The Case Background and Mitigating Factors in the Rosdeep Kular Adekoya case
by Sally Ramage

Abstract

The facts in this Scottish criminal case are that a single mother of five very young children had assaulted her three year old son, and being afraid that he would be permanently taken away by the Social Services Department, she failed to seek medical help for him and instead put him to bed, where he died a few days later. Obviously temporarily insane, she then decided to hide his body underneath some bushes near a property where she formerly lived, and the following day, she contacted Police Scotland to report the three-year old missing.

There have been over 1,800 newspaper articles on this case, most whipping up feverish racism against the mother. Now that the Coroner’s report has been disclosed that the boy died of peritonitis, the family held a very private funeral service for the child and the four other young children of Rosdeep Kular Adekoya were taken in by Rosdeep’s older sister who still cares for them today.

Rosdeep Kular Adekoya was initially charged with the murder of her son and after six months the prosecutor changed the charge to the lesser charge of ‘culpable homicide’.

Rosdeep Kular has the real defence of ‘diminished responsibility’ added to or because of ‘temporary insanity’ The defence of ‘diminished responsibility’ under section 2 of the

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Homicide Act 1957 is because Rosdeep Kular was suffering from an ‘abnormality of mind’ so great as to substantially impaired her responsibility.\textsuperscript{2}

This criminal trial was held in the latter part of July 2014 after Rosdeep Kular Adekoya had agreed to plead guilty to ‘culpable homicide’. She was convicted and her sentencing is due to be announced by the Court of Justiciary on 25 August 2014. This Paper illustrates the background to the case to put it in perspective and to set out an analysis of the many mitigating factors which should be considered by the High Court before Sentencing on 25 August 2014.

\textbf{Case Background: Scotland where Rosdeep Kular was brought up}

The total area of Scotland is 78,133 square kilometres and this includes the total area of the United Kingdom, of which it is still a part today. Geographically, the river Tweed\textsuperscript{3} and the

\textsuperscript{2} \textit{R v Gittens} [1984] QB 698.
\textsuperscript{3} Near the Lanarkshire boundary, the River Tweed runs east and joins the North Sea at Berwick upon Tweed. The River Tweed is 97 miles long and it forms, by its last few miles, the border between Scotland and England in the United Kingdom. At the beginning the River Tweed runs on steep terrain falling two thirds of its total
river Solway became accepted natural divisions between Scotland and England, although Berwick-upon-Tweed on the north bank of the river Tweed remained English and has become evidence of Scotland's statehood.

**Case Background: Scotland’s economic situation**

Scotland is part of the United Kingdom. Feudalism had long led to a growing sense of Scots independence from England. Scotland has a strong sense of nationhood and at present Scotland is at present seeking complete independence from the UK.  

**Case Background: The High Court of Justiciary**

The Kular criminal trial took place at the High Court of Justiciary, the trial court for major crime, and the appeal court for all crime in Scotland. As a trial court, the High Court of Justiciary has jurisdiction over all offences in Scotland (unless excluded by statute). Its jurisdiction overlaps that of other criminal courts, and it is the prosecutor's decision in most cases whether a case goes to the High Court or elsewhere. In the High Court of Justiciary, prosecutions are brought by *Advocates Depute*, that is, the Crown counsel.

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4 Paul Kelbie, 'Scottish independence: The new Scots who hold fate of the UK in their hands', *The Independent*, 21 August 2014. See http://www.independent.co.uk/news/uk/scottish-independence/scottish-independence-the-new-scots-who-hold-fate-of-the-uk-in-their-hands-9681563.html, accessed on 21.8.2014. A significant number of Scots, 4% of Scots, were born outside Scotland, and are planning to vote for Scotland's independence in the September 2014 Referendum. The article revealed that ‘there are estimated 140,000 people who class themselves as Scots Asians; 30,000 African Scots; 7,000 Caribbean Scots; 55,000 Poles who are now Scots; and 400,000 English living permanently in Scotland and numerous other minority groups eligible to vote.

5 Advocates Depute are advocates employed (temporarily and part-time) to prosecute on the Crown’s behalf. A description of the procurator fiscal service is found in Crown Service and procurator fiscal service annual reports.
Case Background: Legal Aid in Scotland

It is to be noted that the Criminal Court cannot aware expenses: and therefore the expenses of the prosecution are paid by the prosecution and the expenses of the defendant is usually paid for by Legal Aid. The Legal Aid Board in Scotland provides money for people to get legal advice and representation - where a solicitor can act for them in court. Scots people have the right, through the UK Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002, to seek information about their entitlement to Legal Aid. The Legal Aid Board of Scotland has legal responsibilities to give people access to information about Legal Aid decisions on applications they or their legal representatives have made on their behalf. They must also divulge what information they hold on any applicant for Legal Aid. They must legally keep personal information confidential by the Legal Aid (Scotland) Act 1984 and the UK Data Protection Act 1998 and the Freedom of Information Act (Scotland) 2002. This is the legal reason why, in this case, Rosdeep Kular has to use her legal name of Adekoya, in order to please the Legal Aid forms and according to the Marriage (Scotland) Act 1977 and other legal searches because she is nearly divorced from her husband, but not actually divorced yet.

Case Background: Scotland's adversarial common law system

The Crown, through the public prosecution system, almost always brings criminal proceedings. Criminal proceedings are adversarial and so it is for the prosecution to decide what crime it considers may have been committed and the prosecution bears the burden of proof.

6 The Freedom of Information Act (Scotland) 2002 has been in force since 1 January 2005 and has the objective of increasing openness and accountability in government and public sectors.
This is largely the same as for the English common law system. The defence is entitled to the following from its opponents: (a) to have the case against it proved; (b) to cast doubt on prosecution evidence; (c) to bring evidence, by calling witnesses, if it chooses; (d) to move that: *There is no case to answer* at the end of the prosecution evidence, seeking to have the case dismissed for want of proper evidence.

The Secretary of State for Scotland has overall responsibility for the Scottish legal system, including specific duties. The senior Law Officer is the Lord Advocate. The junior Law Officer is the Solicitor General for Scotland and an advocate. At present Lesley Thomson is Solicitor General for Scotland, prior to which appointment she was the Area Procurator Fiscal for Glasgow and Strathkelvin. She has prosecuted some very high profile cases in Scotland.

**Case Background: Law-the 'mischief' rule; the 'literal' rule, and the 'golden' rule**

If a provision is unclear, the judge should look to the mischief the Act was designed to overcome and interpret it in order to suppress the mischief and advance the remedy. See *Leadbetter v Hutcheson* [1934] JC 70. The literal rule is that the judge should apply the literal meaning of the legislation. See *Keane v Gallagher* [1980] SLT 144. The golden rule

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7 The Solicitor General for Scotland is a member of the government and also legal advisor to the government.
8 The Respondents were charged with an offence under the Tweed Fisheries Amendment Act 1959, because they were caught with four salmon during the close session near the river Tweed near Peebles. They pleaded ‘guilty’. The fine at the time was ‘not less than 10 shillings and not exceeding £2 in respect of each salmon found in their possession’. They had also to ‘forfeit the salmon ...and every boat, cart, basket, or package in which the same may be found.’ The appeal was founded on the fact that the statute stated the words ‘boat, cart, basket or package’ but not ‘motor cycle and side-car’. The Appeal Court decided that the correct meaning was put on the word ‘cart’ in the statute. Lord Fleming stated that it must have been the intention of the Legislature that the term should be given a wider signification and should be held to include any carriage that might be used for concealment and removal of salmon.
9 In *Keane v Gallagher*, the Respondent was charged with a contravention of the Misuse of Drugs Act 1971, section 5(1) and (2). Section 5(1) of the Act provides that it is not lawful for a person to have a controlled drug in his possession. Section 2 and Schedule 2 of the Act define controlled drugs for the purposes of the Act and cannabis resins included in Part II and Schedule 2. The argument was that resinous material is not the same as
implies that the literal meaning should be applied unless it produces an inconsistency or absurdity. See *Strathern v Padden* [1926] JC9\(^{10}\).

