Neutral Citation Number: [2022] EWCA Crim 108

Case No: 2019/03868/B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM LEEDS CROWN COURT
TUDOR EVANS J
Ind. Nos. 810041, 814402, 810043, 810044, 810045, 810046, 810047, 810048, 810049, 810050, 810051

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2022

Before :

LORD JUSTICE FULFORD, THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
MR JUSTICE HILLIARD
and
LORD HUGHES

- -

Between :

TREDGET	**Appellant**
- and -	
REGINA	**Respondent**

- -
- -

Mr T Barnes QC and J Gelsthorpe (instructed by **Cartwright King Solicitors**) for the **Appellant**
R Whittam QC and Louise Oakley (instructed by **Crown Prosecution Service Special Crimes Division Appeals Unit**) for the **Respondent**

Hearing dates : 11th - 22nd October 2021

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Approved Judgment

LORD JUSTICE FULFORD :

This is the judgment of the court to which all members have contributed.

Introduction

1. On 20 January 1981 in the Crown Court at Leeds before Tudor Evans J, the appellant (now aged 61) pleaded guilty to 11 counts of arson with intent to endanger life or being reckless as to whether life was endangered, contrary to section 1(3) of the Criminal Damage Act 1971, and 26 counts of manslaughter, contrary to common law. His guilty pleas to manslaughter were entered on the basis of diminished responsibility and in consequence the Crown did not proceed against him on the 26 counts of murder with which he had originally been charged.

2. On the same day, he was sentenced to detention without limitation of time at Park Lane Hospital, under sections 60 and 65 of the Mental Health Act 1959.

3. The indictments containing the offences to which the appellant pleaded guilty were as follows (all the addresses are in Hull, in the East Riding of Yorkshire):

Indictment	Address	Date of fire	Guilty pleas
810041	12 Selby Street	4 December 1979	Count 1 – arson with intent to endanger life or being reckless as to whether life was endangered Counts 2 - 4 – manslaughter
814402	70 Askew Avenue	23 June 1973	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter
810043	33 Glasgow Street	12 October 1973	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter
810044	Humber buildings	19 October 1973	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter
810045	7 Minnies Terrace	23 December 1974	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter
810046	9 Gorthorpe	3 June 1976	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter

810047	43 West Dock Avenue	2 January 1977	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Count 3 – manslaughter
810048	Wensley Lodge (All 12 convictions were quashed in 1983)	5 January 1977	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Counts 3 - 13 – manslaughter
810049	4 Belgrave Terrace	27 April 1977	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Counts 3 - 4 – manslaughter
810050	2 Brentwood Villas	6 January 1978	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered Counts 3 - 6 – manslaughter
810051	407 Troutbeck House	22 June 1979	Count 2 - arson with intent to endanger life or being reckless as to whether life was endangered

4. It is critical to emphasise at the outset that the case against the appellant was centrally, although not entirely, based on confessions that he was said to have made in interviews with, and in 12 statements under caution provided to, Detective Superintendent Sagar (together with other police officers) in advance of his guilty pleas. Absent that evidence there would have been no case against the appellant, although there was certain other supporting evidence.

5. He was represented at trial by solicitors (Andrew M Jackson & Company) and counsel (Mr Harry Ognall Q.C., later Mr Justice Ognall, and Mr Peter Heppel). Counsel saw the judge in his chambers on 19 January 1980, the day before the pleas were taken. Mr. Ognall took the highly unusual course of indicating to the judge that his instructions caused him anxiety and disquiet. He said it was difficult to get instructions from the appellant who had shifted his ground as to his guilt. The concerns expressed by Mr Ognall included the following:

> "We for our part are gravely troubled because last Thursday when we saw him last in prison, his clear instructions to us were to plead not guilty to everything on the basis that he had not done anything. When we came to see him this morning as a matter of courtesy, just to explain what would happen to-day he told us he wished to plead guilty. This is about the fourth change of tack."

6. Mr. Ognall pointed out that one of the factors that had created anxiety was the conclusion of a public inquiry into the cause of one fire, the Wensley Lodge fire of 5 January 1977, to the effect that it was accidental.

7. Notwithstanding these concerns, the psychiatrists who had been instructed agreed that the appellant was fit to plead (see [144] – [147] below). His pleas, when entered, were clear and consistent and no suggestion has been advanced that they should not have been accepted by the judge.

The South Wales Investigation

8. On the 28 June 1982, Mr Vivian Brook, Assistant Chief Constable with the South Wales Constabulary, was appointed to conduct an investigation on behalf of the Chief Constable of Humberside Police into the actions of officers from the Humberside Police which had culminated in the arrest of and conviction of the appellant. This followed reporting by the Sunday Times Insight team – in particular, articles on the 7 March 1982, 14 March 1982 and 18 July 1982 and a "dossier" – which purported to raise doubt as to the appellant's culpability, notwithstanding his guilty pleas, and advanced a number of alternative theories. It was suggested that the materials which Mr Brook was asked to consider demonstrated a lack of integrity on the part of the investigating officers and especially Detective Superintendent Sagar and Detective Sergeant Martin. Mr Brook submitted two undated, long and detailed reports which refuted the allegations made by the Sunday Times; he found no evidence of wrongdoing on the part of any of the officers (save for limited criticisms of former Detective Sergeant Nesbitt which did not have any impact on the safety of the convictions). Indeed, the considerable body of evidence did not lead him to harbour any material doubt as to the responsibility of the appellant for these crimes. We note that Mr Ognall expressly declined to place any reliance on the theories advanced by the Insight team which, for reasons we need not rehearse, have been comprehensively demonstrated to be unfounded.

The Previous Appeal

9. On 9 December 1983 the full court (Ackner LJ, Glidewell and Leggatt JJ) quashed the appellant's convictions in relation to indictment 810048 (Wensley Lodge: count 2, arson with intent to endanger life or being reckless as to whether life was endangered and counts 3 - 13, 11 counts of manslaughter), and refused the applications for leave to appeal in respect of the other indictments. The appellant's sentence was unaffected. The appellant has previously used the names Peter Dinsdale and Bruce George Peter Lee, and his appeal in 1983 was listed as *R v Bruce George Peter Lee*. He changed solicitors, but not counsel, in advance of the appeal. The replacement solicitors were Philip Hamer & Co, Hull.

10. The court handed down four rulings or judgments during the 1983 proceedings. The first was on 21 November 1983 ((1984) 79 Cr App R 108), the court having been asked to give a preliminary ruling as to whether, notwithstanding the appellant's guilty pleas, the court had jurisdiction to hear the application and, if so, whether it could receive fresh evidence. The court decided that the fact that an applicant seeking leave to appeal against conviction a) was found fit to plead at his trial, b) knew what he was doing, c) intended to make the pleas he did, and d) pleaded guilty without equivocation after receiving expert legal advice, although constituting factors that were highly relevant as to whether the convictions, or any of them, were either unsafe or unsatisfactory, cannot of themselves deprive the Court of the jurisdiction to hear the applications under section 2(1)(a) of the Criminal Appeal Act 1968.

11. Given the analysis that it has been critically necessary for this court to undertake as to the circumstances when it is open to an appellant to argue that his or her conviction is unsafe following a guilty plea, it is relevant to note that having determined (as just set out) that the court had the power to intervene when the accused had pleaded guilty, and having referred to *Director of Public Prosecutions v Shannon* (1974) 59 Cr App R 250; [1975] AC 717 and *R v Forde* (1923) 17 Cr App R 99; [1923] 2 KB 400, the court expressed the circumstances when this opportunity is potentially available as follows (at page 114):

> "We should however make this observation, about this Court's function in these circumstances. We have set out the relevant terms of section 2 of the Criminal Appeal Act 1968.
>
> In Stafford v Director of Public Prosecutions (1973) 58 Cr App R 256, 290, [1974) AC 878, 912, Lord Kilbrandon said: "The setting aside of a conviction depends on what the appellate court thinks of it – that is what the statute says. If it were necessary to expand the question which a member of the court, whose thoughts are in question must put to himself, it may be, 'Have I a reasonable doubt, or perhaps even a lurking doubt, that this conviction may be unsafe or unsatisfactory? If I have, I must quash. If I have not, I have no power to do so.'"
>
> To quote the words of Lord Diplock at p.282 and p.906F respectively, but inserting the word "conviction" in place of "the verdict of the jury": "I agree with them that the statute under which this appeal is brought to this House requires each of us to ask himself the question: Under all the circumstances of the case as it now stands in the light of the additional evidence, am I myself satisfied that the (conviction) was safe and satisfactory?"
>
> Thus, in hearing and making our decision in due course on the evidence called before us – which evidence, because of the plea of guilty, has not hitherto been heard by a court – we are not seeking to usurp the functions of a jury; we are carrying out our statutory obligations of either allowing the appeal (assuming, of course, we

> give leave) because we think that the conviction was either unsafe or unsatisfactory or, if we do not so think, of dismissing it."

12. It is of note that the court did not analyse whether the correct approach to a conviction based on a plea of guilty is or is not the same as the approach to a conviction based on a jury verdict, save to observe, as rehearsed in the preceding paragraph, that it would be highly relevant that the appellant was fit to plead, knew what he was doing, intended to enter the pleas, and pleaded guilty without equivocation after receiving expert legal advice. This is a critical issue, to which we return later in this judgment (see [148] – [180] below).

13. The court determined that although there is a discretionary power under section 23(1) of the 1968 Act to allow evidence to be heard, the circumstances in which this course would be permitted following unequivocal pleas of guilty will be very rare. The present case, however, was in the view of the court wholly exceptional, if not unique, in part because of the public concern generated by the Sunday Times articles, and it was both necessary and expedient in the interests of justice that relevant and admissible evidence be called by both the applicant and the Crown as to whether the convictions were unsafe or unsatisfactory. Both Detective Superintendent Sagar and the appellant gave evidence to the court, as did experts and lay witnesses concerned with the fires at Troutbeck House and Wensley Lodge.

14. In the second ruling on 25 November 1983, the court indicated that the conviction on indictment 810051 (407 Troutbeck House) was neither unsafe nor unsatisfactory. The court set out the following findings in this context. First, that the appellant had made the statements attributed to him, which were voluntary and properly obtained. Second, what the appellant had said to the police in his confessions was, in substance, the truth. Third, the fire at 407 Troutbeck House was not caused by a cigarette having been dropped. We have considered each of the fires in greater detail below ([51] *et seq.*).

15. During the hearing on 25 November 1983, the court accorded significant weight to a letter dated 16 March 1981 (therefore sent just over two months after the appellant was convicted on his own pleas) from the appellant's former solicitors to the Registrar of Criminal Appeals. It included the following:

> "We first saw Lee on the 7th June, 1980 following his arrest in Hull and thereafter visited him regularly at the Police Station in Hull or at Leeds Prison until the trial. It is right to say that this Defendant throughout this period failed to give explicit instructions to Defence Solicitors and from time to time vacillated with his explanations until it was difficult to reliably assess which was the truth and just how much was the product of a flight of fantasy.
>
> Lee commenced by stating he had not deliberately attempted to cause the death of any person but as time went by he went to great lengths in statements made to the Police to explain just how he had caused the fires and his belief that they would likely kill people."

16. The letter confirmed that although the view of the psychiatrists instructed on behalf of the appellant and the Crown was that the appellant was suffering from a psychopathic disorder, he was nonetheless fit to stand his trial and to plead, and he was guilty of manslaughter (as opposed to murder) on the grounds of diminished responsibility. The letter continued:

> "We have now received a letter from Lee in which he requests our assistance, (he) mentions the Members of Parliament who are trying to sort out whether or not he did the fires and he then goes on to say that he had done some of the fires but not all of them and indicates three cases of arson including the Wensley Lodge fire which took the lives of 11 males, which he did not commit.
>
> It was no real surprise to instructing solicitors that a letter couched in these terms was written by Lee or on his behalf because ourselves, leading and junior counsel have expressed grave concern as to whether the pleas which Lee insisted on tendering to all the indictments were in every case the proper pleas. This concern was particularly strong in respect of the Wensley Lodge fire."

17. The court was informed that the appellant had also communicated with Mr Pearce of Philip Hamer & Co in notably similar terms following his conviction. Part of a letter to Mr Pearce from the appellant was read to the court: "*I know there are a few MPs in Hull who are trying to sort out whether I did the fires or not and wish you to act on my behalf. Fair enough. I have done some of the fires but not all of them e.g., Wensley Lodge (the old folks' home), Askew Avenue and West Dock Avenue.*"

18. It follows that although the use of "*e.g.*" in the letter to Mr Pearce introduces a potential element of uncertainty as to the number of fires for which the appellant was then disputing his responsibility, the matter is essentially put beyond doubt by the unequivocal terms in which the appellant's instructions are rehearsed in the letter to Andrew M Jackson & Company: he was disputing his guilt only as regards Wensley Lodge and two other fires. In light of that letter, the court indicated that it would only allow evidence to be called in relation to Wensley Lodge and two other fires. Mr Ognall accepted this approach and the court permitted evidence to be called on the three fires selected by the appellant: Wensley Lodge, 70 Askew Avenue and 43 West Dock Avenue. The applications in relation to the other indictments were dismissed.

19. On 2 December 1983 (the third ruling or judgment), the court quashed the convictions on indictment 810048 (Wensley Lodge). The court concluded:

> "(1) That we have no doubt that (the appellant) made the statements both oral and in writing, attributed to him; that these were voluntarily made; that they were properly obtained by Detective Superintendent Sagar and that he recorded (the appellant's) words

> in the way he said he did; (2) that (the appellant's) statements and in particular such of the circumstantial material which they contained as was accurate, together with his repeated statements in 1978, which is long before his admissions to Detective Superintendent Sagar, made to Miss O'Shea (the house mother of St. Vincent's Children's Home) that he knew that the Wensley Lodge fire was not an accidental fire, coupled with his pleas of guilty, persisted in contrary to the advice of his counsel, provide very powerful support for the validity of his convictions; (3) that the doubts we entertain arise essentially from the unsatisfactory state of the scientific evidence given both to this court and in 1977 to the committee of inquiry set up by the Humberside County Council. The committee of inquiry should have been informed that the theory that the plumber's blow lamp had caused a slow-burning fire to develop under the floor of bedroom 11 which had remained undetected for some 6 ½ hours suffered from the following potential weak points. Although slow smouldering fires produce a substantial amount of carbon monoxide and smoke (a) occupants of bedrooms 11 and 20, immediately above bedroom 11, emerged unharmed by the fire; (b) there was an absence of smoke in bedroom 11 whilst the fire was developing. Had these important points been disclosed by Mr Devonport, the Senior Scientific Officer from the Home Office Forensic Science Laboratory then at Harrogate, the structure of bedroom 11 and those in the immediate vicinity would have been carefully investigated to ascertain whether a flue or vent existed which would have carried away the poisonous fumes and smoke into the roof or out into the air, by-passing bedrooms 11 and 20.
>
> At this point in time no certainty can be achieved as to the position. On the basis of plans drawn to our attention by the Crown yesterday all that can now be said is that there may have been an escape route for these fumes and smoke. As to the experiments carried out following the confessions made by Lee, these were based on assumptions that may or may not have been justified. The quite inadequate consideration that was given to the possibility of the fire being a paraffin arson resulted in an inadequate examination being made to the state of the floorboards in bedroom 11 or the adjoining rooms, with the result that there is no evidence of the extent of the gaps, if any, between the floorboards or the precise nature or conditions of the linoleum on that floor.
>
> In all these circumstances, none of us think that it would be safe to allow the convictions to stand."

20. Mr Ognall thereon withdrew the remaining 10 applications.

21. On 9 December 1983 (the fourth ruling or judgment), the court provided its detailed reasons for refusing the applications for leave to appeal (save for Wensley Lodge in relation to which the application for leave was granted and the convictions were quashed). It extends to 66 pages. For the reasons set out hereafter, it is only necessary to provide a short summary of this decision. The court provided a detailed description of the history to this case, some of which we have referred to below (to the extent relevant to the present issues). This included a summary of the fires at Selby Street, Troutbeck House and Wensley Lodge; the history of the interviews with and confessions by the appellant following his arrest on 6 June 1980; the proceedings in the Crown Court and in the chambers of the judge; and the events leading up to the first appeal, along with the grounds on which the appellant then relied. The court referred to the analysis of the law as set out on 21 November 1983 (see [11] above). Against that background, consideration was given to the appellant's submission – which was rejected by the court – that the evidence generally regarding 10 of the fires was admissible to demonstrate that his confession to the Selby Street fire was false. The court summarised its five principal conclusions as follows:

> "1. No evidence was called in support of the application for leave to appeal in regard to the fire at Selby Street in December 1979 and we, accordingly, dismissed the application.
>
> 2. We heard evidence called on (the appellant's) behalf and on the Crown's behalf in respect of the fire at 407 Troutbeck House which occurred on 22nd June 1979 and concluded that we had no doubt as to the guilt of Lee in respect of that arson and dismissed the applications relative to that fire.
>
> 3. In light of the letter of 16th March 1981, written by Lee's solicitors on his instructions, and Mr Ognall's inevitable concession, we formally dismissed the applications in respect of the indictments relative to the fires at 33 Glasgow Street, 50 Humber Buildings, 7 Minnies Terrace, 9 Gorthorpe, 4 Belgrave Terrace and 2 Brentwood Buildings.
>
> 4. Having heard evidence in regard to the fire at Wensley Lodge in January 1977, we entertained doubts as to the safety of those convictions and quashed them.
>
> 5. Thereafter, Mr Ognall withdrew his applications for leave to appeal in respect of convictions arising out of the two remaining indictments concerning 70 Askew Avenue and 43 West Dock Avenue, and we therefore formally dismissed them."

22. The Sunday Times was successfully sued for libel by Detective Superintendent Sagar and Detective Sergeant Martin. On 6 October 1987, the Sunday Times agreed a settlement, in

which they withdrew their allegations, published a complete apology, met the costs in full and paid substantial damages to both officers.

The Present Appeal

23. Before this court, Peter Tredget now appeals against his convictions on the remaining counts on which he was convicted (10 of arson with intent to endanger life or being reckless as to whether life was endangered and 15 of manslaughter) upon a reference by the Criminal Cases Review Commission ("CCRC/The Commission") under section 9 of the Criminal Appeal Act 1995. The Commission received an application to review the remaining convictions on 28 November 2011, and it released its Statement of Reasons on 23 October 2019. Various strands of fresh evidence, contributing to new arguments, are said to cast doubt on the veracity and reliability of the appellant's confessions, which essentially comprised the case against him, as summarised below.

