



Neutral Citation Number: [2026] EWCA Crim 957

Case No: 202403091 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM WINCHESTER CROWN COURT
Bright J

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2026

Before :

LORD JUSTICE DINGEMANS

Senior President of Tribunals

MR JUSTICE MURRAY

And

HH JUDGE ANDREW LEES

Between :

Hongchi Xiao

- and -

Rex

Appellant

Respondent

Charles Row KC and Ms Jessica Clarke on behalf of the Appellant
Duncan Atkinson KC and Lyndon Harris on behalf of the Respondent

Hearing date : 17 July 2026

Approved Judgment

This judgment was handed down remotely at 14.00 hrs on 24.07.2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Dingemans, Senior President of Tribunals :

Introduction

1. This is an appeal against conviction for gross negligence manslaughter, which raises, among other matters, the effect of a disclaimer signed by the deceased Danielle Carr-Gomm, and the provisions of section 2 of the Unfair Contract Terms Act 1977 (UCTA 1977).
2. At the hearing of the appeal a reporting restriction order was made pursuant to section 4(2) of the Contempt of Court Act 1981 postponing reports of the proceedings on appeal in case the appeal was allowed, and a retrial ordered, to prevent prejudice to any retrial. For the detailed reasons set out below, it is not necessary to continue the reporting restriction order, and we can confirm that there are no reporting restrictions on this judgment.
3. On 26 July 2024 in the Crown Court at Winchester, following a trial before Bright J and a jury, the appellant Mr Hongchi Xiao was convicted by a majority of one count of gross negligence manslaughter. On 6 December 2024 he was sentenced to an extended determinate sentence of 15 years (with a custodial term of 10 years and an extension period of 5 years). We were informed during the course of the hearing that Mr Xiao had been deported to the USA. Given that he was to serve at least two thirds of the sentence of 10 years (6 years 8 months) and had only been extradited to the UK after his conviction in Australia in 2023 for a separate offence of gross negligence manslaughter, we did ask for further inquiries to be made about whether Mr Xiao had been transferred to serve the rest of his sentence in the USA. It seems that Mr Xiao had been released from custody on 2 July 2026 pursuant to the Facilitated Return Scheme as a Foreign National Offender and the Early Release Scheme, although other information suggests he was deported on 30 June 2026. It seems that Mr Xiao is not in custody in the USA.
4. The appeal arises from the death of Ms Carr-Gomm, a 71-year-old woman, on 20 October 2016. She was a participant in a Paida (slapping) Lajin (stretching) week long workshop at Cleeve House, Seend, Wiltshire which was being led by Mr Xiao. Mr Xiao was referred to as “Master Xiao” by those who attended his workshops.
5. Ms Carr-Gomm suffered from type 1 diabetes, a condition which meant that she was unable to produce sufficient insulin naturally, with the result that unless insulin was injected her blood glucose levels would quickly become too high. Such high glucose, or hyperglycaemic, levels lead to the breakdown of muscle through a process of ketoacidosis, which leads, if unchecked, to coma and death. Her death at Cleeve House was the result of diabetic ketoacidosis, as appeared from the pathologist report from Dr Jeffery.
6. When Ms Carr-Gomm was diagnosed with diabetes, she understood that if she did not take her insulin, she would die. Her son, Matthew, gave evidence that Ms Carr-Gomm did not like taking insulin, which did not accord with her vegetarianism and conflicted with her fear of needles. As a result, she had always sought to address her diabetes in other ways, including through alternative and holistic medicines. It was in that context that she discovered Paida Lajin.

7. Mr Xiao was a practitioner in Paida Lajin, a self-healing method for disease and illnesses as an alternative to conventional medicine. He possessed specialised skill and knowledge in it, and it was an agreed fact that Mr Xiao had been practicing Paida Lajin for about ten years by 2015.
8. Mr Xiao did not have medical qualifications or training. In a book that he wrote about Paida Lajin, he asserted that the taking of insulin led to liver and eye problems, and that in contrast Paida Lajin was “safer and more reliable than existing healing practices” which would result in “significant improvement” or full recovery in 90 per cent of cases, including cases of diabetes. The evidence of the deaths of Ms Carr-Gomm and Aiden Fenton, see below, showed that Mr Xiao’s statements about Paida Lajin being safer than existing healing practices were wrong so far as type 1 insulin dependent diabetics were concerned.

