Neutral Citation No: [2024] NICA 63 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **KEE12248** ***ICOS No:*** **77/000040** ***Delivered:*** **03/10/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

ELLEN PAULINE TERESA GALLAGHER
(NEE McLAUGHLIN)

Mr Ciaran Murphy KC with Mr Steer KC (instructed by the Public Prosecution Service) for the Crown
Mr Donal Sayers KC with Mr Stephen Mooney (instructed by MacDermott, McGurk & Partners, Solicitors) for the Appellant

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Before: Keegan LCJ, Treacy LJ and Rooney J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal brought by the appellant against a conviction on 14 February 1978. It has been considered by a single judge (Colton J) who found that there were grounds for an extension of time to bring an appeal.

[2] The appellant's convictions were for the following offences:

(i) Murder of Michael Simpson on 23 October 1974 (the incident occurring on 3 October 1974).

(ii) Attempted murder of Stephan Stankiewicz on 3 October 1974.

(iii) Possession of a firearm and ammunition with intent, contrary to section 14 of the Firearms Act (Northern Ireland) 1969 on 3 October 1974.

(iv) Placing a prohibited article, contrary to section 3 of the Protection of Persons and Property Act (Northern Ireland) 1969 on 30 October 1974.

(v) Carrying a firearm with intent, contrary to section 16(1) of the Firearms Act (Northern Ireland) 1969 on 30 October 1974.

(vi) Causing an explosion, contrary to section 2 of the Explosives Substances Act 1883 on 29 September 1975.

(vii) Carrying a firearm with intent, contrary to section 16(1) of the Firearms Act (Northern Ireland) 1969 on 27 September 1975.

(viii) Belonging to a proscribed organisation, namely the IRA, contrary to section 19(1)(a) of the Northern Ireland (Emergency Provisions) Act 1973, between 1 March 1974 and 23 October 1976.

[3] The appellant was born on 10 February 1957. She was therefore between 17 and 19 years of age at the time of the various offences outlined above. She was 21 when convicted. The sentence imposed on the murder charge was detention at the Secretary of State's pleasure. However, the appellant was released in 1981, under three years from the conviction, on medical grounds.

Factual background

[4] William Joseph Doherty and James Anthony Campbell were also prosecuted for the murder of Lieutenant Michael Simpson and the attempted murder of Private Stankiewicz. These prosecutions were before the appellant was tried. Both accused were convicted and sentenced to life imprisonment on the murder. Doherty was sentenced to 16 years for the attempted murder and Campbell eight years for that offence.

[5] Gerard Majella Kavanagh was charged on the same indictment with unrelated offences of conspiracy to murder, conspiracy to cause GBH, conspiracy to cause an explosion, robbery, and belonging to a proscribed organisation. Kavanagh was arraigned on 22 January 1979 and pleaded guilty to conspiracy to murder in respect of the incident on 3 October 1974 and other unrelated offences. He was sentenced to two years' imprisonment suspended for three years with the remaining counts not proceeded with.

[6] The background to the index offences concerns three incidents. The first incident was on 3 October 1974 and is comprised within counts 1, 2 and 3. This incident involved shots being fired at soldiers who were on patrol in the Shantallow area of Derry. In this attack Lieutenant Michael Simpson received a gunshot wound which subsequently proved fatal, and a second soldier was also injured. The prosecution case was based on the appellant's admissions that she had a role in this incident, which was to transport the gun, a Garand rifle to the house used as the firing point at a British army patrol in the Shantallow area and to return the weapon after the shooting.

[7] The second incident was the bombing of the Walpamur Factory in Pennyburn Industrial Estate, Derry on 30 October 1974. This offending is comprised in counts 4 and 5. The prosecution case was based on the appellant's admissions that she had held up the staff in the factory with a revolver to facilitate the bomb to be placed in the premises.

[8] The third incident was on 29 September 1975 and is comprised in counts 6 and 7. This was the bombing of Hinds Furniture Warehouse in Strand Road, Derry. The prosecution case was based on the appellant's admissions that her role was to hold up staff with a revolver and to allow the device to be placed on the premises.

Grounds of Appeal

[9] The appeal notice distils into one core argument as follows:

(a) The convictions of the appellant on 14 February 1978 are unsafe, in that the appellant's legal representatives at trial failed to conduct her defence in accordance with her instructions, and failed, in particular, to deploy available evidence of the appellant's low IQ, illiteracy and ill-treatment by police relevant to:

    (i) The admissibility and/or reliability of purported statements of admission on which the prosecution of the appellant was decisively based; and/or

    (ii) The formation of the specific intent required for the offences of which she was convicted.

[10] The appellant's legal representatives therefore argue that the court convicted the appellant without knowledge which was plainly material to the admissibility or reliability of the purported statements of admission and to its assessment of the mens rea required for specific intent.

[11] Akin to other historical cases of this nature some relevant materials are unavailable as follows. First, there are no handwritten records in relation to the statements or interviews. Second, there are no records of consultations between solicitor and client or counsel and client. Third, there are limited records in relation to the trial and its determination. Fourth, there is no record of the sentencing remarks from the trial. Fifth, there is no material from the Secretary of State to explain how the determination was reached as to why the appellant should be released from her detention in 1981. In addition, enquiries have been made in relation to the appellant's instructing solicitor, Brendan Kearney, who is alive but has no information to share with this court. The appellant's counsel at the time was Mr Desmond Boal QC with Mr Talbot, both of whom are deceased. The prosecuting counsel was Mr Appleton QC. It is within this framework that the court was asked to adjudicate on the grounds of appeal.

[12] The appellant refers us to the following material which became available in the course of a Criminal Cases Review Commission ("CCRC") review of this case which this court is now asked to receive and consider as fresh evidence, including:

(i) Prosecution instructions to a psychiatrist Dr Moffatt dated 15 January 1978.

(ii) Dr Moffatt's forensic psychiatry report dated 30 January 1978.

(iii) Prosecution file note of DMR Barlow, dated 10 February 1978, and notes by MJ Higgins, junior prosecuting counsel, detailing recollection of the case dated 11 March 2016.

[13] In addition, there are also some statements from the appellant, namely an undated statement, dated 9 February 2012, and dated 15 July 2020 put before us.

[14] In order to advance the application for an extension of time and the appeal, the applicant applied to introduce fresh evidence under section 25 of the Criminal Appeal (Northern Ireland) Act 1980 which provides:

> "25.-(1) For the purposes of an appeal, or an application for leave to appeal, under of this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice-
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> (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the court necessary for the determination of the case;
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> (b) order any witness to attend and be examined before the court (whether or not he was called at the trial); and
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> (c) receive any evidence which was not adduced at the trial.
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> (2) The Court of Appeal shall, in considering whether to receive any evidence, have regard, in particular, to -
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> (a) whether the evidence appears to the Court to be capable of belief;
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> (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial."

[15] We agreed to consider all of the above material *de bene esse*, reserving our decision as to whether the evidence should be formally received until the end of the case.

CCRC Reference

[16] The documentation from the CCRC comprises the decision note in relation to conviction and sentence dated 9 June 2017. Within the decision the CCRC confirms that the appellant applied and asked them to look at the conviction and sentence. The CCRC reasoning in relation to the conviction aspect of this appeal was as follows:

"**Your conviction**

The CCRC has decided not to send your conviction for an appeal because:

(i) In respect of your allegations of ill-treatment in police custody, these would not be found to be credible by the Court of Appeal, for the reasons set out below. Furthermore, no new evidence or argument is available which might help to support the credibility of your allegations.