24. The appellant relies by way of fresh evidence, first, on evidence from an expert in Forensic Linguistics (Professor Coulthard) to cast doubt on the prosecution's contention that the various statements under caution taken from the appellant were recorded "*at his dictation*", and particularly that "[…] *there were no questions and answers. It was exactly as he spoke word for word* […]", *per* the evidence of Detective Superintendent Sagar to this court in 1983. The linguistic analysis is to the effect that the appellant, certainly in part, answered various questions that were put to him. Professor Coulthard additionally noted that the statements contained explicit "defences" against potential challenges to their validity, such as the appellant indicating "*my solicitor* […] *told me I could make a statement to him denying that the statements* […] *were true* […] *but I have told you the truth*". We set out in detail what the appellant said about his solicitors at [206] – [211] below. Although there were certain points of difference between them, on the central issue regarding whether answers had been given in response to questions, Professor Coulthard and the respondent's expert, Dr Olsson, were in agreement. It is not suggested that this evidence demonstrates that the police introduced false details or admissions by the process of asking questions but instead it reveals the way in which the account came to be recorded, namely some of the information was the result of questions put by the officers.

25. Alongside this linguistic evidence, the appellant, second, relies on Professor Young, a clinical and forensic psychologist (who was not called to give evidence during the hearing of the present appeal) and Professor Taylor, a professor of clinical psychology and a consultant clinical psychologist. Their evidence is to the effect that the appellant was mentally/psychologically vulnerable at the time of his arrest and conviction. It is suggested this was the result of a neurodevelopmental disorder incorporating perinatal brain damage, intellectual impairment (an IQ of approximately 73), social communication problems and personality disorder characteristics, exacerbated by gross deprivation and abuse during his childhood, epilepsy, and alcohol and drug abuse in young adulthood. Professor Taylor classifies this condition as a neuro-developmental disorder, incorporating intellectual impairment, social communication problems and a grandiose, narcissistic anti-social personality disorder, co-existing with uncontrolled epilepsy, drink/drug abuse and fear of rejection. In his view the appellant had a clinically severe personality pathology

immediately pre- and post-conviction. He was likely to have been susceptible to being suggestible, malleable and compliant during protracted questioning by the police. Professor Taylor was of the view that although the risk factors for suggestibility were (only) "*present*", the appellant's "*compliance*" was clearly made out, in the sense that he might agree with "*false facts*" in order to "*secure an outcome*". Professor Taylor emphasised that the appellant had a notion of being serial arsonist which he found rewarding and fulfilling. In his view, therefore, the appellant held on to the persona of a psychopathic arsonist. Professor Taylor agreed in cross-examination by Mr Whittam Q.C. for the respondent that he was not in a position to say whether the confessions were false and, moreover, he accepted that a compliant individual in these circumstances would have known that he was admitting something that was incorrect. In a similar vein, Dr Blackwood, a psychiatrist, called by the respondent, testified that the appellant would have known and remembered what he had done. He was fit to plead and stand trial. Dr Blackwood directed himself more specifically to his intellectual functioning. He attributed some of the poor performance in 1980 to educational deficit, and is of the opinion that the underlying intelligence level, as seen now, is slightly above the average for the prison population. Dr Blackwood is of the view that the appellant was not particularly malleable, compliant or vulnerable and his problems were not markedly unusual. There is a difference between Professor Taylor and Professor Young, on the one hand, and Dr Blackwood, on the other, as to whether the appellant suffered from a neurodevelopmental disorder or a developmental disorder. But the two experts agreed that the IQ measurements made in 1980 suggested that the appellant was below average but probably only on the borderline of what would now be called learning difficulties. His performance, as distinct from the underlying intellectual abilities, had clearly improved somewhat since the 1980s.

26. The appellant, third, relies on Mr Cosslett, an expert in document examination, including evidence which is derived from an electrostatic detection device ('ESDA' or 'EDD'). He agreed, put broadly, with the respondent's expert in this field, Mr David Browne. Depending on the circumstances in which a document is written, this equipment can assist when the integrity of one or more pages of a multi-page document is questioned if the writing occurred when there were layers of paper, which have survived, underneath the page under consideration. The indentations or impressions identified on the succeeding pages may reveal later alterations. This is a highly sensitive technique which can detect changes several layers below the sheet on which the subject writing appears. In the present case, the ESDA evidence demonstrates that three of the statements under caution had been altered, in that two pages of the statement of the 6/7 June 1980, two pages of the statement of 27 June 1980 and four pages of the statement of 30 June 1980 had been completely rewritten. By way of example, as regards the fire at Selby Street (see [135] *et seq.* below) in the rewritten part of the statement of 6/7 June 1980 there was included the words, "*I emptied my container through the letter box*" which did not appear in the original. No explanation is offered for the circumstances in which the appellant's signature appeared on the original version of the relevant statement as well as on the rewritten page. Similarly, in the statement of 27 June 1980 as regards the fire at Wensley Lodge the second version contained the statement, "*I didn't know it was an old blokes home*" which, on the basis of the indentations, was absent from the original version of the statement. In one instance the added words had clearly been in the original version, but they were located elsewhere on the page. It is emphasised that Mr Cosslett has only been able to observe changes that are

revealed by text which it is possible to decipher and that there may have been other, undetected alterations. This evidence is said, therefore, to undermine Detective Superintendent Sagar's testimony that the statements were written at the dictation of the appellant and that any alterations were evident on the face of the statements by way of the appellant's initials. It has to be emphasised, however, that the previous versions of those pages, to the extent discoverable, show that the amendments do not alter the sense of the text and the re-writing has not been shown to be sinister. In essence, it involved an element of amplification to the original content.

27. Fourth, there is expert evidence from two experts as to the causes of the fires: Dr Cox, called by the appellant, and Ms Griffiths, called by the respondent. The appellant contends that their evidence tends to indicate that some or all of the confessions are flawed and, moreover, it contributes to the lack of independent support for the appellant's suggested involvement in any of the fires. Indeed, it is argued that in some instances the evidence demonstrates that accident was a more credible cause than arson. We have reflected the impact of the evidence of Dr Cox and Ms Griffiths in our conclusions on each of the fires, as set out at [51] *et seq.* below.

28. The court wishes to express its thanks for the helpful joint reports that were prepared by i) Professor Taylor and Dr Blackwood; ii) Professor Taylor and Professor Young; iii) Mr Cosslett and Mr Browne; iv) Dr Cox and Ms Griffiths; and v) Professor Coulthard and Dr Olsson.

29. The appeal, presented with consummate ability and diligence by Mr Timothy Barnes Q.C., who was ably assisted by his junior, Mr James Gelsthorpe, and his instructing solicitors, Cartwright King solicitors, involves consideration of 10 principal points, along with other subsidiary arguments, as outlined by Mr Barnes in his opening. These were essentially a reformulation of the Grounds of Appeal. There is a significant degree of overlap between several of the points. Before we consider the individual fires, it is necessary to provide an outline of the 10 points and the Grounds of Appeal, some of which we have grouped together, in order to set the fires and the arguments in relation to them in the context of the overarching submissions advanced on this appeal.

Point 1: the appellant

30. The appellant was 12 years old at the time of the first fire (Askew Avenue). It is suggested he had experienced significant physical and emotional problems. A crime intelligence sheet dated 17 June 1980 describes him as, "*semi-paralysed down his right side, his right arm appears withered and is turned outwards. Tends to limp with his right leg*".

31. Dr McCulloch, the Medical Director of Park Lane Hospital where the appellant was placed after his arrest in June 1980, gave the following description in a letter dated 4 November 1980 to the Senior Medical Officer at Her Majesty's Prison Armley:

> "He is a 20-year-old man who has a right sided hemiplegia and walks with a spastic gait. His right hand is held in flexion. […] His right forearm is shorter than the left as a consequence of his cerebral

> palsy and he has wasting of the muscles of the right calf. There is some considerable movement in the right arm and hand although he has to open his fingers with his left hand and does have some grip. At a glance he presents as a rather pathetic figure."

32. In a similar vein, Detective Superintendent Sagar provided the following assessment to his Chief Constable on 16 September 1980:

> "He was born with congenital right spastic hemiplegia affecting the right hand and leg. This causes him to limp with his right leg and hold his right hand high and crooked across his chest. At an early age he was assessed as educationally sub-normal and has attended special schools for the handicapped."

33. It is suggested that these physical disabilities would have made committing the various arson attacks, or some of them, extremely difficult or impossible.

34. As already indicated, his IQ was 73. He was described by Mr Would, the Area Manager for Humberside Social Services in a report dated 27 June 1980, as follows:

> "Throughout his life Peter has repeatedly experienced rejection by his peers and by many adults, particularly his mother who was also in care for a period and who subsequently took up a habit and mode of life which rendered her unfit to have the care of Peter, although attempts were repeatedly made to effect a reconciliation.
>
> This young man thus arrived at the age of 18 thoroughly damaged emotionally, unable to make proper and lasting relationships with anyone, over sensitive about his handicap which made him the butt of many cruel remarks from his peers and with little to look forward to in adult life."

35. We have already provided a summary of the conclusions of Professors Taylor and Young (at [25] above), which it is unnecessary to repeat. It is submitted that the appellant was, therefore, severely psychologically vulnerable at the time of his confessions.

Point 2: the centrality of the confessions and

Point 5: the court should "consider all the evidence in relation to all the fires"

36. It is highlighted under point 2 that there was no case against the appellant absent his confessions, although there was some supporting evidence. There is a lack of any

substantive identification evidence, a factor said to be of particular relevance in light of the appellant's distinctive physical appearance and the need for him to carry a container of paraffin to the scenes of various of the arsons. It is suggested, furthermore, that if the appellant had been responsible for these offences, in many instances they would have been motiveless, and otherwise only a trivial basis or justification has been identified.

37. It is underscored as regards point 5 that the evidence supporting each of the 11 indictments was entirely dependent on confessions made broadly at the same time to a single police officer, Detective Superintendent Sagar. In the circumstances, if the confessions to any of the fires are demonstrably unreliable, that will have, it is suggested, a "domino" effect on the credibility of the confessions to the other fires. Given what is said to be the strength of the evidence demonstrating that the fire at Wensley Lodge was accidental, the confession to this arson is said to be of particular significance.

Point 3: the concerns expressed by Mr Ognall as to the appellant's reliability and

Point 6: the appellant is an unreliable narrator of events

38. Central to the contentions of Mr Barnes on point 3 is that, as indicated by Mr Ognall in an undated Note he provided in the lead-up to this appeal, it is impossible to place any credence on anything said by the appellant, who is said to be a wholly unreliable narrator of events. It is suggested, therefore, that the unsatisfactory nature of the confessions is only truly revealed when they are considered in their entirety. Put otherwise, an overarching assessment is necessary to evaluate the extent to which the individual convictions are unsafe.

39. Mr Barnes summarised point 6 in the following way:

> "[…] in the period 1980 to 1982 this Appellant gave a variety of mutually inconsistent versions as to which fires he had started or whether he had started any at all, and what his motivations for starting them might have been. He offered many different explanations; a sexual response to the fire (to Dr Snowden), financial gain (to Dr Sasieni), being the accomplice to a more skilled arsonist who introduced him to fire raising (to Dr McCulloch), hating people, problems with his up-bringing, enjoying hearing fire engines and emergency services; fires making him feel relaxed, fires giving him notoriety, fires started when he was drunk or simply because he liked fires."

40. Dr Neill, in a report of 2 November 1982, indicated the appellant is highly suggestible and unreliable, and that it is difficult to place any credence on what he says. Dr Snowden in a report of 10 June 1981 observed that the appellant veered between accepting responsibility for all, some and none of the arsons. Similar observations come from a variety of different sources.

Point 4: 9 of the 10 fatal fires were determined at the time to have had an accidental cause

41. It is suggested that it is a notable coincidence that the appellant set fires which were consistently, save for Selby Street, considered at the time to have been accidental (including Troutbeck House, where there was no inquest given the absence of a fatality). The investigations were not perfunctory or nominal. Dr Cox and Ms Griffiths do not exclude an accidental cause for the fires, excepting Selby Street, and for some of them – albeit there are occasional marginal differences between them – they consider this is the preferred explanation.

Point 7: the expert evidence and

Point 8: the analysis of the fires

42. It is stressed under point 7, as already rehearsed above, that this evidence demonstrates, first, that three of the statements under caution have been, in part, rewritten (the expert ESDA evidence). There were 12 relevant statements under caution. It is emphasised that during the 1983 appeal, Detective Superintendent Sagar testified that any alterations to the statements were evident on their face, and that in each instance they were initialled by the appellant. It is submitted that the ESDA evidence demonstrates that Mr Sagar lied on this issue. Second, we have already summarised the evidence contradicting Detective Superintendent Sagar's assertion that the confessions were written in their entirety at the appellant's dictation, and not including by way of questions and answers (the expert forensic linguistic evidence). Third, the appellant relies on the expert evidence demonstrating the extent of the appellant's vulnerability and suggestibility at the time of the interviews and statements under caution, which is said to undermine the reliability of his confessions. There is particular focus on his low IQ, his learning difficulties, his personality disorder and other personal characteristics. It is suggested that the psychological vulnerability of the appellant in the context of the confessions was not considered in any sufficient detail at the time of the trial (the psychological evidence).

43. Turning to point 8, it is suggested that the evidence of Dr Cox and Ms Griffiths (the fire experts instructed respectively by the appellant and the Crown) tends to contradict the appellant's confessions since it demonstrates that accident is a possible and, in some instances, the preferred explanation for the fires (save for Selby Street). Indeed, it is argued that for some of the fires the evidence is compelling that they were not the result of an arson attack but were instead "*accidental*" in origin. This means, therefore, there is no independent expert evidence supporting the appellant's suggested involvement in the fires.

Point 9: the breach of the Judges' Rules/PACE Codes of Practice

44. It is suggested that there was clear non-compliance with the Judges' Rules in the course of the interviews with the appellant and when he provided the statements under caution (*viz.* the absence of a parent or equivalent adult when he was interviewed, in light of his vulnerability (a mental handicap, applying a "*common sense and fair-minded approach to the issue*", as Mr Barnes puts the matter); the lack of breaks, including for refreshment; and the failure to provide an opportunity to speak on the telephone to a lawyer or a friend.) It

is contended that the appellant was entitled to the protections provided by the Codes of Practice under the Police and Criminal Evidence Act 1984 ("PACE") and particularly Code C, paragraph 11.15. The essence of the argument is that the fairness of the investigatory process leading to the guilty pleas is to be judged by today's standards.

45. There is particular complaint about the first interview at Gordon Street Police Station at 20.05 on Friday 6 June 1980 and which continued until 23.35, when the voluntary statement was commenced. That process ended at 01.25 on 7 June 1980 (an overall period, therefore, of five and a half hours). The appellant had clearly been drinking earlier and may well still have been adversely affected at the relevant time.

Point 10: the unlawfulness of the appellant's arrest at about 16.45 on 6 June 1980

46. The CCRC concluded that there was insufficient evidence to justify referring the circumstances of the appellant's arrest to this court. It is nonetheless suggested by the appellant that he was arrested at the amusement arcade at about 16.45 on 6 June 1980 when there was insufficient evidence to justify this step (rendering it unlawful), given the officers were merely pursuing a then unsupported theory that there was a homosexual connection to the Selby Street fire. In broad terms, Detective Superintendent Sagar's account was inconsistent, varying between the appellant having requested to be held at Gordon Street; that he was invited to the police station; that he was arrested and brought to the police station; that he was not "*properly arrested*"; or he was detained with other selected men, based on the suggested homosexual link. Inspector Holmes concluded that the appellant had been arrested, albeit he did not say when. Detective Sergeants Young and Harrod were present during the interview on 6 June, and on their account the appellant was cautioned at the commencement of the interview process. The appellant made a voluntary confession to the Selby Street fire, at which point he was arrested and cautioned (for a second time) before the questioning continued. A statement under caution was then taken.

47. It is suggested, therefore, that he may have been arrested prior to being brought to the police station on 6 June 1980 and that this would have been an unlawful arrest. The three police officers who detained him at around 16.45 in the Crystal Room amusement arcade (Harrod, Young and Bacon) did not indicate expressly that they had effected an arrest. DC Bacon referred to an operation in which he was involved "*to apprehend known and believed homosexuals*" (the appellant, however, was spoken to by a different officer, Detective Sergeant Young).

48. There was mention on the custody record at Priory Road Police Station (where the appellant was detained after the first interview) that he had been arrested at the amusement arcade by Detective Sergeant Young. However, Detective Superintendent Sagar made a handwritten amendment to the custody record to the effect that the appellant had been arrested at 23.30 at Gordon Street Police Station.

49. The CCRC concluded that in all the circumstances there was insufficient evidence to determine that the appellant had been unlawfully arrested.

50. The Grounds of Appeal are structured as follows:

Part 1

Section A: The Grounds of Appeal relating to the ESDA evidence (*viz.* parts of the statements under caution were rewritten: Point 7).

Section B: The Grounds of Appeal relating to the appellant's psychological vulnerability (Points 1, 3, 6 and 7).

Section C: The Grounds of Appeal as to whether the confession statements were verbatim records of unaided dictation (Point 7).

Section D: The Grounds of Appeal indicating that the appellant was an unreliable narrator of events at the time of the confessions and the pleas of guilty (Points 1, 3, 5, 6 and 7).

Part 2

The central submission under this head is that (with the exception of the fire at Selby Street) the strong "*likelihood is that all the fires were accidental in origin and not the work of an arsonist*" (Points 4, 5, 7 and 8).

Part 3

It is submitted that the confessions are unreliable, bearing in mind particularly the suggested breach of the Judges' Rules and the provisions of the Code of Practice, along with the evidence of Professor Coulthard (linguistic analysis) (Points 1, 2, 3, 5, 6, 7 and 9.

Part 4

It is submitted the appellant was unlawfully arrested (Point 10).

The Facts

51. We turn next to a summary of the circumstances of the 11 fires. We note, however, that there are certain generic submissions advanced by the appellant as to the impossibility, alternatively the high infeasibility, of him having committed at least some of these offences. The physical challenges experienced by the appellant, for instance, would have made the process of entering certain of the properties carrying the paraffin container markedly difficult. Similarly, for some of the fires, the process of opening the container, pouring the paraffin and thereafter igniting the fire would have been potentially problematic. It would have been necessary for the appellant, on occasion, to have walked significant distances in a built-up area carrying a paraffin container and it is emphasised that there is wholesale lack of eye-witness evidence to this effect. For many of the fires the appellant would have had the improbable benefit of the absence of anyone, either inside or outside the properties, having been in a position to see or hear him enter and leave; this observation is particularly advanced as regards properties in which there were a number of people at the relevant time. We have not necessarily repeated these generic submissions in the context of our analysis of each of the individual fires.