**Case Background: Police Scotland**

Police Scotland has enjoyed handsome pension schemes since the Social Security Act 1985 came into force. Then, occupational pension schemes were introduced and the employer, not the employee, owned the pension scheme. By the twentieth century, pension schemes became commonplace, none more so than Stratclyde Pension Fund which, by 1998, had assets of £5.2 billion, the second largest Local Authority Pension Fund in the United Kingdom (‘UK’).\(^{11}\)

By 1998, Scottish Unitary Authorities owned 13 highways in the UK; 12 UK galleries, cemeteries or crematoria; 4 UK police stations; no rubbish dumps; almost no parks or allotments and no sports facilities.\(^{12}\)

cannabis resin because it might not be capable of being used’, but since each case will require to be decided on its own facts, and the court decided to send the case back to the lower court for the offender to be convicted, \(^{10}\) In this serious crime case, an appeal was launched because the lower court took the literal meaning of the word crime to include minor offences as well as serious crime. This appeal centred on the statutory definition of the word ‘offence’. In the Prevention of Crimes Act 1871 contained both words ‘crime’ and ‘offence’ and both had been given distinct meanings. Lord Sands said that ‘every crime is an offence, but every offence is not a crime’.

\(^{11}\) See the National Association of Pension Funds Yearbook, 1999.

\(^{12}\) See CIPFA statistics 1997-8.
Case Background: Scotland's history of corruption 13

With regard to housing, as where the Kulars lived in Edinburgh in the *Drylaw Housing Estate*, housing associations own most housing that used to be council owned housing. As for schools, local authorities still own several thousand schools and colleges in the UK, but about one third part is voluntary - aided schooling. As for government employees, some of the worst problems of corruption are in Scotland where the Labour Party was the 'politics of choice' for decades. In this Kular social services case, the Social Workers from Fife should have made a written report to Edinburgh Council when Rosdeep was granted housing in Edinburgh and the primary school and the nursery school should have been alerted that these five children had been considered ‘at risk’ by Fife Council. Therefore when Mikaeel did not turn up at nursery school after Christmas in early January 2014, the headmistress had a legal obligation to inform social workers and Edinburgh Council, as a matter of course.

As to how to tackle Scotland’s police corruption in respect of guns and drugs on Scotland’s streets, one would be well advised to study the case of *The Queen v Rogerson*14, a case of police corruption in a drugs crime prosecution.

Case Background- Scotland’s corruption including ‘bid rigging’

The literature views some forms of corruption - manipulation of the quality assessment in complex bids, as bid rigging. In 1998, CIPFA\(^{15}\) accountants found that the Direct Labour Organisation at North Lanarkshire Council had accumulated a deficit of almost £5 million pounds (currency - Sterling) in the 1997/98 financial year by systematic under-bidding for contracts. This is a serious fraud known as ‘bid-rigging’.

**Case study of the fraud of ‘bid-rigging’**

X was an employee of a petroleum shipping company in country A. X was the repair and technical manager. The company opened a branch in the United Kingdom. The company had a ship management agreement with *Esso Petroleum Company* in relation to 11 UK registered ships. *Esso* used to invite bids for all aspects of ship refits. In one bid, four shipyards tendered. One of the four shipyards was K shipyard from country B.

**This is how the tendering process operated:-**

There were refit contracts for 3 ships based in the UK. Tenders for the 3 ships were sought from a number of shipyards. Sealed bids were obtained from each shipyard. K shipyard offered substantial discounts.

**X evaluated the bids and favoured K shipyard’s bid.**

K shipyard’s bid was accepted.

**K shipyard’s bid was accepted in 20 other similar bids.**

But K shipyard’s discounts were unusual in timing and size. K was able to succeed in its bids because K shipyard was receiving confidential information from X about the rival bids. K shipyard had made payments to X to a sum of £1.6 million in return for this confidential information. X was subsequently charged with corruption contrary to section 1 of the Prevention of Corruption Act 1906 (the relevant statute at that time) and was convicted and sentenced to three years imprisonment.

Case Background: Scotland’s corruption of councils-cronyism and conspiracy

Since 1975, Scotland has had a two-tier government, except in the islands. Scotland is divided up into nine regions for this purpose, the responsibilities of which include:

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\(^{15}\) Chartered Institute of Public Finance Accountants.
Education; Fire and Police Services; Regional Planning; Roads; and Social Work.

Each of these nine regions is divided into districts, the responsibilities of which include: Cleansing and Environment; Health; Housing; Libraries and Museums; Local Planning; and Parks.

**Social Services Inquiry into Mikael Kular's death announced to the world's media**

At first hearing the announcement of an inquiry into Mikael Kular’s death in January 2014, one might be forgiven for thinking that Fife and Edinburgh Council are doing nothing more than *conspiracy to aid and abet each other* in create their own clean version of the social workers inaction both in Fife and in Edinburgh.

In July 2014, the Edinburgh and Fife Scottish local authorities announced to the world’s media that an independent ‘inquiry’ has been ordered into the case of Mikael Kular’s death. After the court trial ended on 24 July 2014, which verdict will be announced on 25 August 2014, this announcement came as no surprise. Fife Council and Edinburgh Council have had some six months since the child died to get their story plausible; concoct evidence;

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16 See, for example, Editor, ‘Scotland to probe Indo-British boy’s death following confession by mother’, *The Link Paper in Canada*, 2 August, 2014.
re-write their unqualified social workers’ notes and rewrite their external and internal policies with no one being the wiser, as did the police forces involved in the football disaster and deaths all those years ago. John Myles, chairman of Fife Child Protection Committee told the media at a Press Conference:

‘...This inquiry will be led independently and will take place in two phases. The first phase will look at information available from files, records, and policies and procedures that were in place before Mikaeel Kular’s death on 14 January 2014. Work on this phase has already started. Phase two will take into account any new information that has come to light during the criminal proceedings and will involve interviews with relevant staff’.

**Child-Protection Report: expected publication is December 2014**

The report to be published on this so-called *Scottish Child Protection inquiry* is expected to be ready for publication by December 2013; some four months AFTER the court would have sentenced Rosdeep Kular Adekoya, irrespective of the findings of the negligence or otherwise of the Fife District Council and the negligence of Edinburgh County Council expected to be found.

The Fife and Edinburgh Local Authorities’ announcement of an ‘inquiry’ brought a sense of déjá vu. One expects, like all of the local authorities in the United Kingdom, that they will undoubtedly find themselves blameless; they will blame the mother of the deceased child; nobody employed by the local authorities will suffer any pecuniary disadvantages; and life will go on as before- knuckles wrapped and no legal punishment of any social workers, racist or incompetent. Local government corruption will continue as before. Nepotism for local authority jobs with their lush final-salary pension schemes will continue without a single
hiccup. In taking account of the events after the child's death as related in the court trial of Mikaeel Kular's mother for culpable homicide, it is expected that the report will not reveal that police continued with the search because overtime hours and money was already allocated to many police officers from many other police forces, and they would have wanted to receive their allocated overtime pay.

