

**STATEMENT BY THE CRIMINAL CASES REVIEW COMMISSION
IN RESPONSE TO A REQUEST BY THE SECRETARY OF STATE FOR
JUSTICE
FOR ASSISTANCE IN CONNECTION WITH THE ROYAL PREROGATIVE
OF MERCY**

(SECTION 16(1) OF THE CRIMINAL APPEAL ACT 1995)

Rex v Edith Thompson (deceased)

Introduction and legislation

1. Under section 16(1) of the Criminal Appeal Act 1995, the Secretary of State for Justice may refer to the CCRC any matter on which he desires its assistance, which arises in the consideration of whether to recommend the exercise of His Majesty's royal prerogative of mercy (RPM) in relation to a conviction.
2. Where the Secretary of State makes such a reference, the CCRC is required by the same section to give to the Secretary of State a statement of its conclusions.
3. Having found no basis on which to recommend RPM in relation to this conviction (section 16(1)) the CCRC has noted, nevertheless, that the sentence of capital punishment offends all modern standards and would be considered unconscionable by those standards. That observation, however, is not unique to this case and cannot alone properly form the basis of a recommendation for the exercise of the RPM under section 16(1).

Secretary of State's reference to the CCRC

4. The Secretary of State was asked to recommend the exercise of RPM, in respect of a free pardon, on behalf of Mrs Edith Thompson (now deceased) by Professor René Weis, represented by Nicholas Brown at BDB Pitmans LLP. Professor Weis was made Mrs Thompson's heir and executor by her family.
5. The substance of Professor Weis's request to the Secretary of State is contained within a letter dated 7 July 2022.¹ In a letter dated 19 October

¹ Copies of all letters referenced are attached.

2022, the Secretary of State outlined that they were not minded to recommend the exercise of RPM in Mrs Thompson's case at that stage.

6. Professor Weis responded to the Secretary of State's decision on 17 November 2022, setting out his belief that the reasons given for not recommending the exercise of RPM were in error and not in accordance with the law. He asked that the request be considered afresh.
7. On 20 December 2022 Professor Weis sent the Secretary of State a letter before claim in accordance with the pre-action protocol for judicial review. The Secretary of State responded the following day, confirming that the application for the exercise of RPM would be considered afresh.
8. On 6 February 2023 the Secretary of State referred the matter to the CCRC for consideration under s16(1) of the Criminal Appeal Act 1995.

Substance of the request for a free pardon

9. Professor Weis's request for a free pardon relates to Mrs Thompson's conviction for murder.
10. Mrs Thompson was found guilty after trial at the Central Criminal Court for the murder of her husband, Mr Percy Thompson, on 11 December 1922. She was tried alongside Mr Frederick Bywaters, who had stabbed Mr Thompson on 4 October 1922, and who was also found guilty.
11. It was the prosecution case that Mrs Thompson had 'encouraged and assisted' Mr Bywaters, with whom she was having an affair, and was therefore a secondary participant to the murder by way of joint enterprise. The prosecution relied upon love letters Mrs Thompson had written to Mr Bywaters in which they alleged she had encouraged him to murder her husband.
12. Mr Thompson's murder and the subsequent trial attracted much public attention at the time, particularly because of Mrs Thompson's alleged involvement.
13. Mrs Thompson and Mr Bywaters were sentenced to death. They both appealed their convictions. Mrs Thompson appealed on the basis that the letters she had written to Mr Bywaters should not have been admitted into evidence.
14. Their appeals were heard and dismissed by the Court of Appeal on 21 December 1922. On 9 January 1923 Mrs Thompson and Mr Bywaters were executed.
15. The grounds upon which Professor Weis requests the exercise of RPM are as follows:
 - Mrs Thompson was innocent of murder and was convicted, "because she was an adulteress, a young businesswoman who chose to remain childless and whose affair with her much younger lover was blamed for the murder of her husband by her lover",

- the judge’s handling of the case, in particular his summing up, was prejudiced, and
 - the appeal was prejudiced and dismissed perfunctorily without due care and consideration.
16. Professor Weis also raised issue with the admission of Mrs Thompson’s letters as evidence. He said the letters:
- were irrelevant to the charge of murder as they contained fantasies about administering poison to Mr Thompson, not killing him with a knife, and did not contain any plans relating to October 1922 and therefore, the judge was wrong to admit them,
 - constituted the only purported evidence the prosecution presented against Mrs Thompson, and
 - unfairly tainted the jury’s perception of Mrs Thompson along with the trial judge’s clearly expressed views of them.
17. Professor Weis also raised issue with the prosecution’s assertion to the jury that the postmortem showed, “that there were practically no traces of any poison” when in fact the pathologist had said there were, “no indications of poisoning and no changes suggestive of previous attempts of poisoning”.