70 Askew Avenue

52. This fire occurred at 70 Askew Avenue on 24 June 1973 when the appellant was 12. There was one death, Richard Ellerington (aged 6). At approximately 06.40 on 24 June 1973, Lily Irving, who was a neighbour of the Elleringtons, saw a big flash at the back of 70 Askew Avenue (the experts considered this was a "*flashover*" which is a type of rapid fire escalation that typically occurs during the middle stages of a fire's development). She ran upstairs and saw that the kitchen of 70 Askew Avenue was on fire. At around this time, Samuel Ellerington awoke to find the house on fire. He raised the alarm. The exact cause of the fire could not be established although there were suggestions it may have been a gas leak or Richard Ellington had been playing with matches. The inquest verdict was death by misadventure.

53. On 26 June 1980 at HMP Leeds, the appellant said to Detective Superintendent Sagar, "*there was a boy who went to school (with me). I killed him in his house in a fire at the boy's house some years ago, a good while ago it was honest I'll tell you when I see you again, after I have had time to think about it*". During several further interviews, the appellant continued to admit starting the fire at 70 Askew Avenue. On 27 June 1980 he said:

> "Down Askew Avenue in school bus once they said this boy had been killed in a fire at night. I just sat on the bus and said nowt when we was at his house and I killed him and it's been a secret all the time since then."

Shortly afterwards in a written statement he said:

> "A long time ago when I was about twelve I knew a lad who lived in Askew Avenue. It was about number 70. It was in Summer time and this lad a young lad died. It was quite a few years ago."

54. On 30 June 1980, he said:

> "The first one was when I was in a Home when I was twelve. I think I was, yes twelve. I sneaked out of the front door and went to Askew Ave and set fire to that one at number 70. I've told you about that one."

55. On 1 July 1980, he elaborated, as follows:

> "I know the first time I killed somebody was the fire at Askew Avenue, the lad. He went to Frederick Holmes School and I knew where he lived because the school bus used to pick him up after he picked me up. I can't remember his name but he was an invalid and

> fits sometimes. He was an epileptic. It was summer time and I went to his house well night, but it was after midnight when I did it. I think I got in through a window and I seem to remember going in the kitchen and putting paraffin down on the floor there. You know I was about twelve – twelve and a half at the time and the lad who died in the fire was six. I didn't use a real lot of paraffin but it didn't need much. I just did it at that house cause I'd seen the house before but I didn't do that that house for any real reason. The lad was epileptic."

56. The prosecution suggested he pointed out the house to the police on several occasions whilst driving with officers around the relevant area. The appellant said that he entered the house through an open kitchen window and poured paraffin onto the floor, setting it alight. The kitchen, we note, was the seat of the fire. The prosecution emphasised he had provided the detail that he had been friendly with the child who lived in the house and made a bit of a fuss of him sometimes on the bus. He had a memory, when questioned, of being aware of a dog. He took the paraffin from a gravel box on Hessle Road, which he pointed out to the police. He was vague as to the time of the fire, saying it was "*after midnight*" and in the "*early morning*" and that he had been out most of the night.

57. The experts (Dr Cox and Ms Griffiths) are of the view that the fire most probably started in the kitchen but its exact point of origin cannot be determined. A potential cause was a gas leak at the cooker governor, which was ignited by the pilot light. The experts, however, could not rule out arson.

58. The appellant relies on the fact that the kitchen window provided the only access point to the building. It is suggested it would have presented an awkward means of entering and leaving the property for someone with the appellant's disabilities, albeit it is not contended that it would have been impossible. The window would have needed to have been tightly closed during the fire or, alternatively, it was tightly fitting even if not completely secured. It is argued the appellant's account to the police is inherently unlikely and that it contained some notable inconsistencies. Mr Barnes focussed on the absence of witnesses having seen the appellant with a paraffin container, along with the proximity of more feasible target premises to where the appellant was then living at West Dock Avenue. The trip to the grit box to collect the paraffin would have involved walking past 70 Askew Avenue if he had used the direct route from where he was then living. Mr Barnes doubts that the appellant would have been aware of the grit box or whether it contained paraffin. There was evidence that workmen did not use the grit and salt boxes for unofficial storage, although it was accepted there had been rumours to this effect. None of the eight occupants of the house was disturbed. It is suggested it is implausible the appellant would have remembered the house number. Mr Barnes contends there was no apparent motive for the appellant to commit this arson. It is emphasised that Detective Superintendent Sagar had the opportunity to research the circumstances of this fire, providing details of it whilst the appellant was making admissions, although he accepts some of the surrounding or background information would have come from the appellant.

59. The fire experts do not exclude arson. Although the kitchen window may have presented an awkward point of entry, it has by no means been demonstrated that the appellant could not have used that window to enter and leave the premises. Notwithstanding the arguments of the appellant, including the apparent lack of motive and his ability to recall the house number, it has not been established that the appellant either did not commit or could not have committed the offences relating to these premises. Indeed, in relation to this fire, as to others, the appellant's account to the police suffers from his deficiencies as an accurate historian, which deficiencies are relied on by his counsel. But some of it, which can only have originated from him, is significant evidence suggesting that he was responsible. An example is his recollection of sitting on the school bus near the house and contemplating the death of the boy he had known.

33 Glasgow Street

60. This fire occurred at 33 Glasgow Street at approximately 06.40 on 12 October 1973 when the appellant was 13. There was one death, that of the householder, Arthur Smythe (aged 72). The fire was first noted at 06.45. It was not possible to ascertain the precise cause, but it was thought that Mr Smythe either went to bed without extinguishing a candle or cigarette, or that he had stumbled whilst carrying a naked flame. The inquest verdict was death by misadventure. There was evidence that a few hours earlier the deceased had been very disoriented, and he always used paraffin heaters.

61. The appellant first mentioned the 33 Glasgow Street fire on 1 July 1980 in interview when he was discussing other fires. He indicated that he "*did one down Glasgow Street*' after he "*did Askew Avenue*". He said:

> "[…] this house was down a bit and it was dirty with some windows broken I remember, see I got in through a window put some paraffin about the room. There was flames and smoke. I think there was an old bloke, but I think only, I didn't see anybody. I think some of the windows had maybe stuff maybe a bit of wood or old curtain stuck on it or somat. Anyway it was a good fire."

62. He confirmed that he was responsible for this fire in subsequent interviews on 21 July 1980 and 29 July 1980. He gave an accurate description of the house being squalid and being piled up with cardboard. He said he entered by a window (there was evidence of a missing pane of glass which was covered by a piece of old muslin) and he said he left by the front door. The appellant lived about half a mile away from 33 Glasgow Street and he identified the house to Detective Superintendent Sugar whilst being driven round the area.

63. The view of the experts was that that the exact cause of the fire cannot be identified (as the exact origin of the fire is unknown). A number of obvious potential accidental causes were highlighted, such as the accidental ignition of combustibles by a naked flame (such as from a candle, a match, an oil lamp or a cigarette lighter) or an overturned lit paraffin heater. Accidental ignition by a lit cigarette also cannot be ruled out. Dr Cox was of the view that

the reported confused condition of the occupier was a factor that increased the risk of some accident occurring, whilst Ms Griffith stressed that there is no evidence to determine whether the victim had been active prior to the fire and hence it is impossible to determine if he had been involved in its ignition. As neither the origin nor the cause of the fire can be identified, there is no evidence that allows an accidental fire to be distinguished from a deliberate fire in this case.

64. The appellant relies on the extent of the fire hazard at these premises, and the consequent likelihood of an accidental cause. This was the contemporary view, as it was concluded at the time that the fire had developed following a period of slow burning. It is emphasised that no one saw the appellant or heard him breaking in. It is suggested that the deceased may have been asleep in a chair immediately inside the window. In relation to the appellant leaving by the front door, there is uncertainty as to whether the front door was locked (there is evidence of someone kicking it in) but the evidence on this issue is unclear. It is suggested that Detective Superintendent Sagar would have been in possession of information about this fire and could have provided relevant details when the appellant was making admissions.

65. The fire experts do not exclude arson, although they describe their conclusions with somewhat different emphasis. It is uncertain what the position was as regards the front door and it has by no means been demonstrated that the appellant could not have used the window to enter, thereafter leaving by the front door. Notwithstanding the arguments of the appellant, and particularly the extent to which the house and the deceased constituted a fire hazard, it has not been established that the appellant either did not commit or could not have committed the offences relating to these premises. His account to the police, and in particular his repeated references to the dirt and messiness of the house, plainly volunteered, is significant.

50 Humber Buildings

66. This fire occurred seven days later, on 19 October 1973, at 50 Humber Buildings, a ground floor maisonette when the appellant was 13 years old. There was one death, that of David Brewer. Mrs Brewer, the deceased's mother, described how a fire had been lit in the living room. At approximately 16.30 Hilda Lister, a neighbour, heard David Brewer scream and went to investigate. She saw him emerging from the living room engulfed in flames. She originally claimed that he told her that he had been drying clothes on a fireguard which had caught fire, and that he had been burned when he tried to pick up some logs which had fallen out of the fireplace. We note in this context that there was no fireguard in the room. The coal delivery man, Herbert Green, had seen David Green knocking at the kitchen window at about 16.30 and assumed that he was indicating they needed a delivery of coal. There was no smoke or fire at that stage. Shortly afterwards, he heard Mrs Lister shouting and he then saw David Green who was badly burnt and stripped to the waist. He added "*I saw a low fire in the fireplace mainly consisting of glowing coal. I did not see any wood on the fire and there was no damage in any part of the room*".

67. PC Treece noticed the settee was at an angle with its back towards the fire. He saw scorch marks on the left arm of the settee, on the carpet and on the linoleum, as well on the fireplace.

68. The inquest verdict was death by misadventure.

69. On 10 July 1980 the appellant confessed to starting the fire at 50 Humber Buildings by setting fire to some drying clothes. He stated:

> "I did a bad fire down Humber Buildings Madeley Street. I crept into this house. I was twelve or thirteen at the time and I remember it, I saw this bloke, not a real old bloke, and he was sat down. I watched him get up and go to his toilet. I was hiding in his kitchen see and when he went to toilet I went into his living room, I can remember it like it was yesterday. You know somat I like people to think I'm thick sometimes and I've let people think that and they've thought it at times but see I've thought to myself if you knew what I have done the bloody damage I've done being an arsonist they wouldn't think I was thick and call me chicken. They used to call me chicken down Bridlington Avenue Way. Well in this house 50 Humber Buildings when this bloke was in toilet I sprinkled paraffin on floor right in the living room where he had some clothes drying and set it alight. I fled out and then I heard this bloke shouting and I was away like a flash. I was out of the house some distance away and I turned and saw him running out of house burning. I don't think he had all his clothes on. He must have got up to fire and tried to put fire out cause I didn't set him alight. See I just sprinkled paraffin from a bottle with my finger over top so there wasn't a lot of paraffin. I don't believe the whole house would have burned down. When I was a good way from the house I heard ambulance or fire brigade going there. You know its amazing that I can remember all this, but I can you know."

70. On 21 July 1980, whilst driving with the police, the appellant identified the maisonette as the address where this fire occurred, and he gave broadly the same description of lighting the fire as just set out. On 28 August 1980, the appellant told Detective Superintendent Sagar that he had deliberately poured paraffin over Mr Brewer's clothes whilst he was asleep in a chair and set him alight, rather than setting fire to the drying clothes as originally stated on 10 July 1980. This matched a later account that Hilda Lister gave on 29 July 1980, namely that David Brewer had said that he "*just woke up and was on fire*"; she also said there was a distinct smell of paraffin or petrol (as opposed to methylated spirits, which the deceased had been using to clean his clothes). On 7 October 1982, Mrs Lister set out in a statement that David Brewer had said to her "*Why would the bastard do this to me Hilda* […] *Somebody poured something over me through the window and the next thing I was on fire*".

71. Mrs Lister and her son Shaun later asserted that the appellant, who used to play with Shaun, had, a couple of days earlier, threatened to wring the necks of her son's pigeons. Mr Brewer had been present during this exchange, had said that he would clout the appellant if he did any such thing, and had thereupon given the appellant a smack around the ear. A fortnight after the fire, her son's pigeons had been killed. She had accused the appellant of being responsible, but he had laughed and said 'what are you going to do about it ?' When, later, the appellant was challenged with not having told the whole truth about this fire, he confirmed that he had resented being clouted on the ear, and this was the occasion of his admitting pouring paraffin onto Mr Brewer himself. The history, if accurate, provides a clear motive.

72. The experts, Dr Cox and Ms Griffiths, agreed there was insufficient evidence to determine whether the fire had been accidentally or deliberately ignited and that arson using paraffin as an accelerant cannot be ruled out. There was very little damage to the room, as might have been expected if drying clothes had burned, nor was there any sign of there having been any such drying clothes. If Mrs Brewer's evidence is accurate, there were no such clothes. The damage was consistent with the fire having been set on the sleeping Mr Brewer.

73. The appellant relies on his inconsistent confessions, set out in the different accounts he is said to have provided whilst admitting arson. It is suggested the first account allegedly provided by the deceased matched the conclusions reached at the time as to how the fire had started. The appellant would ordinarily have been dropped off by the school bus at between 16.20 and 16.30, meaning he would not have had time to collect the paraffin from West Dock Avenue and reach 50 Humber Buildings in time to set the fire. There was a very short gap between Mr Green seeing Mr Brewer before the fire started and when he heard Mrs Lister scream. The entire scenario is said to be implausible, including whether the appellant would have been able to hide in the kitchen whilst also being in a position to see Mr Brewer leave the living room to visit the lavatory. It is suggested that Detective Superintendent Sagar may well have persuaded Mrs Lister and Mrs Brewer to alter their accounts.

74. The fire experts do not exclude arson. Although there are some oddities as regards the history to this fire, and in particular Mrs Lister appears to be a less than consistent witness, it has by no means been demonstrated that the appellant could not have hidden inside the premises before igniting this fire. Notwithstanding the arguments of the appellant, it has not been established that the appellant either did not commit or could not have committed the offences relating to these premises.

7 Minnies Terrace

75. This fire occurred on 23 December 1974 at 7 Minnies Terrace, the home of Elizabeth Rokahr when the appellant was 14. There was one death, Mrs Rokahr (aged 82). At approximately 20.45 to 21.00 neighbours smelt smoke but a fire was not then visible. At approximately 22.00, however, the fire was noticed. Neighbours attempted entry, but the force of the flames held them back. The front door was broken down. At the time, the seat of the fire appeared to have been at the head of the bed which was in the living room. The

fire brigade station officer, Peter Mitchell, suggested that the victim may have been smoking in bed. Alternatively, clothes that were airing over the fireplace may have ignited. The inquest verdict was death by misadventure.

76. Whilst driving in the area on 30 June 1980, the appellant mentioned setting "*one or two*" fires in the area of Rosamond Street, the street on which 7 Minnies Terrace was located. On I July 1980, he set out in a statement under caution, "*the next one I did which was in Rosamond St, I think it was a paraffin job. I got in the house a terrace house, by back way and put paraffin on floor near fire back room. I lit it like with matches and up it went. I think an old woman died there. I was away before it was a real big fire*". On 10 July 1980 at interview, Detective Superintendent Sagar put it to the appellant that he was responsible for this fire and the appellant agreed. On 21 July 1980, he said to Detective Superintendent Sagar "*I did see someone lying in a bed but I didn't know if it was a man or a woman I didn't wake 'em up to ask, did I?* [...] *I was so attracted to setting it on fire that I didn't bother about anything else* […] *I was devoted to the fire and despised whoever was in there, that's in the Bible, being devoted to one thing and despising another*". He admitted responsibility again during interview on 28 August 1980. He said that he knew that the deceased kept a door key on a piece of string inside the letterbox, but he entered via an unsecure back door. He saw an elderly person lying in a bed on the ground floor and sprayed paraffin nearby. Although he was not recorded as having been absent that evening from Brook Cottage where he was living, there was evidence that he often travelled into Hull from Brook Cottage "*of his own volition*".

77. Mrs Rokahr's daughter, Annie Wainman, provided a statement, indicating that her mother did smoke in bed "*but was careful with them*". She was later to say her mother never smoked in bed. She told the police that the back door was always left open because of the cat. Her sister, Marjorie Wilson, confirmed that Mrs Rokahr did not smoke in bed and she confirmed that the back door had a loose bolt that meant it was easy to push open, and she agreed that in any event it was often left open for the cat. These details were supported by Mrs Rokahr's brother, William. Mr Pratt, a neighbour, suggested that Mrs Rohahr's health was failing, particularly her eyesight and hearing, and he stated (albeit he later denied) that she used to smoke in bed. The appellant had previously lived within 200 yards of Mrs Rokahr's home. A neighbour, Mr Robinson, tried to open the back door after the fire had taken hold – he pulled it once without success. A police officer, after the deceased's body had been removed, described the door as in a dilapidated condition and in need of repair. Mr Cowlam, who lived close by, said the back door was locked and he had been unable to gain entrance.

78. The experts, Dr Cox and Ms Griffiths, are of the view that if a fire started by paraffin had simply continued to develop into a flaming fire, this would not have been compatible with the smouldering fire damage reported by the investigators. However, they are unable to rule out either accidental ignition or arson, given that there may have been an initial flaming fire in front of the fireplace that migrated to the bedhead area, where it died and smouldered for a relatively long period, burning through the floorboards causing the asphyxia of Mrs Rokahr, thereafter erupting again before the Fire Brigade arrived. They disagreed as to which explanation was more probable. Dr Cox considers that ignition at the bedhead area as a smouldering fire was more likely than ignition as a flaming fire in front of the fireplace.

Ms Griffiths, on the other hand, considers that the various uncertainties make an assessment of the likelihood of either scenario impossible.

79. The appellant relies on certain difficulties as regards timing, in that it is suggested a paraffin-accelerated fire would have needed to have been set close to 22.00 and the last train from Hull to Driffield (where the appellant was living at Brook Cottage) was at 22.15, albeit there was also a bus. The distance between the railway station and Minnies Terrace was 1.3 miles. The appellant did not know Mrs Rokahr. It is suggested there is a real possibility that the rear door was secure at the time of the fire (Mr Barnes argued that the consensus of the evidence is that the door was locked), and even if the appellant entered via that route, it is contended that he would have been unable to secure it afterwards. Mr Barnes argues that the most likely explanation – Mrs Rokahr smoking in bed – is entirely consistent with the likely seat of the fire at the bedhead.

80. The fire experts do not exclude arson. Although there are uncertainties as regards the timing of the fire and the position as regards the rear door is unclear, it has by no means been demonstrated that the appellant could not have entered this house in order to ignite this fire. Notwithstanding the arguments of the appellant including the possibility that Mrs Rokahr had been smoking in bed, it has not been established that the appellant either did not commit or could not have committed the offences relating to these premises.