**Tampering with the evidence; breach of confidence; computer misuse offences**

It has been reported in Scottish newspapers that some persons have illegally accessed Mikaeel Kular's files in Scotland's Social Services computers, a criminal offence and a breach of client confidentiality and a computer misuse act offence, carrying imprisonment on indictment and conviction. Fife Council has refused to comment on claims that up to 25 staff accessed confidential social work files on Mikaeel Kular.

There have been reports that the council has begun an internal investigation over fears workers looked at documents about the three-year-old found dead in Fife. A national newspaper reported that staff faced possible disciplinary action for looking at the boy's information without permission.

**Case Background: - Prison Complaints System: Kular at risk of death in Prison**

Rosdeep Kular Adekoya needs to be alerted to take care and to understand the Prison Complaints Procedure and understand how to access it because other prisoners may try to

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17 In 1997, the Local Government suspended nine members of Glasgow City Council amid allegations of 'cronyism' and 'votes-for-holidays'. Similar frauds were uncovered at East Ayrshire council. Posts were allegedly filled according to political affiliation.

murder her.

The Prison Rules 1999 impose a duty to deal with prisoners’ complaints. This duty is firstly placed upon the governor (rule 11) – who may delegate it under rule 81 – and secondly on the Independent Monitoring Board (formerly known as the Board of Visitors (rules 11 and 78)). Requests and complaints procedures were reviewed during 1999 and 2000, as a result of concerns that the old system was not working as intended. Consequently, Prison Service Order 2510, ‘Prisoners’ Request and Complaints Procedures’ was published in early 2002 and sets out a new system replacing that contained within the old Prisoners’ Requests/Complaints Manual.

**Prison Ombudsman**

The Prisons and Probation Ombudsman investigates complaints by individual prisoners and in practice, this includes legal representatives acting on behalf of the prisoner. The Ombudsman will consider an investigation if the prisoner has not received a response to an internal complaint after six weeks or is dissatisfied after exhausting the prison's internal complaints procedure. Prisoners have a right to confidential access to the Ombudsman, and it is not for prison staff to determine whether there is any merit in the prisoner's decision to take the complaint further.

**Consent to access Prisoner's medical records and staff personnel records**

Rosdeep Kular Adekoya needs to be informed of her prison position by her Defence Legal Team and in case she is killed, at least if she had made initial complaints, the prison staff
would need to answer as to any negligence in taking care of this prisoner. The Ombudsman must however have the prisoner's consent to access her medical and prison staff personnel records. The Ombudsman may seek a fast-track local solution.

**Procedure PSI 02/ 2002**

At any time, the prisoner may write to a Member of Parliament ('MP'), usually to her constituency MP, requesting that her complaint be referred to the Parliamentary Commissioner for Administration ('PCA'), attaching a copy of any supporting evidence.

**Prison Rules**

The Prison Rules (PSI's) give prisoners the right to refer their complaint to the Secretary of State for Justice (if they are aware of this fact) because this Minister has overall responsibility for the penal system.

**The new UK Prison Complaints system**

These are that complaints are dealt with separately from requests and there is no generic form dealing with both; complaint forms are freely available to prisoners and no longer have to be applied for; completed forms are posted into a locked box on the prison wing; and there
is no longer an appeal to Prison Service Headquarters. Ordinary complaints are divided into three stages, all of which are answered within the establishment: Stage 1 is usually a response from a wing officer; stage 2 a response from a manager; and stage 3 is a response from the governing Governor. From there, the prisoner can appeal to the Prisons Ombudsman if she is still dissatisfied with the response. All that can be done is to hope that Rosdeep’s family and her legal defence team alert her to her rights to protection in prison by way of the Complaints Procedure. In this way, all those persons in prison showing her discrimination, hate crime offences, sex discrimination, racial discrimination or any other offences, be they from prison staff or from other prisoners, will be duly punished, should any harm come to her.

**Case Background: The European Court of Justice**
Should Rosdeep Kular’s legal defence team find that they have reason to protest and appeal whatever sentence is handed down on Rosdeep on 25 August, the European Court of Justice is still the court available to them to obtain correct legal interpretation of evidence and procedure in this case, after they have exhausted all domestic remedies. The European Court of Justice in Brussels may hear an enforcement action brought by the European Commission against a member state appearing not to be fulfilling its Community obligations. The European Court of Justice may also hear a preliminary reference under Article 177 EEC from a national court or tribunal with a view to ensuring consistent decisions on validity and interpretation throughout the Community.

Case Background: Crime and Punishment (Scotland) Act 1997 not used in pursuit of scurrilous newspaper reporting

By the Crime and Punishment (Scotland) Act 1997, section 44, which inserts section 41D, there must be no unlawful disclosure of information by any medical officer who had

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19 Article 35 (1).
provided medical services to Rosdeep Kular nor from any person under his supervision.

Sections 44 (2) and (3) state:

‘(2) Any person to whom this section applies who discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information relating to any particular prisoner which he has acquired in the course of carrying out his duties shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both. ‘

**Defendant has never spoken to the media**

Since Rosdeep Kular was arrested and before that time, she never spoke to the Press. Rosdeep Kular, 33, attended a two-minute hearing held behind closed doors at Edinburgh Sheriff Court. She never spoke, according to newspapers reports, yet who told newspapers that her legal team spoke on her behalf.
IN MITIGATION - Rosdeep Kular Adekoya

Rosdeep Kular's legal defence team should never have made her plead guilty to 'culpable homicide'. They did not call any experts in mitigation either. Mitigation evidence could influence the decision on culpability whereas personal mitigation is only relevant to determining the penalty or sanction to be imposed.

In the case of Clarke v H.M.Advocate, Lord Walker noted that:

‘An accused person is entitled as of right to lay before the jury all evidence which might properly induce them to commend him to leniency in the event of his being held guilty.’

Mitigating Factor 1: Rosdeep soon told police where child was

The community group search team of police officers and local people who responded to police calls for help, could have turned into a murder mob baying for blood had they been told on that night, what had happened. In past times, crowds have been known to change to

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21 The case resembles the hit and misses in the television comedy 'Keystone Cops' were it not such a very serious issue.
23 If a group of people are ‘baying for blood’, they want someone to be hurt or punished.
become riotous on hearing such news, ‘baying for blood’. Police Scotland immediately
detained Rosdeep Kular. Mikaeel’s mother has acquired British Nationality by
Naturalisation, as did her sister and mother.

She had initially told lies to police that her son was missing but having realized the enormous
effort police were making in this false search, she confessed to police that Mikaeel was not
missing but had died and in fear she had done what she did with the body, hiding it not too
far from her apartment, accompanying police to show them where she had placed Mikaeel’s
body. It was true and police found the body and immediately detained Mikaeel Kular’s
mother Rosdeep Kular. Rosdeep Kular had assaulted her child because he had eaten ice-
cream and had vomited several times and she lost her temper and assaulted him; he had
become unwell but she hesitated to take him to a doctor fearing that the authorities would as
a consequence, take him away from her. She thought that he would rest in bed and become
better but he died as a consequence.

Mitigating Factor 2 - Was Rosdeep Kular properly processed on arrest? Was a solicitor there?