The CCRC’s approach

18. As part of previous section 16 references, the Ministry of Justice has supplied to the CCRC a summary document² which explains that by long-standing convention the Secretary of State will generally only recommend the exercise of the prerogative if:
- it is impractical for the case to be referred to an appellate court; and
 - new evidence has come to light which demonstrates conclusively that no offence was committed or that the defendant did not commit the offence.
19. The summary document also notes that it has been said that a person must be ‘morally and technically innocent’ to be deserving of a free pardon.³
20. These considerations reflect the constitutional position that it is for the courts, not the Government, to determine whether a person is guilty of an offence. The CCRC understands that the Secretary of State’s powers to act are used sparingly, generally only in the circumstances outlined

² “Royal Prerogative of Mercy – Free and Conditional Pardons”

³ See extract from the judgment in *Shields*, below.

above. (The *Turing* case summarised in the footnote provides an example of an exception to the general approach.⁴)

21. In addition to the summary document provided by the Ministry of Justice, the CCRC has had regard to the judgment of the Divisional Court in *R. (on the application of Shields) v Secretary of State for Justice* [2008] EWHC 3102 (Admin). After holding that the Secretary of State had been wrong, in the circumstances (viz. a conviction in Bulgaria), to decide that he did not have power or jurisdiction to consider the grant of a pardon, the court went on to make some observations of more general application about the basis and operation of the prerogative of mercy. At paragraph 19 of its judgment, the court noted that the power had rarely been exercised since the Criminal Appeal Act 1907 (which established the Court of Appeal). It added:

“Furthermore, the establishment of the Criminal Cases Review Commission under the Criminal Appeal Act 1995 means that miscarriages of justice within the United Kingdom are almost always dealt with through the Commission’s power to refer the safety of a conviction to the Court of Appeal Criminal Division.”

22. The Court said (at paragraph 32):

“An application to appeal or review the conviction is a matter within the statutory and constitutional ambit of criminal appeal courts, in serious cases the Court of Appeal Criminal Division. If an appeal is brought and fails in the CACD (and there is no appeal to the House of Lords, or such an appeal fails), the Secretary of State would not – leaving aside the case of Timothy Evans – now consider granting pardon on the ground that the CACD reached a wrong decision on the material before it. If subsequently there were a reference to the CACD by the Criminal Cases Review Commission under the Criminal Appeal Act 1995 and the CACD dismissed the resulting appeal, the same would apply. In neither case could the Secretary of State conclude that the prisoner was morally and technically innocent without usurping the constitutional functions of the courts.”

23. Further, the Court stated:

“But pardon remains a flexible process intended in very rare cases to secure justice which the concluded court process cannot achieve. And rare circumstances could be conceived in which this could occur

⁴ The CCRC notes that in special circumstances the prerogative of mercy has been exercised in cases that do not meet the conventional criteria. For example, on 24 December 2013 a posthumous free pardon was granted to Mr Alan Turing. A note about that pardon on the Government website reads:

“A pardon is only normally granted when the person is innocent of the offence and where a request has been made by someone with a vested interest such as a family member. Uniquely on this occasion a pardon has been issued without either requirement being met, reflecting the exceptional nature of Alan Turing’s achievements.”

Subsequently, the Policing and Crime Act 2017 conferred an automatic pardon on individuals who had been convicted of certain consensual sexual offences which would not be offences today.

where, for instance, fresh evidence was available which was, or would be, inadmissible or not capable of being given in court proceedings.”

Analysis and Conclusion

24. The CCRC has applied the three-limb test to the facts of this case and considered each limb in turn. We have also considered whether there are any extraordinary factors that make the circumstances of this case exceptional.
25. The CCRC is mindful that RPM is a flexible instrument, and it has therefore kept this in mind when considering each limb.

There must be no other available route through the court system.

26. Mrs Thompson is deceased. In accordance with section 44A(4) Criminal Appeal Act 1968 (as amended by section 7(1) Criminal Appeal Act 1995), an appeal can be made to the Court of Appeal by an approved person on behalf of a deceased applicant, but only within one year of their death.
27. Clearly, more than 12 months have passed since Mrs Thompson’s death and, in any event, Mrs Thompson has already appealed her conviction to the Court of Appeal on 21 December 1922. She, and any approved person, therefore, have no right to appeal her conviction directly to the Court of Appeal again.
28. An approved person, on behalf of Mrs Thompson, could however make an application to the CCRC to refer her conviction. The 12-month time limit does not apply to references by the CCRC.
29. Section 44A(3) defines an approved person to be:
 - a. the widow or widower;
 - b. the “personal representative” (within the meaning of the Administration of Estates Act 1925, s55(1)(ix)); or
 - c. any other person appearing to the Court to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of the appeal.
30. In this instance, Professor Weis is Mrs Thompson’s heir and executor, and would therefore fall under section 44A(3)(b) as a personal representative.⁵
31. The CCRC therefore considers it is likely that the Court of Appeal would consider Professor Weis an approved person for the purposes of section 44A, and so he could make an application to the CCRC to review Mrs Thompson’s conviction.

⁵ This is because s55(1)(ix) of the Administration of Estates Act 1925 states a personal representative is an executor and can include an executor of a deceased person.