9 Gorthorpe

81. This fire occurred on 3 June 1976 when the appellant was 15 years old. There was one death, Andrew Edwards (aged 13 months). During the evening of 3 June 1976, Dorothy Stephenson was looking after her great grandchildren, Jennifer Edwards (aged 7), David Edwards (aged 5), and Andrew Edwards at 9 Gorthorpe. According to a statement she made in 1976, at approximately 20.30 Mrs Stephenson took Andrew Edwards upstairs to bed. Some 10 minutes later when she returned downstairs, she saw smoke coming out of the cupboard under the stairs. This was described by Mrs Stephenson as a large/walk-in type cupboard, the back end of which is an extension which runs through to the foot of the stairs. When she opened the cupboard, smoke and flames "*belched*" out, and she saw David, whose hair was on fire, in the rear extension to the cupboard. She managed to rescue both David and Jennifer but not Andrew. She could not understand where David would have obtained matches to light the fire, because the only ones in the house were in her pocket. The fire brigade was called. David Edwards, who had been badly singed, was questioned on the same day by Acting Police Sergeant Blythe (3 June 1976), within half an hour of being rescued. He initially denied having been playing with matches and he said he "*saw the fire*". Thereafter, in answer to a series of leading questions he agreed with the suggestion that he had been striking matches in the cupboard underneath the stairs and that the matches had set fire to a box of newspapers and comics. The officer confirmed to his senior (Chief Inspector Rodgers) that in obtaining this account he had "*had to lead him in certain parts*". David Edwards seemingly confirmed this account to a fire officer. His mother, Veronica Edwards, said that because he had a history of playing with matches, they were not allowed in the house. She also indicated that:

> "I always tried to keep my children out of this cupboard and as a result they never played in it or even went into it. I am satisfied it was never used as hiding place by them."

82. Furthermore, his father, James Edwards, in a statement dated 5 September 1980 set out:

> "Due to the traumatic experience of the fire I never asked David about the fire until a few days after it occurred and he was quite adamant that he had not played with any matches. I have never talked to him about it since as I have thought it better to try and forget about it."

83. The inquest verdict was death by misadventure.

84. On 30 June 1980, the appellant had alluded to a fire that he had set near to a public house with a "big horse" sign (which he thought was a white horse) in Orchard Park, in which a baby had died, and that he believed that they called it "Gorthorpe". In the account the appellant gave on 1 July 1980, it is suggested he said:

> "One after that I did was a house up Gorthorpe up Orchard Park. There was this house up there and I know there was little kids in the house because I think I remember kids toys there. See I opened front door to get in and with a bit of paraffin, not much, I set it alight. See when I do a job, a fire like this, I shove everything out of my mind and concentrate hard on what I'm doing. I think this was a quick in and out up Gorthorpe. As I say I know from what I saw it was a house where there was little kids in but being in and out so quick I didn't see anybody. I don't know if it was a front or back door because all the doors seem same sometimes. I think it was front. It was a big enough fire or should have been for somebody to have been killed in it. Maybe one of the kids. I don't know. It was still day light when I did this Gorthorpe house near time to get dark. I know I stood a good few houses away from the house till it was well alight then I panicked in my mind and cleared off. It was stairs, up or should be I mean it was under stairs I started it. I didn't pick on that house for any particular reason."

85. On 10 July 1980 when asked "*did you pick that house because perhaps you knew there was a spastic girl living there*", he replied "*I might have done*". On 21 July 1980, whilst driving around with the police, the appellant identified the premises as where he had set fire under the stairs and, on 29 July 1980, he confirmed his responsibility for the fire. On 9 September

1980, he indicated that he recalled footsteps upstairs and that the fire occurred shortly before it got dark.

86. The appellant relies on the following principal factors. He was then living at Brook Cottage, the children's home in Driffield. Driffield is a 30-minute train journey from Hull and 9 Gorthorpe is about 3 miles from Hull Bus and Train station. The accounts of Mrs Stephenson and David Edwards effectively rule out the fire having been set by an arsonist, given David Edwards was at the rear of the cupboard when found by Mrs Stephenson. Furthermore, after some prompting, David Edwards admitted setting the fire to two separate individuals in authority.

87. The expert evidence is as follows:

> "7.1.4 The most likely potential cause of fire is the ignition of combustible materials by a lit match or matchbox, either mishandled or carelessly dropped by Master David Edwards.
>
> 7.1.6 If paraffin had been used and the fire developed then David would not have been able to enter. If he had been close to such a fire, he would probably have suffered much more serious burns than his actual burns (singed hair).
>
> 7.1.7 An arsonist would have to travel between 10 and 14 feet (depending on the door of entry) to reach the location of the cupboard.
>
> 7.1.8 There is no objective evidence to indicate the use of paraffin in this fire (although that does not exclude that possibility) and nothing to exclude this being an accidental fire."

88. The experts agree that given Mrs Stephenson was able to pull David out from the rear of the cupboard without sustaining burns, this indicated that the fire was at that point in its early stages of development.

89. Ms Griffiths concludes that a paraffin fire at the entrance of the cupboard could be discounted and that if paraffin had been poured towards the back of the cupboard, it is likely that Mrs Stephenson and David Edwards would have sustained burns. She accepts that if paper and a matchbox were set on fire, this could turn into a flaming fire within 10 minutes.

90. The appellant highlights that the account he allegedly gave of the time of day when the fire occurred – it being near dark (albeit his description of this was somewhat varied) – was incorrect: the fire was more than an hour before sunset. It is suggested that it was implausible that he was aware that a "*spastic*" girl lived in the house or that a baby died in the fire, or that he saw the children's toys (given they were in the living room). At the time of this fire, the appellant was living at Brook Cottage in Driffield. After a train journey to

Hull the appellant would have needed to walk about 3 miles across the city to this address. Given the complicated route to the location of the fire having entered the house, this would not have been a straightforward undertaking for the appellant and it could not have been a "*quick in and out*". It was extremely fortuitous that the front door was unlocked and that Mrs Stephenson was upstairs at the moment the appellant entered the property. Most fundamentally, it is highlighted that given the seat of the fire was at the back of the cupboard where Mrs Stephenson found David Edwards, it was impossible for the appellant to have set the fire without the appellant and the child seeing each other, and without the latter being badly burnt by the paraffin accelerant.

91. In our view, on the evidence the appellant could not have been responsible for this fire. The accounts of Mrs Stephenson and David Edwards, coupled with the lack of fire-related injuries to either of them, mean that the appellant's account of starting the fire under the stairs is an impossibility. David Edwards was in the rear of the cupboard, and if the appellant had lit a fire close to the door, both he and Mrs Stephenson would have been badly injured during his rescue. Furthermore, David Edwards would have seen the appellant lighting the fire; instead, he admitted responsibility for setting fire to comics and newspapers in the cupboard that contained the seat of the fire. He made no mention of an intruder.

43 West Dock Avenue

92. This fire occurred on 2 January 1977 at 43 West Dock Avenue when the appellant was 16. There was one death, Katrina Thacker (aged 5 months). On the evening of 2 January 1977, Karen Frasier was in the premises with her three children: Katrina, Anne Marie (aged 3), and Kim (aged 5). At approximately 19.10, Mrs Frasier banked the fire in the dining room and took Anne Marie to the bathroom at the end of the garden. Kim was downstairs and Katrina was in a carry cot near the fireplace. When Mrs Frasier returned from the bathroom – she had been away "*about five minutes at most*" – she saw smoke coming from the dining room and was unable to gain entry. The fire brigade attended and put out the fire. The appellant was seen in the street by Mr and Mrs Hunter when the fire engine arrived, albeit neither of them noted that he was carrying a container. The Station Officer, Mr Clarkson, concluded that the fire was caused by a spark from the unguarded fire (he later changed this view, and in 1980 indicated the fire was consistent with the use of an accelerant). The inquest verdict was death by misadventure.

93. On 26 June 1980, when interviewed, the appellant admitted being responsible for this fire. He said he had killed a little baby in a fire in West Dock Avenue about two years previously. He had entered the premises via a window and had sprinkled paraffin on a carpet and the couch, "*And up it went. The little baby died in it and I killed her*". This admission was repeated on 27 June 1980: he had "*killed a baby once in a fire*" and "*I got in the house and set the room on fire. I splashed paraffin about the room just as the woman was out and got out quick*" On 30 June 1980 and 1 July 1980 he again indicated he had "*killed the baby in West Dock*" and that he had "*got in through the window and poured a fair bit of paraffin near a fire in living room and on the couch and bit paraffin on chair* [...] *when I dropped match on paraffin on floor it was one out quick but I didn't give any thought to people or kids in houses or owt*". Later that day, he said he thought he entered via the

back door rather than via a window. He suggested he had not seen the child and was annoyed with himself when he heard he had killed the baby. He had not looked inside the cot (which he remembered).

94. On 10 July 1980 he gave similar details as to those provided on 1 July. The fire was further discussed on 21 July 1980 and on 23 July 1980 when the appellant continued to maintain his responsibility. The appellant said that in December 1976 he had a disagreement with Peter Thacker, Katrina's father, which had resulted in Mr Thacker hitting the appellant. The appellant said that he had started the fire for revenge. The appellant had at one stage lived next door but one to the Thackers/Fraisers. This disagreement was verified by Mrs Fraiser, who said Peter Thacker hit the appellant around Christmas 1976. Mr Thacker agreed with this account.

95. There was evidence that the appellant had played with fires on land close to West Dock Avenue. On the day of the fire, he was living just over half a mile from West Dock Avenue. He was seen after the fire standing with others in the street watching it.

96. The joint experts, Dr Cox and Ms Griffiths, are of the view that the origin of the fire was unknown. Its rapid development could have been the result of an accelerant but equally it could have caused by an accidental ignition of a polyurethane upholstered sofa (ignited by an ember or flaming coal from the fire, or from a match carelessly handled by Mr Thacker). They indicate "*there is no compelling evidence either way*".

97. The appellant, as with many of these fires, relies on what are said to be a fortuitous and improbable number of coincidences which enabled him to set the fire without being detected, and most particularly that his entry occurred exactly as Mrs Fraiser made the trip down the garden. His change of account regarding the method of entry – variously a window and a door – is highlighted, as are his initial description of having poured the paraffin on the carpet and the marked similarities in what he said on the 1 and 10 July 1980.

98. The fire experts do not exclude arson. Although there are contradictions as regards the appellant's description of this fire, particularly as regards the means of entry to the premises and how he lit the fire, it has by no means been demonstrated that the appellant could not have ignited this fire. Notwithstanding the arguments of the appellant, it has not been established therefore that the appellant either did not commit or could not have committed the offences relating to these premises.

Wensley Lodge

99. This fire occurred at Wensley Lodge care home in Hessle, near Hull, on 5 January 1977 when the appellant was 16. 11 residents were killed. There was a major public inquiry into this fire. At approximately 21.30 a care assistant arriving for a night shift saw smoke on the first floor and tried to activate the fire alarm, which did not function. That afternoon, a plumber had been working with a blow torch in the boiler room directly below Room 11. Upon later investigation, it was discovered that a substantial amount of smoke had accumulated in Room 11. Graham Devonport, a senior forensic officer with the Home Office, noticed that there was a large hole in the floorboards of Room 11 and in the ceiling

below. He was of the view that what had occurred was symptomatic of a slow smouldering fire having started in the void some hours before it was discovered. Mr Devonport concluded that a spark from the blow torch must have found its way through a crack in the cement and asbestos ceiling, causing the fireboard to catch fire after some hours of smouldering. This conclusion was supported by the Deputy Senior Fire Prevention Officer of the Humberside Fire Brigade. The inquest verdict was death by misadventure.

100. On 27 June 1980, the appellant, when interviewed by Detective Superintendent Sagar and Detective Sergeant Martin said that he "*did the old blokes' home in Hessle*" and that "*eleven blokes died there*". On 30 June 1980, whilst driving with the police, he directed them to Wensley Lodge and he provided further details of the fire. The appellant again admitted responsibility for this fire on 21, 25, 28 and 29 July 1980 (on the last occasion in the presence of his solicitor, Mr Gunby, and the latter's clerk, Mr Pearce). The appellant provided an accurate description of the house and its occupants, and he identified the seat of the fire as being on the first floor. Miss Helen O'Shea, the Housemother at the St Vincent's Children's Home gave a statement on 12 July 1983, in which she indicated the appellant told her on numerous occasions that the fire at Wensley Lodge was not an accident. As already rehearsed, on 21 November 1983, all convictions in relation to this offence were quashed by this court.

4 Belgrave Terrace

101. This fire occurred on 27 April 1977 at 4 Belgrave Terrace, the home of Albert and Gwendoline Gould and their children, Lana Gould, and Deborah Gould. Mark Jordan was staying at the house along with his father Peter Jordan and older brother Graham Jordan (the family were moving to Kent the following day). The appellant was 16 years old. There were two deaths, Deborah Gould (aged 13) and Mark Jordan (aged 7). During the evening Mr Gould, whilst smoking, had been "*messing about the electrical wiring*" beneath the tropical fish tank to make the electric fire work. He connected two bare electric wires by twisting them around in his fingers. During the night, Peter Jordan was asleep on a sofa when he woke to a feeling of intense heat. He saw flames in the middle of the living room behind another sofa. He raised the alarm. He made no mention of having smelt paraffin. Following the appellant's later arrest, Mr Jordan told the police that he had sensed someone moving about the room and that he had heard a distinct bang from the direction of the passage. Mr Jordan, in a statement dated 20 October 1982, said that the appellant (who he knew as Peter Dinsdale) was a friend of Mark Jordan. The appellant had visited the Jordans at the house from which they were moving the day before the fire and he had been told about their imminent move to Kent. The appellant, on the other hand, denied knowing the occupiers. The fire brigade investigation concluded that the most likely cause of the fire was a lighted cigarette having been dropped on the carpeted floor. Graham Devonport, a senior forensic officer with the Home Office, concluded that the fire had started on the settee, probably due to the careless discarding of smoking materials which had smouldered for some time before spreading across the sofa to the armchair. The inquest verdict was death by misadventure.

102. Whilst driving in the area with police officers on 30 June 1980, the appellant told them that he had set a fire near Rosamond Street in which "*two kids died*". He said:

> "Take me to Rosamond Street […] down there, Rosamond Street, that's it. I did one or two down here. One where two kids died and another one. The one with the kids was not long after I did the baby in West Dock Avenue. […]"

103. In his voluntary statement shortly afterwards he said "*There is Rosamond Street, a terrace I think; for all I know they could all have died in it. I didn't bother* […]".

104. On 1 July 1980, the appellant made reference to "*two kids*" in the Rosamond Street terrace and provided further details of the fire including his use of paraffin. Later that day, he spoke of killing "*two in one fire*" and he gave the following description:

> "[…] I did another one where two kids died down a terrace in Rosamond Street. See it was about three months after Wensley Lodge or somat like three months. I know West Dock Ave and old blokes home was soon after Christmas then there was a good few weeks before the two kids in the Rosamond Street terrace. See there was a window into a room where they's maybe knocked a wall out to make a big room instead of two rooms and there was them polystyrene tiles tiles and a couch. There was someone sleeping there I think downstairs I mean and there would be people and kids upstairs asleep. I put paraffin around some near the door and about the floor and set it alight and out through the window. I smashed the glass to get in. I've told you that have I. I have now. I think it was front. I remember there was a T.V. and some fish in a tank. I remember seeing them just. See you get used to being in dark room after you've been in a place a few minutes and although you can't see too clearly you can see. […] It was a terrace, you know where the fish tank was that I did the fire. Then see I went a good while before I did another where somebody was killed. Over a year maybe more […]."

105. On 10 July 1980 and 21 July 1980, he gave provided significant further detail to Detective Superintendent Sagar:

> "Q. In this one you mentioned breaking glass to get in. Was it a door or a window?
>
> A. It was a window near the front door, a side window right at side of front door
>
> Q. You said in your statement that the fire you started was near a doorway, which door?

> A. One inside the house, you know, where two rooms made into one [...]
>
> Q. Did you believe people were asleep in there?
>
> A. Look I got in through the window I broke. See I picked some pieces of glass out after I broke it and climbed in.
>
> Q. Had you ever been in the house before?
>
> A. No
>
> Q. Was there someone asleep actually in the room that you set on fire?
>
> A. Might have been someone on the couch but I don't remember. I know there must have been some more people asleep upstairs [...]
>
> Q. Do you remember much about the front door there?
>
> A. Glass in it; that's all [...]"

106. On 29 July 1980 he again confirmed his responsibility for the fire in the presence of his solicitor.

107. Mr Gould made a statement on 17 November 1982 about the windows in the front room which contains the following:

> "Clearly shown in the photograph is a hole in the upper section of the right hand section of the front bay window viewed from the outside front. I can say that this hole was not present in the window before the fire... I can also say that the hole is situated near the securing stay and I believe the window measured about 18" by 18".
>
> and:
>
> "None of the three lower windows sections were designed to open, so anyone entering the living room through the front window would have to get in through one of those top sections of glass."

108. Thomas Starkey, a local fisherman, in a witness statement dated 7 August 1980, said that when he attended the fire, *"The large bay window was intact but the smaller angled window of the bay nearer the door was broken."*

109. On 22 October 1980, Mr Jordan said he thought he would have heard an intruder break the front window to gain entry.

110. The appellant, therefore, seemingly correctly recalled the layout of the house (including that two rooms had been knocked into one), the fish tank, a sleeping figure on the couch and the fact that there were polystyrene tiles on the ceiling.

111. The experts, Dr Cox and Ms Griffiths, are of the view that the fire had started in the middle of the large through living room on the rear side of the dividing curtain. Its origin was somewhere in the area between the hall doorway and the alcove containing the fish tank. The evidence did not lead them to a definite conclusion as to whether a smouldering fire had developed into a flaming fire and, more generally, there was insufficient evidence to establish whether the fire had been accidentally or deliberately ignited.

112. The appellant suggests that he confessed to an offence that was inherently unlikely, indeed one that was in essence impossible. He would have had to climb through an upper broken window measuring only 18" by 18", situated above a substantial fixed window. It is suggested that would have been, at best, extremely difficult for a fit 16-year-old youth; for one with a withered arm carrying a container of paraffin, it would have been unachievable. Furthermore, it is noted that the sound of breaking glass and the disturbance caused by entering through the broken window did not wake Mr Jordan, a possibility which is said to be wholly far-fetched. It is suggested that it made no sense for the appellant to have walked across the room to ignite the fire close to where Mr Jordan was sleeping, rather than close to the window.

