed after 'conviction' in the former sense. But it does not at all follow that a plea cannot be changed after 'conviction' in the latter sense. It is perfectly true that 'conviction' is used in this latter sense in the Magistrates' Courts Act, 1952, and a number of other statutes. But I cannot infer from that any intention of the legislature to alter as regards summary jurisdiction the old rule that a plea can be changed at any time before final disposal of the case."

37. Lord MacDermott said (at 497F-G)

> "Before your Lordships issue was joined on whether the cases of *Sheridan* and *Grant* were properly decided, the contention against the decisions being that a plea of autrefois convict only lies where there has been a conviction in the broader sense of the word, that is to say, a finding of guilt followed by an adjudication on what should be done with the convicted person by way of punishment, or otherwise."

38. Lord Morris of Borth-Y-Gest said (at 501C-D):

> "Though reference is often made to the 'acceptance' of a plea there is no necessity for any formal pronouncement. All that is denoted by such an 'acceptance' is that a court is proceeding to consider what is the appropriate course to take in regard to a person who, as the court thinks, with full appreciation of what he is doing and with adequate understanding of what is involved in and what are the ingredients of a charge preferred against him, has fully and freely acknowledged and confessed to the court that he is guilty of the charge. … The words 'convict' and 'conviction' in the Act are not always used with the same meaning. If, however, the word 'convict' in this subsection is used in the sense of a finding of guilt (as opposed to a finding of guilt coupled with the making of some order) the question that is now raised is whether the fact that there is an acceptance of a plea of guilty made by an accused (which may amount to 'convicting the accused'—see section 14 (3))—prevents a court from allowing a withdrawal of the plea at any time before sentence."

39. Lord Upjohn said (at 506A-B, D-E):

> "The primary meaning of the word 'conviction' denotes the judicial determination of a case; it is a judgment which involves two matters, a finding of guilt or the acceptance of a plea of guilty followed by sentence. Until there is such a judicial determination the case is not concluded, the court is not functus officio and a plea of autrefois convict cannot be entertained. This has been the law from the earliest times…
>
> But the word 'conviction' is used also in a secondary sense, that is, to express a verdict of guilty or acceptance of a plea of guilty before the adjudication which is only completed by sentence. Not only is the word used frequently in this sense in many judgments, but also in many places in statutes dealing with these matters. As Tindal CJ said in *Burgess's* case, 7 Man & G 481, 504: 'The word

> "conviction" is undoubtedly verbum equivocum. It is sometimes used as meaning the verdict of a jury, and at other times, in its more strictly legal sense, for the sentence of the court'."

40. The question before me is what the word 'conviction' means in section 2(3) of the 1982 Act. As I have said, it appears that HHJ Norris QC in *Re Land* assumed without argument that it meant the occasion of the guilty plea by the defendant in the case, rather than the occasion on which the court sentenced the defendant to a term of imprisonment. Hence that case, although it began as an application under the 1982 Act, was amended at trial to include an application under the Inheritance (Provision for Family and Dependents) Act 1975, and it was that application which ultimately succeeded.

41. Section 6(2) of the Criminal Law Act 1967 provides:

> "(2) On an indictment for murder a person found not guilty of murder may be found guilty— (a) of manslaughter, or of causing grievous bodily harm with intent to do so; or (b) of any offence of which he may be found guilty under an enactment specifically so providing, or under section 4(2) of this Act; or (c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty; but may not be found guilty of any offence not included above."

This replaced parts of the common law rules which, for present purposes at least, were to similar effect, although the unreplaced common law rules were not thereby abolished: *R v Saunders* [1988] AC 148, HL.

42. Section 6(5) of the same Act provides:

> "(5) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that charge, and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty, then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other."