32. We note that the Secretary of State referred to Professor Weis's ability to apply to the CCRC as a barrier to exercising the recommendation of RPM, and said that until the CCRC had been approached, "the full range of judicial routes cannot be held to have been exhausted". In his letter of response Professor Weis stated that the assertion that a failure to apply to the CCRC is a reason not to recommend the exercise of the RPM is wrong in law.
33. We disagree with Professor Weis. The CCRC sees no reason to go behind the Secretary of State's interpretation of their own policy on what constitutes a "route through the court system". Read plainly, this would include applications to the CCRC which, if successful, would provide for a fresh appeal. This position is consistent with the judgment in *Shields*, relevant parts of which are set out above.
34. That being said, it is pertinent to draw attention to the fact that where the CCRC has reviewed a conviction, and where the statutory criteria for a reference to the appeal court is satisfied, it has a discretion not to refer a case on public interest grounds. One of the considerations for the CCRC when considering whether to exercise its discretion not to refer a case is the age of the conviction, and whether the convicted person is deceased.
35. The CCRC has not taken a view on whether an application to review Mrs Thompson's conviction would be successful or whether it would use its discretion not to refer. However, it wishes to highlight that Mrs Thompson's conviction being over 100 years old and her being deceased would be factors for consideration when deciding whether to exercise its discretion not to refer.
36. In conclusion, because Professor Weis could make an application to the CCRC to review Mrs Thompson's conviction, there is an available route through the court system, and so the application for RPM would fail on this limb.
37. Nevertheless, for completeness, transparency, and fairness, the CCRC has gone on to consider the remaining limbs.

There must be new evidence which indicates that the defendant is innocent of the crime, or that no crime was in fact committed.

38. The CCRC has identified no new evidence in this case, which is now over 100 years old. Consequently, there is not any new evidence which demonstrates conclusively that no offence was committed, or that Mrs Thompson did not commit the offence that she was convicted of.
39. The CCRC has reviewed and considered the enclosures sent to the Secretary of State by Professor Weis, along with documents from the National Archives, which include newspaper articles covering the police investigation, trial, and appeal, the BBC programme 'Murder, Mystery and My Family', which aired on 4 March 2022, and featured Mrs

Thompson's case, and the BBC podcast 'Lady Killers with Lucy Worsley', released on 20 March 2023, featuring Mrs Thompson's case.

40. However, the information included in the material above was all information and evidence known about at the time of the trial.
41. Professor Weis has raised issue with the admission of Mrs Thompson's letters to Mr Bywaters, and the trial judge's summing up to the jury.
42. It is acknowledged by the CCRC that by modern standards of fairness, the letters written by Mrs Thompson to Mr Bywaters may have been ruled inadmissible by the trial court. It is also accepted that by modern standards of fairness it could be argued that the trial judge's summing up contained inappropriate judicial comment and lacked fairness and impartiality.
43. However, both these submissions are arguments as opposed to evidence. The argument that the letters were inadmissible is not new, as Mrs Thompson raised it at trial and on appeal. However, it is acknowledged that the argument the trial judge's summing up was lacking in balance and fairness is new.
44. The CCRC has considered whether the "new evidence" requirement of this limb of the policy could be interpreted as including new argument. In the absence of a detailed submission on the specific point, the CCRC takes no definitive view, although it is noted that the new argument in Dr Turing's case was not found to satisfy the policy and rather, was treated as an exceptional factor.
45. In any event, it is considered that the admissibility and fairness arguments, whilst potentially going to the safety of the conviction, are not indicators of Mrs Thompson's innocence. In conclusion, the application for RPM would fail under this limb.

The defendant must be technically and morally innocent of this crime.

46. Mrs Thompson was convicted of murder by way of joint enterprise. She was convicted of being a secondary participant to the murder of Mr Thompson, by offering help and encouragement to Mr Bywaters, who carried out the act.
47. The case against her rested on the letters she had sent to Mr Bywaters, which the prosecution alleged contained evidence of her encouraging him to murder Mr Thompson, her presence at the time of Mr Thompson's death, and statements she made thereafter which she was said to have made to protect Mr Bywaters' identity as the person who carried out the act.
48. Mrs Thompson's defence was that her letters did not contain evidence of encouragement, but evidence of something else – either fantasies, references to books, or wanting a divorce or to take her own life. She

said she had not known of Mr Bywater's intention to kill Mr Thompson and had not been involved in any plan to do so.

49. It is the view of the CCRC that innocence is a high bar. Without new evidence to undermine or disprove the prosecution's case, it cannot be established that Mrs Thompson is innocent of this crime beyond what she raised, and the jury did not accept, in her own defence at trial. There may well have been doubts about her guilt at the time, and it is acknowledged that there are doubts about her guilt now. However, this in itself does not establish innocence.
50. As set out above, it is acknowledged that by modern standards of fairness, the letters may have been ruled inadmissible by the trial court, which would have impacted the strength of the prosecution case against Mrs Thompson. Had this happened, the case against her may not have proceeded. However, it is the view of the CCRC that this does not establish she was morally or technically innocent for the purposes of this test.
51. It is also accepted by the CCRC that by modern standards of fairness, it could be argued that the trial judge's summing up contained inappropriate judicial comment and lacked fairness and impartiality. However, this also does not establish that Mrs Thompson was morally or technically innocent for the purposes of this test.
52. In conclusion, it is the view of the CCRC that it is not possible to establish that Mrs Thompson was technically and morally innocent of this crime, and so the application for RPM would fail on this limb.

The presence of an extraordinary factor making the circumstances of the case exceptional.

