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Case No: 2010/00661/C1

COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CENTRAL CRIMINAL COURT
The Common Serjeant

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2010

Before:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE IRWIN
and
MR JUSTICE HOLROYDE

Between:

R
- and -
Inglis

Mr A Newman QC and Mr G Harrison for the Appellant
Miss M Moore QC and Mr R O'Sullivan for the Respondent

Hearing date : 20th October 2010

Approved Judgment

The Lord Chief Justice of England and Wales:

1. On 7 July 2007, when he was 21 years old, Thomas Inglis, a fit young man, was being taken to hospital in an ambulance. On the way the back door opened three times. On the third occasion he fell out and suffered catastrophic head injuries.
2. Two months later, on 4 September 2007, his mother, Frances Inglis, the appellant, tried to kill her son by injecting him with heroin as he lay in his bed in hospital in Romford. He suffered cardiac arrest. Although he was resuscitated, he suffered further consequential deterioration in his condition. The appellant was arrested. After she denied any responsibility for the presence of heroin, she was charged with attempted murder. In the interests of Thomas's safety she was granted bail subject to a condition that she should not visit him.
3. Just over a year later, on 21st November 2008, having carefully planned how to gain access to her son in breach of bail, the appellant killed Thomas by again injecting him with heroin. It is as well to emphasise at the outset that this was not, and it has never been suggested that it was, an assisted suicide.
4. On 20 January 2010 at the Central Criminal Court, before the Common Sergeant of London and a jury, the appellant was convicted of attempting to murder her son in September 2007, and after the judge concluded there was no evidence on which to leave the defence of provocation to the jury, of murdering him in November 2008. She was sentenced to the mandatory term for murder of life imprisonment. The minimum term to be served before parole could be considered was assessed at 9 years, less 423 days spent on remand.
5. This is an application for leave to appeal against conviction and sentence. We must address the facts in some detail.
6. Thomas Inglis was born in April 1986, one of the three sons of Alex and Frances Inglis. The marriage ran into difficulties and in 1996 they parted. Some features of the appellant's medical history at that time are relevant. In December 1995 an examination revealed that she had "the hallmarks of a depressive illness". By the following March her situation had not changed, and she remained "distressed and depressed" and was advised to take an anti-depressant. In June it was reported that she had ceased taking the medication because she was worried she would become dependent on anti-depressants. Some 10 years or so later, but before the accident to Thomas, in June 2006, a fresh diagnosis of post traumatic stress disorder was made. In the meantime the appellant, who had been a learning support assistant, took up a place on a nursing diploma course, which covered the principles of drug administration and pharmacology.
7. At the date of his accident Thomas was in sound health, living an independent life with his girlfriend. In the early hours of 7 July 2007 he was involved in a fight in which he received a blow to the head. Against his wishes he was required to go to hospital. An ambulance was called. On the way to hospital the back doors of the ambulance opened twice. When they opened on a third occasion, Thomas fell out of the back and sustained severe head injuries. He was taken to the neuro-intensive care unit of the Queen's Hospital Romford, in a deep coma, and put on a life support machine. A decompression operation was carried out almost immediately. Part of

the front of the skull was removed to relieve pressure on the brain. Without the operation he would have died.