43. It is clear from these provisions that the defendant to a murder charge may plead guilty to manslaughter, and, if she is convicted of manslaughter on that plea, she is automatically acquitted of murder. It is also clear that, for this purpose, 'convicted' cannot simply refer to the making of the plea by the defendant. It is necessary that the court should *accept* the plea, and that is a formal step in the proceedings. In *R v Cole* [1965] 2 QB 388, the Court of Criminal Appeal held that the defendant by pleading guilty to a lesser but alternative offence (there, receiving stolen goods) on certain facts could not prevent his being tried on the more serious offence (there, armed robbery), *until the court had accepted the plea*. The court however had a discretion to refuse to accept a plea of guilty to the lesser charge. At page 394, Lord Parker CJ said:

> "In those circumstances it is quite clear, as is seen from *Rex v Soanes* [[1948] 1 All ER 285, CCA] that the judge had got a discretion to refuse to accept a plea of guilty to the lesser charges."

This case was in fact decided before the 1967 Act was passed, but in my judgment nothing turns on that for present purposes.

44. This means that there is in fact a third candidate for the meaning of 'conviction' in section 2(3) of the 1982 Act, which is the occasion on which the court accepts the plea of guilty to manslaughter. In the present case, the claimant pleaded not guilty to murder and tendered a plea of guilty to manslaughter on 5 April 2019. The Crown indicated that it was willing to accept the guilty plea to manslaughter and not guilty plea to murder on 29 May 2019. But it was not until 7 June 2019 that there was a hearing before the court at which the plea of guilty to manslaughter was accepted by the court and she was sentenced. So in the present case it does not matter whether 'conviction' means the occasion when the plea of guilty to manslaughter was accepted by the court or the occasion on which the claimant was sentenced, since in this case they occurred on the same day.

45. In my judgment, the word 'conviction' in section 2(3) of the 1982 Act does not refer to the occasion of the plea of guilty to manslaughter, but to the occasion (if they are at the same time) when the plea is accepted and the defendant is sentenced. On the facts of the present case, it is not strictly necessary for me to decide which is the relevant occasion if the plea is accepted and the defendant is sentenced on different days. However, the reasoning of the Court of Criminal Appeal in *R v Cole* in deciding that the court retains a discretion to refuse to accept a plea to a lesser offence is based on the proposition that the defendant may with the consent of the judge change his plea at any time *up until sentence is passed*.

46. At page 394 Lord Parker CJ said:

> "it is quite clear that whilst no doubt the confession of guilt is the highest conviction, nowhere is it stated either in Hale or Hawkins when the conviction occurred. It is clear that it does not occur at the time of the recording because otherwise it would be impossible for a judge to allow a plea to be changed, as is perfectly possible up to sentence, and indeed in one of the cases a verdict of a jury itself was set aside before sentence. In the judgment of the court it only ranks as a conviction when the defendant is sentenced".

47. Accordingly, the defendant's position is only definitive at the point of sentence and not, if this is earlier, when the court accepts the plea (as appears to have happened in *Re Land*). Only then, in my judgment, is there a conviction within section 2(3) of the 1982 Act, such that the three-month time limit begins to run.

48. This is also consistent with the need for the court in considering a claim under the 1982 Act to have the maximum information available about the moral culpability of the offence. This will generally only be so after the court has obtained all the information needed in order to pass sentence. It would be strange if time started running when the court accepted the plea, but another month or so passed before sentence (as in *Re Land*), since this would significantly reduce the time available for considering whether or not to make an application.

49. A further point is that, as I have already said, in Scotland, section 2(3) was amended by the Scottish parliament in 2015, by substituting words at the end of the subsection, and adding a new subsection following as follows:

> "… before the expiry of the [relevant period].
>
> (3A) In subsection (3) above, the "relevant period" is the period of 6 months beginning with—
>
> (a) the end of the period allowed for bringing an appeal against the conviction, or
>
> (b) if such an appeal is brought, the conclusion of proceedings on the appeal.]

50. It is clear, as Mr Blohm submits, that the phrase "the conclusion of proceedings on the appeal" must refer to the conclusion of any retrial ordered by the appeal. He says that this would extend to any sentencing at the retrial. In principle, I agree. He also says that the Scottish Act "is in *pari materia*", and therefore "is relevant material from which to construe the meaning of the 1982 Act". I was not referred to any authority dealing with the question of interpretation of UK statutes by reference to those of the devolved assemblies, but I respectfully do not think that this can be right.