113. In our view, on the evidence the appellant could not have been responsible for this fire. Given his disabilities, we conclude that it was either impossible or, alternatively, a wholly unrealistic suggestion that he climbed through an upper broken window measuring only 18" by 18", when supposedly entering **and leaving** these premises. This would have been, at best, a substantial challenge for a fit and slender 16-year-old but an effective impossibility for someone with the appellant's disabilities.

2 Brentwood Villas

114. This fire occurred on 6 January 1978 when the appellant was 17 years old. There were four deaths: Christine Dickson and three of her children, Mark Dickson (aged 4), Stephen Dickson (aged 3), and Michael Dickson (aged 16 months). Just before noon on 6 January 1978, a fire broke out at 2 Brentwood Villas. Christine Dickson had called upon her neighbour, Kathleen Hartley, sometime between 11.00 and 12.00. When Christine Dickson returned home, Kathleen Hartley noticed thick black smoke coming out of the front door. Christine Dickson then emerged from the property carrying her son Bryan (aged 2 months). She re-entered the property but did not re-emerge, having been fatally engulfed in the conflagration. Mr Dickson described the children as all being mischievous in a "*normal*" way, but Steven was the "*naughtiest*" of all, and he had been caught playing with a cigarette lighter, setting fire to bits of paper in the living room. He had previously thrown socks and a shoe on the coal fire in the living room. Both parents smoked and used petrol lighters. They kept a can of lighter fuel in a kitchen cupboard, out of the reach of the children. Mr

Dickson, who had suffered for many years from a nervous disorder requiring regular daily Valium and who slept for much of the day, was not sure what had happened to the new can that had been recently purchased, though he believed it to have been in the kitchen. The previous day Mrs Dickson had given a box of matches to Mrs Hartley so that they would be out of the way of the children.

115. Malcolm Watson, an officer at the Home Office forensic laboratory, attributed the fire to the actions of the children whilst their mother was out of the house. He noted that the extreme rapidity of the spread of the fire was due to the flammability of the modern furniture, with possible acceleration provided by the can of lighter fluid purchased by Christine Dickson the previous day. At the inquest it was noted that Stephen Dickson had a history of playing with fire. The inquest verdict was death by misadventure.

116. The appellant first mentioned this fire on 2 July 1980. He pointed to Brentwood Villas whilst driving with police officers in the area and said that he had set fire to the second house on the right. He suggested this had happened in daytime before dinner. In interview the same day, he claimed that he had started the fire by pouring paraffin through the letter box. He also said that the fire had been set at a time when the firemen had been on strike and the green fire engines were in use (presumably a reference to the Green Goddess self-propelled pumps used by the Auxiliary Fire Service). He said that having bought some paraffin from a hardware store:

> "I just walked past the school down side of school top of Reynoldson Street and into terrace, saw this door second one on left, no it wasn't, second on right and quick as a flash poured paraffin into doorway lit a bit of paper put it through letter box and as I say I was away before anybody would know

117. He suggested he had been fed up and a bit bored; moreover, "*fire was in my head and I had to do one that morning*" and he just picked on a house without thinking.

118. In another trip to identify fire sites on 21 July 1980 the appellant again pointed out Brentwood Villas. He provided further details at interviews on 21 July 1980 and 22 July 1980, stating that he had squirted paraffin from a Fairy washing up bottle which he pushed through the letterbox, squirting it left and right and letting it drip back to the letter box before posting a lighted piece of paper through the letter box. He said it "*only takes a second when you know what you are doing*". When asked if he saw anyone standing about in the terrace, he replied "*No, but you know, nobody takes much notice of anything anyway* […] *Away like a flash, that's me*". He again confirmed his responsibility for this fire during interview in the presence of his legal representatives on 29 July 1980.

119. The experts, Dr Cox and Ms Griffiths, confirmed that the fire started in the front living room. The exact origin cannot be established. No lighter fuel can was recovered, though the fire damage was great. The fire developed rapidly. This could be due to either the involvement of an accelerant (such as introduced paraffin or lighter fluid) or the accidental

ignition (or early involvement) of either a latex foam cushion or a polyurethane foam upholstered item of furniture. There was a sofa made of such material just inside the front door.

120. The experts agree that squirting paraffin through the letter box into the room could provide a mechanism by which the majority of the liquid fuel was at a distance from the door (consistent with Mrs Hartley's recollection as to where she saw the flames and Mr Watson's opinion as to the seat of the fire). This would have required a near-continuous trail of paraffin which had been ignited by a piece or pieces of lit paper dropped through the letter box. Dr Cox conducted some detailed tests into this suggested mechanism. Dr Cox prefers the explanation of an accidental fire caused by the children if the lighter fuel had been available to them and matches had been involved, given the seat of the fire was not by the fireplace.

121. Notwithstanding Dr Cox's preferred explanation, the fire experts do not exclude arson. Although the act of squirting the paraffin through the letter box to the right distance, in a near continuous trail, would have been a difficult undertaking for the appellant, we are unpersuaded this would have been impossible for him. He described using the mechanism which Dr Cox demonstrated in his tests, *viz.* squirting paraffin from a Fairy washing up bottle which he pushed through the letterbox left and right and letting it drip back to the letter box before posting a lighted piece of paper through the letter box. Notwithstanding the arguments of the appellant, it has not been established therefore that the appellant either did not commit or could not have committed the offences relating to these premises.

407 Troutbeck House

122. This fire occurred on 22 June 1979 when the appellant was 18. He lived nearby. There were no deaths. Just after midnight, Rosabel Fenton was in bed when she heard her neighbours shouting that her maisonette was on fire. She got out of bed and saw a fire on the landing. She went into her daughter's bedroom, and they both managed to escape although both suffered extensive burns. The police and fire brigade attended the premises and concluded that the cause of the fire was accidental ignition of a cardboard box in the hallway from a cigarette end discarded by a Mrs Lenney, a friend of Mrs Fenton, who had left the property shortly before the fire broke out.

123. Mrs Fenton stated that Mrs Lenney left at about 00.10. However, Mrs Lenney, on 23 June 1974, said she left at 23.40. On 26 June 1980 she amended this time of departure to 00.10 (she also denied in this statement that she had been smoking). Mrs King, a nearby neighbour, saw Mrs Lenney leaving at about 23.45 to 23.50 and said she had a cigarette in her hand. Her husband gave the time as 23.40.

124. Shortly after the appellant's arrest on 6 June 1980, Mrs Fenton contacted Detective Sergeant Martin to state that she had informed Detective Superintendent Sagar some months earlier that she believed that the appellant was responsible for the fire at her premises, and that she also believed that he was connected to the fire at 12 Selby Street. Detective Sergeant Martin took a statement from her on 18 June and 19 June 1980, and from others on 23 June 1980. Following a discussion between Detective Superintendent

Sagar and Detective Sergeant Martin, it was agreed that the appellant would be asked about the 407 Troutbeck House fire.

125. On 26 June 1980 the appellant was interviewed at HMP Leeds by both officers. Detective Superintendent Sagar told the appellant that he was of the view that the appellant may have been responsible for the fire at 407 Troutbeck House. After an initial denial the appellant admitted starting the 407 Troutbeck House fire. In answer to questions, the appellant said that "*I did do that one but it wasn't through the letter box*" and "*it wasn't a paraffin job either*". He added "*I just opened the door see, it wasn't shut properly and I just got some paper, set it alight with my matches and then threw it well inside the door. It went up in no time*". On 27 June 1980 the appellant made a voluntary statement to Detective Superintendent Sagar in the presence of Detective Sergeant Martin. He is alleged to have said:

> "I did Troutbeck House, that's the house where Ros Fenton lives. That house was easy see I had a match and paper, the door wasn't locked. See I was going to do 301 Seathwaite House but changed my mind. I don't like the Buckleys at 301 but lucky for them I changed my mind and did Ros Fentons house instead. See someone I know put it in my mind and I just went in her doorway lit some paper with a match of course, dropped it in the passage and when it was well alight I cleared off to a house near there."

126. The fire experts are of the view that the very short time interval (5 – 7 minutes) as given by Mrs Fenton means that a lit cigarette could not have ignited the fire, since it would have needed to progress from a smouldering to a flaming fire. This interval was insufficient, making this explanation very unlikely. They agree, "*that the reported contents of the shoe box would probably not act to either effectively insulate a discarded lit cigarette or promote a smouldering fire*".

127. The joint experts studied the relevant photographs following the fire and provided the following analysis of the door:

> "We agree that these photographs […] show an absence of gross mechanical damage around the mortice lock position in the door and at the corresponding position of the lock keep in the door frame. We agree that this indicates that the mortice lock bolt had not been fully extended and completely engaged in the door frame at the time the front door was opened by neighbours attempting entry during the fire. For these reasons, we agree that the front door could have been closed but insecure prior to the fire."

128. There was evidence of motive, as the appellant was a friend of Mrs King who was involved in a feud with Mrs Fenton. Mrs Fenton described this in a statement dated 29 September

1980 in which she suggested Mrs King had made threats against her behind her back. The appellant was seen in the near vicinity of the fire both before (in the company of Mrs King) and after it had broken out (with a group of neighbours). If the evidence of Mrs King is accurate, he told her that he had asked Mrs Fenton if he could climb into Mrs King's flat through the Fenton flat but had been refused. If the evidence of Mrs Fenton's sister, Mrs Preston, is accurate, on the day after the fire she remarked to the appellant that he had been there. He thereupon said, "*It wasn't me*", although she had not alleged that he was responsible. He also added that he had been at home all evening because he had had a fit.

129. The appellant relies on a statement made by Mrs Lenney on 23 June 1974:

> "From about 11 until about 20 to midnight we both smoked one cigarette. As Rosabelle (Mrs Fenton) was tired I decide to leave earlier than usual and before I went, put a cigarette out in the ashtray. I cannot remember if I lit another cigarette before I left but I was carrying both a handbag and a 1lb of ham as I left by the front door. As I left, as was usual, Rosabelle who was upstairs, asked me take the front door key then lock the door as I left and push the key though the letter box."

130. Mrs Lenney did as she was asked.

131. The appellant suggests that the alternative times of departure provided by Mrs Lenney (23.40) and Mr and Mrs King (between 23.40 and 23.50) provide a sufficient window of opportunity for the fire from a discarded cigarette to take hold. It is suggested that this could have developed in the area of the cardboard box to the right of the door, which contained shoe polish rags and shoes. It is highlighted that the suggested motive (the feud) only came to light after the appellant's arrest on 6 June 1980. It appears that Mrs Fenton's sister visited the police on 10 June 1980 and indicated she hoped the police had not forgotten the fire at Troutbeck House. This prompted a formal police action: "*Recover file on this fire and enquire if Lee can be connected (Det Supt requires this info urgently)*". Mrs King, in a statement dated 14 July 1980, denied suggesting to the appellant that he should do anything against Mrs Fenton or her family. In all the circumstances, it is suggested that the evidence of motive is slender. Detective Superintendent Sagar raised this fire, which he had been investigating it since the 6 or 7 June 1980, with the appellant on 26 June 1980.

132. The appellant confessed to opening the door and throwing the lit paper inside. It is argued that there is strong evidence to indicate the door was locked. Mrs Lenney had been asked to do this by Mrs Fenton. Mr Coates, a neighbour, was unable to open the door after the fire had started, and he kicked it open. A neighbour, Mr Rudland, saw the door closed after the fire had started. Detective Constable Terry, in a handwritten report about the incident, set out that, "*on the fire being discovered the house was secured with doors and windows locked*". Mr Simmonds described seeing the door kicked open by Mr Hooper, who in turn could not recall if he kicked the door open or whether he broke the glass. In all the

circumstances, it is submitted that the front door was "*secure*" and could not have been used by the appellant to set this fire.

133. It is emphasised that the account concerning this fire in the voluntary statement taken on 27 June 1980 was the subject of rewriting by Detective Superintendent Sagar.

134. The fire experts do not exclude arson. Although there is some uncertainty as regards whether the door was secured, the experts indicate that the door was closed but not secured. Otherwise, it has by no means been demonstrated that the appellant could not have ignited this fire. Notwithstanding the arguments of the appellant, it has not been established therefore that the appellant either did not commit or could not have committed the offences relating to these premises, particularly given (subject to timings) the unlikelihood of the cause of the fire being a discarded cigarette.

12 Selby Street

135. This fire occurred at 12 Selby Street on 4 December 1979 when the appellant was 19 years old. There were three deaths, Charles Hastie (aged 15), Paul Hastie (aged 12), and Peter Hastie (aged 10). In the early hours of the morning, Edith Hastie was woken by intense heat at her premises. Her four sons were also in the premises. She went to the upstairs landing and saw flames moving up the stairs from a fire in the downstairs hallway. Mrs Hastie and her children managed to escape through an upstairs window. Charles, Paul, and Peter, all died in hospital as a result of their injuries. Forensic examination demonstrated that paraffin had been poured through the letterbox and ignited using newspaper. The police opened a murder investigation and the initial lines of enquiry suggested that there was significant local animosity towards the Hastie family. Another possibility was that the arsonist's intended target was the nearby home of a local criminal. These lines of enquiry were investigated and eliminated.

136. On 3 January 1980 the appellant voluntarily attended Hull's Central Police Station and told police that he had spoken to a man called "*Steve*" in the Royal Oak Public House, who had told him that he knew who was responsible for the fire. The police did not act on this report. In April 1980, investigation began to focus on homosexual activity in the local area in which it was believed Charles Hastie (aged 15 at the time) may have been involved. On 18 May 1980 the appellant was brought into the police station as a man who had possibly had sexual contact with Charles Hastie. The appellant made a witness statement to the effect that he had been sexually involved with Charles Hastie, who had asked for money following each sexual encounter between them. On 6 June 1980 the appellant was interviewed, along with a number of other local men, at Hull's Gordon Street Police Station. This was conducted by Detective Superintendent Sagar in the presence of Detective Sergeant Young and Detective Constable Harrod. As set out above, one of the Grounds of Appeal concerns the question of whether the appellant was under arrest at the time. Detective Sergeant Young expressed the view that he was "*well under the influence of drink*" when he was first seen (at 16.45), prior to his arrival at the police station. At the station at 18.00 he was still visibly under the influence of drink. However, by 20.00, when the questioning began, he was deemed to be sober and fit for interview, which was conducted under caution. The appellant said that Charles Hastie had been blackmailing him

by threatening to tell the police about their sexual activity. The appellant said he was fed up and angry, and as a result had obtained paraffin from a friend named Thomas Buckley which he used to start the fire at 12 Selby Street. During the course of the interview he said:

> "I struck another match, it went out. I threw it away and I then got some paper and lit that with another match and that was alright. I put it all through the letter box."

137. Detective Superintendent Sagar arrested him for murder. The appellant then made a voluntary statement in which he gave a detailed confession about the manner in which he had started the fire and how he had destroyed the paraffin container after he had run off from the scene. Detective Superintendent Sagar said that he contemporaneously recorded this statement which was made between 23.35 on 6 June 1980 and 00.25 on 7 June 1980. On 7 June 1980 the appellant showed police where he said he had destroyed the bottle of paraffin. On the same day, in the presence of his solicitor's clerk, he identified a plastic bottle that was shown to him by the police as being similar to that in which he had carried the paraffin for the arson, save that his container did not have any moulded rings around the base. On 9 June 1980 the appellant made a second voluntary statement to the effect that he had lied about obtaining the paraffin from Thomas Buckley. He was charged with arson and murder.

138. The appellant highlights that the police were in possession of all the facts set out in the appellant's confessions, which had been obtained during a 6-month investigation. This particularly relates to the paraffin having been poured through the letter box (a large quantity was used), the spent matches outside the front door, the specific type of matches (Pioneer) that were used, the net curtain inside the door and the pieces of paper found outside the house. It is emphasised that the appellant lied about having obtained the paraffin from Thomas Buckley and the container he claimed he had used and discarded was not found at the location identified by the appellant. The appellant contrasts the different accounts he is alleged to have provided as regards his attitude to Charles Hastie, in that he was inconsistent as to whether he was angry with Charles Hastie or whether he always got on well with him. No one matching the appellant was seen in the vicinity of the fire. It is suggested that it is unbelievable that the appellant remembered details such as the net curtain inside the front door, the paraffin dripping down the outside of the door, the fact that he (definitely) took newspaper with him and that he used Pioneer matches. It is suggested that it would probably have been beyond the physical competence of the appellant to unscrew the cap of the container, push up the letter box, pour in the paraffin, repeatedly light matches to ignite a piece of paper which, when lit, he pushed through the letter box. Doubt is expressed as to the account he gave in interview on this issue:

> "I just lifted the letter box flap with this hand (indicating his partly paralysed hand) and rested the container on me knee and rested the top on the letter box and poured it in all slow like."

139. It is suggested there were others with a more compelling motive than the appellant to burn down the Hastie's home. The appellant, however, showed a close interest in this fire. If their evidence is accurate, on the night of the fire he returned at around 0500 to the friends with whom he was then lodging. He told them, apparently falsely, that he had had a fit and been in hospital (see also a similar explanation given to Mrs Pearson in relation to the fire at Troutbeck House: [128] *supra*). The next day he became emotional at reports of the fire and threatened to 'get' whoever was responsible. He had admittedly made an anonymous phone call to the police about the fire, and, as set out above, on 3 January 1980 had arrived unannounced at the police station with the story of the man called Steve in a pub. Significantly, this was the first fire to which the appellant confessed. He had previously given an account of his sexual encounters with Charlie Hastie, and there has never been any suggestion that that account was other than truthful and freely volunteered. Hastie's demands for money associated with those encounters, did, if true, provide a motive for the appellant to set the fire

140. This fire was clearly the result of arson. Although there are arguments to be made regarding the account he gave (including as regards the role of Thomas Buckley), it has by no means been demonstrated that the appellant could not have ignited this fire. Notwithstanding the arguments of the appellant, it has not been established therefore that the appellant either did not commit or could not have committed the offences relating to these premises.

Other Events

141. On 10 June 1980 the appellant was produced at Hull Magistrates' Court and remanded into custody at HMP Leeds whilst police enquiries continued. On 12 June 1980 he wrote to his mother, saying that he had to own up sometime, adding that he was drunk when he did it (clearly a reference to 12 Selby Street). On 14 June 1980, the appellant's sister visited him at HMP Leeds where he made an implied admission to her that he had set the fire at 12 Selby Street. She asked him whether he had committed the offence and according to her statement to the police, his response was "*do you think I would admit doing a thing like that if I hadn't done it?*". On 14 or 16 June 1980 the appellant also wrote to his aunt from HMP Leeds informing her that he had started the 12 Selby Street fire but that he had not intended to kill anyone.