(ii) In respect of your low IQ and illiteracy on arrest in 1976, this is not a new point, as explained below.

(iii) Insofar as additional information could now be presented regarding your low IQ and illiteracy in 1976, this would not be received by the Court of Appeal because there is no good reason why such information was not used at your trial.

(iv) Even if there were a new argument to make in relation to your low IQ and illiteracy, you could pursue this (with the help of your representatives) via a direct application to the Northern Ireland Court of Appeal."

[17] Whilst declining to refer the case, the CCRC recognised the issues as to the appellant's IQ and illiteracy on arrest, and reiterated the fact that she could bring an application to the Court of Appeal as follows:

> "In any event, if you consider that the Court of Appeal might agree to hear additional evidence and/or argument regarding your educational level/psychiatric presentation in 1976, it remains open to you to appeal directly to the court now (if necessary, supported by recent case authorities on this point – see further below). You have not sought to appeal in the past, but the possibility remains open to you. You are arguably better placed than the CCRC to assess medical information which relates to you personally. Unless there are exceptional circumstances the CCRC cannot refer your conviction to the Court of Appeal where the applicant has not previously attempted to appeal. The CCRC has not been presented with – and nor has the CCRC itself identified any such exceptional circumstances in relation to this aspect of the case."

Relevant legal principles applicable in Northern Ireland at the time of convictions

[18] The common law position was, at the time of these convictions, dictated by the Judges' Rules. These rules were designed to ensure that only answers in statements which were voluntary were admitted in evidence against their makers. We have been provided with the Judges' Rules from 1964 which are comprised in a Practice Note and which sets out how statements should have been taken.

[19] The 1964 edition of the Judges' Rules had come into force in Northern Ireland on 8 October 1976. This edition contained provisions in respect of the right to access and consult with a solicitor during detention. An admission obtained in breach of the Judges' Rules was still, however, admissible under the Emergency Provisions legislation unless obtained by torture, inhuman or degrading treatment.

[20] This point is referenced in the case of *R v Brown* [2012] NICA 14 at para [18] as follows:

> "The cases to which we have referred demonstrate that admissions made in breach of the Judges' Rules were admissible under the emergency provisions legislation unless obtained by torture or inhuman or degrading treatment. The residual discretion to exclude such admissions would not be exercised to render statements obtained in breach of the Judges' Rules inadmissible on

> that ground only. That was the law at the time of these trials. None of the parties before us contended that this was a change of case law although all parties recognised that the standards of fairness had significantly altered as a result of legislative changes arising from PACE and the Human Rights Act 1998."

[21] The Judges' Rules were revised and amended in June 1978 by Home Office Circular No: 89/78. We have been provided with these amended rules. Specifically, provision was made in these rules for the issue of statements by children and also the issue of statements by those who had mental impairment. The 1978 Rules also refer as follows at "Rule 4 Interrogation of Children and Young Persons" in these terms:

> "As far as practicable children and young persons under the age of 17 years (whether suspected of a crime or not) should only be interviewed in the presence of a parent or guardian, or in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done, only with the consent, and in the presence, of the head teacher, or his nominee."

[22] Rule 4A deals with the interrogation of mentally handicapped persons in the following terms:

> "4A. If it appears to a police officer that a person (whether a witness or a suspect) whom he intends to interview has a mental handicap which raises a doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, the officer should take particular care in putting questions and accepting the reliability of answers. As far as practicable and where recognised as such by the police, a mentally handicapped adult (whether suspected of crime or not) should be interviewed only in the presence of a parent or other person in whose care, custody or control he is, or of some person who is not a police officer (for example, a social worker)."

[23] The Northern Ireland (Emergency Provisions) Act 1973 ("the 1973 Act") also provided for the admissibility of statements of admission. This was following the

Diplock Commission which reported in December 1972. The Commission concluded that trial by judge alone should take the place of trial by jury for the duration of the emergency prevailing in Northern Ireland. It also recommended a departure from the common law test for the admissibility of confession statements. It concluded that a confession made by an accused should be admissible as evidence in cases involving scheduled offences unless it was obtained by torture, inhuman or degrading treatment. If admissible it would then be for the court to determine unreliability.

[24] Section 6 of the 1973 Act which is the operative section reads as follows:

> "(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of sub-section (2) below.
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> (2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, *prima facie* evidence is adduced that the accused was subjected to torture, inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial should be restarted before a differently constituted court (before whom the statement shall be inadmissible)."

[25] In addition to the statutory provisions discussed above subsequent jurisprudence established that a residual discretionary power vested in the court to exclude confessions in certain circumstances. This power was addressed in cases such a *R v Corey* [1979] NI 49 and *R v McCormick* [1977] NI 105. In that case McGonigle J said:

> "In my opinion the judicial discretion should not be exercised so as to defeat the will of Parliament expressed in the section."

[26] Hence, judicial discretion could be exercised in a residual category of cases which did not meet the maltreatment requirement set out in section 6, but where it would create an injustice if the statement were admitted. Lord Lowry LCJ explained this in *R v O'Halloran* [1979] NI 45 where he set out two propositions:

> "1. This court finds it difficult in practice to envisage any form of physical violence which is relevant to the interrogation of a suspect in custody in which, if

it had occurred, could at the same time leave a court satisfied beyond reasonable doubt in relation to the issue for decision under section 6.

2. It may be necessary, when considering statements of suspects, to distinguish more explicitly the meaning of the word "voluntary" at common law and "voluntary" as a shorthand expression for "not against the suspect's will or conscience" in the context of cases decided under the European Convention of Human Rights. The mere absence of voluntariness at common law is not by itself a reason for discretionary exclusion of a statement and the absence of voluntariness in the European Convention sense is *prima facie* relevant to degrading treatment and therefore, again, is not primarily concerned with the exercise of discretion."

[27] In this case there is a discrete point in relation to the confessions made by the appellant. Essentially, it is submitted that the low IQ of the appellant led to a susceptibility which calls into question the reliability of the confessions given the psychological pressure applied to her during the process. This type of situation led to an inquiry by Sir Henry Fisher taking place in England & Wales in the 1970's following the wrongful conviction of a man named William Confait. This was a high-profile case involving the conviction of three young persons for murder and arson. Two of the defendants were under 17 years and were children, the third was 18 with a low IQ. The convictions were overturned by the Court of Appeal in England & Wales on 17 October 1975 and ultimately led to the revision of the Judges' Rules which we have discussed.

[28] Paragraph 16.4 of the Inquiry report refers as follows:

> "Latimore was 18 years old, and accordingly, the administrative direction did not apply to him, there was not in 1972 (nor is there now) any direction about the interrogation of mentally handicapped people. However, in 1976 a circular was issued by the Home Office to Chief Officers of police in the following terms:
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> > '1. The Home Secretary wishes to draw attention to the need for special care in the interrogation of mentally handicapped persons. This circular has been drawn up following consultation with the Lord Chief Justice, who concurs with the advice given.