It is not clear whether she was read her rights to silence as per PACE or whether she was
immediately given legal representation before talking. The mother was initially charged with
murder and just before the trial; the charge was changed to ‘culpable homicide’ provided

24 Note that the spelling of ‘Mikael’ is not an incorrect spelling but it is the Muslim spelling. Mikael features
in the holy book of the Quaran in which Mikael is said to be one of God’s angels.
25 Rosdeep then told police everything and accompanied Police Scotland to the place where she had hidden her
son, near where she used to live in family property in Kirkcaldy, Fife, Scotland, about 20 miles
away from the infamous Drylaw Housing Estate in Edinburgh where Rosdeep and her children were forced to live since the
year 2013.
26 The criminal charge of ‘murder’ - murder is homicide with malice aforethought. Such malice aforethought is
the mens rea, an intention to cause the death, or grievous bodily harm to another as in R v Moloney [1985] AC
905. Causation is a mixed question of fact and law. It must be proved by the prosecution that Rosdeep
KULAR’S act is a sine qua non of the death of Mikael. This is a question of fact. Her act must be proved to
be substantial before it can be regarded as the legal cause as a result. The jury must only infer intention to kill
or cause grievous bodily harm (‘gbh’) only if it appears to the jury that the accused foresaw such death/gbh as
she pleads guilty and relates to the prosecution, every possible detail. This is a case of assault contrary to section 47 of the Offences against the Person Act 1861 and causation; murder and diminished responsibility. Rosdeep had lost her temper because her toddler son vomited in his bed after a meal out that evening.

**Mitigating Factor 3: Rosdeep lost her full-time employment in the recession**

Not surprising in the present UK economic recession, single-parent Rosdeep Kular Adekoya lost her full-time employment, and this had exacerbated her domestic and financial struggles considerably, reflecting the nation’s economic crisis. Employment is seen to be a viable route out of poverty for single-parent families in dire circumstances and although much has been made recently of the jobs recovery and the return to economic growth. Although recent employment statistics show that employment levels have allegedly risen, actual incomes tell a grim economic story especially for employed single parents -because wages are failing to provide many employed single parents with an adequate income, with 61 per cent of those surveyed struggling to make ends meet. One in ten working single parents said they are not coping financially, frequently falling into arrears. It is an established fact that single parents have long faced barriers to work and thus barriers to earning an adequate income. The charity Gingerbread’s research study found three critical factors which hinder single parents earning their way: (1) a sharp reduction in hours or wages by employers; (2)

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27 Section 47 OAP 1861 provides that it is an offence to assault occasioning ‘actual bodily harm’ (‘abh’) and abh is defined in *R v Chan Fook* [1994] Crim LR 432, as ‘any injury which is more than trivial’, *no mens rea* being necessary.

28 Sumi Rabindракumar, ‘Getting just five percent more single parents into work could save the government £436 million’, *Joseph Rowntree Foundation Charity*, 22 July 2014.
temporary jobs coming to an end, and (3) redundancy of employment. Rosdeep Kular Adekoya was struggling financially and food at home must have been scarce. 29

Often when people’s actions seem unfathomable, there is good reason for those actions. We must remind ourselves that Rosdeep Kular was in 2013 technically a ‘one-parent family’. She would have been receiving Child Benefits for each of her young children, amounting to weekly sums for her five children. 30 Because she was in full-time employment, Rosdeep would also have been entitled to Child Tax Credit to the value of £2,720 for each child, equalling £13,600. Rosdeep would also have had her Personal Income Tax Allowance of £9,440 for the year. 31 Rosdeep therefore, as the government keeps telling the unemployed, was financially better off as a full-time single working parent than sitting at home receiving Social Security Benefits and that must be a factor as to why she preferred full-time employment in Edinburgh than being reliant on benefits from the state alone. For persons in the plight of Rosdeep Kular, every bit of financial help matters. She was poor.

**Mitigating Factor 4: Social Services forced her to live near estranged husband**

Forcing Rosdeep Kular to live in a certain part of the United Kingdom just because her estranged divorcing husband wants easier family access is certainly a precedent in UK family law because there is no statutory law to support or warrant this, unlike laws concerning removing children from the UK contrary to court injunctions in the Family law courts. This forced change in abode to a desperate and infamous council housing estate

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29 Editor, ‘Poverty in Scotland has more than doubled in 30 years - despite the economy doubling in size’, *Daily Star*, 20 August 2014.

30 See government website https://www.gov.uk/child-benefit/.

known for its many social problems of drugs, alcoholism, unemployment and anti-social behavior, can be argued to be in breach of Rosdeep Kular’s Human Rights. Rosdeep agreed to live in proximity to Omotoso Adekoya who had reported her as being a negligent parent, setting in flow the social services system which has now marred all the children’s medical records for life and scarred their future prospects of ever becoming a police officer; working with the vulnerable or even of becoming a lawyer or a doctor when they became adults. Rosdeep Kular Adekoya agreed to live in this place in an effort to have the return of Mikael to the family because Mikael had been having emotional problems and was not being cooperative with his mother who, at the time, was in full-time employment and requested Social Services to look after him for awhile until he settled down.

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32 ‘Major police operation in Edinburgh uncovers over £200,000 worth of drugs as 16 people are arrested’, Daily Record, 1 May 2013. Note that these arrests occurred one week after Mohammed Abdi was shot dead.
Mikael Kular’s emotional turmoil was set only to increase sharply as, being only three years old, he had spent one third of his life in the company of young 25 year old Mohammed Abdi who in May 2013, shortly after Mikael’s third birthday, never came home again because he had been shot dead by machine gun bullets.  

When Social Services became involved with Rosdeep Kular and her children, it was a few months before Mohammed Abdi had been murdered and when Mikael her son began to show signs of emotional disturbance. The most important thing is that the attendant Social Worker must be a qualified and Licensed Social Worker with at least one UK university degree in social care studies. The Social Worker must follow a Code of Ethics and the government regulates the conduct and training of social care workers. The General Social Care Council regulates the conduct and training of social care workers and also social

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33 Paul O’Hare and Chris Clements, 'Revealed: student killed in gun gang street attack was son of Muslim community leader', Daily Record, 28 May 2013.  
34 See http://www.basw.co.uk/.
workers. With regard to Rosdeep Kular and her five children, they are culturally sensitive and so any social worker who attended them must have been aware of the British Association of Social Workers ('BASW') Code of Ethics which states that cultural awareness is a necessity for cultural practice.

The BASW Code of Practice states that social workers will give priority to service users' interests when ill-health or impairment requires the social worker to act on their behalf and to seek to safeguard and promote the rights of service users and ensure service users maximum participation in decisions about their lives. Especially in Scotland, social workers must be aware of cultural differences which might require independent, qualified interpreters where necessary. Working in a multi-cultural and multi-racial society requires qualified social workers to be committed to equality in meeting the needs of all children and families and to understand the effects of racial harassment, racial discrimination and institutional racism, as well as cultural misunderstanding and misinterpretation. Social workers should be trained to guard against myths and stereotypes, positive and negative, of black and minority ethnic families, which Rosdeep Kular and her children fall under.

By moving to a council apartment near where her estranged husband Adekoya was also living, Edinburgh Social Workers were satisfied that this would bring the young mother good support and child-care help from Omotoso Adekoya, the genetic father of her first set of children, Tarun, David and Renuka. Of course, the Scottish Social Worker might have been ignorant of cultural differences between people except that some were black and some were

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35 See http://www.gscc.org.uk/.
36 Mr Adekoya had been an overseas student in Edinburgh when he met Rosdeep and impregnated her, after which time they were legally married and he legally gained the right to stay permanently in the United Kingdom.
white, neglecting differences between, Church of England, Catholics, Muslims, Hindus, Buddhists, etc.