Events in Australia and the death of Aiden Fenton

9. In April 2015, Mr Xiao gave a seminar and then led a Paida Lajin workshop in Hurstville, a suburb of Sydney in New South Wales. At the seminar he described Paida Lajin as 100 per cent effective against type 1 diabetes, and that its healing effects meant it was no longer necessary to take insulin as insulin would be generated naturally. The details of the events in Australia were set out in agreed facts 11 to 28.
10. Those attending the seminar included the parents of a 6-year-old boy, Aiden Fenton, who was also a type 1 diabetic. Like Ms Carr-Gomm, Aiden’s parents were attracted by Mr Xiao’s promotion of an alternative method of treating and, potentially, curing that condition.
11. Aiden’s parents enrolled him in the workshop led by Mr Xiao, and they stopped giving Aiden his insulin. Aiden was required to fast as part of the workshop. As the workshop progressed, Aiden became increasingly unwell, he started to vomit black material, his blood sugar levels became high, and by day 5 he had to be pushed around in a pram because he could not walk, stand or dress himself. On day 6 Aiden could not stand, he was breathing slowly, his face yellow and his eyes sunken. Mr Xiao saw Aiden and told Aiden’s parents that “is the detox. All the bad stuff ... come out from his body, his organ. It’s just part of self-healing body adjustment”. It was in fact diabetic ketoacidosis, the direct consequence of Aiden not receiving his insulin.
12. The prosecution case was that Mr Xiao, without medical qualifications, had purported to give advice about the diabetic ketoacidosis, without any understanding of the harm he was causing. Aiden subsequently died. After Aiden’s death Mr Xiao left Australia and travelled to the USA. Mr Xiao became aware of media reports about Aiden’s death which had blamed him and Paida Lajin for the death.
13. Mr Xiao was later prosecuted and convicted of manslaughter in Australia. He was sentenced in July 2023. The prosecution in Australia followed the workshop in Wiltshire at which Ms Carr-Gomm had died, his extradition from the UK in 2017, but preceded the trial of Mr Xiao for the gross negligence manslaughter of Ms Carr-Gomm in Winchester. The judge at the trial in Australia found that Mr Xiao had given instructions to Aiden’s mother to stop injecting him with insulin, and that he had repeated this instruction a number of times during the workshop over the days that followed. Furthermore, the judge found that it was Mr Xiao’s act in instructing Aiden’s

mother to cease injecting insulin that caused or accelerated Aiden's death by diabetic ketoacidosis.

Events in Bulgaria

14. Ms Carr-Gomm met Mr Xiao at a Paida Lajin workshop in Bulgaria in July 2016. He assured her that he could help her with her diabetes. During the workshop Ms Carr-Gomm stopped taking her insulin. She became extremely unwell, starting to vomit and became hard to reason with. She recommenced administering insulin, having been encouraged to do so by a number of those present including Mr Xiao, and made a recovery. This was an agreed fact at the trial. It seems that at the workshop in Bulgaria participants had been asked to sign a disclaimer which, apart from the details of the workshop, was similar to the one signed by Ms Carr-Gomm at the workshop at Cleeve House.
15. After the workshop Ms Carr-Gomm left a testimonial about Mr Xiao, which was found by the police on Mr Xiao's phone after her death. Ms Carr-Gomm was very complimentary about Mr Xiao, but also said that type 1 diabetics needed special sessions, and needed longer to make total progress and needed more supervision. This was relied on as evidencing the relevant relationship between Mr Xiao and Ms Carr-Gomm.

The workshop at Cleeve House

16. After the workshop in Bulgaria Ms Carr-Gomm attended a seminar in London which went on for two days which was run by Mr Xiao. Mr Xiao said he had told Ms Carr-Gomm to reduce her insulin gradually and to keep checking insulin levels.
17. Between 15 and 21 October 2016 (Saturday to Friday), some four months after the workshop in Bulgaria, Mr Xiao ran a workshop on the topic of Paida Lajin at Cleeve House, Wiltshire. Cleeve House is a multipurpose venue used for conferences and seminars, and providing accommodation. The booking for the workshop was made by Joanna Hartl, who had herself previously undergone the Paida Lajin process. There were to be around 30 persons attending the workshop including Ms Carr-Gomm.
18. All the participants at the workshop signed a form of disclaimer and waiver (which was referred to at trial as a waiver, and which we will refer to as the waiver). The waiver was provided to participants by Salim Jodiyawalla, a joint organiser of the workshop. The waiver was headed "disclaimer" and provided:

"I hereby understand that I will be engaged into some physical activities conducted under the 7-day Paida and Lajin Experiential Programme to be held on 15th to 21st Oct 2016 at Cleeve House.

I am aware that the Paida and Lajin programme are promoted as self-healing techniques, they are NOT meant for medical treatment nor used to diagnose and treat any illness or health problems.

I further understand my risks involved in taking part of the activities and hereby confirm that I am free from illness that can aggravate or endanger my life if I participate in these activities.

I hereby fully discharge the organiser, Mr Salim Jodiyawalla, Mr Hongchi Xiao and their officers, attorneys, agents, volunteers, promoters, and/or employees other participants, from any liability, duty or responsibility arising out of the said activities.

I have read this disclaimer, release of liability and assumption of risk agreement, fully understand its terms, understand that I have given up substantial rights by signing it, and sign it freely and voluntarily without any inducement or coercion.”