> 2. The Home Secretary appreciates that it may be difficult for a police officer to decide whether a person who is to be interviewed is mentally handicapped. However, he considers it important, if it appears to a police officer that a person (whether a witness or a suspect) whom he intends to interview has a mental handicap which raises a doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, that the officer should take special care in putting the questions and accepting the reliability of answers.'"

[29] The report then refers to the need for a third party to be present in certain circumstances and how statements should be taken and at paragraph 16.5 states:

> "I suggest that, in order to keep the circular in line with the circular of 31 May 1968 the words and young persons should be inserted."

Historic convictions generally

[30] As this is a historic conviction case a high degree of caution must be exercised by any appellate court in judging a case after such a remove of time; see *R v Bentley (Derek William) (deceased)* [2001] 1 Cr App R 21. We remind ourselves of what Lord Bingham said in that case:

> "Where, between conviction and appeal, there have been significant changes in the common law (as opposed to changes effected by statute) or in standards of fairness, the approach indicated requires the court to apply legal rules and procedural criteria which were not and could not reasonably have been applied at the time. This could cause difficulty in some cases but not, we conclude, in this. Where, however, this court exercises its power to receive new evidence, it inevitably reviews a case different from that presented to the judge and the jury at the trial."

[31] The recent case of *Oliver Campbell v The King* [2024] EWCA Crim 1026 traces the line of authority since *Bentley*. It also discusses the case of *R v King (Ashley)* [2000] 2 Cr App R 391 where the accused had been interviewed at a time when PACE was not yet in force and the sole evidence against him was his admissions. At para [49] of *King* Lord Bingham CJ said this:

> "We were invited by counsel at the outset to consider as a general question what the approach of the court should be in a situation such as this where a crime is investigated and a suspect interrogated and detained at a time when the statutory framework governing investigation, interrogation and detention was different from that now in force. We remind ourselves that our task is to consider whether this conviction is unsafe. If we do so consider it, section 2(1)(a) of the Criminal Appeal Act 1968 obliges us to allow the appeal. We should not (other things being equal) consider a conviction unsafe simply because of a failure to comply with a statute governing police detention, interrogation and investigation, which was not in force at the time. In looking at the safety of the conviction it is relevant to consider whether and to what extent a suspect may have been denied rights which he should have enjoyed under the rules in force at the time and whether and to what extent he may have lacked protections which it was later thought right that he should enjoy. But this court is concerned, and concerned only, with the safety of the conviction. That is a question to be determined in the light of all the material before it, which will include the record of all the evidence in the case and not just an isolated part. If, in a case where the only evidence against a defendant was his oral confession which he later retracted, it appeared that such confession was obtained in breach of the rules prevailing at the time and in circumstances which denied the defendant important safeguards later thought necessary to avoid the risk of a miscarriage of justice, there would be at least *prima facie* grounds for doubting the safety of the conviction - a very different thing from concluding that a defendant was necessarily innocent."

[32] We also note that in *R v Hanratty (deceased)* [2002] EWCA Crim 1141, [2002] 2 Cr App R 30 Lord Woolf CJ said at para [94]:

> "… it is clear that the overriding consideration for this court in deciding whether fresh evidence should be admitted on the hearing of an appeal is whether the evidence will assist the court to achieve justice. Justice can equally be achieved by upholding a conviction if it is safe or setting it aside if it is unsafe."

[33] In the same case Lord Woolf went on to say, at para [98]:

> "For understandable reasons, it is now accepted that in judging the question of fairness of a trial, and fairness is what rules of procedure are designed to achieve, we apply current standards irrespective of when the trial took place. But this does not mean that because contemporary rules have not been complied with a trial which took place in the past must be judged on the false assumption that it was tried yesterday. Such an approach could achieve injustice because non-compliance with rules which were not current at the time of the trial may need to be treated differently from rules which were in force at the time of trial …"

[34] In *R v Hussain (Abid)* [2005] EWCA Crim 31, at para [26], the court quoted the passage we have cited above from *King* at para [31] above and added:

> "26. This guidance is far from saying that a contravention of a safeguard which has only become applicable since the time of conviction will be enough to render a conviction unsafe and is, to that extent, a recognition that the principle set out in *Bentley* cannot be taken too far. The essential question is whether the conviction is safe, and it would be surprising if the mere fact that (for example) a "good character" or "lies" direction had not been given in the terms which are conventional today would be enough to enable a court to doubt the safety of a conviction.
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> 27. This was also, we think, the approach adopted in *Hanratty*."

[35] We note that in *R v Nolan (Patrick Michael)* [2006] EWCA Crim 2983, the court said:

> "23. As has been said in other cases of this kind, the courts are more aware today than they were 20 or 30 years ago of the risk of false confession. The procedural requirements introduced by the Police and Criminal Evidence Act were necessary to protect the vulnerable. Expert evidence is often needed to identify those who are vulnerable and assess the reliability of any confession which they make.
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> 24. But even judged by 1982 standards this was a worrying case. Proof of murder depended entirely upon the confession of the 19-year-old illiterate appellant, made in the course of 9 hours of interviews over three days, without a solicitor being present. These interviews were

> not fully recorded and in them the appellant made, and more than once retracted, admissions which included things which were obviously untrue.
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> 25. However, judged by modern standards and in the light of the new evidence, we have no hesitation in saying that this conviction is unsafe. By modern standards the interviews were unfair. The Police and Criminal Evidence Act Codes of Practice require that a detained person is advised of his right to consult with a solicitor on arrival at a police station and his right to free legal advice immediate before any interview. Any interview must now be fully recorded. In 1982 the officers' notes of the interviews should have been offered to the appellant for signature.
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> 26. But even without these safeguards, if the jury had heard expert evidence of the kind we have admitted, it would have been bound to affect their consideration of the reliability of the appellant's confession. At the very least, applying the *Pendleton* test we cannot be sure that they would have convicted if they had heard such evidence. Although the judge gave what we think was, at the time, a perfectly adequate warning about the dangers of false confessions, if expert evidence had been called his warning would inevitably have been stronger, based as it then would have been on cogent expert medical opinion."

[36] Finally in *R v Pendleton* [2001] UKHL 66, [2002] 1 Cr App R 34, Lord Bingham stated at para [19] that when an appellate court receives fresh evidence it must make its own assessment of whether the effect of it is to make the conviction unsafe, but must keep in mind that it has not heard all of the evidence:

> "The Court of Appeal can make its assessment of the fresh evidence it has heard but save in a clear case it is at a disadvantage in seeking to relate that evidence to the rest of the evidence which the jury heard. For these reasons it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe."

R v Brown & others

[37] The case of *R v Brown* [2012] NICA 14 discusses how a modern-day court should assess a historic case where a defendant exhibited vulnerabilities. This was a

case involving four defendants who were arrested and convicted for alleged terrorist offences. They appealed against their convictions by way of reference from the CCRC. We will examine the facts in a little detail as follows. The appeal was essentially based upon the fact that there were breaches of the Judges' Rules. Three of the defendants were aged 16 at the time of their arrest, whereas one was aged 15. None had been given the opportunity to consult a solicitor, none had been accompanied by a parent or guardian during interview. One defendant made allegations of mistreatment. In relation to one other, an issue was debated before the judge as to the suggestibility and diminished mental capacity of the defendant and a psychiatrist gave evidence. However, the judge preferred the evidence of the police officers, particularly as the psychiatrist did not appear to possess the relevant professional qualifications to provide medical opinion on mental capacity.