142. During his numerous interviews under caution and voluntary statements, the appellant confessed responsibility for at least 10 other fires which did not form the subject of charges in the Crown Court and which were not formally put to the appellant as offences that he wished to have taken into consideration on sentence.

143. It is of note that the 11 fires covered by the indictment, save for those at 12 Selby Street and 407 Troutbeck House, had been the subject of an inquest that had taken place prior to the appellant's confessions. In each case the inquest verdict was recorded as misadventure. The fire experts changed their opinions about the cause of the fires after the appellant had confessed.

Medical Reports prior to Trial

144. Prior to the appellant's guilty pleas on 20 January 1981, various medical reports were obtained. Dr McCullough (a psychiatrist) provided a report dated 4 November 1980. He concluded that the appellant suffered from cerebral palsy, had mobility issues and that he had an IQ of 63. Dr McCullough suspected, however, that the appellant functioned at a higher level than his formal IQ. He was able to recall the detail of 17 of the fires, and he told Dr McCullough that there was a sexual element involved when he the set the fires.

145. Dr Sasieni (the senior medical officer at HMP Leeds) wrote reports dated 21 December 1980 and 16 January 1981. In her first report, she recommended the imposition of a hospital order as the appellant suffered from a psychopathic disorder. In the course of her second report, she noted that the appellant said that he had started the fire at 12 Selby Street because Charles Hastie had annoyed him, and that the appellant had said that he had started some of the other fires with another person.

146. Dr Milne (a consultant forensic psychiatrist) provided a report to the defence dated 29 December 1980. He noted that the appellant admitted setting the fires, and that he claimed some of them had been set at the request of others. The motive for the remainder was that the occupants had irritated the appellant. The appellant had also told Dr Milne that the motive for the fire at 12 Selby Streets related to the threats made to him by Charlie Hastie. Dr Milne described the appellant as "*extremely perceptive and alert*", as well as apt to correct the doctor's contemporaneous notes by reading them upside down.

147. Prior to the appellant entering pleas of guilty in the Crown Court on 20 January 1981, he was assessed by psychiatrists instructed both for the prosecution and the defence. They agreed that he was fit to plead.

Discussion

148. Section 2 of the Criminal Appeal Act 1968 ("*Determination of Appeals*") ("the 1968 Act"), as amended, provides:

> "(1) Subject to the provisions of this Act, the Court of Appeal –
>
> shall allow an appeal against conviction if they think that the conviction is unsafe; and
>
> shall dismiss such an appeal in any other case.
>
> (2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.
>
> (3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal."

149. To follow the cases on appeals after a plea of guilty, it is necessary to sketch, in brief terms, the history to this provision. The Court of Criminal Appeal was created by the Criminal Appeal Act 1907. Section 4(1) provided that the court should allow an appeal if "*the verdict of the court should be set aside on the grounds that it is unreasonable*" or could "*not be supported by the evidence*" or that "*the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law*" or that "*on any ground there was a miscarriage of justice*". In *The King v Forde* [1923] 2 KB 400, 403, Avory J, giving the judgment of the court, seemingly limited the opportunity to appeal under section 4(1) following a guilty plea as follows: "*A plea of Guilty having been recorded, this Court can only entertain an appeal against conviction if it appears (1) that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it, or (2) that upon the admitted facts he could not in law have been convicted of the offence charged*". Such a limitation to these two circumstances alone has, however, not been followed in subsequent cases.

150. By the time of *DPP v Shannon* [1975] AC 717; [1974] 3 WLR 155, the 1907 Act had been replaced by first the Criminal Appeal Act 1966 and then the Criminal Appeal Act 1968. Those statutes omitted the power to quash a conviction on the ground that a miscarriage of justice had occurred, and the sole available grounds which remained were an unsafe or unsatisfactory verdict of a jury, a wrong decision of a question of law or a material irregularity in the trial. The House of Lords was driven to conclude that the effect of that change was, perhaps inadvertently, to remove the power to entertain an appeal against conviction following a plea of guilty where there was no jury verdict and no wrong decision of law or other material irregularity. The House was considering whether the conviction (upon plea of guilty or otherwise) of one conspirator could in law stand if the only person or persons with whom the indictment alleged that he had conspired is or are subsequently acquitted. The decision of the House was that there was no impediment to the conviction of the first defendant, for the simple reason that the evidence against different defendants may well differ. But Viscount Dilhorne took the opportunity to observe that such a situation was not one that the court in *Forde* had in mind. His Lordship observed that if, contrary to the decision of the House, the conviction had been vitiated in law "*there can be no doubt that the Court of Criminal Appeal* (under the 1907 Act) *had power to quash the conviction on the ground that there had been a miscarriage of justice*" (see page 756 F). The statute was later amended by the Criminal Law Act 1977 (s 44) to substitute as the test whether the **conviction** was unsafe or unsatisfactory, rather than whether **the verdict of the jury** was, and subsequently the Criminal Appeal Act 1995 (s 2) put the 1968 statute into its present terms. It follows that, except for the period between 1966 and 1977, the Court has had jurisdiction in appropriate circumstances to entertain an appeal against a conviction grounded on a plea of guilty. As analysed below, the authorities reveal that the categories of cases in which an appeal against conviction may succeed following a guilty plea are not closed.

151. Against that background, the focus of the court's attention in considering an appeal against conviction – indeed, its "*sole obligation*" (per Lord Bingham CJ in *R v Hemamali Graham and others* [1997] 1 Cr App R 302, 309) – is on the single question of whether the conviction is unsafe. This determination is dependent on an application of the relevant legal principles to the facts and circumstances of the case. We consider that this, equally, is the

correct approach to be applied when determining whether a conviction is safe following an appellant's guilty plea. Where there has been a plea of guilty, that is plainly a major, and normally a dominant, part of the facts and circumstances of the case. So, it does not follow that the approach to a conviction grounded on a plea of guilty is identical to the approach to a conviction grounded on a jury verdict after a contested trial.

152. As we have set out above at [10], in the course of the judgment in this appellant's previous appeal, Ackner LJ observed,

> "Thus, the fact that (an appellant) was fit to plead; knew what he was doing; intended to make the pleas he did; pleaded without equivocation after receiving expert advice although highly relevant considerations to whether a conviction was unsafe or unsatisfactory, cannot of themselves deprive the court of the jurisdiction to hear the applications." (R v Bruce George Peter Lee [1984] 1 WLR 578, 583; (1984) 79 Cr App R 108, 113).

The significance of the guilty plea in this context was reiterated in *R v Asiedu* [2015] EWCA Crim 714; [2015] 2 Cr App R 8, *per* Lord Hughes:

> "19. A defendant who pleads guilty is making a formal admission in open court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence […]. But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open court. A defendant will not normally be permitted in this court to say that he has changed his mind and now wishes to deny what he has previously thus admitted in the Crown Court."

Later in the judgment:

> "31. […] Of course a defendant who is confronted by a powerful case may have difficult decisions to make whether to admit the offence or not. He will of course be advised that if he does plead guilty that fact will be reflected in sentence, but that general proposition of sentencing law does not alter his freedom of choice in the absence of an improper direct inducement from the judge, such as there was in *R. v Inns* (1974) 60 Cr. App. R. 231. He will always have it made clear to him that a plea of guilty, should he choose to tender it, amounts to a confession. Only he knows the true

> facts, which usually govern whether he is guilty or not and did so here. If he is guilty, the fact that the choice between admitting the truth and nevertheless denying it may be a difficult one does not alter the effect of choosing to admit it. […]".

153. In a number of cases, as discussed hereafter, the courts have identified various circumstances when, notwithstanding the admission of guilt, an appellant is entitled to submit that his or her conviction is unsafe. Most, if not all, can be seen to fall into three broad categories of case, albeit we are not suggesting this is necessarily a closed list.

The First Category

154. First, there may be a variety of circumstances in which the guilty plea is vitiated. An obvious one is where an equivocal or an unintended plea was entered. Similarly, in *R v Swain* 1986 Crim L.R. 480 the appellant's conviction was quashed on the basis of evidence that there was a very real risk that he had been affected by delusion caused by L.S.D. at the time he changed his plea to guilty, and for a short time thereafter. In those circumstances, the court held that the conviction was unsafe and unsatisfactory.

155. Equally, an appeal may be allowed when "*the plea of guilty was compelled as a matter of law by an adverse (*and, we add, wrong) *ruling by the trial judge which left no arguable defence to be put before the jury*" (see *Asiedu* at paragraph 20, as endorsed in *R v Fouad Kakaei* [2021] EWCA Crim 503 at paragraph 75). This situation is, however, to be contrasted with the position when there is an adverse ruling by the judge which renders the defence being advanced more difficult, even to the point of being near hopeless, as distinct from unarguable: "*A change of plea to guilty in such circumstance would normally be regarded as an acknowledgment of the truth of the facts constituting the offence charged*" (*per* Auld LJ in *R. v Chalkley* [1998] 2 Cr. App. R. 79; [1998] Q.B. 848, at 94 and 864, and see *Asiedu* at paragraph 20). In such a situation a defendant who contests his guilt can plead not guilty and challenge the disputed adverse ruling on appeal, whereas the defendant who has no defence left to put to the jury cannot.

156. Similarly, a guilty plea might be vitiated by improper pressure, for instance from the judge. In *R v Nightingale* [2013] EWCA Crim 405; [2013] 2 Cr App R 7, Lord Judge CJ at paragraph 16 observed,

> "The question is whether (the intervention) by the judge, and its consequent impact on the defendant after considering the advice given to him by his legal advisers on the basis of their professional understanding of the effect of what the judge has said, had created inappropriate additional pressures on the defendant and narrowed the proper ambit of his freedom of choice."

The court determined that the plea of guilty was, in effect, a nullity. And in *R v Inns* (1974) 60 Cr App R 231, Lawton LJ suggested at page 233 that,

> "When the accused is making a plea of guilty under pressure and threats, he does not make a free plea and the trial starts without there being a proper plea at all. All that follows thereafter […] is a nullity."

157. If it is established that incorrect legal advice had been given, this too can result in the conviction being quashed/treated as a nullity, certainly in the restricted circumstances described by Scott Baker LJ in *R v Saik* [2004] EWCA Crim 2936:

> "57. For an appeal against conviction to succeed on the basis that the plea was tendered following erroneous advice it seems to us that the facts must be so strong as to show that the plea of guilty was not a true acknowledgment of guilt. The advice must go to the heart of the plea, so that […] the plea would not be a free plea and what followed would be a nullity."

158. An appeal can, however, succeed if vitiated by erroneous legal advice or a failure to advise as to a possible defence, even where the advice may not have been so fundamental as to have rendered the plea a nullity, if its effect was to deprive the defendant of a defence which would probably have succeeded. In *R v Boal* [1992] QB 591, it was decided that if a possible line of defence is overlooked, exceptionally the court will be prepared to intervene, although only if the defence would quite probably have succeeded and the court concludes, therefore, that a clear injustice has been done (see pp. 599 and 600). This approach was endorsed in R v *Mohamed (Abdalla) and others* [2010] EWCA Crim 2400; [2011] 1 Cr. App. R. 35 (a case in which a defence under section 31 of the Immigration and Asylum Act 1999 had been overlooked) and in *R v McCarthy* [2015] EWCA Crim 1185. In the latter case, the court was "*far from confident that when the applicant pleaded guilty to the offence of wounding with intent he had a proper understanding of the elements of the offence*" (see [81]). Similarly, in *R v Whatmore* [1999] Crim. L.R. 87 the court quashed the appellant's convictions on the basis that he had received misleading advice on which he relied, rendering the convictions unsafe (he had pleaded guilty to two counts of sexual offences against his daughter, having been led erroneously to understand that those allegations would not, as a consequence, feature as part of the evidence during another trial). Here the pleas were in effect induced by misleading legal advice. Waller LJ indicated at page 9:

> "[…] the defendant had not admitted his guilt and was pleading on the basis that if he pleaded, the daughter's allegations would never become part of the case at all and he was content, in effect, to take a sentence which he had already served in return for pleading to something which he did not admit. In those circumstances, as it seems to us, it cannot be said that the conviction on those pleas are safe."

159. In *R v PK* [2017] EWCA Crim 486 Sir Brian Leveson P. emphasised the approach just described, namely that the Court of Appeal would only intervene on the basis that the conviction was unsafe when it believed the defendant had been deprived of what was in all likelihood a good defence in law, which would quite probably have succeeded and, as a result, a clear injustice had been done.

The Second Category

160. There is a distinct category of cases which do not depend on the circumstances in which the plea was entered or indeed upon whether the accused is innocent or guilty, but instead arise when "*there* (is) *a legal obstacle to his being tried for the offence, for instance because the prosecution would be stayed on the grounds that it is offensive to justice to bring him to trial. Such cases are generally described, conveniently if not entirely accurately, as cases of "abuse of process*"; in these circumstances "*a conviction upon a plea of guilty is as unsafe as one following trial*" (see *Asiedu* at paragraph 21). By way of example, entrapment, if made out, can amount to unfairness which would render it an abuse of process to try the defendant (see *Asiedu* at paragraph 25). So, one example of a case coming withing this second category is when an abuse of process is established such that renders it unfair to try the defendant at all. As Lord Woolf CJ observed in *R v Togher & others* [2001] 1 Cr App R 33 at paragraph 31,

> "Certainly, if it would be right to stop a prosecution on the basis that it was an abuse of process, this Court would be most unlikely to conclude that if there was a conviction despite this fact, the conviction should not be set aside".

The court in *Togher* at page 161 G approved what it described as the "*broad*" approach adopted in *R v Mullen* [1999] 2 Cr App R 143; [2000] QB 520, per Rose LJ:

> "... for a conviction to be safe, it must be lawful; and if it results from a trial which should never have taken place, it can hardly be regarded as safe. Indeed the *Oxford Dictionary* gives the legal meaning of 'unsafe' as 'likely to constitute a miscarriage of justice'."

161. A further type of case within this category is when there is a fundamental breach of the accused's right under article 6 of the European Convention on Human Rights to a fair and public hearing by an independent and impartial tribunal. It is unnecessary for the defendant to establish prejudice in this context (see *R v Ilyas Hanif* [2014] EWCA Crim 1678 and *R v Abdroikov, R v Green, R v Williamson* [2007] UKHL 37, in which latter case Lord Bingham observed at paragraph 27 that "[…] *even a guilty defendant is entitled to be tried by an impartial tribunal* […]").

The Third Category

162. In the case of category 1, the ordinary consequences of the public admission of the facts which is constituted by the plea of guilty are displaced by the fact that the plea was vitiated,

whether in fact or by reliance on error of law. In the case of category 2, the ordinary consequences of the public plea are irrelevant, because the defendant ought not to have been subjected to the trial process (or to that form of trial process) at all. But ordinarily, the plea of guilty, by a defendant who knows what he did or did not do, amounts to a public admission of the facts which itself establishes the safety of the conviction. There remains, however, a small residual third category where this cannot be said. That is where it is established that the appellant did not commit the offence, in other words that the admission made by the plea is a false one.

163. In *R v John Verney* (1909) 2 Cr App R 107, the appellant's conviction for sacrilege, on his guilty plea and for which he received 12 months' imprisonment with hard labour, was quashed on the basis that it was established that he had been in prison on the relevant date and thereby he had been unable to commit the offence. *R v Barry Foster* [1985] 1 QB 115; 79 Cr App R 61 concerned an appellant, a man of previous good character and low intelligence, who in 1977 was interviewed by the police on several occasions concerning the rape and attempted rape of two 10-year-old girls (counts 1 and 4 respectively). He was alone for some of the interviews, and he was otherwise accompanied by his mother or a social worker. He was made the subject of an order under sections 60 and 65 of the Mental Health Act 1959. Thereafter, in December 1981 another man (Pearce) pleaded guilty to six offences against young girls, and he asked for 70 similar offences to be taken into consideration. Pearce's admissions showed conclusively that he had committed the offence in count 1 (rape) but he denied having committed count 4 (attempted rape). Indeed, during the appeal, counsel for the Crown indicated that he was instructed to say that in the opinion of the Director of Public Prosecutions the appellant was innocent of count 1. Furthermore, on count 4 the Crown conceded the conviction should be quashed and the court thereafter concluded (at page 72) that on the particular facts of the case "*no jury properly directed could safely come to the conclusion that this appellant was guilty of count 4."* Watkins LJ indicated that the court should only intervene in a case of this kind if the grounds were sufficiently compelling (page 67).

164. Scott Baker LJ described the approach to be taken to this situation in *Saik* at [51] as when there is "*fresh evidence to show he was not guilty of the offence,* [which is] *a classic case of matters going to the safety of the verdict*".

165. Similarly, in *R v Noel Jones* [2019] EWCA Crim 1059, an appeal was allowed against the appellant's conviction for manslaughter on the basis that later DNA evidence "*wholly exonerated* (the appellant) *of involvement in this terrible crime*". There had been only one attacker, who it was later demonstrated was someone other than the appellant. The latter had seemingly pleaded guilty because of pressure that he felt at the time.

166. There are, however, two somewhat countervailing decisions about which we need to make some observations.

167. The first is *R v Lee* (the decision of 21 November 1983 in relation to the present appellant, set out above). The court, without considering whether an appeal following a guilty plea is to be approached in the same way as an appeal following a contested trial, adopted at page 114 the formulations provided by Lord Kilbrandon and Lord Diplock in *Stafford v Director*

of Public Prosecutions, an appeal which focussed entirely on appeals following a contested trial (see [11] above).

168. The second is *R v Brady* [2004] EWCA Crim 2230. The appellant was identified by a police officer from CCTV footage as one of a pair of robbers at an off licence. She was arrested, confessed to the crime (along with a significant number of other offences) in the presence of her solicitor and pleaded guilty. In due course, two witnesses to the robbery said that they had known the appellant for many years and she had definitely not been one of the robbers. Significant questions arose as to the reliability of the identification by the police officer. This court, on an appeal, did not require the two witnesses or the appellant to give evidence. It was accepted that the evidence of the witnesses was capable of belief. The appellant, for her part, had committed such an abundance of offences she could not recall if this was one of them. The court did not analyse or apparently receive submissions on the test to be applied when it is submitted a conviction should be quashed following a guilty plea. The court simply observed at [14], "*Once* (the evidence from the two witnesses) *is in and it is accepted that the contents of the statement are capable of belief, it seems to us simply to follow that the appellant's conviction for robbery is unsafe notwithstanding her plea of guilty*" and at [15] "*If she pleaded guilty out of some motive unknown to the court, it would plainly not save the safety of the conviction*". This latter passage prompted the editors of Archbold Criminal Pleading, Evidence and Practice 2022 Ed at 7-46 to note that the court in *Brady* had observed that "*once the fresh evidence had shown the conviction to be unsafe, it mattered not what the reason for an unequivocal plea had been.*"

169. In our judgment, there is a significant difficulty shared by these two decisions (*viz. Lee* and *Brady*). The question of whether the appellant's conviction is unsafe – following public pleas of guilty, tendered in open court by a defendant who did not lack capacity, who knew what he had and had not done, and had been in receipt of appropriate legal advice – cannot simply be answered by reference to the approach that has historically been applied to convictions by a jury following a not guilty plea. That would be to ignore the effect of the guilty plea as an informed public admission of the offence.