19. At trial, the jury sent a note asking for assistance in how they ought to approach the waiver. Following discussions between counsel and the judge, an agreed direction was formulated and included in the written legal directions delivered just before the speeches. It appears that neither counsel nor the judge considered the effect of section 2 of the UCTA 1977 on the waiver. The judge also revisited the issue of the waiver in his summing up of the facts after speeches and that forms the basis of ground one of the appeal.
20. Ms Carr-Gomm shared a room with Claudia Smith, with whom she had previously shared a room at the Bulgarian workshop, and Jannine Stoodley. Ms Stoodley had previously participated in one of Mr Xiao’s Paida Lajin workshops in July 2016 but had not met either Ms Carr-Gomm or Ms Smith before the Cleeve House workshop. The judge’s summary of Ms Stoodley’s evidence reporting what had been said by Ms Carr-Gomm at either the Saturday or Monday evening “sharing sessions” (where the workshop participants said what they were achieving) forms the basis of the second ground of appeal.
21. The workshop was led by Mr Xiao. Whilst at the workshop, Ms Carr-Gomm stopped taking her insulin. It seems from her records that she had reduced her insulin to about half sometime before the workshop and had then stopped taking it completely on Monday. Ms Stoodley reported that at a sharing session Ms Carr-Gomm was recorded to have said that she was prescribed insulin and “wanted to be free of it, was free of it and wanted it to stay that way”. There were different understandings of her evidence (there is no transcript of her evidence because there were problems with the recording device). The judge thought that Ms Stoodley had said in evidence that Ms Carr-Gomm had made that disclosure on Monday. Counsel’s note suggested that Ms Stoodley had said that the disclosure had been made at the Saturday sharing session. Teresa Hayes was another participant at the workshop, and she gave evidence that at the Monday sharing session Ms Carr-Gomm said she was diabetic, she had not taken insulin that day, and felt fine. Mr Xiao had personally congratulated her. Mr Xiao’s case was that Ms Carr-Gomm had only ever said that she had stopped taking half of her insulin, and in that situation there was no risk of her dying.
22. After Ms Carr-Gomm had stopped taking her insulin, and when, like the other delegates to the workshop, on the third day of the workshop, she started to fast, she exhibited signs of being increasingly and seriously unwell. On the fourth day of the workshop, Tuesday, 18 October 2016, she was heard to be crying and yelling whilst lying on her

bed. She started to vomit, in a way similar to that which followed her withdrawal from insulin in Bulgaria. The expert evidence showed that if she had taken insulin at this time she would have recovered.

23. On the fifth day of the workshop, Wednesday 19 October 2016, Ms Carr-Gomm was vomiting, tired and weak, and by the evening she was howling in pain and unable to respond to questions. She was moved from her bed to a mattress on the floor after falling from the bed. The expert evidence showed that if she had been medically treated and received insulin at this time it was probable that she would have recovered.
24. Dr Paul McNally, a consultant endocrinologist, said that a diabetic who stopped taking their insulin would move from being hyperglycaemic to ketoacidosis over a period of 24 to 72 hours. The diabetic would become increasingly agitated and confused and would lose the capacity to make rational decisions. He considered that it would have been obvious to a reasonable, medically unqualified person by Wednesday 19 October 2016 that Ms Carr-Gomm was seriously unwell. She was, by then, vomiting, agitated and looking unwell. She was in bed. This condition was the result of the developing ketoacidosis, and it would have been clear that she was deteriorating. By the evening of the Wednesday, Ms Carr-Gomm would have lost the ability to make rational decisions for herself. Whilst she was conscious, she could have received medical care, including the administration of insulin, and this would have saved her. On the sixth day of the workshop, Thursday 20 October 2016, Ms Carr-Gomm died.
25. The prosecution case was that Mr Xiao had assumed a duty of care for Ms Carr-Gomm. The prosecution put the duty of care on two bases: (1) that their relationship was such that she was entitled to place reliance on him to make provision for her safety; or (2) that he had assumed responsibility for her safety. It was common ground that Mr Xiao was the “Master” at the workshop and that Ms Carr-Gomm was a participant at the workshop, and that Mr Xiao had directed the start of the fast, and had told people that they should expect to experience feeling faint and weak but that was all part of the toxins leaving their body. There were issues about whether this was sufficient to give rise to a duty of care to Ms Carr-Gomm. The prosecution case was that Mr Xiao’s knowledge both as to Ms Carr-Gomm and the risks of diabetes, and his role both when she made her decision to stop taking her insulin, and especially in her care once that decision started to have catastrophic consequences, together formed a proper basis for concluding that he owed a duty of care to remedy her hyperglycaemic state by either persuading her to take her insulin, or summoning help. Mr Xiao relied on evidence showing that Ms Carr-Gomm was cagey and evasive about her insulin, according to Ms Smith who shared a room with her, and said he had no knowledge that Ms Carr-Gomm had stopped taking all of her insulin at any time before her death.
26. The prosecution also relied on the fact that Mr Xiao’s knowledge meant that Ms Carr-Gomm’s condition after she had stopped taking her insulin carried with it an obvious and serious risk of death. His failure to take reasonable steps in those circumstances substantially contributed to Ms Carr-Gomm’s death and amounted to gross negligence.
27. The particulars of the offence on the amended indictment at trial read:

“Hongchi Xiao on a day between the 17th and 20th day of October 2016 whilst delivering a Paida Lajin workshop unlawfully killed Danielle Carr-Gomm, who was at the time attending the

workshop and to whom he owed a duty of care, and in particular:
(i) Failed to take reasonable steps to encourage the aforementioned Danielle Carr-Gomm to take her insulin; (ii) Failed to take reasonable steps to ensure that urgent medical assistance was sought when the aforementioned Danielle Carr-Gomm was suffering from a medical crisis, namely ketoacidosis; and by breaching that duty in such a way and/or to such an extent as to amount to gross negligence, thereby causing her death”.

28. After the death of Ms Carr-Gomm, Mr Xiao was arrested on 20 October 2016. He was cautioned and replied, “I don’t know why I am arrested, there must be a crime I committed”.
29. When interviewed, Mr Xiao said: that his practices involved no medication, and that he had no interest in people's medication. He denied that he offered any advice as to the taking or not taking of any medication. He said that he had met Ms Carr-Gomm at previous workshops, and as a result he accepted that he knew that she was a type 1 diabetic, that she claimed to have reduced her medication by 50 per cent and that she was very excited by Paidá and Lajin.
30. Mr Xiao said that at the workshop at Cleeve House it had been brought to his attention on Wednesday morning that Ms Carr-Gomm was feeling poorly. She had remained in bed that morning, causing her to miss some classes. He had visited her in her room that morning and found her asleep. Later, in the afternoon, he had returned and had offered her food and drink. She had refused to eat and insisted on continuing the fasting. She had however agreed to drink water. From experience, he was confident that later in the day she would drink the Ginger tea “as people’s bodies are more likely to at certain times of the day”. He said he had returned at about 9 or 10 pm and encouraged her to drink ginger tea or eat couscous. She had eaten and drunk some of each. He remained in her room, with her room mates, until she had dropped off to sleep having felt much better. He then went to bed. He was subsequently woken in the small hours and told that Ms Carr-Gomm had died. He denied that he had any influence over the students at all. He had no more responsibility than anyone else in attendance. At no time did he feel an ambulance was needed for Ms Carr-Gomm. He believed that she was weak from fasting.
31. Mr Xiao denied owing a duty of care to Ms Carr-Gomm, or breaching any duty, and he denied that there was a serious and obvious risk of death (in that such risk if it existed was not present, clear and unambiguous at the time a decision was made not to call for medical assistance). It was contended that at the time a decision was made not to call for medical assistance it was reasonably foreseeable that the decision would give rise to a serious and obvious risk of death. It was not accepted that any breach of duty found to exist on the part of Mr Xiao caused or made a significant contribution to the death of Ms Carr-Gomm.

The directions to the jury

32. The judge gave directions to the jury at the start of the trial, referred to as the Part 1 legal directions, and then again just before counsel addressed the jury, known as the Part 2 legal directions. After speeches the judge summed up the facts to the jury, and

it is his directions in the final part of the summing up which give rise to the grounds of appeal.

33. In the Part 2 legal directions the judge gave written legal directions about the waiver saying:

“Strictly, a “disclaimer” is a document by which someone who is under a legal duty disclaims their responsibilities; whereas a “waiver” is a document by which someone who is owed a legal duty agrees to give up their rights. However, in practice the two terms are often used interchangeably. Furthermore, they can overlap – a single document can often be both a disclaimer and a waiver. So, do not be distracted by the title at the top of the document.

This document records Danielle Carr-Gomm’s agreement to give up all her rights against Hongchi Xiao. **If this case were a civil dispute between Danielle Carr-Gomm and Hongchi Xiao (e.g., if one of them were suing the other, to recover money), this document might well be decisive. But this is not a civil dispute between those two people. It is a criminal case, brought by the King, through the CPS – who are not bound by this Disclaimer/Waiver. The document cannot absolve him of criminal liability.**

Although not decisive, the document is, of course, still highly relevant to element/question (1). The Defence rely on it as evidence that Danielle Carr-Gomm did not place reliance on Hongchi Xiao to make provision for her safety and that Mr Xiao did not assume responsibility for her safety. They point out that this is what the document effectively says, that Danielle Carr-Gomm was asked to agree to its terms and that she signed it voluntarily.

You have to decide whether the Prosecution have made you sure that, despite this, Hongchi Xiao owed a duty of care to Danielle Carr-Gomm in the way that I have explained in Part 1. To do this, the Prosecution have to point to evidence outside the document, which shows that what it seems to say does not reflect the reality of the relationship between Danielle Carr-Gomm and Hongchi Xiao.”