[38] The circumstances of *McCaul* are particularly relevant on the issue of low IQ. He had received a reduced sentence in a previous appeal as a result of which he was released however it was in the later appeal hearing that the conviction was actually quashed. That judgment refers to the fact that the appellant was arrested at his home and taken to Castlereagh Police Station where he was interviewed. He had two interviews in the afternoon and evening of one day lasting for a total period of four hours and 15 minutes. He was detained in custody overnight and had two further interviews in the morning and afternoon of 8 March by which time he had been interviewed for a total period of eight hours and 10 minutes. According to police he made oral admissions during these interviews relating to his part in two bus hijackings and two burglaries where shotguns were stolen. His fifth interview, a day after, lasted from 19:50 hrs until 00:10 hrs and the Crown case was that he had dictated five voluntary statements to the 10 counts on which he was charged. The admissibility and reliability of the statements were contested at the trial.

[39] Dr Nugent, a consultant psychiatrist, who examined and assessed *McCaul* found that he had a mental age of seven and IQ of between 50 and 60. He concluded that he was highly suggestible and could not have dictated the written admissions allegedly attributed to him. He had attended a special school and could neither read nor write. His mother was called to prove his suggestibility. Evidence was also called from the police and there was a debate before the judge as to admissibility.

[40] The Court of Appeal observed that it was clear that the trial judge entertained some reservations about the evidence of Dr Nugent, because he was a psychiatrist but felt able to offer an estimate of the appellant's IQ. The Court of Appeal said:

> "Such an assessment would normally be made by a psychologist. Dr Nugent did not conduct any test, approved or otherwise, to come to his conclusion. He also asserted that the appellant was abnormally suggestible. Again, it is not clear how he arrived at such a conclusion. His expertise in this area was not explained."

[41] The court's conclusion is stated at para [54] as follows:

> "There is now a considerable body of evidence to suggest that mentally handicapped young people are likely to be more vulnerable in police interviews because they may be suggestible. This much was recognised by *R v Hussain* [2005] EWCA Crim 31. The very case made on behalf of the appellant at trial was that he was suggestible. In those circumstances the absence of a solicitor or independent adult gives rise to real concerns about the reliability of the admissions. We are, therefore, satisfied that this conviction is unsafe, and we allow the appeal."

[42] The above paragraph resonates when we turn to consider the facts of this case. There is, therefore, an added dimension to this case which concerns decisions made by the appellant with the benefit of her lawyers at trial to include senior and junior counsel. The appellant is now effectively saying that her lawyers were inadequate in the handling of her case.

Principles governing the adequacy of legal representation

[43] First we refer to *Marcus Jason Daniel v The State of Trinidad and Tobago* [2012] UKPC 15. This was a murder case where the issue was whether or not diminished responsibility had been properly dealt with at trial. Fresh evidence was received from a forensic psychiatrist. Para [21] of the decision refers to the issue of a tactical decision not to run diminished responsibility as follows:

> "It is well-established that one of the factors which is likely to weigh heavily against the reception of fresh evidence in an appeal is a deliberate decision by a defendant whose decision-making facilities are unimpaired not to advance before the trial jury, a defence known to be available, see *R v Erskine & Williams* [2010] 1 WLR 183 quoting *R v Criminal Cases Review Commission ex p Pearson* [1993] 3 All ER 498."

[44] In this case the court decided that the matter should be sent for a retrial. Para [23] reads as follows:

> "In any event, even if the Board were satisfied that such a tactical decision was taken, it would not refuse to receive the fresh evidence if it thought that the evidence supported a defence of diminished responsibility which had real prospects of success." As was said at para [90] in *Erskine* quoting *R v Criminal Cases Review Commission, ex parte Pearson* [1993] 3 All ER 498:

> 'But even features such as these (including a deliberate decision not to advance a defence known to be available) need not be conclusive objections in every case. The overriding discretion conferred on the court enables it to ensure that, in the last resort, defendants are sentenced for the crimes they have committed, not for psychological failures to which they may be subject.'"

[45] The next case we considered is *Chandler v The State of Trinidad and Tobago* [2018] UKPC 5. This, again, is a murder case where fresh evidence was relied upon. The court in looking at similar issues as the previous case as to whether or not there was a failure to advance a case of diminished responsibility which would lead it to quash the conviction said this at para [29]:

> "Crucially, in the Board's view, there is no evidence that the failure to advance a case of diminished responsibility at the trial was anything other than deliberate, and indeed, a fair reflection of the appellant's own position. It is important that he is accepted as being of normal intelligence, and there is no reason to doubt his understanding of the issues at trial or his competence to give instructions. Although his position changed between the two trials so far as regards his decision whether to give evidence, he stood by the case that he had not killed Mr Philip, neither then, nor at any time subsequently, did he link this event to the voices of which he had complained to the hospital in 2005. In his interview with Professor Eastman, there is in this respect a striking contrast with the specific link made by him in relation to the *Haines* incident. The conclusion of the report, said to be derived from the history gained from the appellant, is expressed in understandably guarded terms:
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> > 'More likely than not, that at the time of the attack upon the victim of the index offence, he was in a psychotic state.'
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> But the report does not appear to explain how, given the appellant's self-awareness on this issue (as reflected in the 2005 letter and his answers in the interview), this conclusion could be reconciled with his own failure to make any such assertion at the time or later. Furthermore, as Mr Pool points out, there is no evidence even now that

> the appellant has himself changed his position or would do so if there were a retrial."

[46] The final case that we have found useful is *R v Day* [2003] EWCA Crim 1060. This was a case referred to the CCRC. The factual circumstances differ from the instant case in that it turned on a limited factual dispute as to the extent of the appellant's participation in a violent brawl for which he ended up being convicted of murder. The point in this case was a wholesale attack on legal representation which spanned across the lawyers not being properly prepared, briefing of senior counsel very late in the day, failing to cross-examine a witness, failing to call the appellant and various other complaints. It follows from the above discussion of the law that each case will obviously depend on its own facts. The ultimate test is whether the court is satisfied as to the safety of the conviction.

R v Patricia Wilson

[47] Before leaving the current law we must also discuss the case of *R v Patricia Wilson*. This is a case which was recently decided by the Northern Ireland Court of Appeal and which this court requested additional submissions on. There are two judgments of the court, a majority judgment reported at [2022] NICA 73 of Sir Declan Morgan and Sir Paul Maguire and a dissenting judgment of Treacy LJ at [2022] NICA 74. By a majority decision the Court of Appeal refused the applicant's application to extend time for appeal.

[48] In written submissions the appellant contends that many aspects of *R v Wilson* are strikingly similar to the case of the appellant and their historical context is effectively identical. Counsel highlighted the fact that the convictions were entered on consecutive days namely, the appellant was convicted on 14 February 1978 and Ms Wilson on 15 February 1978. The appellant makes the case that the *Wilson* majority does not prejudice her case given that there was material available which showed evidence of mental retardation on examination and illiteracy in this case.