170. In the context of an appeal against a conviction founded on the jury's assessment of the evidence, Lord Judge CJ sounded this warning in *R v Pope* [2012] EWCA Crim 2241; [2013] 1 Cr App R 14:

> "14. […] As a matter of principle, in the administration of justice when there is trial by jury, the constitutional primacy and public responsibility for the verdict rests not with the judge, nor indeed with this court, but with the jury. If, therefore, there is a case to answer and, after proper directions, the jury has convicted, it is not open to the court to set aside the verdict on the basis of some collective, subjective judicial hunch that the conviction is or may be unsafe. Where it arises for consideration at all, the application of the "lurking doubt" concept requires reasoned analysis of the evidence or the trial process, or both, which leads to the inexorable conclusion that the conviction is unsafe. It can therefore only be in the most exceptional circumstances that a conviction will be quashed on this

> ground alone, and even more exceptional if the attention of the court is confined to a re-examination of the material before the jury."

171. It can nevertheless exceptionally occur that a reasoned legitimate doubt may be entertained by this court about the verdict reached by the jury following disputed evidence, and this may be sufficient to establish that the conviction is unsafe. But following a freely made guilty plea, the conviction does not depend on the jury's assessment of disputed evidence. The evidence has never been heard, still less tested. It cannot be appropriate to enquire how it might have emerged and might have been assessed if there had been a trial. A submission that the evidence leaves a doubt about the guilt of the defendant is simply inappropriate. In such a case, of a free and informed plea of guilty, unaffected by vitiating factors, it will normally be possible to treat the conviction as unsafe only if it is established that the appellant **had not** committed the offence, not that he or she **may not have** committed the offence. Therefore, the test is not that of "*legitimate doubt*", still less a "*lurking doubt*", but instead it must be demonstrated that the appellant was not culpable. This is essentially consistent with four of the authorities set out above. In summary, the decision in *Verney* was based on the court's conclusion that the appellant could not have committed the offence because he had been custody at the relevant time. In *Barry Foster,* although Watkins LJ did not describe the approach in precisely these terms, he nonetheless set a high test when he suggested that no jury could be sure of the appellant's guilt, adding that the court should only intervene in a case of this kind if the grounds were sufficiently compelling. In *Saik,* fresh evidence demonstrating the appellant was not guilty of the offence was said to represent a classic example of material that potentially undermined the safety of the verdict. The DNA evidence in *Noel Jones* wholly exonerated the appellant.

172. As Lord Salmon observed in *DPP v Shannon* [1975] AC 717 at page 769, "*a plea of guilty is equivalent to a conviction*", where entered, we would add, by an individual who knows whether he or she committed the offence. It would be wrong in principle for a defendant to be entitled freely to enter a guilty plea, thereby convicting himself or herself, only later to seek to appeal that conviction simply by producing evidence that might have led a jury to doubt his or her guilt if there had been a trial, or by subjecting the evidence which might have been led at trial to a theoretical paper analysis in the absence of the witnesses. The objectionable nature of such a course is demonstrated in the instant case where many features of the evidence have never been and are now incapable of being tested. Therefore, although we consider the decisions in *Lee* and *Brady* were no doubt correctly decided on their facts given the strength of the evidence demonstrating the appellants had not committed the offences in question, the test applied by the court in both cases was incorrect. In consequence, with respect to the editors of Archbold, the observation at 7-46 concerning *Brady* is in our view unjustified and fails to reflect the correct approach.

173. An important common element across the three categories, therefore, is that the circumstances relied on by the appellant need to be established by him or her. That is merely an application of the normal rule that it is for an appellant to demonstrate that his conviction is unsafe. By way of summary, for the first category, the matters vitiating the plea must be demonstrated (*e.g.* that the plea was equivocal, unintended or affected by

drugs *etc*.; there was a ruling leaving no arguable defence; pressure or threats narrowed the ambit of freedom of choice; misleading advice was provided or a defence was overlooked). For the second category, it must be shown that there was a legal obstacle to the defendant being tried for the offence or there was a fundamental breach of the accused's right under article 6 (whether he or she was guilty or not), and for the third category, it needs to be established that the appellant did not commit the offence. If that standard is not met, we would not expect an appeal against conviction following a guilty plea to succeed.

174. We have borne in mind that Mr Barnes placed some considerable reliance on *R v McKenzie (David Stuart) (Practice Note)* [1993] 96 Cr App R 98. In that case the appellant was convicted by the jury of two counts of murder and two counts of arson. The convictions for murder depended entirely on his confessions to the two murders, in circumstances when he had confessed to 12 other killings, none of which the Crown believed he had committed. The appellant denied responsibility for the killings, suggesting that although he "*felt*" guilty, he knew he had done nothing; he, therefore, drew a distinction between feeling he had done what was charged and knowing that he had not committed the offences. However, it would appear that by the end of his evidence the appellant's stance had changed in that he said he did not know if he had killed the two victims but felt that he had. The appellant suffered from a significant degree of mental handicap: he had a personality disorder and he was mentally abnormal.

175. The court decided at page 108:

> "[…] applying the guidance given by this Court in *Galbraith* (1981) 73 Cr.App.R. 124; [1981] 2 All E.R. 1060, we consider that where (1) the prosecution case depends wholly upon confessions; (2) the defendant suffers from a significant degree of mental handicap; and (3) the confessions are unconvincing to a point where a jury properly directed could not properly convict upon them, then the judge, assuming he has not excluded the confessions earlier, should withdraw the case from the jury. The confessions may be unconvincing, for example, because they lack the incriminating details to be expected of a guilty and willing confessor, or because they are inconsistent with other evidence, or because they are otherwise inherently improbable. Cases depending solely or mainly on confessions, like cases depending upon identification evidence, have given rise to miscarriages of justice. We are therefore of opinion that when the three conditions tabulated above apply at any stage of the case, the judge should, in the interests of justice, take the initiative and withdraw the case from the jury."

176. The decision in *McKenzie* accordingly does not assist in the present case. It essentially concerns the admissibility of evidence at trial, as opposed to the wholly different circumstances when a defendant enters public pleas of guilty, which are tendered in open

court when he did not lack capacity, he knew what he had and had not done, and he was in receipt of appropriate legal advice.

177. Similarly, the appellant relies on *R v King (Ashley)* [2000] 2 Cr App R 391, a case in which the appellant – following a trial – was convicted on his own confessions, which had been improperly obtained. The appellant was highly abnormal in ways that cast doubt on the reliability of what he had said. The court determined that in a case in which the only evidence against a defendant was his oral confession which he later retracted, and it appeared that the confession had been 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 prima facie grounds for doubting the safety of the conviction. For the reasons we have set out above in relation to *R v McKenzie*, this decision does not assist in a case in which the appellant freely entered guilty pleas.

178. The error in the argument, tempting as it may appear, is to say that if a proper doubt can be raised about an antecedent confession to the police, this carries over to render unsafe a conviction based not on acceptance by the jury of that confession but on a freely entered unvitiated plea of guilty, tendered after the defendant has been advised that he is not bound by anything said, or alleged to have been said, to the police. That does not begin to follow.

179. In the present case, apart from the new ESDA and linguistic evidence, the material for challenging the admissibility of the confessions was available in 1980 as it is now. It is apparent that the highly experienced counsel acting for the appellant were fully apprised of it. The Judges' Rules and Administrative Directions, as analysed below at [189] *et seq.*, were available to be deployed in the submission either that the confessions were not voluntary or that the circumstances amounted to oppression of the appellant and that it would be unfair to him to admit them. It is clear from the evidence of the appellant given to this court in 1983, as well as implicit in what counsel said to the judge in chambers, that their advice to him was that there was ample scope for such challenge, and that he could therefore (and maybe *should* therefore) plead not guilty. The pleas of guilty were thus tendered when fully advised of the possible available defence and to the effect that he was not bound by the confessions recorded by the police. If there was reason to think that the appellant did not know whether he had committed the offences or not, that might present a different case. But the expert evidence which we have heard and set out above at [25] makes it clear that whatever his intellectual limitations, he knew what he had done and had not.

180. There is no question in this case of factors vitiating the appellant's pleas of guilty. There is no suggestion that it fell into the class of case where it was wrong in law to put him on trial at all. We are satisfied that on the facts of this case his convictions can only be unsafe if it is established that he did not commit the offence. We set out below, the conclusions which we have reached, together with our conclusions on, Mr Barnes's 10 points and the grounds of appeal.

Point 1: the appellant

181. It is undoubtedly the case that the appellant has experienced physical challenges throughout his life. We have set out a summary of these various difficulties above, based particularly on a selection of the contemporary records. He was, nonetheless, able to walk considerable distances, something he regularly used to do in Hull. There is no evidence demonstrating he was incapable of carrying or emptying a paraffin container or lighting a match. Although we accept that some particularly difficult physical manoeuvres would have been beyond his capability, in our view, in the absence of particular circumstances, the basic steps that would have been necessary to commit arson at domestic premises would have been within the appellant's capability. There may have been an element of awkwardness, but not such as to prevent him – save in one instance – from igniting these fires. Accordingly, we do not accept – as a broad proposition – that his physical disabilities would have made committing these various arson attacks impossible, thereby bringing the convictions within the category 3 circumstances when an appeal against conviction following an unequivocal guilty plea should be allowed. We repeat that there is one exception to this conclusion, namely 4 Belgrave Terrace.

182. We have equally borne in mind that the appellant was psychologically vulnerable at the time of his confessions. However, that does not detract from the fact that he pleaded guilty to each of these offences of his own free will, having received what would have been careful and accurate advice from eminent and highly experienced leading counsel, supported by junior counsel and solicitors. It is to be emphasised that Mr Ognall's visit to the judge in chambers reveals the extent to which he was alive to the need to advise the appellant carefully on the implications of his proposed guilty pleas. It is not submitted that he was unfit to plead, that he was incorrectly or poorly advised by Mr Ognall, that he was afforded insufficient time to consider the course that he was going to take or that the judge or counsel put him under any kind of unfair pressure.

Point 2: the centrality of the confessions and

Point 5: the court should "consider all the evidence in relation to all the fires"

183. The prosecution's case against the appellant was dependent on his confessions in interview and in the voluntary statements. However, as just set out, the convictions were based on his freely-entered guilty pleas, not on the confessions. The same applies to the absence of other evidence linking the appellant to the fires, such as testimony indicating that someone of his description with a container was seen in the environs of the fires at the relevant time. Similarly, there are only a limited number of instances for which a motive for the arsons on the part of the appellant have been identified. These points would all have been apparent at the time the guilty pleas were entered and the appellant undoubtedly received detailed advice on them from his then legal team.

184. Central to point 5 is the proposition that if the confession to one of the fires is demonstrably unreliable (*e.g.* the confessions to Wensley Lodge), this will trigger a "domino" effect, fatally undermining the appellant's credibility vis-à-vis his confessions to each of the other fires. For the reasons we have already set out, we consider this represents a wrong approach to the question of whether the convictions are safe. The appellant's personal lack of reliability as a narrator of events does not establish that he was not guilty of these offences,

given his unequivocal pleas. We do not in any event endorse the 'domino' theory. It is indeed possible to accept that an offender with a personality disorder who has committed a number of offences may be attracted to the image of himself as a serial offender and add confessions to further offences which he did not commit, especially if he is apt to be untruthful or unreliable as a narrator. It does not follow that in doing so he puts in doubt his confessions to all offences and it is much harder to envisage a wholly innocent suspect confessing in considerable detail to a great many offences when he committed none of them at all.

Points 3: the concerns expressed by Mr Ognall as to the appellant's reliability and

Point 6: the appellant is an unreliable narrator of events

185. Mr Ognall's Note has provided support for Mr Barnes's contention that the appellant is an unreliable narrator of events, as evidenced for instance by the various versions he provided as to what occurred, along with his changes of instruction. He gave mixed accounts as to the reasons for committing the offences and his reactions to some of the arsons. However, although we have reflected on the suggested need to consider his various accounts globally, along with the views of Doctor Snowden, we simply repeat that his guilty pleas were unequivocal. His unreliability as a narrator in the lead-up to his pleas on 20 January 1981 does not establish that he did not commit these offences.

Point 4: 9 of the 10 fatal fires were determined at the time to have had an accidental cause

186. Although the contemporary view (save for Selby Street) was that the fires were accidental, and although Dr Cox and Ms Griffiths do not exclude accident as the cause for the remaining fires – indeed, for some of them they prefer that explanation – the critical question in this context is whether it has been established that the appellant did not commit these offences. A possible, or preferred, accidental cause does not lead to that conclusion.

Point 7: the expert evidence and

Point 8: the analysis of the fires

187. Once again, this material does not demonstrate that the appellant was not guilty of these offences. The expert forensic linguistic evidence, for instance, whilst undermining the suggestion that the confessions were written in their entirety at the appellant's dictation, fails to demonstrate that he did not commit these various crimes. Similarly, the appellant's vulnerability at the time of the interviews and statements under caution (*viz.* his low IQ, learning difficulties, personality disorder and other personal characteristics), coupled with his potential "*compliance*", does not demonstrate the appellant was not responsible for these offences, as attested by his unequivocal guilty pleas. The same applies to the ESDA evidence.

188. Save for Selby Street, the evidence of Dr Cox and Ms Griffiths does no more than indicate that accident is either a possible or a preferred explanation for the fires.

Point 9: the breach of the Judges' Rules/PACE Codes of Practice

189. It is suggested that there was clear non-compliance with the Judges' Rules and Associated Administrative Directions in the course of the interviews with the appellant and when taking the statements under caution (*viz.* the absence of a parent or equivalent adult when he was interviewed given his vulnerability (a mental handicap, applying, as Mr Barnes suggests, a "*common sense and fair-minded approach to the issue*")); the lack of breaks, including for refreshment; the failure to provide an opportunity to speak on the telephone to a lawyer or a friend; and the failure to take down the statements under caution in his own words). It is contended that the appellant was entitled to the protections provided by the Codes of Practice under PACE and particularly Code C, paragraph 11.15. The essence of the argument is that the fairness of the investigatory process leading to the guilty pleas is to be judged by today's standards.

190. There is particular complaint about the first interview at Gordon Street Police Station at 20.05 on Friday 6 June 1980 and which continued until 23.35, when the voluntary statement was commenced. That process ended at 01.25 on 7 June 1980 (an overall period, therefore, of five and a half hours). The appellant had clearly been drinking earlier and may well still have been adversely affected at the relevant time.

191. Specifically, the appellant contends:

(a) that contrary to Administrative Direction 4A, the appellant was interviewed without the presence of some person other than a police officer to look after his interests; this applied to all the interviews except for one occasion, later in the process, when his solicitors attended;

(b) that Code C, promulgated under PACE, would have mandated after 1984 the presence of an appropriate adult at the interviews of the appellant;

(c) that contrary to Administrative Direction 7(b) the appellant was not informed during the first interviews on 6-7 June 1980, either orally or by way of a notice displayed in the police station, of his right to speak to a solicitor;

(d) that contrary to Administrative Direction 3, the appellant was not afforded, at those first interviews on 6-7 June, reasonable arrangements for comfort and refreshment, alternatively that contrary to Administrative Direction 1(b) no record was kept of any breaks or refreshment;

(e) that contrary to Rule IV(d), the written statements under caution were not taken down in exactly the words spoken by the appellant, without questions other than such as were needed to make them coherent, intelligible and relevant, and without prompting.

192. The status of the Judges' Rules was well established at the time of these interviews, and had been for many years. They had existed in their then current form since 1964, and the latest edition had been published in a Home Office circular in 1978. The Rules themselves had been approved by all the Queen's Bench judges. The Administrative Directions, issued by the Home Office alongside them, were frequently considered by the judges in individual cases. The legal position was oft re-stated in decisions of this court, of which a principal

example was *R v Prager* (1972) 56 Cr App R 151. Notwithstanding their name, the Judges' Rules were not rules of law. But they, and the associated Directions, were official guidance issued to police officers with the object of providing means of keeping interviews with suspects fair. Infringement of either did not necessarily render the interviews of a suspect inadmissible. The test of the admissibility of any confession was, as the Rules themselves explicitly stated, whether it was voluntary, in the sense that it had not been obtained by fear of prejudice or hope of advantage exercised or held out by a person in authority, or by oppression. But the Rules and Directions were very relevant in two ways. First, a breach might be relied on, and often was, as indicating that the court could not be sure that a confession was voluntary, and if that was the conclusion reached, the consequence would be that the interviews would be excluded as inadmissible. Second, many interviews were relied upon not only as confessions, but for other potential evidential force; for example, as amounting to the advancement of a false account which was subsequently contradicted by other evidence. In either case, the court always retained the power to exclude any evidence relied upon by the Crown on the grounds that its prejudicial effect outweighed its probative value – see *Noor Mohamed v The King* [1949] 1AC 182. The subsequent codification of that jurisdiction in section 78 of PACE put the power in simpler language, that admission would have such an adverse effect on the fairness of proceedings that it should be refused, but that did not significantly alter the way it was exercised. The provisions of the Judges' Rules and associated Directions were thus routinely relied upon in submissions that the circumstances had amounted to oppression of the suspect and/or had amounted to significant unfairness to him, and for the contention that the interview content should as a result be ruled inadmissible. Whether the breach(es) alleged led to exclusion or did not was a matter for the judgment of the trial judge.

A supporting person

193. The provisions relating to the presence of a supporting person at interviews were contained in Administrative Direction 4A:

> "If it appears to a police officer that a person whom he intends to interview has a mental handicap which raises 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 should be interviewed only in the presence of a parent or some other person in whose care, custody or control he is or of some person who is not a police officer."

194. The expression "mental handicap" was not a legal term of art, and the different language of the then Mental Health Act 1959 was not adopted. The key was that the Direction targeted a mental limitation which raised doubt as to the ability to understand questions or which made the suspect likely to be especially open to suggestion. That latter word was

used before the much more recent refinement by psychiatrists and psychologists into the separate concepts of suggestibility and compliance (see [25] above); it clearly comprised both, and meant an especial risk that the suspect might be apt to say what he thought the interviewer wanted. The Direction bit when the interviewing police officer realised the existence of the mental handicap.