(emphasis added)

34. When summing up the facts the judge returned to the waiver, referring to the legal directions and identifying that he would provide more assistance. He said: “take what I wrote, rather than what I say now, but it boils down to, more or less, whether or not this document reflects the reality” of the relationship between Ms Carr-Gomm and Mr Xiao. The judge then took the jury through some parts of the waiver saying:

“Going through it, it starts with her name and her address, and then the first paragraph: “I hereby understand...” That’s just introductory. It doesn’t really mean anything very much and the last paragraph: “I have read this disclaimer [etc.]” That’s important, but it’s really just a conclusion from what follows. The, the business part of it is in the three paragraphs that are in the middle and, if you have a pen handy, I’ve, I’ve numbered them so that number 1 is: A “I am aware that paida and lajin are promoted as self healing techniques...” Number 2 is the one that begins: “I further understand my risks involved in taking part...” And number 3 is the one that reads or begins: “I hereby fully discharge [etc.]” What you have to do is, I think, focus on each of those, consider what they say, and ask the question, is this the reality or is it artificial and untrue? And you hear those words coming out of my mouth and you’re thinking, well, I, I, I hear what the judge has just said, but I really don’t understand what he means by that and I understand why some of you may be feeling like that, so I’m going to try and give you some more help. The one that I asked you to number, give the number 2 to, the one that says: “I further understand my risks [etc.]” Now, it happens that I can give you a lot of help on this. Generally speaking, when I asked you to decide whether this represents the reality of the relationship, that involves deciding questions of fact, which isn’t my job and I can’t tell you how to do it, that’ll be for you to do, but this one, number 2, there’s not much fact that’s in doubt here: “I further [my,] understand my risks involved in taking part in the activities.” Well, she’d done something similar in Bulgaria, so she probably did, and she’d been a diabetic who’d been informed by doctors for many years, so she probably did, but, but of more relevance is the next bit: “I hereby confirm that I am free from illness that can aggravate or endanger my life, if I participate in these activities.” Does that represent the reality? This isn’t in doubt. You know that she had type-1 diabetes and, and that it absolutely could aggravate or endanger her life, if she participated in these activities. That’s not in dispute, but there’s much more to it than that. You know that she knew that. That’s not in doubt either, so you know that, when she was signing this, she was signing something that she knew was not true and you know that Mr Xiao knew that, when she signed it, she was signing something that was not true. He knew that she was a type-1 diabetic and he knew about what had happened in Bulgaria and you know that she knew that he knew that she knew, and so on and so on. In other words, they both had a complete state of awareness about the underlying fact she was a type-1 diabetic, it was dangerous, and what each of them knew about it. That’s the kind of exercise that you have to do not just with that paragraph, but with the other two, where you have to decide the same questions and, here, the facts are in doubt. They’re for you to decide. I can’t tell you them, but that’s how you go about it, so number 1, the one that I’ve given the number

1, certainly it's the case that paida and lajin are promoted as self healing techniques, but the next part of it: "...not meant for medical treatment." Are they used to diagnose? Are they used to treat illness or health problems? Well, I've summarised some of the evidence that has a bearing on that and it's for you to decide whether that was true, whether she knew that it was true or untrue, whether he knew that she knew that it was true or untrue, and so on, and similarly, the last question, sorry, the, the paragraph number 3: "I hereby fully discharge..." Lots and lots of different kinds of people, including Mr Xiao, from lots and lots of different kinds of things, liability, duty, responsibility, just focus on the word duty. The reason that you're thinking about this is because of question one in the route to verdict: "Did he owe a duty of care?" This says that she fully discharges him from any duty. If you take it at face value, it means that she says he didn't owe her a duty of care. Did she mean it? Compare what happened in, and I think the way to approach this is compare what happened in Bulgaria, where he'd been involved in efforts over some hours to persuade her to take insulin. The question you have to ask is, was this document meant to mean that, if something similar happened at Cleeve House, he was under no duty to do the same thing there that he'd done in Bulgaria? And, and, and that's, I think, how you assess this question."