8. Immediately after the accident, the appellant was examined by the doctor on call. The appellant reported that Thomas was in a “vegetable state”, and she herself was very depressed and tearful... “hopeless and helpless,” but denying suicidal thoughts.
9. A further decompression life saving operation to remove more of the skull was carried out on 10 July. One result of the operations was severe disfigurement. We have seen photographs showing the condition of Thomas’s face and skull. They are indeed distressing, and it is clear that the appellant was shaken by the physical appearance of her son. She was later to say that the first time she saw her son her heart broke. Following this second operation, the supervising consultant, Mr Vindlacheruvu, had a discussion with the family, suggesting that the early signs were encouraging, and he told them that it was possible that Thomas could end up leading an independent life. He added that he had seen patients in worse condition who had eventually recovered sufficiently to be able to run their own businesses.
10. The family views about the operations, and in particular the second operation, were distressingly contradictory. The appellant was opposed to it. Thomas’s father, who believed that without the operation his son would die, agreed to it. That provided the necessary consent. So it was undertaken. The appellant regarded the operation as subjecting her son to yet further and completely unnecessary suffering. In recording her attitude to it we are not to be taken as implying that her attitude accurately reflected the reality, but it undoubtedly accounted for her perception that the operation was “an act of madness”. The appellant totally rejected what she regarded as the unfounded optimism of Mr Vindlacheruvu. At the time the rest of the family did not.
11. During the meeting with Mr Vindlacheruvu on 17 July, the appellant was observed to be very distressed, and she was unable to stay to the end of the meeting. That evening she went round to see a neighbour. She appeared to be irrational, and quite unlike herself. She reported that Thomas was in a “cabbage” state, and she asked the neighbour to find someone who could find some pure heroin so that his life could be ended. She said that she wanted to take him out of his misery and end his pain. Very sensibly, the police were called. They took the appellant home, and spent several hours with her, trying to calm her and reassure her.
12. Something of her perception about the consequences of the accident, and indeed the operations, is revealed in the evidence of her eldest son, Alexander. He suggested that his mother was “frantic and stressful to be around, because of her emotional swings and crying”. Although the doctors suggested otherwise, she was adamant that Thomas could not get better. She was convinced he would be a vegetable, and had become obsessed with the thought. She felt that Thomas should never have been resuscitated and should have been allowed to die a natural death. The operation was “evil”. Alexander expressed his concern for the safety of his brother “because of what she says, the way she acts, she thinks that she has to release Thomas from his suffering...she thinks he is in pain, when it is obvious he is not”.
13. At the same time, the family as a whole were unified in their concern about the circumstances of the accident, and how, as they understood it, it had come about that

Thomas had been taken to hospital against his wishes, and how and why the rear doors of the ambulance had opened on no less than three occasions.

14. In August 2007, Thomas was assessed by the Regional Rehabilitation Unit. He was not ready to transfer into that unit until he was able to swallow on his own, and he was assessed as likely to need dependant care in the long term. The appellant and the family visited Thomas daily. By September, the family was increasingly concerned about the appellant. She was constantly crying. She was desperately but unsuccessfully hoping to find someone to agree with her view that there was no hope for Thomas, and that it would be better if he were dead and at peace.
15. The appellant's belief that Thomas should be released from his suffering never changed. Over the days before she first injected Thomas with heroin, the appellant had been crying for the whole day "non-stop...just acting weird". When she was examined for the purposes of addressing the charge of attempted murder, the conclusion of Dr Gillian Mezey, a distinguished forensic psychiatrist, was that in the period leading to the offence the appellant was "becoming depressed" (and that) "this would have affected her perceptions and judgment". She believed that she needed to relieve Thomas of his suffering, which in her mind was being prolonged and exacerbated by the interventions of the medical team. She had convinced herself that she was the only person who had his interests at heart or who genuinely cared for him.
16. On 4 September when the hospital was short staffed, the appellant arrived to visit her son. She expected to see him in a chair, but he was still in bed. She was left alone with him. Some time later it was appreciated that she had left and that Thomas had become very ill. The team responsible for his care was called. He had suffered cardiac arrest. His lips were blue and he was not breathing. The heart monitor showed that he was clinically dead. He was resuscitated. The cardiac arrest was not expected, and there was no obvious cause for it. The incident was reported to Thomas's parents, and his father queried whether the appellant may have had something to do with what had happened.
17. During the following days the appellant was heard to repeat the view that Thomas should never have been resuscitated at the hospital. Then, on 21 September, the results of tests on samples taken from Thomas on 4 September revealed the presence of constituent parts of street heroin. The police were called. The appellant was arrested and interviewed. She denied any knowledge of how heroin had got into the deceased body and denied that she had ever had any idea of ending Thomas's life. It is a feature of the interviews with the appellant that she was content to allow suspicion to fall onto Thomas's father or his brother or those responsible for his care at hospital. She was, however, later to accept that she had lied to the police, and in her defence statement she admitted that she had injected her son with heroin, but denied any intention to kill him. When she gave evidence at her trial she said that she had lied to the police deliberately, believing that if she told the truth she would be deprived of bail, and so would be unable to visit her son and kill him.
18. After she was charged with attempted murder, the appellant's bail was extended, but for the sake of Thomas's safety, it was made an express condition of the continuation of her bail that she should not visit him. In May 2008, her solicitors indicated that she intended to plead guilty to attempted murder on the basis that her actions represented

an act of mercy, and her intention was to put Thomas out of his misery. Accordingly the only issue for decision was sentence.