**Mitigating factor 6: Social Workers legal obligations to Rosdeep & her children not met**

It appears to be a solid case against the Local Authority of Edinburgh which has been negligent to Rosdeep Kular and to all her children and Kular should sue them. The Edinburgh Social Services were very negligent in first using draconian powers against this young mother and her children, scarring them for life, rather than showing the family gentle and caring treatment, contrary to the UK Human Rights Act 1998, of which Articles 6 and 8 guarantee to every parent and every child fairness, which imposes heavy burden on Local Authorities. (See the case of Re L [2002] 2 FLR 730. See also the case of Re S [2003]). Rosdeep Kular's parents or sibling must not be allowed to take decisions on her behalf. (See the case of R (on the application of M) v Secretary of State for Health (2003)).

A Social worker's legal obligations\(^\text{37}\) are to have respect for human rights and anti-discrimination legislation; to have awareness of users' statutory entitlements to services; to be aware of Family Law; Housing Law and homelessness; to respect confidential information and the limits to confidentiality;\(^\text{38}\) to be aware of their statutory powers; to be aware of criminal law offences such as violence and harassment; to be aware of their own legal powers and duties including legal processes; inter-agency working and the workings of the UK courts. Under the UK Children's Act 1989, there is provision which deals with

\(^{37}\) UK Local Authority (Social Services) Act 1970.  
\(^{38}\) UK Public Interest Disclosure Act 1999.
exercising of parental responsibility once an Emergency Protection Order has been applied for and granted. The Social Workers Code of Ethics provides a list of a social worker’s responsibilities, most of which were found wanting and so contributed to Mikael Kular’s death:

1. **Challenging discrimination**
   
   Social workers have a responsibility to challenge discrimination on the basis of characteristics such as ability, age, culture, gender or sex, marital status, socio-economic status, political opinions, skin colour, racial or other physical characteristics, sexual orientation or spiritual beliefs.

2. **Recognising diversity**
   
   Social workers should recognise and respect the diversity of the societies in which they practice, taking into account individual, family, group and community differences.

3. **Distributing resources**
   
   Social workers should ensure that resources at their disposal are distributed fairly, according to need.

4. **Challenging unjust policies and practices**
   
   Social workers have a duty to bring to the attention of their employers, policy makers, politicians and the general public situations where resources are inadequate or where distribution of resources, policies and practice are oppressive, unfair, harmful or illegal.

5. **Working in solidarity**

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39 The Community Care (Delayed Discharges) Act 2003 penalises Local Authorities which cannot provide for a discharged hospital patient. The Children’s Act 2004 is concerned with child protection.
Social workers, individually, collectively and with others have a duty to challenge social conditions that contribute to social exclusion, stigmatisation or subjugation, and work towards an inclusive society.....'

**Mitigating Factor 7 - Omotoso Adekoya hostility and complaint to Social Services**

Previously, Mr Omotoso Adekoya had complained to social services, whether true or untrue, during their acrimonious divorce proceedings, that Rosdeep had left the children unsupervised whilst she went out for the night. Omotoso Adekoya had called police, according to what neighbours told news reporters, who in turn had brought in Social Services Department whilst Rosdeep and the children were living in a private bungalow in a lovely sought-after neighbourhood, this property owned by Rosdeep’s family. It may be that other factors played a part in the acrimony between the two because Adekoya's immigration standing might have been affected by divorce and he might have had to return to his country of birth.

**Mitigating Factor 8: Police encouraged crown hostility to Rosdeep Kular**

Police encouraged mob ‘baying for blood’-by not disclosing facts ‘in the public interest’. Police decided to allow the search to continue until after midnight and then called a meeting to announce that the boy’s body had been found. They did not divulge to the media nor to anyone else that it was Rosdeep Kular Adekoya who had herself taken them to where the child’s body was. This surely is a mitigating factor in her favour. This was stressed in the
An accused person has is to speak in mitigation before sentence is passed. In the case of Clarke v H.M. Advocate, Lord Walker noted that:

‘An accused person is entitled as of right to lay before the jury all evidence which might properly induce them to commend him to leniency in the event of his being held guilty.’

Police Scotland did not reveal, until at trial in court in July 2014, that it was Rosdeep Kular herself who told them what happened and where the child's body was. Nevertheless Police Scotland let the local residents who volunteered to look for the child to continue to search on that cold night instead of calling off the search immediately that Rosdeep Kular took them to the place where Mikael Kular's body was! Police did not say, inciting more public outrage which could have led to a mob murder of Rosdeep Kular herself.

Mitigating factor 9-Serious criminal breach of Client Confidentiality by Scottish Social Workers; serious professional misconduct offences

It has been claimed that Fife Council had closed the case file and in a breach of client confidentiality, a social worker at Fife Council has spoken to a newspaper reporter and told him, unlawfully, that Rosdeep Kular had persuaded her to close the case and had told her that her estranged husband Adekoya and her were planning a reconciliation and that there was going to be no divorce. Furthermore police are now aware that 29 illegal accesses to government computers in Scotland have been recently made, yet no one has been arrested.

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40 [1975] SLT, at para 78. Even if an accused cannot avail himself of a legally recognised defence, he can always ask a court to take what he claims to be mitigating circumstances into account. ‘One of the rights which an accused person has is to speak in mitigation before sentence is passed.’

Police Scotland may not see any important regarding breaches of the police computer rules as they themselves often do what these 29 social services employees did, not to mention criminal offences contrary to the Computer Misuse Act.

In law 'serious professional misconduct' rests primarily on the word 'misconduct' which is defined in the case *Roylance v General Medical Council* 42 as follows:

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed...'

In law 43, the word 'serious' merely qualifies the word 'misconduct'. Therefore, in law, 'serious professional misconduct' means 'the professional misconduct is serious'. Serious professional misconduct includes gross professional negligence. We know that gross professional negligence is more than a degree of negligence. In law 44, even a single incident can amount to serious professional misconduct. Rosdeep Kular Adekoya's social workers in Fife Council and in Edinburgh Council failed to provide the high standard of care to which their client was entitled and thereby neglected their professional responsibilities to this client, Rosdeep Kular Adekoya.


43 See caselaw *Thorndon in Preiss v General Dental Council* [2001] 1 WLR 1926
44 See caselaw *McCoan v General Medical Council* [1964] 3 All ER 143
Mitigating factor 10-The possible Criminal Offence of Perjury committed by Social Workers

Obviously, Fife Council and Edinburgh Council did not see fit to verify this important lie neither did they consult the law or write up proper reports. It has been six months since Mikael Kular’s death and much time to rewrite, committing perjury, both council’s complete files on Rosdeep Kular Adekoya and her five young children. In fact, Rosdeep never reconciled with Adekoya and had since moving to Drylaw Housing Estate in Edinburgh, Scotland, experienced one very short friendship and a steady supportive relationship with Mohammed Abdi who was suddenly killed by machine gun bullets, allegedly by a drugs gang, bringing her total relationships with men to the minute number of FOUR. Most 16 year old females in the UK have had more intimacy than that. 45 Rosdeep Kular was a naive, inexperienced young woman who had great respect for life: otherwise she would have procured abortions did she want to become a ‘good time girl’, added to which, ‘good time girls’ hardly ever are capable of maintaining full-time employment as well as taking care of five young children.