35. When summing up Ms Stoodley's evidence, the judge said:

"The Q&A experience sharing on Monday is a really important event in this case. We know that there was a group discussion, as presumably there had been on Saturday and Sunday and as there was to be on Tuesday and Wednesday as well, but about this Monday, Theresa Hayes gave evidence that, on the first day of the fast at the Cleeve House workshop, so that Monday, and in this group sharing session, meaning this thing that happens at 5 o'clock in the afternoon, Mrs Carr-Gomm made a general announcement that she had stopped taking insulin and she said that this made a distinct impression on her, because she was surprised that a diabetic would stop taking insulin and she said that it made her uncomfortable. Jannine Stoodley said that, in the Saturday sharing session, so that was the first one, Claudia had said that she was a diabetic and that she was prescribed insulin, and then she said, as I understood her evidence, that it was in the sharing session on Monday, she said she wanted to be free of insulin, she was free of it, and wanted to stay that way. These sharing sessions are a group activity and Mr Xiao was present and Theresa Hayes said that, when Danielle Carr-Gomm said that she'd stopped taking insulin, Mr Xiao acknowledged it and responded positively. He said something like: "Well done." She said that this reaction from Mr Xiao towards Danielle was not unique to Danielle. She said that several people said that they'd stopped taking medication and that, each time, there was

cheering from the other people present and, each time, Mr Xiao was the first to congratulate them for doing this and she said that she heard him respond in a similar way repeatedly to a number of different people, so that was her evidence about what Danielle said, Jannine's evidence about what Danielle said, you'll want to think about whether they're consistent or whether they're different, and then Theresa gave evidence about how Mr Xiao responded. Jannine didn't say anything about how Mr Xiao responded".

36. Mr Row KC, appearing for Mr Xiao with Ms Clarke below at the trial as he does on appeal, raised the direction about Ms Stoodley's evidence with the judge just before the jury retired. Mr Row referred to Ms Clarke's note which, so far as is material, provided: "Started on Saturday the 15th" which was a reference to the start date of the workshop, "Was there an opportunity to share experiences? Answer, yes. Sat Danielle said she was diabetic and prescribed insulin. What did she say about the use? Answer, want to be free of it, was free, free of it, and wanted it to stay that way". Mr Row submitted that this was consistent with Ms Stoodley's written statement, which had referred to the sharing session on Saturday. Mr Harris, who appeared with Mr Atkinson KC for the prosecution at the trial below as he does on the appeal, confirmed at the trial that his note accorded entirely with Ms Clarke's note, save in an immaterial respect.
37. The judge called the jury back. He directed them as follows:
- "Don't worry. This won't take long. It's about Jannine Stoodley, just to be absolutely as clear as I can and as accurate I can in summarising her evidence about this critical sharing session. Jannine Stoodley gave evidence about a sharing session on the Saturday, the first day, and she undoubtedly said about that that, that Danielle told the group that she was diabetic and was prescribed insulin. She then gave evidence about Danielle saying that she wanted to, she was emphatic about stopping insulin, wanted to be free of it, was free of it, wanted to stay that way. It wasn't entirely clear to me whether that was evidence about the sharing experience on the Saturday or the one on the Monday. I thought tentatively that it was about the one on the Monday. Mr Clarke thinks, and he may well be right, that that too was about the sharing experience on the Saturday, but you've got to decide this. You, you, you will have your own memory, I hope, of what she said and ultimately you don't take it from me. Sorry. I said Mr Clarke, didn't I? It was, it was, it's Mr Row, I think, on the basis of Ms Clarke's note."
38. As already noted Mr Xiao was convicted. After conviction he was sentenced. In his letter sent to the judge before sentencing, Mr Xiao said he had reflected on his thinking in the light of the case and recorded that "I put too much emphasis on the side effects of medication and ignored the positive part of medication". This showed the beginnings of insight into the harmful effect of his teachings on some particularly vulnerable persons attending his workshops.

Grounds of appeal and respective cases

39. There are two grounds of appeal. The first ground of appeal is that the judge's summary of the evidence, namely that in signing the waiver Ms Carr-Gomm was lying, and that Mr Xiao knew she was lying, was inappropriate, and the way in which it was raised left defence counsel unable to deal with it before the jury. The second ground of appeal is that the judge misdirected the jury in relation to the evidence of Ms Stoodley, in the context of when Ms Carr-Gomm stopped taking her insulin and when that was communicated to Mr Xiao and inappropriately informed the jury of his opinion of the evidence.
40. The prosecution submits that, as to the first ground of appeal the judge's direction on the waiver document was correct, did not have any material impact upon the jury's deliberations, and did not render the conviction unsafe. As to the second ground of appeal the prosecution say that there was nothing objectionable. First, the judge summarised the evidence by reference to his own understanding of it and accurately set out the opposing cases on this point. Importantly, he correctly identified that there was an ambiguity in the evidence and clearly directed the jury that this was a matter for the jury to resolve as they were the sole arbiters of the facts. Mr Xiao had challenged that through his counsel. Following this, and by reference to a note of the evidence, the matter was clarified and the judge's interpretation of the evidence was not repeated.
41. At the hearing of the application for leave to appeal a point arose as to the correctness of the judge's direction set out in paragraph 39 above on the waiver in the light of the terms of section 2 of the UCTA 1977, which makes ineffective any attempt to exclude liability for death or personal injury caused by negligence.