19. In the report prepared for the purposes of the sentencing hearing, Dr Mezey recorded that the appellant did not accept that her “behaviour and actions were unjustified and she did not express remorse for what she has done. She continues to believe that she is acting in Thomas’s best interests in administering heroin. These views and perceptions are likely to be affected by her continuing level of mental disturbance”. It was recommended that she should receive psychiatric treatment and specific focussed psychotherapy to help her come to terms with her son’s accident.
20. It is clear from all the evidence that while arrangements were being made for the hearing of the attempt murder charge, and the sentence which would follow conviction, the only remorse the appellant suffered arose from the fact that her attempt to kill Thomas had failed, and that her intention to kill him, and to find the opportunity to do so, was and remained settled.
21. Two important questions connected with the attempted murder of Thomas remain. The first relates to the extent to which this injection of heroin aggravated Thomas’s condition, and the second, the development of the appellant’s mental condition after the failure of that attempt to kill Thomas.
22. It is overwhelmingly likely that Thomas’s condition deteriorated as a direct result of the cardiac arrest which followed the injection of heroin. The report from Mr Peter Kirkpatrick FRCS recorded the severe brain injury sustained by Thomas on 7 July 2007, and the expeditious decompressive craniectomy surgery which proved life saving. Prior to the cardiac arrest on 4 September, “the indications were for a reasonable neurological recovery”, but Mr Kirkpatrick explained that after patients have suffered injuries similar to those sustained by Thomas, and life saving operative treatment, even if they can become “largely independent in their physical capabilities, they may have significant cognitive difficulties”, needing structured support. He doubted whether Thomas could have gone on to improve to such an extent that he could have found employment. After the incident of cardiac arrest, Thomas’s condition had declined. He was in a “desperate state of disability and the prognosis ...(was) exceedingly poor”.
23. We should add that we have studied the report prepared on behalf of the appellant by Dr Derek Wade. He had not seen all the relevant medical records on Thomas at the time when he expressed his opinion about the extent of Thomas’s problems before his mother first administered heroin. As to Thomas’s condition the evidence of Mr Kirkpatrick is convincing. We have no doubt that the cardiac arrest following this first injection of heroin produced a significant deterioration in his condition. The medical report prepared by Dr Wade after this deterioration had occurred, and as far as we can ascertain for the first time, suggested that the prognosis for the future was such that an application might eventually have to be made to the High Court for permission to withdraw hydration and nutrition from Thomas.
24. Thomas was removed to the rehabilitation centre at Northwick Park in October 2007. The staff of the centre were well aware that the appellant was not allowed to visit him, and so they discussed the arrangements for caring for Thomas with his father. Among other matters this included the possible withdrawal of hydration and nutrition for

Thomas if he persisted in the vegetative state for at least 12 months. His father expressed the view that Thomas should not be resuscitated. When the appellant was told about the possibility that hydration and nutrition would be withdrawn her response was that this was unacceptable.

25. In May 2008 Thomas was moved to the Garden Hospital at Sawbridgeworth. The staff here had also been informed that the appellant was not allowed to visit him. Conditions at the Garden Hospital appeared to the rest of the family to be an improvement. There were reports that by using his eyes Thomas appeared to be responding to contact.
26. After a while his father started visiting him at hospital accompanied by the appellant, who was described as his aunt. At much the same time a photograph of Thomas with his mother, which had been kept in his room, was removed, plainly so as to prevent her identification.
27. Between June and November 2008 the appellant was in a state of heightened arousal, depression, irritability and anxious anticipation. Her ability to plan and prepare to bring Thomas's life to an end was not in any sense incompatible with the diagnosis of continuing severe depression, and this condition, together with additional symptoms of post traumatic stress disorder, would have damaged her perception of Thomas's condition as well as her ability fully to understand the likely prognosis.
28. On 21 November the hospital was short-staffed. The nurses were late doing their medication rounds. The appellant arrived at about 1.40pm. She was carrying heroin, syringes and superglue. She asked to see Thomas. No suspicions were aroused. According to her account, once they were alone she injected him with a fatal dose of heroin, telling him, "everything is fine. I love you". She calculated that it would take about an hour for Thomas to die, and she did not want anyone to see him before he had died, lest they interfere and seek to resuscitate him. After about 20 minutes a nurse walked into the ward. The appellant panicked and yelled at her to "get out", threatening her that she had "aids". When the nurse left the room the appellant shut and then locked the door. She put superglue she brought for the purpose into the lock and then barricaded the door with an oxygen tank and a chair. Gradually Thomas stopped breathing. Eventually the door was pushed in by a male member of staff, who then had to restrain her because she was screaming and crying, terrified that Thomas would be brought round, and desperate to prevent it. When she eventually heard that he had died, she felt a sense of relief that her son was "finally at peace".
29. The appellant's mental condition after the failed attempt to kill her son meant that she had "never faltered in her conviction that Thomas was suffering and that ending his life was the only way to stop this". The appellant told Dr Mezey that she had been informed that it would be possible, if there was no improvement in Thomas's condition, for the hospital to withhold treatment, and nutrition and hydration. She believed that this was a "barbaric" solution, and that it would result in Thomas's suffering a prolonged and lingering death, whereas when she injected him with heroin, his end was relatively "quick and peaceful". She had become increasingly determined to release him from his suffering. She perceived this to be her duty as his mother.