51. In considering the relevant provision applying in England, namely section 2(3) as originally enacted, I am seeking to gather the intention of Parliament from the words themselves, in the context of the rest of the statute. Whether or not it is permissible to construe an original statutory text by reference to amendments made subsequently by the *same* legislator, I cannot see how I can find the meaning that the UK Parliament wished to express in 1982 by reference to statutory language used by the *Scottish Parliament* in 2016. I accept, of course, that what the Scottish Parliament has done is indeed consistent with the meaning of section 2(3) that Mr Blohm urges upon me. But I do not think I can take it into account as a matter of construction.

52. But in the event it does not matter. For the reasons given above, it is only at the point of sentence and not, if this is earlier, when the court accepts the plea, that there is a 'conviction' within section 2(3) of the 1982 Act, such that the three-month time limit begins to run. If I were wrong about that, then the conviction would occur at the time when the court *accepts* the plea, rather than when the defendant *tenders* it. Accordingly, on either view the claimant's claim in this case was in time.

The test to be applied

53. I have already set out above the relevant provisions of the Forfeiture Act 1982. The test (in England and Wales) for making an order modifying the effect of the forfeiture rule in any case is contained in section 2(2), as follows:

> "The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case."

This requires the court to take *all* the relevant circumstances into account, and to decide whether "the justice of the case" requires that the forfeiture rule be modified in its application to the particular case.

54. In *Dunbar v Plant* [1998] Ch 412, CA, a case to which I have already referred, the defendant and her fiancé agreed to commit suicide together. At the third attempt, the

fiancé managed to kill himself, but the defendant survived. The deceased fiancé's father as administrator of his estate brought proceedings concerning the ownership of the deceased's half share of the house, various deposit accounts and the proceeds of two insurance policies, one on the deceased's life. At first instance the judge held that the defendant had committed the criminal offence of aiding and abetting the suicide of her fiancé, and therefore the forfeiture rule applied. However, he decided to modify its effect so that the defendant could take the deceased's share of the house (but not the proceeds of an insurance policy on his life). He considered that his task was to do justice between the parties. The Court of Appeal unanimously held that this was wrong, and that the judge should have decided whether it was right in all the circumstances to relieve the defendant of the consequences of the forfeiture rule. By a majority, the court allowed the appeal by the defendant,

55. Phillips LJ (with whom Hirst LJ agreed), said, at 438-39:

> "The first, and paramount consideration, must be whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all. The question of the extent to which the criminal should be blamed for committing the crime is a familiar one for the sentencing judge in the criminal jurisdiction, but not one that the judge exercising a civil law jurisdiction welcomes as the test for determining entitlement to property. I have already given my reasons for suggesting that it is likely to be appropriate to relieve the unsuccessful party to a suicide pact of all effect of the forfeiture rule. Each case must be assessed on its own facts. Had Miss Plant's decision to take her own life been an understandable reaction to the pending consequences of her theft, a case could well have been made out for saying that this gave to her participation in the suicide pact a culpability that should properly be reflected by the application, at least to a degree, of the forfeiture rule. I do not, however, see this case in that light. The desperation that led Miss Plant to decide to kill herself, and which led to the suicide pact, was an irrational and tragic reaction to her predicament. I do not consider that the nature of Miss Plant's conduct alters what I have indicated should be the normal approach when dealing with a suicide pact—that there should be full relief against forfeiture. The assets with which this case is concerned were in no way derived from Mr. Dunbar's family. They are the fruits of insurance taken out by Mr. Dunbar for the benefit of Miss Plant. So far as his family is concerned, the judge rightly described the consequence of the forfeiture rule to be the conferring on them of an unwelcome windfall. While I can appreciate, and sympathise with, the emotions which I suspect underlie this litigation, I have reached the conclusion that there should be full relief against the forfeiture rule, and I would allow this appeal so as to grant that relief."