The directions on the waiver – ground one

42. It seems that the waiver did not originally feature as an important factor in either the case for the prosecution or defence at the start of the trial. However the jury asked a question about its effect, and the judge gave agreed legal directions about it in his Part 2 legal directions before speeches, as set out in paragraph 33 above, and then returned to it again in his summing up of the facts, as set out in paragraph 34 above.
43. It is particularly unfortunate that no one seems to have directed the judge's attention to the provisions of section 2 of UCTA 1977. That provides:

“Negligence liability.

(1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of

it is not of itself to be taken as indicating his voluntary acceptance of any risk.”

44. Section 2 of UCTA prevents anyone who has by their negligence caused death or personal injury to another person excluding or restricting their liability. It was common ground that this applies to both civil and criminal liability. It means that the waiver could not have been effective to prevent a duty of care arising if, but for the waiver, the duty of care would have arisen and there was a breach of the duty of care which had caused Ms Carr-Gomm’s death, see generally *Smith v Bush* [1990] 1 AC 831 at 857 and 873.
45. The vice of such contract terms or notices such as the waiver, is that individuals who have suffered personal injury, or dependants of deceased who were killed by negligence, might wrongly assume that they had no remedy.
46. In these circumstances the judge might have directed the jury that, that if they were sure that Mr Xiao had caused the death of Ms Carr-Gomm by negligence (by breaching the duty of care he owed to Ms Carr-Gomm) then the waiver was of no effect in either the criminal or civil law. It was therefore a misdirection for the judge to tell the jury that “if this case were a civil dispute between Danielle Carr-Gomm and Hongchi Xiao ... this document might well be decisive”. It was common ground that this misdirection did not assist Mr Xiao because the judge had correctly told the jury that the document could not absolve Mr Xiao of criminal liability, albeit for reasons unrelated to section 2 of UCTA 1977. It seems that the judge thought that the waiver would not bind the Crown because these were criminal proceedings and not civil proceedings. It might be noted that negligence in the criminal offence of gross negligence manslaughter mirrors, apart from the doctrine of *ex turpi causa* which difference was explained in *R v Wacker* [2002] EWCA Crim 1944; [2003] QB 1207, the common law of negligence in civil proceedings, see generally *R v Broughton* [2020] EWCA Crim 1093; [2021] 1 ELR 543.
47. It is therefore necessary to address the complaint made on behalf of Mr Xiao about the judge’s further directions in the summing up on the facts about the waiver. Particular complaint was made about the judge’s comment that Ms Carr-Gomm knew that what she was signing about being free “from illness that can aggravate or endanger my life, if I participate in these activities” was not true, and Mr Xiao knew that, and the judge’s invitation to look at the waiver and consider whether it was the reality or artificial and untrue. On behalf of Mr Xiao, Mr Row pointed out that the activities (slapping, stretching and fasting) could not aggravate or endanger Ms Carr-Gomm’s life, that the judge’s comments could not be saved by saying the facts were for the jury to decide, referring to *R v Awil* [2020] EWCA Crim 1802, in particular at paragraph 21, and the comments were unfair because they had been made after speeches and with no notice about what the judge was going to say. Mr Row said that this was a considered comment from the judge, and so nothing could be gained by raising it with the judge at the end of the summing up of the facts.
48. On behalf of the prosecution Mr Atkinson noted that Ms Carr-Gomm was carrying out the activities so that she would not have to take any insulin at all and that, to the knowledge of both Ms Carr-Gomm and Mr Xiao, could endanger Ms Carr-Gomm’s life because of what had occurred in Bulgaria, so the judge was right to say what he did.

No complaint had been made at the time of the summing up about this matter, and it could not affect the safety of the verdict.

49. As appears from the judgment in *Awil*, impermissible judicial interventions and their effect on the safety of the convictions have been addressed in a number of cases. In *R v Hamilton* (1969) 113 Sol Jo. 546, [1969] Crim LR 486 Lord Parker CJ stated that whether judicial interventions would in any case give ground for an appeal against conviction was only a matter of degree, noting that interventions to clear up ambiguities and to ensure that a note is accurate were perfectly justified. He went on to say:

“But the interventions which give rise to a quashing of a conviction are really three-fold; those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty ... and thirdly, case where the interventions have the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way”.

50. The report of *R v Hamilton* in the Solicitors’ Journal is very brief but in *R v Hulusi and Purvis* (1973) 58 Cr App R 378 Lawton LJ set out at pages 381-382 extracts from a transcript of Lord Parker’s judgment when setting aside convictions for robbery where the appellant “was cross-examined by the judge – there is no other word for it – at very considerable length ...”. *R v Copsey* [2008] EWCA Crim 2043 was another case where the Court quashed a conviction where they found that the judge “took on the role of cross-examining in the way that is more suitable for a prosecuting counsel than for a judge”.
51. It is not, however, every case where a judge acts impermissibly that will render a conviction unsafe. In *Randall v The Queen* [2002] UKPC 19; [2002] 1 WLR 2237 at paragraph 28 Lord Bingham stated:

“While reference has been made above to some of the rules which should be observed in a well-conducted trial to safeguard the fairness of the proceedings, it is not every departure from good practice which renders the trial unfair ... But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty.”