30. Dr Mezey diagnosed that the appellant had continued to suffer from depressive disorder, with additional symptoms of post traumatic stress disorder. She became more determined to release him from his suffering. At the time when she administered the fatal dose of heroin these symptoms would have “affected her perception of the severity of Thomas’s condition and her view of his prognosis. She perceived Thomas’s situation as hopeless. She was convinced that he was suffering extreme pain and indignity...she believed that there was no prospect of improvement or alleviation of his condition”.
31. It is not without significance that after Thomas’s death the appellant’s mental state improved. It was observed that she had become markedly less angry, agitated and distressed than she had been when she was examined when she was on bail facing the charge of attempted murder. She described to Dr Mezey how, once his life had ended, a burden had been lifted from her, and so after her initial distress at his death, she began to experience a sense of relief. As far as she was concerned, his real death had occurred after the accident in July 2007. Her mental condition continued to improve until the date of her trial.
32. When she gave evidence at trial, the appellant explained that she had become increasingly concerned about the consequences of the possible withdrawal of hydration and nutrition in due course. She thought that this would be a dreadful death, dreadful for Thomas, and this time, she wanted to do the job properly. She looked through the nurses’ notes to see what their routine was so that she would have long enough to be alone with Thomas. She equipped herself with heroin and syringes. She tested one of the syringes on herself. She took nicotine patches with her because she knew she would be arrested. In addition to the syringes and heroin, she packed superglue with which, if necessary, to block the door. She told Thomas that she loved him. She injected him in each thigh, and told him it would be fine. She had no choice. She had to do it. She accepted that she had closed and locked the door, using the superglue, and put oxygen cylinders against it. She agreed that she had told nursing staff anything she could to keep them away. She wanted her son to leave what was a living hell. She felt that he had already lost his life. She did not see it as murder. There was no malice, only love in her heart. She knew the law would see it as wrong, and she knew that in our society it was wrong. Nevertheless she thought she had to do it. She wanted to relieve his suffering because he did not have the quality of life he wanted.
33. To her, for an offence to be murder, it had to be carried out with hatred. She was not taking his life. He was suffering a living death. She agreed in her evidence that she had thought the whole thing through. She intended him to lose his life. She did not, at any stage, appear to understand that by the first injection of heroin she had made her own contribution to the sad condition or possible long-term outcome from which she wished to relieve him.
34. The appellant did not suggest, and there was no shred of evidence that the administration of heroin to Thomas occurred when she was, or may have been, deprived of her self control. The only moment when she showed any signs of not being fully in control of her actions was when she faced the possibility that her efforts to kill Thomas might be frustrated by the intervention of members of the hospital staff seeking to prevent his death. This was consistent with her disregard of any views or wishes which did not accord with her own.