53. A pardon may be granted where there exists some extraordinary factor making the case exceptional. That RPM has been granted in circumstances where all three limbs have not been met highlights its flexibility.
54. An example of this flexible application is the case of Dr Alan Turing, a computer pioneer and codebreaker for the Allies in World War 2. He was granted a royal pardon for an offence of gross indecency for homosexual activity following which he was chemically castrated. It was acknowledged that Dr Turing was not innocent of the offence, however, his conviction and sentence would now be considered unjust and discriminatory, and the offence and sentence he was subject to have since been repealed.
55. Further, Dr Turing was issued a pardon without the innocence requirement being met as a reflection of the exceptional nature of his achievements during World War 2. Former Prime Minister David Cameron said at the time that Dr Turing played, "a key role in saving this country in World War 2 by cracking the German enigma code. His actions

saved countless lives. He also left a remarkable national legacy through his substantial scientific achievements, often being referred to as the ‘father of modern computing’.

56. The CCRC considers that Dr Turing’s circumstances can be distinguished from Mrs Thompson’s. Mrs Thompson’s conviction concerned murder, and there has been no moral transformation in society’s views on this, and there are no other apparent compelling circumstances in her case.
57. Another example is the case of Mr Timothy Evans, who was convicted of the murder of his daughter and executed in 1950. Mr Evans had learning difficulties, rarely attended school for medical reasons and left school virtually illiterate. He confessed to the murder of his wife and daughter but subsequently said it was committed by another man, John Christie. Mr Evans was convicted and executed. Clear new evidence later emerged to support the guilt of Mr Christie, after the bodies of several other murdered women were found at his premises. The combination of the new evidence and doubts about the confession evidence eventually led to the granting of a royal pardon for Mr Evans in 1966.
58. The CCRC considers that Mr Evans’ circumstances can also be distinguished from Mrs Thompson’s. Although it was found that Mr Evans’ technical and moral innocence could not be conclusively established, and therefore he did not come with “clean hands”, nonetheless, there was compelling new evidence that Mr Christie was guilty of the offence. This sort of circumstance is not present in Mrs Thompson’s case.
59. We have considered whether the arguments made in respect of the admissibility of the letters and the fairness of the judge’s summing up would amount to exceptional factors. We have decided they do not. The examples of free pardons granted on grounds of exceptional factors include concrete evidence pertaining to innocence or, in Dr Turing’s case, moral innocence and significant wartime contribution. Whilst the applicant’s arguments plainly concern the safety of Mrs Thompson’s conviction, they are not so extraordinary as to render hers an exceptional case.
60. In this case, the CCRC has been unable to identify any extraordinary factors making the circumstances of Mrs Thompson’s case exceptional.

Conclusion

61. In conclusion, the CCRC has found that:

- Professor Weis does have an available route through the court system, in an application to the CCRC.⁶
- There is no new evidence which indicates that Mrs Thompson is innocent of the crime, or that no crime was in fact committed.
- There is no evidence to suggest Mrs Thompson is morally or technically innocent of the crime.
- There is no extraordinary factor making the circumstances of Mrs Thompson's case exceptional.

62. For these reasons above, the CCRC is of the view that the case is not made out for the granting of a royal pardon for Mrs Thompson.

Submission

63. This statement constitutes the CCRC's response to the reference by the Secretary of State. It is submitted in accordance with section 16(1)(b) of the Criminal Appeal Act 1995. It has been considered by a committee consisting of three Commissioners as required by Schedule 1 paragraph 6(3)(c) of the Act. The report is signed by one of the committee members on behalf of the CCRC.

Signed:

Dated: 8 December 2023



N Cockburn
I Comfort
D Brown

⁶ Although the CCRC would highlight, as we have done already at paragraphs 34 and 35, the CCRC's discretion not to refer, and the consideration that would be had in respect of the age of Mrs Thompson's conviction and her being deceased.

The Rt Hon Dominic Raab MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Our Ref
CYG/LUB/104312.0002
Date
7 July 2022

Dear Sir

Request for a posthumous pardon for Edith Jessie Thompson under the Royal Prerogative of Mercy

1. We act for Professor René Weis. Our client is Emeritus Professor of English Literature at University College London. He is the author of *Criminal Justice: The true story of Edith Thompson* (Hamish Hamilton 1988 / Penguin 2001). His website <https://edithjessiethompson.co.uk/> is the standard reference work for information about the case of Edith Jessie Thompson (**Edith**). It is a free online resource which features complete and accurate transcripts of all of Edith's letters, the authorised transcript of the trial, the autopsy and post-mortem reports on her murdered husband, and other relevant source materials.
2. We write to you to request that the Royal Prerogative of Mercy (**RPM**) be exercised to grant a posthumous free pardon in respect of Edith's conviction for the murder of her late husband, Mr Percy Thompson (**Percy**). Percy was stabbed to death by Frederick Bywaters (**Bywaters**), with whom Edith had been having an affair.
3. Edith was executed by the state on the basis of an unsafe conviction and has been the victim of a grave miscarriage of justice. Our client's case is that Edith was innocent of murder, that she was convicted because she was an adulteress, a young businesswoman who chose to remain childless and whose affair with her much younger lover was blamed for the murder of her husband by her lover. We believe that the Judge's handling of the case and his summing up were prejudiced from

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the beginning, and that the Appeal was conducted from a similarly prejudiced viewpoint and dismissed perfunctorily without due care and consideration.