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45 The fact is that in a developed country as the UK is, teenage pregnancy is usually outside of marriage. Early sex conduct by teenage girls is sometimes, but not always, an indication that they had experienced sexual abuse as children. Among child abuse offences are child sex offences, abuse of position of trust, indecent photographs taken of children, child abduction, rape of a child under thirteen and child prostitution offences. The maximum sentence for abuse of position of trust and sexual activity with a child is 12 months on summary conviction. The UK Sexual Offences Act 2003 creates four offences, in sections 16 to 19 in relation to sexual activity by people who are in a position of trust. There are people in our society who prey on children sexually. Many of these people go to great lengths to get themselves into positions that give them access to and authority over children, and then use that position to victimise children. (Sally Ramage, ‘Child abuse in the United Kingdom’, The Criminal Lawyer, Issue 191, July/August, 2009, pgs 1-3 ISSN 0956-7429).
Perjury offences

The Criminal offence of Perjury covers a range of criminal offences against the administration of Justice and also the Public Interest. Some perjury offences involve some form of interference with the machinery of justice, eg. Perjury as per the Perjury Act 1911, section 1 carries a maximum of seven years imprisonment on conviction. Witness Intimidation and other Perjury offences have an indirect effect on the Criminal Justice process. Section 2 of the Perjury Act 1911 is the criminal offence of making a false statement on Oath and this carries a seven year imprisonment and/or a fine of six months imprisonment and/or a fine if tried summarily.

Section 39 of the Criminal Justice and Police Act 2001 makes it a criminal offence to intimidate witnesses in other proceedings and section 40 is an offence of harming witnesses which carries a maximum of five years imprisonment if convicted. Section 7 of the Perjury Act 1911 is an offence of ‘aiding and abetting perjury’ and this offender, if indicted, tried and convicted faces two years imprisonment or summarily, six months imprisonment and/or a fine. Similar to the section 7 offence is the offence of making a false statement in criminal proceedings as per the Criminal Justice Act 1967, section 89.

Mitigating Factor 11 - Criminal Gross Negligence Manslaughter by Social Workers

Social workers who let this family slip through their fingers were grossly negligent. Even though the relevant social worker might plead that their actions were well-intentioned, the prosecutor’s case would be that this individual’s performance of a work-place duty caused
the death of Mikael Kular\textsuperscript{46} and Mikael Kular had the right to life as per Article 2\textsuperscript{47} which ranks as one of the most fundamental provisions in the ECHR, together with Article 3, enshrine the basic value of the democratic societies making up the Council of Europe. However, such a criminal prosecution may be vulnerable to the vagaries of discretion and discrimination. \textsuperscript{48}

**Mitigating Factor 12: Social Workers Breach of Confidential Information**

A professional social worker must conduct themselves by ethical codes, values, competence and responsibilities. Legally, a Social Worker appointed by the government must have a professional identity and this implies legal responsibilities and carries with it particular powers. So often these unqualified social workers use their powers without the full understanding of the legal consequences of the use of these powers, notwithstanding that social workers are accountable to society in a number of ways. It is the law that creates and controls the practice of social work.

The social worker is a state agent who should be qualified to carry out statutory functions with particular responsibilities for caring for the vulnerable on behalf of society. Already, Social workers involved with the Kular family have already illegally leaked gossip to the national newspapers stating that it was Rosdeep Kular’s fault because she fooled them and persuaded them that she was getting back with her estranged husband. If nothing else, this is a breach of client information and probably lies.

\textsuperscript{46} R v Holloway [1993] 3 WLR 922; R v Beckingham and Barrow Borough Council (NLJ, 154/7118 (2004), 326-327.
\textsuperscript{47} Article 2 declares that everyone’s right to life shall be protected by law
Once again, another local authority of the United Kingdom will have found itself totally free of blame and no doubt, as in other similar cases, the local government employees will have assuaged themselves of guilt, as if by going to a Church Service – feeling better and pushing even more paperwork.

**Mitigating Factor 13: Corruption in Local Authorities and Prison negligence potential**

The fear is that Rosdeep Kular Adekoya may be killed by other prisoner inmates whilst serving her sentence in prison, because he is not white and because a child died. We are reminded that historically, links between local councillors, officials and local businessmen had caused embarrassment to the government in Scotland, where three constituency Labour Parties in Renfrewshire were shut down after Scotland on Sunday exposed a web of bribery,\(^49\) drug dealing, money laundering, bid rigging and vote rigging mostly occurring in Paisley and Monklands District Council. There were also allegations of nepotism and sectarianism.

In recent years many unspeakable and barbaric murders of inmates have occurred in UK Prisons.

\(^{49}\) The Organisation for Economic Co-operation and Development (OECD) found that British companies were among the worse offenders for bribing foreign officials. On insisting that the UK enact a new Bribery Act, the report stated that: ‘Some 37 of the 55 companies which the World Bank publicly blacklists and has disbarred from participation in its contracts because of evidence of corruption, are domiciled in Britain’. Ramage, S. (2009) *Fraud investigation*, New York: iUniverse; at page 195.
Mitigating Factor 14: Corruption- a factor to considered in the present Councils’ Inquiry

Corruption is a frequently observed and well documented event in many government procurement auctions. Any abuse of power which results in what most people would regard as unfairness should be recognised as corrupt. It has been well documented that the United Kingdom has been found in the past to have police corruption and local authority corruption. Many UK newspapers have profited handsomely from sensationalizing the death of Mikael Kular as they did the death of the young black boy, Stephen Lawrence, killed on the streets of the United Kingdom as he made his way home decades ago. We now know that, after many lies, frauds and cover-ups, the courts decided that Stephen Lawrence was indeed stabbed to death in a racist attack as his parents have always insisted, but that inquiries were obfuscated by corrupt police officers.

Mitigating factor 15: Rosdeep was hard-working and in full-time employment until recently; she was a decent person

On a positive note, Rosdeep Kular managed to hold down full-time employment and always looked immaculate as did all five of her young children- this she accomplished with no home-help; no servants; no child-minder and no family to support her, even with five young children solely in her care; a fantastic feat since most Western women find it difficult to hold a full-time job with one child, much less five young children. She kept all her five young children well dressed, well- groomed and in good health. Who among her council-flat neighbours are even in employment, with or without children?

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50 The author of this Paper is the Annotator of the UK Bribery Act 2010 for Current Law Statutes Annotated, Thomson Reuters Publications.
There are few British women who can hold down full-time employment with five children under ten to care for. In this respect she was a stalwart and to be praised. This may be the reason for the child to begin to behave in an un-cooperative way and why, he was taken in the care of the Local Authorities for a short while in 2013. The shooting dead of her boyfriend in 2013, allegedly by gangsters dealing in drugs, must have terrified her personally, especially as Mohammed Abdi was a source of emotional and practical support to her. Rosdeep Kular went to school in Kirkcaldy in Scotland. She is Scottish by upbringing and culture. Her surname Kular is a Hindu name and her parents originated from India. Her parents were medical doctors and she and her younger sister had a typical middle-class upbringing.

She is to be differentiated from the millions of unemployed, drunken, council house tenants who take and deal in drugs. Rosdeep Kular studied beauty therapy at Fife College; graduated from that college as a qualified, licensed beauty technician, and worked in full-time employment until very recently, even though she had borne five children. She was no ‘good-time-girl’ as depicted in the scurrilous newspaper lies about her. ‘Good-time girls’ do not bear five children; ‘good-time girls’ would normally use oral contraception and usually have no children.

She married a student who was at the time working as a part-time taxi-driver. After that relationship broke down, she met a long-time school friend and had an affair, resulting in the twin children. In all, her boyfriends over the whole of her 34 years were four in total, of which she bore children for two of them, making her more of a saint than the millions of British females who have five children for five different partners; no employment and no skills or qualifications useful for employment.