Appeal against conviction

35. Having allowed all the evidence said to bear on the issue of provocation to be deployed before the jury, the judge withdrew the issue on the basis that there was no relevant evidence. Mr Alan Newman QC drew our attention to a number of features of the evidence which, so he contended, should lead us to conclude that the judge's decision was wrong. Mr Newman highlighted the early problems, in the immediate aftermath of the accident, which made it difficult for the appellant to cope with conflicting information provided to her about how Thomas had fallen out of the ambulance, or been allowed to fall out of the ambulance, and her concern that the first set of operations was carried out to cover up the negligence of those responsible for conveying him to hospital by ambulance. She believed that a most unrealistic and disturbing opinion was expressed to the family about the likely prospects of a successful brain operation, which led to the consent being given to an operation which, in her view, was quite unnecessary and added to his suffering. Mr Newman argued that these considerations provided the context, on which were superimposed as time went by, clear signs that Thomas was undergoing pain and terror and panic as he lay helplessly in his bed, coupled with the appellant's knowledge that because there was no improvement in his condition, and her belief that none could be expected, the stage would eventually arrive when an application would be made to the High Court for the treatment supporting Thomas's life to be withdrawn, and which, if allowed, would lead him to suffer an agonising death from malnutrition and dehydration.
36. We do not need to decide whether any of these matters, whether taken individually or cumulatively, fell within the ambit of provocative conduct for the purposes of section 3 of the Homicide Act 1957. Assuming that all of them were established, or even that the appellant's perception of these facts and their consequences may have been correct, notwithstanding Mr Newman's valiant efforts, we agree with the judge. There is no doubt at all that the appellant was subjected to great stress and anguish, but dealing with it briefly and starkly, there was, as our analysis of the evidence underlines, not a scintilla of evidence that when the appellant injected the fatal dose of heroin into her son she had lost her self-control. Rather, it was to the contrary: all the evidence demonstrated that the appellant applied her mind to her objective, which was to kill her son, and that she did so with scrupulous and meticulous care, and that in doing so she fulfilled her long-standing objective. Of course, we accept that the appellant is a decent woman, of positive good character, and that acts of violence of any kind, let alone fatal or potentially fatal actions, were quite outside her normal character. However, in relation to her son and his injuries, she was resolved that she should relieve him of his suffering. When she did so, she knew exactly what she was doing, and why she was doing it, and how it was to be done, and how it was imperative that its success should be assured. Far from lacking or losing self-control (an essential ingredient for the defence of provocation) the appellant was completely in control of herself. The appeal against conviction is not arguable.

Mercy Killing

37. On any view this case is a tragedy, not only for the appellant, who has lost a precious and loved son, but for the father and brothers of the deceased and the extended family. There is a wider public interest in the case because the issues to which it gives rise are immensely sensitive and difficult, and they have attracted an increasing measure of public interest and concern. Therefore we must underline that the law of murder does

not distinguish between murder committed for malevolent reasons and murder motivated by familial love. Subject to well established partial defences, like provocation or diminished responsibility, mercy killing is murder. The offences of which the appellant was convicted, and for which she fell to be sentenced, were attempted murder and murder. The sentence on conviction for murder is mandatory. The judge had no alternative but to order imprisonment for life. He then had to assess the length of the minimum period to be served before the possibility of release from prison on licence could arise for consideration. In making that assessment he was obliged to have regard to the statutory provisions in schedule 21 of the 2003 Act.

38. We must also emphasise that the law does not recognise the concept implicit in the defence statement that Thomas Inglis was “already dead in all but a small physical degree”. The fact is that he was alive, a person in being. However brief the time left for him, that life could not lawfully be extinguished. Similarly, however disabled Thomas might have been, a disabled life, even a life lived at the extremes of disability, is not one jot less precious than the life of an able-bodied person. Thomas’s condition made him especially vulnerable, and for that among other reasons, whether or not he might have died within a few months anyway, his life was protected by the law, and no one, not even his mother, could lawfully step in and bring it to a premature conclusion. Until Parliament decides otherwise, the law recognises a distinction between the withdrawal of treatment supporting life, which, subject to stringent conditions, may be lawful, and the active termination of life, which is unlawful.
39. We cannot decide the case on the basis of whichever of the contradictory strands of public opinion in this extremely sensitive area happens to coincide with our own views, assuming that is, that if we had allowed our personal feelings to impinge on our discussions, that there would be any coincidence of views. How the problems of mercy killing, euthanasia, and assisting suicide should be addressed must be decided by Parliament, which, for this purpose at any rate, should be reflective of the conscience of the nation. In this appeal we are constrained to apply the law as we find it to be. We cannot amend it, or ignore it.
40. In the result, we cannot improve on the Law Commission’s careful analysis of this profoundly sensitive issue in the Report on Murder, Manslaughter and Infanticide [2006] Law Com. 304 Part 7:

“All “mercy” killings are unlawful homicide.