52. In *Bernard v The State of Trinidad and Tobago* [2007] UKPC 34; [2007] 2 Cr App R. 22 the court stated that “in a case of procedural unfairness ... determination of such an issue involves weighing the seriousness of the irregularities. If the defects were relatively minor, the trial may still be regarded as fair. Conversely, if they were sufficiently serious it cannot be accepted as fair, no matter how strong the evidence of

guilt.” *Awil* was a case where the judge was said to have become an advocate for the prosecution.

53. As already noted, in our judgment it was unfortunate that no one had drawn the attention of the judge to section 2 of UCTA 1977. If this had happened, the judge could have directed the jury to ignore the waiver if they were sure that the negligence of Mr Xiao had caused Ms Carr-Gomm’s death, and the judge would not have felt the need to revisit the issue in his summing up on the facts. We also accept that it is generally undesirable to give an agreed legal direction about a document, and then to revisit it in different terms when summing up the facts.
54. As it is we do not consider that the judge’s comments about the waiver rendered the trial unfair or the verdict unsafe. This is because the judge was simply pointing out that the waiver did not reflect the reality of the relationship between Ms Carr-Gomm and Mr Xiao. This was bound to be the case, because it was a standard form which Ms Carr-Gomm, and all participants at the workshop, had been required to sign which purported to exclude Mr Xiao’s liability for causing death by negligence. A legally correct direction from the judge about the effect of section 2 of the UCTA 1977 would have created more difficulties for Mr Xiao because it would have made plain that Mr Xiao was seeking to rely on a waiver which had no legal effect. For all these reasons we are sure that the directions given by the judge on the waiver in the summing up of the facts did not make the verdict unsafe.

Directions on Ms Stoodley’s evidence – ground 2

55. As appears above, after the judge’s first summary of Ms Stoodley’s evidence in the summing up on the facts, he was asked to call the jury back. This was to make it clear (in accordance with the note of evidence taken by Ms Clarke, junior counsel for Mr Xiao, which was agreed in all material respects by Mr Harris, junior counsel for the prosecution) that Ms Stoodley had said that the sharing sessions at which Ms Carr-Gomm had said that she was free of insulin was on Saturday (when in fact she was still taking half of the prescribed insulin) and not Monday (when she had in fact stopped taking insulin). The judge’s impression of Ms Stoodley’s evidence was that she had referred to Monday’s sharing session, and that seems to have been the prosecution’s impression of the evidence, but it is only fair to record that the note taken by Ms Clarke, agreed by Mr Harris, suggested that Ms Stoodley had referred to Saturday’s sharing session. As we have already noted, there was no transcript of the evidence because of recording issues with the court equipment.
56. The judge did revisit the matter. He said “I thought tentatively that it was about the one on the Monday. Mr Clarke [the judge later clarified it was Mr Row] thinks, and he may well be right, that too was about the sharing experience on the Saturday, but you’ve got to decide this. You, you, you will have your own memory, I hope, of what she said and ultimately you don’t take it from me.”
57. Mr Row complains that the judge ought not to have expressed a view about which interpretation of the evidence was correct, and that in describing the summary as coming from the defence note of the evidence, the judge created a risk that the jury placed less weight on it than would otherwise have been the case. Mr Row emphasises that the judge considered that the evidence about the sharing session on Monday where,

according to Ms Hayes, Mr Xiao had congratulated Ms Carr-Gomm on stopping her insulin, raised a key issue in the trial.

58. Mr Atkinson highlighted the number of times that the judge had told the jury that the facts were for them, and to ignore any views he expressed, and pointed out that he had reminded them of the point and expressly left it to them to decide.
59. In our judgment the judge acted properly in highlighting this as an issue for the jury, and that is common ground. The judge was entitled to set out the evidence as he understood it, and was properly asked by Mr Row to highlight Ms Stoodley's evidence as it was recorded by Ms Clarke, and agreed by Mr Harris. Some judges might have referred to the note as being agreed in all material respects by the prosecution, but there was no requirement for the judge to use any formula of words, and it is not apparent that any reasonable jury would have dismissed the judge's reminder because he pointed out that the note had been made by the defence. As it was the judge reminded the jury of the relevant parts of the evidence, identified what he considered to be a lack of clarity in the evidence, and did so in terms which were neutral. He then properly reminded the jury that it was for them to decide whether Ms Stoodley was referring to a sharing session on Saturday, or Monday. Nothing that was said by the judge in his directions on this point made the conviction unsafe.

Conclusion

60. For the detailed reasons set out above we dismiss the appeal against conviction. This means that no question of a retrial arises, and we therefore discharge the reporting restriction order that had been made under the Contempt of Court Act 1981.