[49] We briefly recap on the circumstances of the *R v Wilson* case as follows. The appellant in that case was aged 17 when arrested, she did not give evidence nor call any witnesses at trial, no appeal was made until an application to the CCRC in January 2014. The CCRC did not refer the convictions and thereafter an appeal was lodged. The prosecution case depended entirely on the appellant's admissions at police interview in Castlereagh, she did not have access to a solicitor or family. Following the second interview on the second day of interviews she made a complaint to a Forensic Medical Officer ("FMO") who recorded "verbal threats and pushed about." This was transmitted to RUC Headquarters and in subsequent interviews following her complaint she made statements of admission. On the third day she was seen by her parents and a doctor but had no complaints to make and she was charged that evening. The appellant signed two complaint certificates in respect of the entire period of her detention and replied no in respect of whether she had any complaints to make. One of the interviewing officers gave evidence in mitigation of sentence.

The point is therefore made that there are similarities to this case in that the conviction was made upon confessions made during detention and questioning which were alleged to have breached the Judges' Rules in that there was not a solicitor present and that there was an allegation of physical assault and ill-treatment.

[50] In the *Wilson* case the court dealt substantively with previous decisions on the admissibility of confessions under the emergency legislation referencing cases of *R v Brown and others*, *R v Corey*, *R v McCormick, R v O'Halloran* and *R v McCaul*. We have already referenced the fact that following from dicta a breach of the Judges' Rules did not automatically mean that a statement would be declared inadmissible. In terms of the application of the Human Rights Act 1998 ("the HRA 1998") the majority decision is quite clear flowing from *R v Lambert* [2002] 2 AC 545 that Convention rights could not be relied upon in respect of a conviction pre the HRA 1998 coming into force. This is contained at para [55] of *Wilson* as follows:

> "[55] It follows, therefore, that the reasoning in *Magee* does not apply and in light of the fact that this conviction was made in February 1978 the appellant is not entitled to rely on the Convention rights in the HRA."

[51] The decision in *Wilson* also explains the position in Northern Ireland regarding the *voir dire* procedure. The court notes that there was no rule that the defence in a criminal case had a right prior to the trial to see documents in the possession of the Crown or police which were relevant to the issues which might arise in the trial and especially on the *voir dire*. Para [80] of the decision reads as follows:

> "[80] What is clear from each of these cases is that there was no duty of disclosure where the accused intended to challenge the admissibility of a statement of admission allegedly induced by inhuman or degrading treatment until the accused either indicated the intention to make the challenge or gave evidence on the *voir dire*. Nor was there any unfairness in this procedure."

[52] However, if the accused raised an issue about admissibility of a confession at the *voir dire* disclosure should have followed. Furthermore, if there was relevant material on the circumstances of the making of an admission which an accused could not have been expected to appreciate for mental health or other reasons, failure to disclose to the appellant and her lawyers could be relevant to safety.

[53] The dissenting judgment of Treacy LJ refers to the necessity for safeguards in a case such as this based on confession only admissions. Treacy LJ noted that a discretion was available to police by virtue of which permission could be granted for a detainee to be accompanied in interview by a solicitor. The exercise of that discretion required to be considered in each case by the officer in charge of the investigation. Similarly, the appellant argues it would have been open to police to allow a detainee

including someone like the appellant with a low IQ to be accompanied by an appropriate adult. The point made is that this was not considered at all in the case of the appellant and that the police had simply not fully appreciated the low level of her intellect. The point raised is that irrespective of the reasons for it, the resulting absence of safeguards is a matter going directly to the safety of the appellant's convictions.

[54] In *Wilson* the appellant raised the point independent of the HRA 1998 which the majority drawing on *Lambert* says does not apply retrospectively. It therefore follows that each party in this case draws on the *Wilson* case to their own advantage. The appellant says that there was information about her capability at the time of interview which was not known to police which meant that appropriate safeguards were not undertaken at interview. The prosecution said that this was not challenged in the hearing by way of *voir dire* when it could have been whenever the evidence was available in a medical report obtained by the appellant's solicitor which referred to her capabilities and so no issue of disclosure arises.

[55] Having discussed this case above we are clear that the current case presents a different challenge to that in *Wilson*. In this case the issue is whether or not the medical evidence which was available at the time to the defence from Mr Patten should have been utilised to make a case for exclusion given the low IQ of the appellant alongside a case that the confessions should have been excluded due to improper psychological pressure. In order to determine whether or not these matters are sufficient to undermine the safety of the conviction, we must first look at what the evidence of the experts is as one aspect of the case; secondly, how the interviews were actually conducted and what the evidence is in relation to those; thirdly, the court must look at the content of the confessions made; and fourthly, the court must consider the issue of the legal representation given to the case.

[56] Ultimately, this court has to decide whether or not the convictions are safe in all of the circumstances. This task must be approached with care given the fact that the conviction was for serious offences following a trial many years ago.

This case - the interviews and evidence

[57] A chronology of the interviews has helpfully been provided by counsel within the following table:

21 Oct 1976	12:30pm	D arrested by army at 41 Drumleck Gardens, Shantallow. Gave name as Ann Bridget McLaughlin
	3:10pm	To custody of W/Con Hamill at Strand Road RUC
	4:14pm – 4:20pm	Seen by police doctor: refused examination other than by own doctor.
	5:30pm – 6:15pm *45 mins*	Interview 1. D/Sgt Davidson, D/Con Millar, W/Con Barnett

	45 mins (cumulative)	
	8:25pm – 11:45pm *3 hours 20 mins* **4 hours 5 mins**	Interview 2. D/Sgt Davidson, D/Con Millar, W/Con Barnett. Gave correct name at 10.05pm.
	12:00am approx.	Received food brought to RUC by brother.
22 Oct 1976	9:00am	Refused breakfast
	11:00am – 1:05pm *2 hours 5 mins* **6 hours 10 mins**	Interview 3. D/Con Millar, D/Con McAdams, W/Con Kealey
	1:45pm	Refused meal
	1:50pm – 4:35pm *2 hours 45 mins* **8 hours 55 mins**	Interview 4. D/Sgt Sheehy, D/Con Millar, W/Con Kealey. [In a statement dated 3 Feb 1978 (not mentioned in Sheehy statement dated 7 Apr 1977, or by Millar or Kealey), Sheehy: '... McLaughlin suddenly got up from her chair and deliberately struck her forehead against a press, which was standing approximately [...] feet to her left. Detective Constable Millar and myself manage to restrain McLaughlin. I stopped the interview and made arrangements for her to be medically examined.)'
	5:15pm	Seen by police doctor (Dr Mitchell): refused examination other than by own doctor. 10 minutes: 'states had hair pulled and was shaken about and lifted up by lapels of coat and had ears pulled. No other ill-treatment or abuse … there were no visible marks on the face and the prisoner was relaxed and cheerful and smiled readily which seemed to contraindicate ill-treatment.' Refused tea.
	5:30pm – 6:15pm *45 mins* **9 hours 40 mins**	Interview 5. D/Con Millar, D/Con McAdams, W/Con Kealey.
		Undated statement of W/Con Kealey (Notice of additional evidence, 3 Feb 1978): Detailed as gaoler for D. After one of the interviews on 22 Oct 1976: o D's 'eyes were full of tears'; 'crying'; o D asked what she was going to do; o Kealey told her 'the best thing to do was to tell the truth' / the only people who can