7.4 The law ...does not recognise either a tailor-made defence of “mercy” killing or a tailor-made offence, full or partial, of “mercy” killing. Unless able to avail him or herself of either the partial defence of diminished responsibility or the partial defence of killing pursuant to a suicide act, if the defendant intentionally kills the victim in the genuine belief that it is in the victim’s best interest to die, the defendant is guilty of murder. This is so even if the victim wished to die and consented to being killed...

7.6 The current law does not recognise the “best interests of the victim” as a justification or excuse for killing. What it

does, instead, is to acknowledge to a very limited extent, that the consent of the victim can be relevant in the context of suicide pacts...

7.7 Under the current law, the compassionate motives of the “mercy” killer are in themselves never capable of providing a basis for a partial excuse. Some would say that this is unfortunate. On this view, the law affords more recognition to other less, or at least no more, understandable emotions such as anger (provocation) and fear (self-defence). Others would say that recognising a partial excuse of acting out of compassion would be dangerous. Just as a defence of necessity “can very easily become simply a mask for anarchy”, so the concept of “compassion” – vague in itself – could very easily become a cover for selfish or ignoble reasons for killing, not least because people often act out of mixed motives”.

41. In reality, in a true case of mercy killing, provocation is unlikely to provide any defence. The more likely defence would be diminished responsibility. Either defence would reduce murder to manslaughter: it could not result in an acquittal. However, whereas the judge must leave the defence of provocation to the jury if there is evidence to sustain it, whether or not the defendant or his legal advisers have invited the jury to consider it, the defence of diminished responsibility must be raised by the defendant. If the defendant chooses not to canvass diminished responsibility, there is rarely anything the judge can do about it.
42. Diminished responsibility was not advanced as a partial defence in this case. As we have explained the medical reports suggested that at all the relevant times the appellant was depressed and suffering from post traumatic stress disorder. We should make it clear however that we have not seen any medical report that argues a possible defence of diminished responsibility. When we inquired why the issue had not been examined further, on his instructions Mr Newman told us that the appellant was desperate that all the facts relevant to her son’s accident and treatment should emerge at trial, and that the only way that could be achieved was for her to plead not guilty. We found that difficult to follow, but it did not appear that any advantage would accrue from any further investigation into the appellant’s thinking on this topic.
43. As long ago as 1976, the Criminal Law Revision Committee put forward for consideration what would then have been a new offence of “mercy” killing which, if proved, would have been punishable by a maximum term of imprisonment for 2 years. The proposal was heavily criticised, not least because it did not address the state of mind of the victim. Rather it concentrated on the situation facing the defendant.
44. In its final report the Criminal Law Revision Committee observed:

“It was said that our suggestion would not prevent suffering but would cause suffering, since the weak and the handicapped would receive less effective protection from the law than the fit

and well because the basis of the suggested new offence would rest upon the defendant's evaluation of the condition of the victim. That evaluation might be made in ignorance of what medicine could do for the sufferer. We were reminded, too, of the difficulties of definition."

(Offences Against the Person (1980) Report 14, para 115)

45. In 1989 the report of the Select Committee of the House of Lords on Murder and Life Imprisonment addressed the issue of "mercy" killing. Rather than suggesting that "mercy" killing should be treated as anything other than murder, it recommended that in such cases the mandatory sentence of life imprisonment should be abolished. The recommendation has not been adopted.
46. The terms of reference for the Law Commission's 2006 report excluded consideration of some of the fundamental questions relating to the law of euthanasia and suicide. No public response was sought to the question whether "mercy" killing should be a specific, identifiable defence, distinct from murder, or whether, if it remained part of the law of murder, a partial defence of "mercy" killing should be created. This led to criticism that the consultation paper prepared by the Law Commission was too cautious. The Law Commission rejected the criticism, explaining "that there would need to be a much wider debate before concluding that the concept of "compassion", as a motive, is in itself a sufficiently secure foundation for a "mercy" killing offence or partial defence...it is too important and socially significant a subject for us to make a recommendation without explicitly consulting on the question".
47. In the context of murder, the concept of mercy killing has achieved an express, if fleeting mention. The mandatory sentence for an offender aged 21 or over who is convicted of murder is life imprisonment. Section 269 of the Criminal Justice Act 2003 provides a statutory scheme for the setting of minimum terms in murder cases. The judge is required to have regard to the general principles set out in schedule 21 of the Act. These address a number of different starting points depending on the level of the seriousness of the offence, and the starting point for present purposes would be a 15 year minimum term, the equivalent of the term served on the imposition of a 30 year determinate sentence.
48. Having identified the starting point, the court will take into account any aggravating or mitigating factors. The aggravating features identified in paragraph 10 include (although they are not confined to):
 - ...“(a) A significant degree of planning or premeditation,
 - (b) The fact that the victim was particularly vulnerable because of ...disability.
 - (c)...
 - (d) The abuse of a position of trust... ”
49. In the normal case of murder, these factors do, as a matter of common sense, and would, whether they had been included in any statutory provision or not, provide