56. Mummery LJ, whilst agreeing that the judge below had approached the matter on the wrong basis, dissented from this view. He said, at 427-28:

> "Having taken the wrong approach, the judge failed, in my view, to give consideration in his reasons to all the factors material to the exercise of his discretion. In those circumstances it is open to this court to exercise the discretion afresh on the basis of the relevant material. On doing that, I have in fact reached the same conclusion as the judge on the limited scope of the modification order. It is difficult to draw the line with confidence. The point at which the judge drew it is not obviously wrong. The court is entitled to take into account a whole range of

> circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what has happened; the nature and gravity of the offence; the intentions of the deceased; the size of the estate and the value of the property in dispute; the financial position of the offender; and the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule. On consideration of all those circumstances I conclude that the appeal should be dismissed on this point…"

57. The judge's reasons for his conclusion included that the starting point was that the forfeiture rule was a rule of public policy, that the defendant's conduct was unlawful, that the fiancé's intentions were material, but that the wishes of the father and family of the fiancé were also material, and should be given weight. However, there was not enough evidence to reach any firm conclusion on other factors such as the relative financial positions of the defendant and the fiancé's family. Although, as I have said, Mummery LJ dissented in his conclusion, it is not at all clear to me that he was taking a different approach from the majority as to the factors that should be taken into account. (This is relevant to something I deal with later.) But, if and to the extent that he was taking a different approach, I am bound by the decision of the majority.

58. In *Dalton v Latham* [2003] EWHC 796 (Ch), [2003] WTLR 687, the claimant strangled the deceased to death. He was charged with murder but acquitted on the basis of diminished responsibility, convicted on his own plea of manslaughter, and sentenced to a term of 6 years in prison. For practical purposes he was the sole beneficiary of the deceased's estate. He made a claim under the Forfeiture Act 1982 for an order modifying the forfeiture rule in his favour. This was opposed by members of the deceased's family. Patten J considered (at [10]) that the terms of the Act required that he

> "be positively satisfied that the justice of the case requires the forfeiture rule to be modified".

He referred to the statement of Phillips LJ (quoted above) that the "first and paramount consideration" must be whether the forfeiture rule applied to the case at all. On the other hand, he also considered that the judgment of Mummery LJ (and in particular the extract set out above) gave some indication of matters which the court may consider when deciding whether to grant relief. There is no suggestion that I can see in the judgment of Patten J that there was any inconsistency or conflict between the approaches of these two appellate judges to the law and to the matters which must be taken into account by the court in exercising the discretion conferred by section 2(2).

59. Having considered in detail the facts of the case, Patten J refused to relieve the claimant from the effects of the forfeiture rule. He said (at [49]):

> "I have to consider whether the interests of justice require the forfeiture rule to be modified in this case. It seems to me clear that they do not. The reforms introduced by the Homicide Act 1957 were designed to preserve certain classes of offender from capital punishment for killings carried out by reason of diminished responsibility or under provocation. But the 1982 Act recognises in terms that cases of manslaughter do not qualify for relief for that reason alone. The case

> must be one in which an exception to the rule of public policy requires to be made in order to do justice. Had Parliament intended to disapply the forfeiture rule in all cases of manslaughter involving diminished responsibility, it would have enacted the 1982 Act in a very different form. In the present case Mr M. was killed by someone he had befriended and to whom he had only ever been generous. He was rewarded by violence and abuse, both physical and financial. Mr D.'s mental condition may have robbed him of a measure of responsibility for the actual killing, but it does not remove from him the responsibility for allowing that situation ever to arise. He is still, to a significant extent, morally culpable for what he did, and this was recognised by the sentencing Judge in a term of 6 years' imprisonment, which is at the upper end of the band of 2 to 7 years suggested by the Court of Appeal as appropriate for this kind of case: see Archbold at para 19-81. Mr Holmes asked me to show compassion for Mr D. in the order which I made, but that is not the test. I have to take into account all the relevant factors, including the wider circumstances I have referred to, and these include the position of the deceased's family. I have to decide, against that background, whether the justice of the case requires a modification of the forfeiture rule. I have reached the conclusion that, in the circumstances I have outlined in this Judgment, it does not."