Rosdeep found kindness and support in a young man named Mohammed Abdi, who died at age 25, in a shooting in Edinburgh in 2013, allegedly by a drug gang. He was from a decent
family and he was a good father figure to her children, assisting her whilst she worked full
time. Mohammed Abdi and his father had recently been charged with drug dealing when
police raided his parents' home and allegedly found money. They were due to be tried in
court around the time that Mikael Kular's body was found. There is much more to this cas
than meets the eye.

**Mitigating factor 16: mental illness-PTSD and PND leads to diminished responsibility**

Mohammed Abdi died, aged 25, and the children never saw him again. Rosdeep Kular must
have been utterly devastated to learn of the death of her boyfriend Mohammed Abdi on 26
May 2013. Mohammed was a Muslim whose father was an Imam at the Edinburgh Central
Mosque, and he was shot dead with machine gun fire on 26 May 2013 by the drugs gang of
whom he was to give evidence in court in April 2014.

Rosdeep was then left with the twin children and no father figure for them not the helpful
support this young man gave to this family. A gang of men who were drug dealers are
*alleged* to have murdered Mohammed Abdi because he allegedly told police who the drug
dealers were, according to newspaper headlines. Abdi had helped her to care for her children
and he was obviously protective of her. Her young son Mikaeel was close to him. Then one day in the year 2013, the children never saw him again.

What happened to Rosdeep Kular was a mixture of Post Traumatic Stress Disorder and Post-natal Depression which was prolonged and left untreated. Her relatives were harsh with her and called in Social Services Department but unfortunately, most so-called social workers in the United Kingdom are totally unqualified and are no more than automatons doing a job they do not really understand because they have not been educated to UK University degree level on sociology and social care.

**Why was diminished responsibility not pleaded?**

The Scottish law on diminished responsibility is in the Full Bench decision of *Galbraith v H.M. Advocate*. The opinion of the court in the *Galbraith* case illustrates the largely unsettled and confused terminology in the concept of diminished responsibility. Before the

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51Mohammed Abdi used to take Mikael to his kindergarten school whilst Rosdeep Kular held down a full time employment as a fully qualified graduate beauty therapist.
The Galbraith case a plea of diminished responsibility was unsuccessful unless there was mental disease or a state of mind almost bordering on insanity. At trial in July 2014, the Prosecutor accepted that Rosdeep Kular did not intended to murder her youngest son and offered her a charge of culpable homicide instead of murder, to which she pleaded 'guilty'. One is at a quandary as to why Kular’s legal defence team allowed her or encouraged her to plead at all.

She is sick and she should have had a verdict of ‘not guilty’ by reason of unfitness to plead. The question of ‘fitness to plead’ arose in the case of R (on the application of P) v West London Youth Court.

If a person was mentally disordered at the time of the offence then this may affect his/her legal responsibility for his/her actions. In some cases the court may find that the person's mental condition was such that he/she cannot be held responsible for his/her actions, he/she is then acquitted on account of insanity in terms of section 54(6) (also known as insanity at the time of the offence or not guilty by reason of insanity). A person may also be acquitted on the ground of insanity in terms of section 55(3) and (4), where the trial diet has been discharged and an Examination of Facts has taken place. In murder cases, a person's mental condition may be such that although he/she cannot be acquitted on account of insanity, he/she may be found to be of diminished responsibility. The latter is a mitigating plea as opposed to a defence and therefore does not result in acquittal, but in conviction for the lesser offence of culpable homicide. Diminished responsibility, unlike insanity, does not have any specific procedures attached to it, but is conveniently described here because, like

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52 Sentencing has been deferred until 25 August 2014 at the High Court in Edinburgh.
In my previous paragraphs I have illustrated how it is that Rosdeep Kular suffers from diminished responsibility and that the charge of murder must have been a tactical one in order that she pleads guilty.
acquittal on the ground of insanity, it is concerned with the impact of mental disorder on a person's responsibility for an offence.

Mitigation Factor 17: No fair trial in breach of Rosdeep’s Article 6 Human Rights ECHR and UK Human Rights Act 1998

This Paper has attempted to touch on the complex factors in the background of the jurisdiction in which this boy's death occurred - leading to the concealment of the body. I have attempted to clarify the true politics of Scotland rather than support the incitement of newspaper reports which attempted to instill in readers' minds that Scotland in over-run by black, gun-toting drug-dealers and drunken black women murderers.

Rather, it is widely known that Scotland had much drug dealing, drunkenness; unemployment and persistent youth offenders and sex offenders. Rosdeep Kular's right to a fair trial is constantly being eroded by scurrilous and unverified statements made in the media, despite legislation that prohibits this. The newspapers in the United Kingdom have already breached legislation on unlawful disclosure and so it appears have the medical profession and/or its operatives. Rosdeep needs to have natural justice and a FAIR TRIAL according to article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, scheduled to the Human Rights Act 1998 which begins with the declaration that in the determination of her civil rights and obligations or of any criminal charge against her, she is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Did Rosdeep have a fair hearing? No.

The hearing was biased. The common law tests for apparent bias have fluctuated to some extent over the years, albeit with differences probably more semantic than substantial for the

purposes of most cases. *R v Gough* [1993] AC 646 in the House of Lords was widely understood to have upheld a test (real danger in the eyes of the court) rather less strict than the main competing formula (reasonable suspicion in the eyes of a notional informed observer). By advising Rosdeep to accept the guilty plea, her own defence legal team let her down. Mitigation evidence could have influenced the decision on culpability.

Newspapers made huge profits for many days as they and television channels, using telescopic lens, showed dramatic pictures of police searching undergrowth close to where the body of three-year-old Mikael Kular was found, as his mother Rosdeep is charged in connection with his death. To make profits from sale of their newspapers, the crime scene area had been said to be totally contaminated because of the many lay persons solicited by police to search.

However not one newspaper has been prosecuted for inhibiting the Human Rights of a Fair Trial or for breach the Crime and Punishment (Scotland) Act 1997. They remain a 'law unto themselves' and have perhaps bribed someone for this information, whether the information is true or untrue.
Mitigating Factor 18: Rosdeep Kular Adekoya risks being murdered in Prison and
Corton Vale Prison unfit for purpose

At present Rosdeep Kular Adekoya is in custody at a women's prison near Stirling, Scotland,
namely, Her Majesty's Prison Corton Vale, which was found in December 2012 to be unfit
for purpose. 55 This consultation report was the catalyst to a new women's prison built in
Scotland.

The report stated:

' HMP Cornton Vale in its current form is not fit for purpose in the longer term.
Steps need to be taken quickly to improve both the circumstances and outcomes
for women offenders. The SPS wants to involve partners and stakeholders in its
plans to deliver as early as possible an improved regime for women offenders.
Looking forward, views are also sought on the longer term solution including
what the size, nature and location of a new national prison should be....'

The fear is that another prisoner might take the law into their own hands and kill Rosdeep Kular.

Nor will it do her mental health any good to isolate her for the duration of her sentence in case somebody inside prison attempts to torture or kill her. As a prisoner, Rosdeep Kular is entitled to contact with the outside world; to contact with other persons within the prison community she has been punished to live with; and she is entitled to keep herself in good health according to her right to life in Article 2, ECHR, besides which, the Prison Act 1952 and Prison Rules 1999 do contain minimum entitlements in some areas (the Prison Rules, r 35 provides for a minimum number of social visits- what prisoners should expect on top of these, or where the statutory framework is silent, has been a matter of debate.) The Woolf Report following the prison riots in 1990 recommended that Standing Order 4, which deals with facilities for prisoners, should be amended (para 14.35) to:

‘…make clear the facilities which should normally be provided for prisoners. The amendments should recognise that these facilities should no longer be provided as privileges, but as a prisoner’s normal expectation.’