aggravating features of the offence. However, as we shall see these factors will be present in virtually every mercy killing.

50. We now address the specific mitigating factors identified in paragraph 11. These include the first and only reference to mercy killing:

“... ”

- (f) A belief by the offender that the murder was an act of mercy...”

We begin by emphasising that the express words used in this paragraph are indeed “the murder”, which emphasises that a mercy killing which is not committed in circumstances of provocation or diminished responsibility is indeed murder. In short, the latest statute to address the problem of mercy killing, currently in force, expressly includes as mitigation for the offence the offender’s subjective belief that he or she was acting out of mercy, but that belief and motivation, however genuine, does not and cannot constitute any defence to the charge of murder.

51. These statutory provisions present a problem. On the face of it, the identified features of aggravation and mitigation are quite distinct. They appear in separate paragraphs of the schedule. Yet in the context of a mercy killing all the considerations we have identified coalesce. It would be wholly unrealistic to treat precisely the same actions as both aggravating and mitigating factors. In the vast majority of cases where the offender genuinely believes that the killing is an act of mercy, he or she will intend death, there will often be significant planning or premeditation, and the victim will always be particularly vulnerable (because otherwise the question of killing as an act of mercy would not arise) and, almost inevitably, at the time when the killing takes place, the perpetrator will be in a position of trust.
52. This is a prescriptive statutory sentencing regime, which on occasion creates difficulty and dilemma. There is no doubt that Thomas was helpless or that the appellant was in a position of trust when she attempted to kill him. She had been forbidden access to him under her bail conditions. When she was alone with him and administered the heroin on the second occasion, the appellant was in just as much a position of trust as she would have been if her access to her son had been permitted. He was no less vulnerable than before. The premeditation was lengthy.
53. Having reflected on the realities of what we believe to be the first case of murder involving a mercy killing to reach this court, we are satisfied that the factors specified in paragraph 10(a), 10(b) and 10(d) of schedule 21 to the 2003 Act, which would normally aggravate the offence of murder, should not be taken to aggravate a murder committed by an individual who genuinely believes that her actions in bringing about the death constitute an act of mercy. If it were otherwise this express feature of mitigation would be deprived of any or any significant practical effect. At the same time, just because this feature of mitigation is based exclusively on the offender’s subjective belief about her motivation, the sentencing court must do its best to examine her motivation as a whole.
54. Specific additional statutory features that are also relevant to mitigation in this case include:

“(c) The fact that the offender suffered from any mental disorder or mental disability which [although not constituting diminished responsibility] lowered his degree of culpability, and

(d) The fact that the offender was provoked, (for example by prolonged stress) in a way not amounting to a defence of provocation.”

For the reasons set out in our narrative of the facts we have concluded that both these features of mitigation are present in this case. The appellant’s condition of depression and post traumatic stress disorder diminished her ability to view her son’s condition, and all the events that surrounded it, in an objective way, and reduced her ability to cope with the awful stresses and strains likely to be imposed on any loving parent.