60. I was also referred to *Chadwick v Collinson* [2014] EWHC 3055 (Ch), where the deceased and the claimant lived together for about 10 years in an apparently stable and loving relationship. They had a son together. They also co-owned a house (by way of joint tenancy) in which they lived. In April 2013 the claimant was referred by his GP for a mental health assessment after describing feelings of paranoia and of hearing voices. In the early morning of the day of the assessment the claimant stabbed both the deceased and their son to death. He was charged with murder, but his plea of guilty to manslaughter on the grounds of diminished responsibility was accepted by the Crown and he was made the subject of a hospital order. In 2008 the deceased had made a will under which the claimant was the residuary beneficiary. The claimant now sought orders under the 1982 Act declaring that the forfeiture rule did not apply in the circumstances of the case or that it should be disapplied under section 2(2).

61. HHJ Pelling QC referred to a number of decisions, including *Dunbar v Plant* and *Dalton v Latham*. The judge regarded Mummery LJ and Phillips LJ as having expressed different approaches to the exercise of the discretion conferred by section 2(2) of the Act. He referred to the decision of Patten J in *Dalton v Latham*, and said:

> "10. … The effect of these different approaches was held by Patten J in *Dalton v Latham* (ante) at 11 as meaning that the first and paramount consideration is that identified by Philips LJ but that such is not the only factor to be considered and that the other factors to be considered included those identified by Mummery LJ. I would be entitled to depart from that approach [*ie* that of Patten J] only if satisfied that it was plainly wrong. That is not my view. On the contrary, with respect, I consider it to be the correct approach not least because it is consistent with the terms of the Act."

62. In my judgment, in the passages in *Dunbar v Plant* relied on by the judge (and quoted earlier in this judgment), Mummery LJ and Phillips LJ were not disagreeing, but dealing with different matters. Phillips LJ said it was first necessary to decide whether or not the forfeiture rule applied at all to the case before considering whether or not to

modify it. He said this because it was his view that the forfeiture rule did not apply as a consequence of every criminal offence (see above). It was therefore necessary to ascertain at the outset whether this was a case in which there was any forfeiture at all. If there was not, then it was not necessary to engage the 1982 Act. Mummery LJ, on the other hand, did not deal with this threshold question, but began on the assumption that the forfeiture rule *did* apply to the particular case. So he began by considering the factors to be taken into account by the court in exercising the discretion under section 2(2). Moreover, if Mummery LJ were taking a different approach from Phillips LJ, there would be a problem, because Mummery LJ was in the minority. Hirst LJ expressly agreed with the judgment of Phillips LJ.

63. However, I am satisfied that the approaches taken by Mummery LJ and Phillips LJ were not in conflict. It is simply that the latter was starting the enquiry at an earlier point compared to the former. In other words, I respectfully agree with Patten J that the factors set out by Mummery LJ are to be taken into account, as well as those identified by Phillips LJ.

The threshold question

64. In accordance with the judgment of Phillips LJ, before the exercise of discretion under the 1982 Act can be considered, the first question is whether the forfeiture rule applies to this case at all. The evidence in this case amply establishes that the claimant at the time of the killing was suffering from psychiatric illness, consequent upon the coercive control of her exercised by the deceased. The claimant's expert said that the illness was a personality dysfunction and a dependent personality disorder. The Crown's expert said that it was an adjustment disorder. But, whichever it was, this was sufficient to reduce the offence consisting of the killing from murder to manslaughter under the Homicide Act 1957, section 2, by reason of diminished responsibility.

65. Nevertheless, this was a deliberate rather than accidental killing, where the law judges that the actor's criminal responsibility was sufficiently impaired so as to justify conviction only of the lesser offence, namely manslaughter. In the light of the decision of the Court of Appeal in *Gray v Barr*, where the court referred to "deliberate, intentional and unlawful violence" as engaging the forfeiture rule, and the criticism of the later decision in *Re H* by the majority of the Court of Appeal in *Dunbar v Plant*, both of which appellate decisions are binding upon me, I hold that the forfeiture rule does indeed apply to the facts of the present case.