		help you now are those fellas up the stairs' / 'make a statement and rid yourself of everything'; o reminded D of caution; o questioned D about joining IRA and 'jobs' - recorded answers on piece of papers (not exhibited); o D: 'You tell them first and then I'll make a statement'; o in interview: '... some time later during the interview the detectives asked her about the talk she had in the cell with me she did not reply but looked at me I knew she wanted me to tell them first so I did.'
	7:00pm – 11:10pm *4 hours 10 mins* **13 hours 50 mins**	Interview 6. D/Sgt Sheehy, D/Con Millar, W/Con Kealey. 7:55pm: admitted involvement in bombing at Walpamur in Pennyburn Industrial Estate. 8:00pm – 8:20pm: dictated written statement to D/Sgt Sheehy [Exhibit C]. Admitted IRA membership and bombing at Hinds furniture store, in answer to D/Sgt Sheehy. 8:45pm – 9:10pm: written statement [Exhibit B] 9:15pm: D/Con McAdams replaced D/Con Millar. 9:50pm: after further denials of involvement in recent terrorist incidents, admitted taking part in a shooting, in answer to D/Sgt Sheehy. 10.30pm - 11.05pm: written statement [Exhibit A]
	11:10pm	D interviewed by W/Sgt Adair about complaint of ill-treatment by police officers (made to Dr Mitchell at 5.15pm). Long written statement taken by W/Sgt Adair.
23 Oct 1976	12:25am	Completion of statement taken by W/Sgt Adair.
	12:25am – 3:20am	Visited by father, brother, and sister-in-law. 2:30am – 3:00am: examined by own doctor (Dr Hurley): 'had had her hair pulled and lifted up by

		lapels of coat and shaken about and ears pulled on several occasions to-day by 2 policemen while a prisoner in Strand Road Barracks.' Examination disclosed that: 'there was no evidence of bruise. No marks on ears or scalp. No lacerations on body. No bruising.'.
	3:00am	Seen by police doctor: no evidence of ill-treatment
	11:10am	Seen by police doctor: no evidence of ill-treatment
	3:15pm	Seen by police doctor: no evidence of ill-treatment
25 Oct 1976	9:30am	Seen by Dr Cole having been committed on remand to Armagh Prison: found fit and well, made no allegations against security forces. Dr Cole prepared a medical report which, addressing Mental/ Emotional State, said: ' illiterate. Relaxed and co-operative. Low IQ.'
		Report of Dr Lyons: not included in papers.
11 May 1977		Report of Mr Patten (District Principal Clinical Psychologist): records D's allegations of physical ill-treatment in custody, and her indication that she was shown by police photographs of victims of explosions and shooting. The following matters in particular were referred to: o D alleged that she was shown and made to kiss a photograph of a youth of 16, who she was told had been shot; o D was shown photographs of a woman, who again she was told had been shot, and was told that the woman would haunt her at night; and o D was threatened with assassination - that police would have her shot in the street, and that no one would know that they had been responsible. Mr Patten concluded that D's Intelligence Quotient was 64: 'This would suggest that she is functioning in what is usually regarded as the high grade mentally subnormal category.' She should, it was said, have been classified as educationally subnormal, and her educational attainments '... would be approximately

		equivalent to that of an average child in the first year of primary school education.' The experiences which D described, if true, were said by Mr Patten arguably to have been: '... sufficient to produce an acute emotional disturbance in an immature girl of such limited intelligence, to such an extent that she might well have agreed to sign a statement which she might not have made, or which she might not have understood. Indeed, I suggest that the latter is more likely, i.e. that given her limited understanding and the extent of her disturbance, she would not be in a fit state to comprehend the contents of such a statement, even if these were read to her, which clearly must have been the case, since she would have been unable to read it herself. The reliability of such a statement, from such a person, in such a condition must therefore be suspect ... The account which she gives of the events of her arrest and interrogation, if true, must raise the question of whether she was in such an acutely disturbed state, that she could not comprehend the content of her statement. This would cast considerable doubt on such a statement's reliability.'
16 Dec 1977		Letter from Brendan Kearney (solicitor)
5 Jan 1978		Letter from CW Shannon (Area Assistant Director, Belfast) to Dr Moffatt, Consultant Psychiatrist: 23 points. 'If she is a high-grade sub-normal I should be grateful for your views about the effect of the duration and frequency of questioning such a person and the lucidity of the statements made by Miss McLaughlin – Exhibits A, B and C – and her statement of complaint made to Woman Sergeant Adair and the ability of such a person to withstand such questioning; also, the truthfulness of such a person in the circumstances which Miss McLaughlin found herself.' Documents enclosed: depositions, D's statement to W/Sgt Adair, Detention Schedule and Medical Reports, letter dated 16 December 1977 from Brendan Kearney.

30 Jan 1978		Dr Moffatt (at request of DPP): 'I do not feel that the duration or the frequency of the periods of questioning were excessively long. She can make statements but not fluently. They could be lucid and factual. In my experience she could withstand such questioning – e.g. she would not easily be forced to give a reply if she didn't wish to. I would have felt that she would have been a truthful witness. If asked questions which she resented she would have refused to answer them or parried them with 'if you say so', but I do not feel that she would have deliberately lied.'
3 Feb 1978		Additional evidence: D/Sgt Sheehy, W/Con Kealey: see entries for 22 Oct 1976 above.
8 Feb 1978		Note prepared by DMR Barlow within Office of DPP. Related to conduct of prosecution; followed conversations with senior counsel and Mr McLoughlin. Recognised that following medical examination on behalf of both the defence and prosecution, it was: '… now common ground that she is a person of low intellect (probably ESN) with an intelligence rating of 64.' Senior counsel had identified two aspects of the case on which this was considered to bear: 1. The admissibility of the confession obtained from the accused on the basis of which the entire case depended. 2. The question of her ability to form the full intent required to establish the more serious charges against her, e.g. murder and attempted murder. Note indicated that certain matters concerning the police interrogation gave rise to concern, such as the contention that D: '… had been shown certain photographs of deceased persons and that she was made to kiss them, etc. The police apparently concede that at least one such photograph was shown to the accused, but they would dispute the other conduct alleged.'

		Noted that the medical report obtained by the prosecution had concluded that D would have been a truthful witness and would not have deliberately lied. Senior counsel note that this might place the prosecution in difficulties: D had maintained her innocence *'… for a relatively long period'* before purportedly confessing. Note concerned an intimation from senior counsel for the accused that she would be prepared to plead to all counts save those of murder and attempted murder. Senior counsel for the prosecution advised that such a plea should be accepted. The proposed pleas were acceptable to the Director. (Three lines of the Note have been partly or wholly redacted, as has a note in the left margin.)
10 Feb 1978		Addendum to Note: D declined to plead guilty to any charge. Trial: Belfast City Commission (Kelly J). 'No defence witnesses called, or evidence given.'
14 Feb 1978		Verdict 'Guilty to all eight counts', immediately followed by a note stating: '2 x Medical reports handed in. 1 report returned to Crown.'. Sentence: (1) Murder - SOSP (2) Attempted murder (3) Possession firearm and ammunition with intent (4) Placing a prohibited article (5) Carrying firearm with intent to commit indictable offence (6) Causing an explosion (7) Carrying firearm with intent to commit indictable offence (8) Belonging to proscribed organisation.
11 Mar 2016		M J Higgins (junior counsel for the prosecution at the time) advised of information recovered from a February 1978 notebook and provided observations thereon. In particular:

		'The lack of cross-examination of any of the witnesses, in particular D/Con Miller, indicates that a decision was made by defence counsel not to challenge the admissibility of the confession statements or the prosecution evidence. There was probably a submission on the murder charge that the evidence was insufficient to establish knowledge of the intended use of the weapon. The short duration of the trial, the lack of cross-examination and the verdict delivered on Tuesday 14 February all indicate that the defence adopted a procedure known colloquially as a 'fighting plea.' This occurred where the accused did not wish to formally plead guilty, but was not contesting the prosecution case and preferred a verdict by the court to a plea of guilty. The accused would not have given evidence. The advantage for the defence was to secure as much credit for the accused as possible when it came to sentence, based on the attitude adopted.' It was also noted that '... there was no *voir dire* and no decision on admissibility was required or given.'