Appeal Against Sentence

55. We must focus on all the critical facts and find a balance between them in which justice is appropriately tempered with mercy. Not all the crucial facts provide the appellant with mitigation. Some aggravate her offences.
56. Thomas was helpless. He may have been able to communicate something of the severity of his fear and panic to those who loved him, but we do not and never shall know what his response to any suggestion of euthanasia or an assisted suicide might have been, whether in September 2007 or again in November 2008. It may provide something of a comfort to the appellant and those who loved him if they have come to terms with Thomas’s death by convincing themselves that if he could have communicated his wishes he would indeed have asked for his life to be ended. But, we do not know, and we are not prepared to make any such assumptions. As we have explained, this was not an assisted suicide in which the appellant did for her son what he could not physically do and desperately wanted to do for himself.
57. The appellant’s actions were deliberate and premeditated, and her compulsive objective was indeed to kill her son. She was motivated throughout by her personal, unremitting conviction that she should release him from the living hell his very limited life had become and which it would continue to be, and also because she herself, in all probability because of her fragile personality and depressive disorders, was unable to cope personally with the catastrophic consequences of the accident. She has never felt any sense of guilt or remorse, and she was and remains convinced that, irrespective of what anyone else might think, her son’s life had to be brought to an end.
58. There are a number of features which obviously mitigate the offence, and we have largely set them out in our narrative account of the facts. We have recorded that the appellant has no sense of remorse for what she has done. In this particular case the absence of remorse does not extinguish the mitigation that she has already suffered and will continue hereafter to suffer the terrible grief of the loss of Thomas, as she would put it, as a result of the accident in July 2007. The mitigation consequent on her grief should not be reduced by the absence of remorse for the killing. She was ill equipped psychologically to cope with the disaster which befell Thomas, and for that reason, the consequent stresses and strains on an already fragile personality were

disproportionately grave. In our view her mental responsibility for her actions, driven as she was by a compulsive obsession, was diminished if not sufficiently for the purposes of the defence of diminished responsibility, certainly to an extent that reduced her culpability. This combination of factors led to her long obsession with the belief that as his mother she owed a duty to Thomas to end his suffering. And there is no doubt about the genuineness of her belief that her actions in preparing for and eventually killing Thomas represented an act of mercy or that the grief consequent on the loss of her son is undiminished by her responsibility for his death. These are powerful considerations, far removed from the ordinary case of murder.

59. However the appellant's culpability is reduced, it is not extinguished. She had resolved to kill Thomas within a very short time of the accident, almost in its immediate aftermath, and well before the long-term results of the operations and treatment could be known, and indeed while the remaining members of Thomas's family were still hoping that he would survive. She was convinced that she, and she alone, knew what was best for Thomas, to such an obsessive extent that any view to the contrary, however it was expressed, was to be rejected out of hand. This was not a moment or two of isolated thinking, but a settled intention. She tried to kill Thomas and did eventually kill him without a thought to the feelings of anyone else, including his father and his brothers, and indeed the members of the medical professions who were doing their very best to care for him. What is more, she assumed that she knew what Thomas's wishes would have been, and close as the bond between mother and son no doubt was, he was an adult whose mother would not always have been able to speak for him. When the first attempt failed, she ignored the potential consequence to others of denying her involvement in the offence, justifying the possibility that blame might pass unfairly to anyone else on the basis that she must continue to be free to achieve her objective. The process of preparing for trial for attempted murder, and the intimation that there would be a guilty plea, obscured the fact that she was making arrangements to deceive those responsible for her son's care into believing she was not his mother. And perhaps most significantly of all, her unsuccessful attempt to kill Thomas produced a deterioration in his condition without which, as far as we can see, the possibility of the withdrawal of hydration and nutrition would have been most unlikely to arise. In short, harsh as it is to have to say it, she had contributed to the very sorry condition from which, on the day of his death, Thomas was suffering, as well as the risk of the awful death from which she intended to relieve him. Because of her early fixed obsession, she never sought advice or information from medical experts on how the suffering of the patient might be reduced if the decision was made to apply to the court to allow him to die. As it is, her intention that Thomas should die was fixed long before that sad final state was reached because, as far as she was concerned, within a very short time of the accident, Thomas had to die. At that time no one else shared her view, and she decided that she must kill him herself. On the first occasion she failed to kill him, but added to his disabilities, and, on the second she was better prepared, and succeeded.
60. We cannot allow any discount for a guilty plea (because there was none).
61. This case involves one of the most difficult sentencing decisions faced in this court. We cannot interfere with the mandatory sentence of life imprisonment. Having reflected on all the relevant considerations, we have decided that the minimum term

Judgment Approved by the court for handing down.

ordered by the trial judge should be reduced to a period of 5 years. To that extent the appeal against sentence will be allowed.