4. Edith deserves to be granted a posthumous free pardon so as to clear her name and we respectfully request you to recommend the exercise of the RPM in this case.
5. Please note that Edith's family made our client her heir and executor. Our client was thus in a position to fulfil Edith's mother's wish that her daughter one day be buried with her family. Our client put considerable personal effort and expense into making a successful application to the Ministry of Justice to have Edith's remains exhumed and moved to the City of London Cemetery where, in November 2018, she was at last buried with her parents. Our client's sole motive in pursuing a posthumous pardon for Edith Thompson is to see true justice done for her at last.
6. We enclose copies of the following documents:-
 - 6.1. **Notable British Trials: Trial of Frederick Bywaters and Edith Thompson**, edited by Filson Young (1923); also at <https://edithjessiethompson.co.uk/primary-source-texts/notable-british-trials-1923>. This includes the authorised transcript of the trial, Police statements of Edith and Bywaters (pp.35-39), the letters between Edith and Bywaters (pp.161-250) - also at <https://edithjessiethompson.co.uk/primary-source-texts/letters-of-edith-thompson-and-frederick-bywaters/> - and the Court of Appeal judgment of 21 December 1922 rejecting Edith's appeal (pp. 255-261); also at <https://edithjessiethompson.co.uk/primary-source-texts/notable-british-trials-1923#Appeals>
 - 6.2. Dr Percy Drought's post-mortem examination report of October 1922 from the National Archives (Crim 1/206); also at <https://edithjessiethompson.co.uk/primary-source-texts/autopsy-post-mortem-reports-percy-thompson>
 - 6.3. Dr Bernard Spilsbury's post-mortem examination report dated 1 December 1922 from the National Archives (Crim 1/206); also at <https://edithjessiethompson.co.uk/primary-source-texts/autopsy-post-mortem-reports-percy-thompson>
 - 6.4. Other Police Statements and Police map of the crime scene from the National Archives (Crim 1/206);
 - 6.5. **The Times** report on the Court of Appeal Judgment dated 22 December 1922 from The Times Digital Archive;
 - 6.6. Letter from Avis Graydon to the Prime Minister dated 30 December 1922 from the National Archives;

- 6.7. National Archives DPP 1/70: BYWATERS, F, and THOMPSON, E Offence: murder: copy of 'Exhibit 60'.
- 6.8. Two articles by 'A life-long Friend of Mrs Thompson' in *Lloyd's Sunday News* dated 17 December 1922 and 24 December 1922) from the British Library, together with a transcript of the articles; also at: <https://edithjessiethompson.co.uk/primary-source-texts/newspaper-article-1#article-3> and <https://edithjessiethompson.co.uk/primary-source-texts/newspaper-article-1#article-4>;
- 6.9. Article by James Douglas in the *Sunday Express* dated 7 January 1923 from the British Library, together with a transcript of the article; also at <https://edithjessiethompson.co.uk/primary-source-texts/newspaper-article-1#article-12>.

The facts

7. Edith was born in Dalston on 25 December 1893 to William Eustace Graydon, a clerk with the Imperial Tobacco Company, and to Ethel Jessie Liles, the daughter of a police constable. Edith's sister was Avis Graydon (**Avis**). Edith met Percy in 1909 and they married seven years later in 1916. Bywaters (b. 1902) was in the Merchant Navy. He had been at school with Edith's brothers and was a longstanding friend of the Graydon family. As such he was also friendly with Edith and Percy. Edith was unhappy in her marriage to Percy and became close to Bywaters. In June 1921, Edith and Bywaters entered into a relationship. From about September 1921 to September 1922, Bywaters was often at sea and Edith wrote to Bywaters frequently. Edith and Bywaters always met up on Bywaters' return.
8. On 3 October 1922, Edith attended a performance at the Criterion Theatre with her husband Percy, her Aunt and Uncle, Mr and Mrs Laxton, and an unnamed friend of both Avis and Edith, probably Ida Louise Burton. The performance started at 8.40pm. Following the performance, Edith and Percy took the tube to Liverpool Street and then boarded the 11.30pm train to Ilford. As Edith and Percy were walking from Ilford station towards their home at 41 Kensington Gardens shortly after midnight on 4 October 1922, Bywaters confronted Percy on Belgrave Road. Bywaters engaged in a fight with Percy and stabbed Percy multiple times. Percy died at the scene. The post-mortem examinations concluded that Percy had died as a result of stab wounds to his neck.
9. The police arrested Edith and Bywaters and charged them both with Percy's murder. Edith and Bywaters were tried together for Percy's murder between 6 and 11 December 1922. Of the two indictments (see paragraph 18), the prosecution chose to try only the first indictment, for wilful murder. Edith and Bywaters were both found guilty of Percy's murder and convicted on 11 December 1922. Edith and Bywaters appealed their convictions but their appeals were dismissed

on 21 December 1922. Edith was executed by hanging at Holloway prison on 9 January 1923. Bywaters was executed by hanging at Pentonville prison on the same date.