195. PACE was not passed until some years after this appellant was interviewed, and indeed some years after his trial. The Act preserved the common law rule that a confession was admissible only if shown to be voluntary (section 76), adding the requirement that it should also be shown not to have been made in consequence of anything said or done which might render it unreliable. By very detailed Codes of Practice promulgated under the Act, and made statutorily relevant to any decision on admissibility, there were wholesale new procedures for (inter alia) the conduct of police investigations. The scope of the Codes has increased with the passage of time, but Code C, governing the interviewing and treatment of suspects, has contained since its inception a specific mandatory requirement at C:11.15 that juveniles and persons who are mentally disordered or otherwise mentally vulnerable must not (save for specified exceptional circumstances involving urgency) be interviewed without the presence of an "appropriate adult". PACE also enacted a new provision in section 77 which required the judge to warn the jury of the special need for caution if the case depended substantially on confessions made by a mentally handicapped person without the presence of an independent person. As with the Judges' Rules, a breach of the codes of conduct did not necessarily lead to the exclusion of interview evidence, as indeed section 77 expressly recognises, for else it would be unnecessary. The test was (and is) whether the admission of the evidence would be unfair in the context of the proceedings as a whole.

196. Both the extent of any mental limitations on the part of the appellant, and the level of knowledge of them in the police officers dealing with him, were and still are uncertain. The knowledge of the police, and specifically of Detective Superintendent Sagar, will inevitably have developed as he had greater dealings with the appellant. He must have known rather more about him when he embarked on the second stage of the interviews on 26 June 1980 than he did when he first spoke to him on 6/7 June.

197. As at the time of the first interviews, relating to Selby Street, on 6/7 June 1980, the police records contained a statement from Detective Sergeant Spink. He had taken a witness statement from the appellant on 4 January 1980 when he arrived unannounced at the police station and offered to give information about the Selby St fire, about a month after the event. Mr Spink recorded that the appellant "*is obviously of low intelligence*", as well as that he was under the influence of alcohol but reasonably coherent. It seems likely that the police were also aware that the appellant had had a highly disturbed upbringing and had spent most of his childhood in care; this was referred to in his witness statement of 18 May 1980 concerning his relationship with Charles Hastie. It may well be that it was known that he had attended a special school.

198. By the time of the second stage of the interviews, beginning on 26 June 1980, the police had access to a supplementary witness statement by Mrs Fenton (Troutbeck House) in which the appellant was ascribed the local nickname "Daft Peter". Mr Sagar had spoken

personally to Mrs Fenton on 10 or 11 June, for, following the announcement of the appellant being charged with Selby Street offences, she was accusing him of causing her own fire. It seems likely that she might have told him then of the nickname. It also seems very likely that, having had admissions to Selby Street and intending to interview him about other fires, some research would have been done on his background. There does not, however, appear to have been any formal psychological assessment of his intellectual abilities until later, when Dr Sasieni and Dr McCulloch reported in August and October/November 1980, after all the confessions had been made.

199. Even now, forty years on, the experts differ somewhat in their assessments of the appellant's intellectual abilities, although it is clear to all that his performance has improved over the years (see [25] above).

200. The experts are agreed that if the stricter rules created by PACE had applied, the appellant could not be interviewed in the absence of an appropriate adult without breach of Code C 11-15. His condition would properly have fallen within the expression "vulnerable" used in that Code.

201. We consider below the consequences of Direction 4A and/or PACE Code C for the present appeal.

202. Quite apart from the appellant's mental condition, it is relevant to have in mind the circumstances in which the first interviews on 6/7 June 1980 were conducted. The appellant had undoubtedly been drinking. The barmaid Mrs Cooper said that he had already had a lot to drink by about 13.00/14.00 in the early afternoon. When he arrived at the police station later in the afternoon, both Inspector Holmes and Detective Sergeant Harrod saw that he was the worse for drink. He was given until 20.00 to sober up, and the police evidence was that there was by then no indication that he was still adversely affected; he himself assented in the course of the first interview to the proposition that he was alright now. The interview which then ensued ran from 20.05 until 01.25, or a little after. So there was a sustained interview lasting about five and a half hours with a man who had been drunk the previous afternoon. The appellant was not alone in being interviewed; a number of other men who might have had relationships with Charles Hastie were seen also. Except for the obvious usefulness of continuing for at least some time once admissions had begun in order to obtain a single account, there was no particular urgency about the interview taking place that day.

Access to a solicitor

203. Administrative Direction 7 stipulated:

> "(a) A person in custody should be supplied on request with writing materials. Provided that no hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice:

> he should be allowed to speak on the telephone to his solicitor or to his friends;
>
> […]
>
> (b) Persons in custody should not only be informed orally of the rights and facilities available to them but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices."

204. There is no sign that at the time of the first interviews on 6/7 June the appellant was advised of his right to speak to a solicitor if he asked to do so, and because the police station being used was a temporary or semi-decommissioned one without cells there were no notices such as are contemplated by the Direction. On the day after the first interview (Saturday 7 June 1980) Detective Superintendent Sagar spoke to the appellant to advise him that it was in his interests to contact a solicitor and indeed pressed him to choose a name. The Superintendent then set about contacting the chosen solicitor, and on discovering his office was closed for the weekend, liaised with him at home. Mr Sagar's witness statement recorded that the solicitor came to the police station and saw the appellant at 12.45 that day, who confirmed in general terms that he had told the police the truth; there seems no possible reason to suppose that so specific and checkable an assertion could be false. Thereafter, the same solicitors acted for the appellant throughout; they were kept informed of further interviews, and visited the appellant from time to time. It follows that there was a breach of Direction 7 on 6/7 June, but not thereafter.

205. The solicitors did not attend the further interviews except for the one on 29 July 1980, when the appellant confirmed his admissions to them. They were however clearly in frequent touch with the appellant and saw all his written statements. From time to time in the subsequent interviews he made reference to their having advised him that he need say nothing, and indeed that he could repudiate anything he had said thus far.

206. On the second day of the second tranche of interviews (27 June 1980) he responded to the initial caution in these terms:

> "Yes, that doesn't matter cause I'm going to tell you anyway. My solicitor told me not to speak to you if you came to see me, but I've got it on my mind; it's on my mind, not his. He can go and get fucked cause I'm going to tell you in any case."

He went on to make admissions to several further fires, beyond those to which he had confessed the previous day (which had been Troutbeck House, West Dock Avenue and Askew Avenue).

207. Four days later on 1 July 1980 he began a long written statement under caution by saying:

> "See you know Mr. Gunby by came to see me last night and he told me I could make a statement to him denying that the statements and that I have made to you were true and he said that I could deny doing any of them, but see I have and I have told you the truth."

After finishing that statement, he told the police that Mr Gunby had frightened him by talking of the likely sentence, but that he liked his colleague Mr Pearce.

208. On 22 July 1980, in the course of a long statement under caution dealing generally with fire setting, the appellant said:

> "You know Mr Gunby and Mr Pearce asked me again if I wanted to retract the statements I've made to you well I want you to put this down Mr Sagar I don't want to retract my statements because they are true."

209. On 24 July 1980, speaking to Detective Superintendent Sagar about personal matters, the appellant said:

> "Mr Sagar, Mr Pearce has been to see me and he's gone through my statements and showed me where I've said seven times that I've intended to kill people. Well I want to make a statement saying I didn't intend killing and I don't think I really said 'intended to' in my statements."

210. As described extensively above, it is the appellant's case now in 2021 that it is not possible to rely on the integrity of the recorded contents of his statements either in interview or in written statements, because of the combination of the new ESDA evidence, the expert evidence of Professor Coulthard to the effect that the records contain indications of prompting questions and his unreliability as a narrator. However, it is to be noted that when it comes to the observations made about his solicitor, the appellant made it clear in sworn evidence, both written and oral, before this court in 1983, that although he had not said much if not all of what was attributed to him, the exception was a written statement under caution made on 25 July 1980. That latter statement, the appellant told the court, comprised his own words. Those words were:

> "Yesterday my solicitor came down and saw me and he showed me where I've said in my statement that I meant to kill people and that I'd said it seven times, well what I want to say is that I never intended to kill anybody. I set fire to the houses but my intention was fire and only fire. I just didn't bother about people who was in the houses. See that's better. See Mr Pearce has picked out quite a few bits in

> my statements and told me that in some of my sentences I have been digging my own grave. Well I just want to say that my intention has been fire only. He has told me that it would be best for me to say nothing. He told me that when he first saw me in Gordon Street Police and he told me again yesterday. See Mr Pearce is only trying to help me I know but I'm sick of people telling me what to do. I'm telling truth in my statements so sooner its all over the better."

It must follow that the other observations about his dealings with his solicitors are also genuinely his own.

211. A month after that, on 28 August 1980, in the course of a further interview about Humber Buildings, the appellant repeated the same kind of remark:

> "See Gunby and Pearce was on about you writing a lot of 'sees' in my statements and that I hadn't said things, but fucking hell I know I talk like that and you two know. I wish you would tell them silly bastards cause it's true. They seem to think you was making it up."

It must similarly follow that this records the appellant's genuine protestation.

Comfort and refreshment

212. Administrative Direction 3 was in these terms:

> "Reasonable arrangements should be made for the comfort and refreshment of persons being questioned."

213. There is no record in any of the interviews or in the contemporaneous statements of the officers to any break for refreshment. The appellant relies particularly on the long first interview on 6/7 June which lasted approximately five and a half hours. A later statement of Detective Superintendent Sagar, made in 1983 for the first appeal, asserted that before the statement under caution was begun cups of tea were brought in for the three participants, but did not suggest any other refreshment or breaks.

214. It follows that there are good grounds for believing that there was a breach of Direction 3.

Recording of actual words

215. Rule IV(d) of the Judges' Rules provided as follows in relation to statements under caution:

> "Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him."

216. As set out above, the appellant relies on the agreed expert evidence now available that various pages of the written statements under caution can be shown by ESDA analysis to have been rewritten. The previous versions of those pages discoverable show amendments which do not alter the sense and the re-writing cannot be shown to be sinister. We have addressed this aspect of the appellant's submissions above.

217. As analysed above, Professor Coulthard's evidence is to the effect that at a number of points the written statements under caution display linguistic signs of incorporating responses to questions rather than dictation simpliciter. The examples he has identified are consistent with questions within the scope of Rule IV(d) – i.e. such as were needed to make the statement coherent, intelligible and relevant, although Professor Coulthard suggested that some of them were equally consistent with the introduction by the police officers of anticipatory explanations designed to give a colour of authenticity to the content. The appellant, however, relies on these conclusions to submit that this court cannot be confident that either interview records or statements under caution were honestly made or accurate.

Judges' Rules, Directions and PACE: conclusions

218. The principal submission of the appellant, supported by the reasoning of the CCRC, runs as follows:

a. the case against the appellant in 1980 depended on his confessions to the police; without those confessions there would have been no case to answer;

b. there were breaches of the Judges' Rules and Administrative Directions which ought to have led to the exclusion of the evidence of the interviews and statements under caution; if the first interviews on 6/7 June were inadmissible, it follows that the later ones were also – reliance is placed on *R v Neil* 1994 Crim LR 441;

c. even if that were not clear from the Judges' Rules and Directions alone, the safety of the convictions should be judged by modern standards of fairness, and in particular by PACE Code C which would have mandated the presence of an appropriate adult at the interviews; the absence of such a person means that the police evidence ought to have been treated as inadmissible and without it there was no case to answer;

d. as summarised in paragraph 27 above, the court cannot in any event be confident that the interview records and statements under caution are honest and accurate and for this reason also the convictions are unsafe.

219. We do not think that it is nearly as clear as is argued that there were breaches of the Judges' Rules and/or Directions which ought to have led to the police interview evidence being inadmissible. Put shortly, our reasons are these.

a. It does not at all follow that the breaches, at the first interviews only, of the provisions relating to access to a solicitor and refreshment breaks would merit the

consequence of inadmissibility. Given the appellant's receipt of legal advice after those first interviews and before he embarked on quite separate admissions to different fires, and given his declared approach to such advice, it is by no means clear that inadmissibility would follow.

b. Even if it did, the inadmissibility of the first interviews, which related only to Selby Street, would not carry with it the inadmissibility of quite separate later admissions to quite different offences. *R v Neil* did not begin to hold that the inadmissibility of one confession led necessarily to the inadmissibility of a later one; on the contrary, it held that whether it did so or not depended on all the circumstances of the case. It is one thing to say that if a suspect's first confession to offence X is inadmissible, it may follow that a subsequent admission to the same offence is also inadmissible on the grounds that he might have thought he was bound by the earlier confession. It is quite another to say that subsequent confessions to offences A-H are also automatically inadmissible, and they clearly are not.

c. It is far from clear that the appellant's intellectual powers could properly be described as a mental handicap, as distinct from a significant educational deficit, or that the interviewing officers were aware of there being a mental handicap.

d. If they could so be described, it is also unclear that the condition was such that the officers were aware there was doubt that the appellant could understand questions put to him; there was a better case as the interviews went on for the proposition that he might be suggestible in the broad sense of compliant or eager to please, but only as they went on.

e. The proposition that the fairness of a trial or of the treatment of a suspect is to be judged by modern standards, whilst generally correct, cannot possibly mean that retrospective force is to be given to the raft of very detailed new provisions (including for example the compulsory audio recording of interviews) introduced by the several codes promulgated under PACE.

f. It cannot be overlooked that at the time of these interviews it was conventional for honest police officers to believe that they were obliged to assert that they had recorded the exact words of the suspect and nothing else, when this was in practice very often an unrealistic and unattainable level of perfection – see *R v Bentley* [2001] 1 Cr App R 21 per Lord Bingham CJ at [114].

g. A fair reading of the interviews and statements under caution by a reader prepared to make the assumption in the appellant's favour that dishonesty on the part of the interviewing officers cannot be ruled out, can only leave that reader with the clear conclusion that much of the content can only have originated in the appellant's own words. Some examples are referred to above. Invective about his mother is another. Yet another is the striking miscitation of St Matthew 6 as an explanation for hating those who have houses, several times repeated.

h. To the extent that the explanation for the contents of the interviews and statements under caution might be that every incriminating part of them was foisted on the appellant by the police officers, that would postulate a quite remarkable thoroughness and scope of invention.

220. It is, we think correct, that without the confessions to the police there would not have been a case to answer. That is not to say that there was not support in the case of some fires for those confessions, but if there had been a trial we should, we consider, make the assumption that if the whole of the police interviews were inadmissible, the case against the appellant could not have succeeded.

221. For the reasons set out above, however, we reject the arguments that the interviews and the statements under caution should have been excluded because of suggested non-compliance with the Judges' Rules and the Associated Administrative Directions, along with breaches of the protections provided by the Codes of Practice under PACE and particularly Code C, paragraph 11.15. But this conclusion is secondary to our dispositive analysis that the appellant's convictions were critically based, not on the interviews and the statements under caution, but on his unequivocal guilty pleas. Potential breaches of the Rules, the Administrative Directions and the Codes of Practice are essentially irrelevant in the face of those formal admissions of guilt.

222. We repeat that in the present case the safety of these convictions does not depend on the acceptance by a jury of disputed confessions obtained in circumstances when there were arguable breaches of the Judges' Rules or other unfairness. These convictions depend on the public pleas of guilty, tendered in open court by the defendant who did not lack capacity, who knew what he had and had not done, and when he was in receipt of the best legal advice. The Judges' Rules had no application, any more than PACE has now, to pleas of guilty tendered after careful advice and in open court.

Point 10: the unlawfulness of the appellant's arrest at about 16.45 on 6 June 1980

223. The CCRC concluded that there was insufficient evidence to justify referring the circumstances of the appellant's arrest to this court. We agree. Given the gap of four decades, it is now impossible to establish with any necessary precision the relevant facts concerning when the appellant was arrested, including the justification for this step. The appellant is, on his own case, an unreliable narrator of events. Detective Superintendent Sagar's account was inconsistent in this regard. Inspector Holmes concluded that the appellant had been arrested, albeit he did not say when. Detective Sergeants Young and Harrod were present during the interview on 6 June, and on their account the appellant was cautioned at the commencement of the interview process. The appellant made a voluntary confession to the Selby Street fire, at which point he was arrested and cautioned (for a second time) before the questioning continued. A statement under caution was then taken.

224. The high watermark of this submission is that the appellant may have been arrested prior to being brought to the police station on 6 June 1980 and that this would have been an unlawful arrest. As set out above, the three police officers who detained him at around 16.45 in the Crystal Room amusement arcade (Messrs Harrod and Young, and Detective

Constable Bacon) did not indicate expressly that they had effected an arrest. Detective Constable Bacon referred to an operation in which he was involved "*to apprehend known and believed homosexuals*" (the appellant, however, was spoken to by a different officer, Detective Sergeant Young).

225. There was mention on the custody record at Priory Road Police Station (where the appellant was detained after the first interview) that he had been arrested at the amusement arcade by DS Young. However, Detective Superintendent Sagar made a handwritten amendment to the custody record to the effect that the appellant had been arrested at 23.30 at Gordon Street Police Station.

226. It was in these circumstances that the CCRC concluded that there was insufficient evidence to determine that the appellant had been unlawfully arrested. In our view it is simply no longer possible to come to reach any firm conclusion on this issue. This supports our observation above that it would be wrong in principle for a defendant to be entitled freely to enter a guilty plea, thereafter appealing his or her conviction on the basis of evidence which might have led a jury to doubt his or her guilt if there had been a trial. On the issue of the lawfulness of the appellant's arrest, the evidence has never been and is now incapable of being tested; therefore, reliable conclusions can no longer be reached on the issues raised by the appellant in this regard. We are not persuaded, furthermore, that if he had been arrested, but unlawfully, the confessions would have become inadmissible. He was certainly cautioned from the beginning. Moreover, most of the confessions came after the undoubtedly lawful arrest at the end of the first interview and the Selby Street confession was repeated after that.

227. Finally, the safety of these convictions does not depend on whether the appellant was unlawfully arrested on 6 June 1980, given his unequivocal and voluntary guilty pleas.

Conclusions

228. For these reasons, we allow the appeals in relation to 9 Gorthorpe (indictment 810046, count 2 - arson with intent to endanger life or being reckless as to whether life was endangered and count 3 – manslaughter) and 4 Belgrave Terrace (indictment 810049, count 2 - arson with intent to endanger life or being reckless as to whether life was endangered and counts 3 - 4 – manslaughter) and the convictions on those counts are all quashed.

229. The convictions on the other indictments are safe. Accordingly, the appellant's sentences on the counts relating to the other indictments are undisturbed.