Assessment of the evidence

[58] As is apparent from the foregoing Mr JW Patten, Principal Clinical Psychologist, was retained by the appellant's solicitors to assess her intellectual and educational abilities, her suggestibility during the interview process and the reliability of her statements of admission. In order to measure the appellant's level of intellectual functioning, Mr Patten administered the Wechsler Adult Intelligence Scale, which consists of a number of sub-tests designed to measure global intellectual ability. The Wechsler Intelligence Scales are among the most widely used assessment instruments for determining a person's intellectual abilities, strengths and weaknesses. Mr Patten's conclusions from the results of the tests are referenced in the table above and point to a very limited degree of intelligence given the IQ finding of 64. Mr Patten expressly rejected any suggestion that the appellant had fabricated the test scores. He stated that "without expert knowledge of attainment criteria, a subject performing these tests would find it extremely difficult to fabricate poor results with such consistency." Mr Patten assessed the appellant's abilities as that of a primary one child.

[59] In response to the report from Mr Patten, it appears from new evidence contained within the documents disclosed to the CCRC, the prosecution requested a report from Dr Moffatt, Psychiatrist. We can glean the context of this request from a

letter of CW Shannon (Area Assistant Director, Belfast) to Dr Moffatt, the following is stated:

> "If she is a high-grade subnormal, I should be grateful for your views about the effect of the duration and frequency of questioning such a person and the lucidity of the statements made by Ms McLaughlin (exhibits A, B and C) and her statement of complaint made to Woman Sergeant Adair and the ability of such a person to withstand such questioning; also, the truthfulness of such a person in the circumstances in which Ms Laughlin found herself."

[60] In his report dated 30 January 1978, Dr Moffatt stated that the appellant "showed evidence of mental retardation on examination" and was "almost illiterate." Dr Moffatt further stated that, "[T]he degree of her abnormality would make her Borderline Special Care." Without carrying out any formal psychological testing, Dr Moffatt indicated that the appellant had "an estimated mental age of 11-12 years." Despite these most concerning observations, Dr Moffatt stated that he did not "feel that the duration or the frequency of the periods of questioning were excessively long. … in my experience she could withstand such questioning eg she would not easily be forced to give a reply if she did not wish to." In his report, Dr Moffatt stated that the appellant admitted saying "she was a member of the IRA. Probably did make a statement about Hinds Store. Maybe I would have said I carried a gun in the waistband on my trousers."

[61] It follows from perusal of these medical reports that the medical experts plainly agreed that the appellant fell within the high-grade mentally subnormal category. Both experts agreed that individuals who function at this level were borderline special care. As stated by Mr Patten, "less than 5% of the general population of her age could be expected to obtain a score as low as, or lower than an IQ of 64." Both experts were of the opinion that the appellant would have been classified as educationally subnormal and illiterate. Mr Patten assessed the appellant's educational attainments equivalent to that of an average child in the first year of primary school education. Dr Moffatt estimated her mental age at 11-12 years.

[62] Despite acknowledging the appellant's intellectual and educational deficits and having classified her as "borderline special care," the bone of contention or disagreement between the medical experts related to the impact of police interrogation on the appellant.

[63] We note that a *voir dire* did not take place. Therefore, the validity and cogency of the opinions expressed by both experts were not tested under cross-examination. However, there is no doubt that all involved knew this was a vulnerable young woman who could be subject to psychological pressure during interviewing.

[64] In this regard it is highly significant that the appellant, when interviewed (and so contemporaneously) by Mr Patten on 9 May 1977, stated that during her interrogation, the interviewing police officers showed her photographs of victims of explosions, an Indian woman who had been shot dead and a deceased youth who had also been shot. The appellant stated that she was made to kiss one of the photographs and was told that the Indian woman would haunt her when she closed her eyes.

[65] In his report, Mr Patten also stated that, if the events as described by the appellant took place in the police station:

> "… they would have been sufficient to produce an acute emotional disturbance in an immature girl of such limited intelligence, to such an extent that she might well have agreed to sign a statement which she might not have made, or which she might not have understood. Indeed, I would suggest that the latter is more likely, ie that given her limited understanding and the extent of her disturbance, she would not be in a fit state to comprehend the contents of a statement, even if these were read to her, which clearly must have been the case, since she would have been unable to read it herself. The reliability of such a statement, from such a person, in such a condition, must therefore be suspect."

[66] It would unquestionably be improper for police officers during questioning of this or any vulnerable individual to have shown them photographs of corpses, leaving aside whether she was made to kiss the photographs. The statements made by the police officers who interviewed the appellant make no reference to such improper conduct. However, in the new evidence contained in the note from DMR Barlow, it is clearly stated that the police conceded that at least one such photograph was shown to the appellant. Thus, there was evidence to corroborate the appellant's own account of this.

[67] The significance and the weight to be attached to this new evidence and the impropriety of the police must also be considered in light of the medical evidence. Firstly, it is now clear that the appellant's account to Mr Patten that she was shown at least one photograph of a corpse was accurate and truthful. Secondly, as a principal clinical psychologist, Mr Patten possessed the training and experience to carry out the relevant psychological tests to ascertain (i) the level of the appellant's intelligence and educational functioning and (ii) to assess the impact of the police questioning of such a vulnerable individual. According to Mr Patten, the results of the tests were not fabricated. Based on these tests, Mr Patten assessed the appellant as having very limited intelligence and almost negligible educational attainments. Furthermore, he provided a striking opinion as to the potential effect of psychological pressure which we set out at para [65] above.

[68] Unlike Mr Patten, the prosecution expert, Dr Moffatt was not a consultant clinical psychologist. He did not carry out any psychological testing, such as the Wechsler Adult Intelligence Scale. Indeed, he was not qualified to carry out such tests and to assess the results of the tests on the appellant. Despite these limitations he proffered an opinion that the appellant was capable of withstanding police interrogation over such lengthy periods. In light of the new evidence, the question necessarily arises as to whether Dr Moffatt's opinion would have changed if he had been told that during the interrogation process, this vulnerable individual, with a learning disability, had given a truthful account that she had been shown at least one photograph of a corpse in the context of her longstanding fear of death and corpses.

[69] We are troubled by the impact of police interrogation on such an obviously vulnerable individual. The interviewing officers, in our judgment, would clearly have been alerted to the appellant's intellectual limitations and learning disability. They were plainly aware that she could not read or write. The appellant's vulnerabilities and deficits were evident and should not have been ignored. For the reasons given above specific to the expert medical evidence on the vulnerability of the appellant, the impropriety of the interviewing officers, the significance of the fresh evidence and the absence of a solicitor or independent adult gives rise to real concerns about the reliability of the admissions.

