

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a reference by the Secretary of State under Section 4 of the Forfeiture Act 1982 ("the 1982 Act"). The subject of the reference is a woman who was born in 1950 and whom I shall call P. Her late husband was born in 1947: I shall call him D. For the reasons I give below my findings are as follows:-

- (a) A, with whom P had formed a relationship, unlawfully killed D on 27 October 1998.
- (b) P unlawfully counselled the death of D.
- (c) The forfeiture rule, namely the rule of public policy which precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing, applies to P in respect of any social security benefits she might otherwise be entitled to on proof of D's death.
- (e) The only social security benefit potentially accruing to P on proof of D's death (in the circumstances of the present case) is widow's pension for the period between 16 June 2000 and 1 September 2001.
- (f) The forfeiture rule applies to that benefit.
- (g) I am not precluded by section 5 of the 1982 Act from considering whether or not to modify the effect of the forfeiture rule under section 4 of that Act.
- (h) In the circumstances of the case justice does not require me to make any modification of the forfeiture rule.
- (i) I remit the case to the Secretary of State to determine entitlement to benefit in the light of my decision.

2. P (who had been married to D for over 20 years and by whom she had had two children, both grown up at the time of the events in question) formed first a friendship and then an intimate relationship with A. For a period in 1997-1998 she left D and went to live with A. She then returned to D in June 1998, but kept seeing A. On 27 October 1998 D was killed by a shotgun. On the evening of the same day A went to a police station and stated that he had killed D, but that it was an accident: he took with him the shotgun. On 14 November 1998 P, having written letters to her mother, son and daughter, and A, went to a police station and was interviewed. She was again interviewed on the following day. A and P were each charged with a count of murder. The trial started on 6 July 1999. The judge, in the absence of the jury, heard a submission on behalf of P that what P had said during her interviews with the police should not be admissible in evidence against her on the grounds that P was suffering from depression and that there had been no appropriate adult present at her interviews. The judge heard evidence from a number of medical practitioners, including P's GP and a doctor who had examined P before she was interviewed. Although the judge found that P was suffering from depression, he ruled that the contents of the interviews and the letters written by P were admissible in evidence. On 14 July 1999 (i) A pleaded guilty to

the murder of D, (ii) the count of murder against P was ordered to lie on the file and not to be proceeded with and (iii) a further count against P of soliciting to murder D was added to the indictment. P pleaded guilty to this count. A was sentenced to life imprisonment; P was sentenced to 42 months imprisonment.

3. P was released from prison on 16 June 2000. On 23 August 2000 she claimed widow's benefit. On 22 May 2001 the Secretary of State referred the claim for widow's benefit to the Commissioner for determination whether P was precluded, by virtue of the forfeiture rule, from receiving widow's benefit following her conviction upon indictment of soliciting to murder. P remarried on 31 August 2001, having started to live with her new husband at or about the beginning of June 2001. She has subsequently separated from her new husband.

4. I directed an oral hearing of this reference, to be held at a venue convenient to P. I further indicated that P should, if she could, obtain advice from an appropriate organisation. She responded by indicating that she would not attend nor be represented at any oral hearing. I accordingly further directed that there should be an oral hearing in London at which the Secretary of State should be represented, so that I might be certain that all issues I had to decide were properly dealt with. At that hearing Mr Lewis appeared on behalf of the Secretary of State and gave me considerable assistance by way of both written and oral submissions. I am grateful to him.

5. Although the convictions are prima facie evidence that P and D committed the offences with which they were charged, it is necessary for the purposes of this jurisdiction that I briefly review the evidence that was before me and make my own findings of fact. The evidence before me consisted of the interviews by the police with each of P and D, a transcript (not official, but prepared by or on behalf of P's solicitors) of (i) the submissions to the judge at the trial on the admissibility of P's interviews with the police (ii) the judge's ruling on that issue, (iii) prosecuting Counsel's outline of the case to the judge, (iv) P's Counsel's plea in mitigation, and (v) the judge's comments when passing sentence.