Justification for granting a free pardon to Edith

10. Edith was subjected to a grossly unfair and highly prejudicial trial, which was tainted by the admission of irrelevant letters. The trial was further tarnished by the judge's moral condemnation of Edith's marital infidelity. Even if the Letters had been admissible, they did not go to prove that Edith murdered Percy and there was no other evidence alleged against Edith in the case.
11. Grave doubts have been expressed about Edith's conviction for Percy's murder, including from contemporary observers at the trial and subsequent students of the case. More recently, in the course of a re-examination of the case against Edith on BBC 2 (2018), Sasha Wass QC of 6KBW (prosecuting), Jeremy Dein QC of 25 Bedford Row (defending), and Deputy Circuit Judge David Radford, formerly a Senior Circuit Judge, concluded unanimously that Edith's conviction was unsafe. Ms Wass submitted to HHJ Radford that, after due consideration of the summing up of Mr Justice Shearman, she found it to be "*so defective that it meant that the defendants did not have a fair trial ... and for that reason I am not going to be resisting Mr Dein's application to you.*" After reviewing the evidence, HHJ Radford stated "*I have concluded for myself, with regret, that the summing up in this trial failed fundamentally to direct the jury properly as to key legal matters. It was, as a whole, fundamentally lacking in balance and fairness. ... I find that clearly there are grounds that...the conviction of Mrs Thompson was unsafe and indeed unsatisfactory, and that is my view of this case.*"
12. Edith's trial was disturbingly anti-feminist. The hostility towards her of the judges, jury, and large sections of the population needs to be seen in the context of "the surplus woman", a 19th century gender-gap notion that achieved new traction after the terrible losses of young men in the Great War.
13. At the time of Percy's murder in 1922, the popular press advocated exporting a million British women to the far-flung reaches of the empire, as British-born breeding stock to consolidate imperial loyalty abroad, thereby at one stroke also solving the surplus woman problem at home. After the Great War, during which women had worked in factories and munitions, the working woman became a social and economic headache, a threat to male jobs and to family life through her new financial freedom. Thus, at her firm, Mrs Edith Thompson had to work as Miss Edith Graydon, without her wedding band. It is likely that Edith earned more than most of the men in her family and, probably, in her wider circle too.

14. In a final letter to Bywaters on 2 October 1922 (Exhibit 60), the day before the murder, Edith evoked the freedom that her job afforded her:

“I’d love to be able to say ‘I’m going to see my lover tonight.’ If I did, he [her husband Percy] would prevent me – there would be scenes and he would come to 168 [her place of work in the City] and interfere and I couldn’t bear that – I could be beaten all over at home and still be defiant – but 168 it’s different. It’s my living – you wouldn’t let me live on him would you and I shouldn’t want to”.

The Letters

15. At the trial, the Honourable Mr Justice Shearman (**the Judge**) decided to admit 26 out of the 58 letters written by Edith to Bywaters, and two letters written by Bywaters to Edith, into evidence (**the Letters**). The Letters were dated between November 1921 and October 1922 and were found in Bywaters’ possession. The jury were not told why 32 of Edith’s letters were held back.
16. The Letters (c. 55,000 words) show a young woman from a modest East London background leading a successful life of work, theatre, dances, reading, and dinners in exclusive restaurants, while conducting a long-distance, clandestine love affair through letters. The Letters are remarkably candid about romantic feelings and intimacies that at the time were deemed to be off-limits for women. The Letters caused a sensation, for their explicit ardour, for the background of their author, their fluency and their strikingly literate and literary record of London life in 1921/22. They contained Edith’s expressions of affection to Bywaters, Edith’s avid analyses of novels that she had been reading, and, on five occasions between 10 February 1922 and 4 July 1922, references to Edith’s fantasies about killing Percy by administering poison or broken glass in Percy’s food. The last such reference occurred during Edith’s analysis of the novel *Bella Donna* by Robert Hichens, three months before the murder.
17. However, we submit that (i) the Letters were irrelevant to the indictment for wilful murder and the Judge was wrong to admit them, (ii) the Letters constituted the only purported evidence that the prosecution presented to the jury against Edith and (iii) the Letters unfairly tainted the jury’s perception of Edith along with the Judge’s clearly expressed views about them. Whilst the Letters contained fantasies about administering poison to Percy or serving him glass in his food, the post-mortem examinations of Percy had already concluded that Percy’s cause of death was a fatal stab in the back of the neck and that no poison or glass had been detected in Percy’s system. The Letters did not contain any fantasies about killing Percy with a knife and did not discuss any plans for October 1922.
18. There were two indictments against Edith and Bywaters:

- 18.1. the first indictment was the charge of wilful murder; and
- 18.2. the second indictment was five counts charging conspiracy to murder, soliciting to murder, inciting to commit a misdemeanour, administering poison with intent to murder and administering a destructive thing with intent to murder.
19. The Letters were relevant to the lesser charges in the second indictment but the charges in the second indictment were not being tried. The Letters were not relevant to the first indictment for which Edith was being tried and the judge should not have admitted them into evidence, particularly without the prosecution having first shown that Edith had taken some active role in the murder; which the prosecution did not do.
20. Those arguments were put to the Judge at the start of the trial on 6 December 1922. Regrettably, the Judge dismissed those arguments and decided to admit the Letters for reasons which were unsound. Sir Henry Curtis-Bennett KC, Counsel for Edith, submitted to the Judge at the start of the trial that the Letters were not admissible upon the indictment for murder, at least until and unless the prosecution had shown that Edith had taken some active part in the murder of Percy. The Judge responded: *“That is for the jury to decide, the matter of conspiracy”*. When Edith’s Counsel challenged the Judge’s reply, the Judge suggested that the Letters were *“evidence of a felonious intention of this lady who, it is alleged, was present at the murder”*. Cecil Whiteley KC, Counsel for Bywaters, similarly objected to the admissibility of the Letters because they were *“too remote for there to be any connection between what is said in those letters and the assault on the deceased man in the early morning of 4th October.”* The Solicitor-General, as lead prosecutor, argued that they were admissible on the basis that Edith was a principal in the second degree. In response, Edith’s Counsel asserted:-