Exercise of discretion

66. Accordingly, I have to consider the exercise of judicial discretion under the Forfeiture Act 1982, so as to disapply the effect of the forfeiture rule. I have already considered the unchallenged evidence in the present case. The main features are that the claimant was a late child, whose father died (in her presence) when she was six years old. When she was 15 she started a relationship with the deceased, who was then 22, charismatic and something of a charmer. She became pregnant at 17, and had an abortion. They later married, and had two children together. In total they were together for more than 40 years until the deceased's death. The claimant had few friends to turn to for assistance. Over the long term, the deceased's infidelity, use of prostitutes, violence towards the claimant, humiliating conduct, and isolation of the

claimant, as well as what can only be described as "gaslighting" her, by making her think that she was imagining his behaviour, led to what has subsequently been described as the deceased's 'coercive control' of the claimant.

67. Coercive control is now recognised, not only as a social phenomenon, but indeed also as a criminal offence since 2015 (although not at the time of the killing). The relationship between the claimant and the deceased was up and down, and at one point the claimant even presented a divorce petition and then withdrew it, entering into a one-sided post nuptial agreement with the deceased, which her own solicitor advised her not to sign. It is fair to say that the deceased's treatment of the claimant increased her dependency upon him. As Mr Justice Edis said in sentencing the claimant, she was both "trapped and manipulated", and she knew it.

68. So far as they are relevant, the deceased's testamentary intentions are difficult to discern. He left no will, and a major asset, the matrimonial home, was jointly owned with the claimant. It may well be, as Mr Blohm submitted to me, that he never contemplated anyone other than himself benefiting from his own assets. The victim impact statement, written by the elder son on behalf of both of them for the purposes of the sentencing, seeks to take responsibility onto their own shoulders:

> "… we can see that we let her down. We knew that she did not have any friends, so had no one to share her pain. Had we tried, then she would have talked to us about it. Had we been there for her to provide her with the support she so obviously needed, this might not have happened. We will always carry this regret and guilt because our mother deserved better than that from us."

69. I am quite satisfied on the evidence that the claimant loved the deceased very much and could not contemplate the thought of losing him. And yet she killed him, as Oscar Wilde says in *The Ballad of Reading Gaol*. The exercise of my discretion under the 1982 Act is not about whether there was criminal responsibility for the killing. There clearly was, and that has been dealt with in the criminal proceedings. Instead it is about whether the justice of the case requires that the forfeiture rule relating to the inheritance of property be disapplied to the facts of the case.

70. These facts are extraordinary, tragic, and, one would hope, rare. They lasted 40 years and involved the combination of a submissive personality on whom coercive control worked, a man prepared to use that coercive control, a lack of friends or other sources of assistance, an enormous dependency upon him by the claimant, and significant psychiatric illness. The deceased undoubtedly contributed significantly to the circumstances in which he died. I do not say that because coercive control is now a criminal offence, but simply because I consider that, without his appalling behaviour over so many years, the claimant would not have killed him. This distinguishes the present case from others such as *Dalton v Latham*, where the deceased made no contribution at all to the circumstances in which he died.

71. I should also say something about the effect of disapplying the forfeiture rule in the present case. The major effect would be that the claimant, rather than her sons, would inherit the estate of the deceased. That would be an exempt transfer for inheritance tax purposes, rather than a chargeable transfer which resulted in a significant amount of tax being paid. Accordingly, there would be a significant claim to recover inheritance tax from HMRC. The claimant has disclaimed any interest in actually recovering

inheritance from her sons. She simply wishes them to benefit from the tax-free inheritance that she would have had. (Obviously, there is a question as to whether this amounts to in effect a lifetime gift from her to her sons, and if so from what date, but I am not concerned with that.) Mr Blohm says that the application of the forfeiture rule has actually made the sons, innocent of any crime, worse off. I am not sure that strictly speaking this is right. The application of the forfeiture rule gives them an inheritance (subject to inheritance tax) which would otherwise have gone to their mother, tax free. It is only because the claimant does not seek to recover the inheritance from them that the sons are made worse off, by the imposition of the tax.

Conclusion

72. Overall, I am quite satisfied that the justice of this case requires that I should disapply the forfeiture rule to the facts of this case, taken as a whole. Of course, this does not mean that any person suffering from the effects of coercive control should expect without more to have the forfeiture rule disapplied in case she or he should kill the person exercising such control. Every case must be decided on its own merits. I emphasise that the facts of this terrible case are so extraordinary, with such a fatal combination of conditions and events, that I would not expect them easily to be replicated in any other.