[70] Mr Barlow's note also recorded that 'the main difficulty in the case' appeared to be that at the time of her interviews the police had not fully appreciated the low level of her intellect and that accordingly there was a 'real danger' that the confession might be excluded. If it was excluded the prosecution would collapse. What generated this concern was the police admission in the possession of the prosecution that they had not fully appreciated the low level of her intellect. The significance of this admission for the entire case was immediately apparent to the experienced prosecutor hence the unqualified acknowledgment of the "real danger" that the police admission might lead to the exclusion of the evidence upon which the prosecution depended.

[71] Given the prosecution concern that the entire trial could collapse as a result of this evidence it is concerning that the prosecution failed to discharge their duty "to the courts to ensure that all relevant evidence of help to an accused is either led by them or made available to the defence." Allied to this is the fact that the appellant was not provided with any safeguards that her mental vulnerabilities and fundamental fairness required, such as an appropriate adult or solicitor. Despite their qualified understanding that the appellant was mentally impaired, the police proceeded with their interrogations and treated her as if they were dealing with a teenage adult of normal ability when, in fact, she was a vulnerable young woman of very low intellect.

[72] The appellant's admissions were presented in the police statements of evidence as if these admissions were unproblematic. It is also significant that her low level of intellect was absent from the statements of evidence of the interrogating police. Not

even the slightest hint was given by the experienced police officers that they were dealing with an immature, "almost illiterate" girl with a mental age of 11-12 on the prosecution case.

[73] Furthermore, the prosecution did not disclose to the defence the evidence that the police admitted that she was shown *at least* one photograph of a deceased person. This evidence was neither led in evidence nor disclosed to the appellant. This decision was made notwithstanding its obvious relevance to the issues of admissibility and reliability. This decision was also made with the knowledge that the appellant had made complaints at the time to the police and the medical experts about being subject to improper treatment. Of most relevance for present purposes is that her complaint included a very unusual and specific allegation that she had been shown photographs of dead bodies. It follows that the police material, if disclosed, would have constituted strong corroborative evidence of her account.

Overall conclusion

[74] The context of this case is important as the prosecution case and subsequent convictions were solely based upon the appellant's confessions. It is accepted by the appellant that much of the material mentioned above in this judgment was available at trial. This concession is unsurprising. In fact, the reports of Dr Moffatt and Mr Patten are not fresh evidence. However, the other non-expert material is new and raises an issue as to whether the notes now received establish non-disclosure to the defence as to how this vulnerable defendant was treated. The first time the appellant became aware of this material from the DPP including police admissions was as a result of its disclosure to the CCRC almost 30 years after her conviction.

[75] The appellant's counsel Mr Sayers KC also frankly accepted the limitations with his line of argument as to physical maltreatment in his skeleton argument where he states at para [17] as follows:

> "Available medical evidence in relation to the examination of the [appellant] on 22 and 23 October 1976 does not provide corroboration of her complaints of physical ill-treatment. This line of argument is therefore not a line that can succeed."

[76] However, that is not the end of the matter as the question of psychological pressure clearly arises based upon Mr Patten's report of 11 May 1977 which we have discussed above. The appellant understandably relies on one particular section of Mr Patten's report which we set out at para [65] herein.

[77] Allied to this compelling evidence is the material that has been produced from the DPP. In the notes now provided it is apparent that police accepted that at least one photograph was shown to the appellant of a deceased person during the interview process but disputed other conduct alleged. The appellant made no allegations or complaints of psychological ill-treatment at any of her medical examinations. However, Mr Patten's report raises a valid question as to psychological fragility or suggestibility.

[78] What remains to be considered is the criticism of the appellant's previous legal team. Clearly there was a recommendation to enter a plea to all charges save murder and attempted murder based on lack of intent. This material is a good indicator of the shape of the case being advanced from defence counsel's point of view. It also appears that the prosecution was willing to accept a plea to the lesser charges. That is also an indication of what the prosecution thought about the case and some potential difficulties it knew it had given the appellant's low IQ. Ultimately, the plea was not forthcoming and so the trial proceeded. We do not have a record of exactly what happened at this trial or notes of counsel.

[79] We understand the prosecution's point that there was no complaint by the appellant about her legal team or shortly thereafter. The point as to the appellant's inability to form an intent for murder could of course still have been raised during a three-day trial after the *voir dire*. It is also clear that the appellant had the benefit of family around her, particularly her aunt, Anne McLaughlin, who is mentioned in the material we have seen. However, these facts must be seen in the light of the issues we raise above as to the appellant's very low IQ and non-disclosure by the prosecution.

[80] Therefore, this is not in fact a case where inadequate legal representation is the real issue (in the sense of the authorities we have discussed in this judgment). That is because, the defence were unaware of the police admission that the appellant had been shown photographs of at least one dead body. Obviously, this revelation would have helped establish a case of psychological pressure which in turn would have called into question the reliability of the appellant's confession.

[81] In truth, this appeal is well founded upon the medical evidence in relation to this appellant's mental age and intellectual capacity at the time. This evidence raises a valid query as to the appellant's reliability in terms of standards prevailing in 1977 never mind 2024. That is because it was recognised by both prosecution and defence that this was a vulnerable young woman, with an IQ of 64 in the learning disability bracket. Yet there were no safeguards provided to protect her including access to a lawyer and an appropriate adult. These circumstances are stark and to our mind make this an exceptional case. Such a situation would be unthinkable today where in our courts we have a much greater appreciation of the suggestibility of those with such a low IQ and recognise the needs of vulnerable witnesses and take steps to safeguard them.

[82] In addition, the new evidence contained in documents disclosed to the CCRC establish the improper conduct of the interviewing police officers who showed at least one photograph of a dead body to this vulnerable woman. The appellant recounted this to Mr Patten at the time. This admission was not disclosed to the defence who, if it had been, could have mounted a case of psychological pressure. Furthermore, if the trial judge had been aware of this, we consider, there is a real possibility that he would have taken a different course in the case as he would have been slow to conclude that the confession was reliable.

[83] Therefore, having considered the section 25 criteria (set out at para [14] herein), we admit the fresh material we have received which is clearly capable of belief and has a bearing on the appeal especially as to psychological pressure and the use of photographs of dead people by interviewing officers. In addition, based on a better understanding of the effect of intellectual deficits on reliability, the safeguards needed to protect against unfairness were not applied in this case to a young woman who was illiterate and operating at the level of a young child.

[84] In this appeal we have the benefit of a contemporaneous assessment by a consultant psychologist Mr Patten in relation to the appellant's capabilities. In the light of the material, we now have, his report is of strong evidential weight. That is because the key point highlighted by Mr Patten of the appellant at trial was that she was suggestible and open to psychological pressure and crucially, if her version of being presented with photographs of dead people was correct, she could well have signed a false statement. Obviously, in those circumstances the absence of a solicitor or independent adult gives rise to real concerns about the reliability of her confession.

[85] Accordingly, we cannot be satisfied as to the safety of these convictions. We agree with the single judge that time should be extended, and we will quash the convictions.