“there must be some nexus between those letters and what they contain and the killing as it took place. The killing which is alleged to have been murder took place by a stab, as is alleged, by Bywaters on Mr Thompson. Now, where is the connection between that act of murder and these letters which are written months beforehand? In my submission, there is no nexus between them at all, and the proper way to deal with these letters is to deal with them under an indictment which actually charges a direct incitement, to use my friend’s words, to murder. Upon that indictment, clearly admissible; upon this indictment, in my submission, not.”

21. Notwithstanding the lack of a connection between the fatal stabbing of Percy on 4 October 1922 and the contents of the Letters, the Judge decided to admit the Letters as *“evidence of intention and motive”*. The Judge’s decision was wrong and had a substantial, detrimental impact on the fairness of the trial.

22. The prosecution relied heavily on the Letters to advance their case that Edith was guilty of aiding and abetting Bywaters to kill Percy and had secondary liability for Percy's murder. In particular, the prosecution used the Letters to propagate a narrative to the jury that Edith, a 28-year-old married woman who had a job but no children, had preyed on the younger Bywaters, a 20-year-old man, and had induced Bywaters to kill Percy. The Solicitor-General stated that the Letters showed that Edith *"so worked and preyed on the mind of this young man by her suggestions that, although it was his hand that struck the blow, it was her mind that conceived the crime"*. Moreover, the prosecution cherry-picked passages from the Letters in an attempt to substantiate their case that Edith was plotting with Bywaters to kill Percy. By deploying the Letters in this way, the Crown misled the jury in the most serious fashion about Edith's alleged role in the murder and tainted the fairness of the trial.
23. For instance, despite the fact that there was no evidence of any kind in the Letters that Edith knew that her husband would be assaulted that night in that particular place and in that manner, the Solicitor-General stated, in his opening address to the jury, that *"there is the undoubted evidence in the letters upon which you can find that there was a preconcerted meeting between Mrs Thompson and Bywaters at the place."* The Solicitor-General's statement is false and misled the jury as to the content and relevance of the Letters. The jury could not properly assess the truth of the Solicitor-General's statement as fewer than half of Edith's letters were admitted into evidence.
24. It is noteworthy that Bywaters' Counsel, in closing, expressed his anxiety at the *"unprecedented and extraordinary way in which the case has been presented by the prosecution"* and asserted that the prosecution deliberately introduced the Letters into evidence relating to the second indictment in order to implicate her in Percy's death. Indeed, Bywaters' Counsel stated that the prosecution had *"tried, by introducing evidence relating, as I submit, to counts in the other indictment, to make her equally guilty of the death of Thompson"*. The prosecution did so notwithstanding that there was no dispute between the parties as to the fact that Bywaters inflicted the lethal blow on Percy. Bywaters' Counsel confirmed this when he submitted that *"since the evening of 5th October there has been no dispute, that Percy Thompson met his death owing to a blow inflicted on him by Frederick Bywaters"*.
25. Edith's Counsel, in closing, expressed his concern that *"the case for the prosecution [against Edith] is founded upon nothing but those letters written over a period of time, and founded, outside that, on nothing but guesswork, contradicted when you come to test it"*.
26. One such "test" case is the prosecution's conjecture about the meaning of particular passages in Edith's letter to Bywaters of 2 October 1922 (Exhibit 60), the day before Percy's murder. Edith stated: *"He's still well – he's going to gaze all day long at you in your temporary home – after*

Wednesday. “*He*” was a reference to the bronze monkey that Bywaters had given to Edith as a gift. It sat on her desk. She referred to it as being “*still well*”, meaning it was still there, even though Percy wanted her to get rid of it, knowing full well that Bywaters had given it to her. Edith was telling Bywaters that his gift to her would gaze at his temporary home, the SS MOREA, after Wednesday 4 October 1922 when he was due to sail East, as she was having a picture of the vessel framed. In an earlier letter to Bywaters of 20 February 1922 (Exhibit 16), Edith recounted an unannounced call at her place of work by her husband (it is one of four references to the monkey in her letters):

“He also said ‘Have you anything whatever belonging to him – anything mind you’ (I knew he meant our monkey) ‘I have nothing whatever belonging to him’ I said – darlint it wasn’t a lie was it, because the monkey belongs to us doesn’t it and not to you or to me, and if it was a lie I dont care, I’d tell heaps and heaps and heaps to help you even tho I know you don’t like them.”

- 27.** However, that is not how the prosecution or the Judge chose to interpret that passage. They assumed that ‘*He*’ somehow meant Percy being ‘*still well*’, despite having been, presumably, poisoned by Edith. During the trial, the Solicitor-General questioned her thus:

“[SOLICITOR-GENERAL] Look at the sentence immediately above that where you say ‘He’s still well. Is ‘he’ your husband?’ — [Edith] No. That refers to a bronze monkey I have. ...