This was to ensure consistency between prisons, the lack of which had fed prisoners’ grievances. The Woolf Report suggested that facilities that were not part of the prisoner’s ‘basic standard of life’ could be forfeited only as a result of disciplinary proceedings. Despite the effect of the Woolf report in other areas, no such amendments were made.
Mitigating Factor 19: Rosdeep Kular Adekoya had been in large part a good mother who was normally protective of her children

A strong mitigating factor is that Rosdeep Kular normally had been a good and protective mother to her five children. Those living in the six-flat building said the children often played in the stairwell, indicating that Rosdeep Kular was protective of her children in this rough neighbourhood she was now forced to live in, to appease the social workers by agreeing to move near her almost divorced husband.

Mitigating Factor 20: Rosdeep Kular Adekoya has no previous criminal convictions

By the Act of Adjournal (Criminal Procedure Rules) 1996 SI 1996/513, the prosecution must show a certificate relating to previous criminal convictions and Rosdeep Kular has no previous criminal convictions as per section 285(2) (certificate relating to previous convictions) and section 285 (5) (certificate relating to fingerprints of previously convicted person).

Conclusion

Should Rosdeep's trial been unfair by not producing expert witnesses to state on her behalf her mental state; witnesses of her strong work background, etc, then she should be acquitted:
The most worrying aspect of this case is the realisation that there are illegal machine guns aplenty in the United Kingdom where not even Parliament had not realised that Police Scotland took total autonomy into buying and walking around with machine guns, as they pleased. When the main newspapers tell us this piece of information, causing uproar in Parliament, it brings to the fore whether it was indeed Police Scotland who shot dead 25 year old Mohammed Abdi, and blamed black young men.

One wonders.

The machine guns are the backdrop to this case.

If Scotland were overrun with drugs, the drug hauls would have been many millions of pounds so Scotland, if overrun by drugs, must have organized criminals who are cunning money launderers. The walking the streets with machine guns without the knowledge of...
Parliament in England is without precedent and an indication of what lies legally asunder in the jurisdiction of Scotland.
The Death of Punishment: Searching for Justice among the Worst of the Worst

Professor Robert Blecker (Author)
Published by Palgrave Macmillan (2013)
ISBN-10: 1137278560 (Kindle)
Hardcover Price 16.35 pounds
Kindle Price 15.53 pounds

Book Review written by Richard Barbuto$^56$

Crusader of the death penalty

If you want to read a book about the pros and cons of the death penalty, this is not it. *The Death of Punishment: Searching for Justice Among the Worst of the Worst* appears to fail to do much more give is the pros and cons of the U.S. death penalty laws. Perhaps, though, it may have furthered Professor Robert Blecker's career as a crusader for the death penalty. For the sake of full disclosure, the reviewer is not a death penalty advocate, finding the

$^56$ Richard Barbuto is an attorney-at-law in the United States of America, practicing in criminal law. He is a past President of the New York State Association of Criminal Defense Lawyers ('NYSACDL').
imposition of the death penalty barbaric and believing that it should be abolished, an opposing moral stance to Robert Blecker's. However he does not claim that every murder requires the death penalty. Indeed, he proclaims that only 'the worst of the worst' should be executed and in support of his argument, Professor Blecker relies on conversations with death penalty prisoners over the past 10-plus years. Examples of the cases this author discusses include multiple murders of children; cases involving torture followed by death; rape-murder cases; and other heinous crimes.

Murder cases male Robert Blecker 'emotional'

There is no question that the cases he writes about will make your blood boil. Throughout the book, Blecker talks about how emotional this subject makes him, and how much he wants the 'monsters' perpetrating such acts to be killed. This, of course, is part of the problem. The criminal justice system must be administered by professionals in a fair and impartial manner, not by over-emotional law professors.

Proportionality in sentencing in murder cases

Blecker does spend time discussing the notion of proportionality in sentencing. His proposal is that the death penalty should be reserved for only the 'worst of the worst' cases. This is not exactly a novel position, as penal law recognizes that different crimes require different sentencing times. For example, in New York State, where Robert Blecker teaches criminal law at university, there is no death penalty.

Murder in the first degree
However, murder in the first-degree can carry a penalty of imprisonment for life without parole whereas a conviction of murder in the second degree carries a maximum penalty of 25 years to life in prison. Murder in the second-degree at least carries the possibility of parole. There are, of course, many different homicide categories in New York State, including manslaughter, vehicular homicides, negligent homicides, etc. Each of these crimes has a specific sentencing penalty attached to it, based on the New York State Legislature’s determination of the seriousness of the crime. This business of proportionality depends on the nature of the crime and the intent of the actor when committing the crime.

**Written from academic standpoint**

The fact is that the book *The Death of Punishment: Searching for Justice among the Worst of the Worst* is written from an academic point of view and as a result, it suffers some shortcomings. The author's research is mainly based on his interviews of prisoners on Death Row\(^5\) and on a few people working in the actual prisons. There were not, that I saw, any interviews or conversations with trial lawyers, although Blecker did have some conversations with appellate attorneys.

**Ivory Tower Professors**

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\(^5\) See table below of United States Death Row Prisons. In 2013, there was over 3,000 persons in Death Row Prisons.
Crimin

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As is often the case, 'Ivory Towers' are sometimes claustrophobic. If Robert Blecker were serious about tackling problems in Sentencing in murder cases he might wish to walk the floors with a prison guard or try one case or two with seven in the trenches. In this way, he might have reached a more balanced view of the workings of the U.S. Criminal Justice System.

**Conclusion**

As a reviewer I think it appropriate to ask why this book was written. As far as the pros and cons of the death penalty go, it does not appear to contribute much in this area of law. In terms of sentencing defendants to the death penalty, Professor Blecker does not really come up with any particular construct. In my personal opinion, advocating for the administering of the death penalty to the worst of the worst raises too many obvious, unanswered questions because, to accept that proportionality is the key to fair sentencing, legislatures throughout the United States have already reached that conclusion. Professor Blecker is a very smart man, make no mistake about that. But this book, *The Death of Punishment: Searching for Justice among the Worst of the Worst*, in this Counsel's humble opinion, fails to do much more than perhaps further Blecker's career as a crusader for the death penalty.

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58 According to the Cambridge Dictionary, to live or be in an ivory tower is not to know about or to want to avoid the ordinary and unpleasant things that happen in people's lives. Academics sitting in ivory towers have no understanding of what is important for ordinary people.
Table 1: Death Row locations in the United States of America

<table>
<thead>
<tr>
<th>Type of Prison</th>
<th>Men’s Death Row</th>
<th>Women’s Death Row</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama State</td>
<td>Holman Correctional Facility, Atmore &amp; Williams E Donaldson Correctional Facility, Bessemer.</td>
<td>Julia Tutwiler Prison for Women</td>
</tr>
<tr>
<td>Arkansas State</td>
<td>Varner Unit</td>
<td>McPherson Unit</td>
</tr>
<tr>
<td>California State</td>
<td>San Quentin State Prison</td>
<td>Central California Women’s Facility</td>
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<tr>
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<td>Arrendale State Prison</td>
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