6. My findings are as follows. P and D met in 1970. They had two children (who had left the matrimonial home by the mid-1990s). P had intermittently suffered from periods of depression. At some time in the latter half of the 1990s P and A became friends at work. By this time P's marriage to D had fallen into difficulty. By the end of the summer of 1997 P and D had formed an intimate relationship. She left D for a time and moved in with A. In June 1998 she returned to D because she wished to restore the unity of her family, and to retain the affection of her children. She continued to see A, who wanted her to leave D. A took shotgun lessons in the middle of August 1998. He applied for a shotgun licence. He received a licence on 23 October. P was told of this on the same day. On 24 October (a Saturday) A purchased a shotgun and cartridges. On 26 October (a Monday) P met A at lunch-time and A arranged with P to follow her that evening to her home (where she was then living with D) so that A would know exactly where it was. On 27 October P and A again met at lunch-time. P told A the registration number of D's car and the approximate time at which D would arrive home. P told A that she had a dental appointment in the evening of that day. P went to her dental appointment and spent time afterwards buying a newspaper and milk so that she would not return too early. A shot D outside his home shortly before 6.00 p.m. When P returned home she found that D had been shot. Later that evening A went to a police station. During the course of her interviews on 14/15 November 1998 P stated, first, that A had told her he was going to shoot D and, secondly, that, although P had asked A to "walk away", P could nonetheless have stopped him by telling someone else. In her letter to her

children P stated that although she did not actually pull the trigger she was guilty in every other sense.

7. Section 1 of the 1982 Act provides:-

“(1) In this Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.

(2) References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other and references in this Act to unlawful killing shall be interpreted accordingly.”

8. P pleaded guilty to the statutory offence (under Section 4 of the Offences against the Person Act 1861) of soliciting to murder, for which the maximum sentence is life imprisonment. P was in fact sentenced to 42 months imprisonment, the judge stating that if P had not pleaded guilty the sentence would have been six years and that he reduced it not only because of her plea of guilty but also because of her remorse and mental health. I have to consider not whether P committed the statutory offence to which she pleaded guilty but whether she “unlawfully ... counselled ... the death of [another]” within Section 1(2) of the 1982 Act. It is clear from the decision of the Court of Appeal in Dunbar v. Plant 1997 4 All ER 297 that it is not necessary, for the application of the forfeiture rule, for the person concerned him or herself to threaten violence or to be personally involved in violence. The question I have to answer is whether P intentionally counselled (assisted or encouraged) A to kill D. P knew that A had a shotgun, she showed him where D and she lived, and she gave him the registration number of D’s car and the likely timing of D’s movements. She further made sure that she would not be near the scene of any killing until after it took place. I have no difficulty in finding that, even making every allowance for her mental state, P intentionally and unlawfully counselled (assisted or encouraged) the death of D.

9. It follows from my finding in the previous preceding paragraph that the forfeiture rule applies in the present case. Before I turn to the question of whether or not I should modify the application of the forfeiture rule, there are two further issues with which I have to deal.

10. First, Mr Lewis faintly submitted before me that if I should find that P had unlawfully counselled the death of D, this was tantamount to a finding that P was an accessory to murder within Section 8 of the Accessories and Abettors Act 1861 and that P should be treated exactly as if she had committed the crime of murder which A had committed. He further went on to submit that Section 5 of the 1982 Act, which provides:-

“Nothing in this Act ... or in any decision made under section 4(1A) of this Act shall affect the application of the forfeiture rule in the case of a person who stands convicted of murder.”

prevented me from exercising the jurisdiction contained in Section 4(1A) (relating to the Commissioner’s power to modify the effect of the forfeiture rule). I reject these submissions. First, section 5 refers to a conviction for the offence of murder, a common law offence, for which there is a fixed sentence of life imprisonment. P was not convicted of that offence: she was convicted of a statutory offence under the 1861 Act for which sentencing is in the discretion of the judge. Therefore she is not within the ambit of section 5. Secondly, (although it is not for the Commissioner to embark on this hypothetical investigation) even on

the hypothesis that P's trial had continued on the charge of murder, there is the strong likelihood that she would have pleaded diminished responsibility: if this plea had been successful, any subsequent conviction would have been for manslaughter, rather than murder.

