

## PRESS SUMMARY

**Ecila Clare Henderson (A Protected Party, By Her Litigation Friend, The Official Solicitor) (Appellant) v Dorset Healthcare University NHS Foundation Trust (Respondent) [2018] EWCA Civ 1841**

**On appeal from: [2016] EWHC 3275 (QB)**

**JUDGES:** Sir Terence Etherton MR, Sir Ernest Ryder SPT, and Lady Justice Macur

**DATE OF JUDGMENT:** 3 August 2018

### **BACKGROUND TO THE APPEAL**

This appeal considers the circumstances in which the common law doctrine of illegality/public policy prevents a claimant from bringing claims for negligence for loss arising out of the claimant's own illegal act.

Ms Henderson was born on 10 August 1971. She was diagnosed at different times as suffering from paranoid schizophrenia or schizoaffective disorder. She began experiencing problems with her mental health in 1995. From about 2003 she had various formal and informal hospital admissions pursuant to the Mental Health Act 1983. Her condition had recently worsened when, on 25 August 2010, whilst experiencing a serious psychotic episode, she stabbed her mother to death. She was subsequently convicted on her guilty plea of manslaughter by reason of diminished responsibility and was made the subject of a hospital order and a restriction order under sections 37 and 41 of the 1983 Act.

Ms Henderson brought a claim for damages in the tort of negligence against the NHS Trust. Liability was admitted but the Trust argued that the heads of damage which included compensation for depression, PTSD and loss of amenity consequent upon the killing, loss of liberty by her compulsory detention, costs of therapy and care and a share in her late mother's estate, were barred by the doctrine of illegality. Mr Justice Jay, sitting in the High Court, agreed.

### **JUDGMENT**

The Court of Appeal unanimously upholds the decision of Mr Justice Jay. The Court of Appeal holds that Ms Henderson cannot claim for any of the heads of damage which are all barred by the doctrine of illegality.

### **REASONS FOR THE JUDGMENT**

In *Clunis v Camden and Islington Health Authority* [1998] QB 978 the claimant, who had been convicted of manslaughter on the ground of diminished responsibility, claimed damages from a health authority for loss and damage which he said he had suffered as a result of his conviction and which he said should have been prevented by the provision of proper care by the health authority. His claim was dismissed. The Court of Appeal held that courts are required by public policy to deny their assistance to claimants seeking to enforce a cause of action in tort if the claimant was implicated in the illegality and in putting forward his case he seeks to rely upon the illegal acts. The seriousness of the illegal act and the degree of personal responsibility was held to be irrelevant, unless the claimant had been found not guilty of the illegal act by reason of insanity [42-44].

In *Gray v Thames Trains Ltd* [2009] UKHL 33, [2009] AC 1339, a majority of the House of Lords agreed on the following. First, *Clunis* was correctly decided. Secondly, in the context of a criminal conviction for unlawful killing, there is a wider and a narrower form of public policy which precludes a claim by the killer from recovering damages in proceedings for negligence against the person whose act or omission is alleged to have been responsible for bringing about the claimant's unlawful conduct in carrying out the killing. Thirdly, the narrower form is that there can be no recovery for damage which flows from loss of liberty, a fine or other punishment lawfully imposed in consequence of the unlawful act since it is the law, as a matter of penal policy, which causes the damage and it would be inconsistent for the law to require compensation for that damage. Fourthly, the wider form is a combination of public policy and causation. If the tortious conduct of the defendant merely provided the occasion or opportunity for the killing, but (in causation terms) the immediate cause of the damage was the criminal act of the claimant, it is offensive to public notions of the fair distribution of resources that a claimant should be compensated (usually out of public funds) for such damage [45 and 64].

The consequence of those principles, which bind this court, is that Ms Henderson cannot claim for damages under any of the heads of loss because (1) Ms Henderson has been convicted of a serious criminal offence; (2) it cannot be said that she did not know the quality and nature of her act or that what she was doing was wrong since her mental state did not justify a verdict of not guilty by reason of insanity; (3) in such a case the court cannot and should not go behind the conviction in order to ascertain whether she had no responsibility for the serious crime to which she pleaded guilty; and (4) she seeks to rely on her illegal act of manslaughter to advance her claims. The critical elements of the present case, *Clunis* and *Gray* are materially identical so far as concerns the application of public policy [46, 65 and 76].

It is impossible to discern in the majority judgments of the Supreme Court in *Patel v Mirza* [2016] UKSC 42; [2017] AC 46 any suggestion that *Clunis* or *Gray* were wrongly decided or to discern that they cannot stand with the reasoning in *Patel*. On that basis, *Gray* remains binding on the Court of Appeal and so does *Clunis* [89-92].

*References in square brackets are to paragraphs in the judgment*

**NOTE:**

**This summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment of the Court of Appeal is the only authoritative document. Judgments are in the public domain and are available at [2018] EWCA Civ 1841.**