11. The second issue is what benefits there are to which P might otherwise be entitled and which could be effected by the application of the forfeiture rule. The principle is set out in paragraph 27 of R(P) 1/88: it is that no person who has committed an unlawful killing to which the forfeiture rule applies can receive any social security benefit if they can do so only upon proof of the death of their spouse. There are theoretically four possible social security benefits in issue in the present case. First, widow's payment, a lump sum payment made upon the death of a husband: this, however, can only be paid if a claim is made within 12 months of the relevant death (see section 1(2) of the Social Security Administration Act 1992). No such claim was made. Secondly, widowed mother's allowance: no question arises of any entitlement on the part of P to this allowance since at no time following the death of D did she have any children in respect of whom she was entitled to child benefit. Thirdly, category B retirement pension (based on D's contributions): although P might have had a potential entitlement to such a pension that potential entitlement came to an end when she remarried in August 2001; any further entitlement to a Category B retirement pension would be based on the contributions of her second or any future husband and not of those of D. The only benefit in issue, therefore, is widow's pension. This cannot be paid for any period for which the claimant was serving her sentence of imprisonment, nor can it be paid for any period more than three months prior to the date of claim. The earliest that it can run from is therefore 16 June 2000 (when P was released from prison). Any potential entitlement to that benefit had to cease on her remarriage and could not be paid in respect of any period during which she was living with her future husband as man and wife. Accordingly any entitlement to widow's pension would have ceased on 31 August 2001 (when P remarried) and may have terminated when she first went to live with him in or about the beginning of June 2001. The sole benefit with which I am therefore concerned is the potential entitlement to widow's pension from 16 June 2000 until, at latest, 31 August 2001. During this time P was in receipt of income based jobseeker's allowance for an approximate total period of seven months. By virtue of Section 74 of the Social Security Administration Act 1992 (relating to the offsetting of late paid benefits against means-tested benefits which would not have been paid had the first mentioned benefits been paid on time) the claimant would not have received any widow's pension for the periods when she was in receipt of means-tested jobseeker's allowance.

12. The jurisdiction of the Commissioner to modify the effect of the forfeiture rule is contained in subsection (1A) and following of section 4 of the 1982 Act. Relevantly these provide:-

“(1A) Where a Commissioner determines that the forfeiture rule has precluded a person (in this section referred to as the offender) who has unlawfully killed another from receiving the whole or any part of any such benefit or advantage, the Commissioner may make a decision under this subsection modifying the effect of that rule and may do so whether the unlawful killing occurred before or after the coming into force of this subsection.

(1B) The Commissioner shall not make a decision under subsection (1A) above modifying the effect of the forfeiture rule in any case unless he is satisfied that having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the Commissioner to be material, the justice of the case requires the effect of the rule to be so modified in that case.”

I have taken into account P's mental state in October 1998, and her subsequent genuine remorse. However, it is clear that P played a significant part in the criminal enterprise, which part I have identified above: P assisted A to identify D and where D would be on the evening in question. Given that only entitlement to widow's pension is in issue and that for a period of less than 15 months and further given that in any event payment for some seven months or so would not be made because of offsetting, justice cannot require me, in the circumstances of the present case, to make any modification of the forfeiture rule. I therefore do not do so.

13. As I have explained above, no question of entitlement to Category B retirement pension based on D's contributions can arise because of P's remarriage. I therefore do not have to consider Section 4(1E) of the 1982 Act.

14. In accordance with regulation 29 of the Commissioner's Procedure Regulations 1999 I remit the case to the Secretary of State for any necessary determination on entitlement to benefit to be made in the light of my decision.

(Signed) A Lloyd-Davies
Commissioner

(Date) 17 April 2003