Re-examined by Sir HENRY CURTIS-BENNETT — The little bronze monkey stands on my desk and is referred to in several of my letters.

Mr JUSTICE SHEARMAN — “He’s still well” means the monkey?

Sir HENRY CURTIS-BENNETT — Yes. (To Witness) —

“He’s still well – he’s going to gaze all day long at you in your temporary home – after Wednesday”: that is the picture of the ship “Morea” which when framed was going to stand upon your desk where the monkey was? — [Edith] Yes.”

- 28.** Despite Edith having confirmed during re-examination by Edith’s Counsel that the “*little bronze monkey stands on my desk and is referred to in several of my letters*”, the Judge immediately felt the need to request further clarification that ““*He’s still well*” means the monkey?””. The Judge’s need to question Edith’s clear and unequivocal evidence lays bare his unfavourable opinion of Edith and would have had the effect of undermining her evidence to the jury.

- 29.** That letter also included the following passages:

“Darlint [sic] do something tomorrow night will you? something to make you forget. I’ll be hurt I know, but I want you to hurt me — I do really — the bargain now seems so one-sided — so unfair — but how can I alter it?”

... Don’t forget what we talked in the Tea Room. I’ll still risk and try if you will — we only have 3 and three quarter years left darlingest.”

30. Edith’s reference to “*tomorrow night*” was a reference to Bywaters’ last night of shore leave and Edith was apologising to Bywaters for not spending his last evening in London with him, unable to pull out of the theatre party arranged a fortnight earlier by her Aunt and Uncle. Edith was encouraging Bywaters to meet up with someone else on his last night of leave, even if it made her feel jealous. Bywaters did just so: he called in on Edith’s family in Manor Park and took her sister Avis out, who had a crush on Bywaters. At the trial, on 8 December 1922, Bywaters confirmed in his evidence that Edith “*said she was going to the theatre with Percy and her uncle and aunt from Stamford Hill, and Miss Avis Graydon was supposed to go too, and she [Edith] added ‘I wish I was going with you’*”. Edith’s evidence at the trial confirmed this and confirmed that the Tea Room discussion was about finding her a job abroad. However, as can be seen from the extract below, the Crown presented those passages to the jury out of context and suggested that they revealed a plot to murder Percy, notwithstanding that the Crown had no evidence to support this theory. The Crown dismissed Edith’s evidence that the Tea Room discussion concerned finding her a job abroad, notwithstanding that the subject was mentioned earlier on in Edith’s letter.

“[MR WALTER FRAMPTON – COUNSEL FOR EDITH] In that letter you also say — ‘Darlingest find me a job abroad. I’ll go tomorrow and not say I was going to a soul and not have one little regret.’ Did that really represent your feelings at that time, that you were prepared to go abroad with him at once? — [EDITH] Yes. We had discussed it on the Saturday.

[MR WALTER FRAMPTON] Look at the end of that letter — ‘Don’t forget what we talked in the Tea Room, I’ll still risk and try if you will.’ What had you discussed in the tearoom? — [EDITH] My freedom.”

“[SOLICITOR-GENERAL] Turn to your, letter (exhibit 60) (about 1st October), the last sentence — ‘Don’t forget what we talked in the Tea Room, I’ll still risk and try if you will.’ Was that in connection with the same matter, the idea of poisoning your husband? — [EDITH] No, that was not. What we talked of in the tea-room was getting me a post abroad.”

“[SOLICITOR-GENERAL]...At any rate I suggest to you that your statement, “I will still risk and try if you will,” referred to the same matter which you had mentioned so often in the letters, the

risk of using poison or force to your husband? — [EDITH] I had never mentioned force to my husband.”

31. It is noteworthy that Travers Humphreys, Counsel for the Crown, had actually conceded privately that Edith’s innocent explanation might be the true one. Indeed, in the DPP file ‘EXHIBITS: Mr Travers Humphreys’ (**enclosed**), Travers Humphreys had pencilled this in the margin of this letter next to the words *“Do something tomorrow night”: “See her explanation of this wh[ich] may be the true one”*. The Crown privately acknowledged that Edith was probably telling the truth about this but presented a very different account of events to the jury.
32. Edith appealed her conviction on the basis that the Judge was wrong to admit the Letters as evidence against Edith at the trial and that the conviction was unsafe. The Court of Appeal rejected Edith’s appeal, a decision which was plainly wrong. Counsel for Edith pleaded her case for three hours. The Court of Appeal rejected her appeal after eight minutes, three minutes more than they had accorded Bywaters, who had confessed to the murder and had assumed full and sole responsibility.
33. In the Court of Appeal Judgment (**enclosed**), the Lord Chief Justice described the case as *“commonplace and unedifying”*, and stated that the case *“exhibited, from the beginning to the end, no redeeming feature”*. The Lord Chief Justice characterised the Letters as *“remarkable and deplorable correspondence, which was full of the most mischievous and perilous stuff”* and which *“show a passionate and, in the circumstances, a wicked affection between Mrs Thompson and Bywaters.”* The Lord Chief Justice’s hyperbolic comments about the Letters reveal his moral disapproval of Edith’s and Bywaters’ affair, which tainted the fairness of the Appeal. The Court of Appeal referred to the passages that the prosecution had cherry-picked from the Letters, including *“I’ll still risk and try if you will — we only have 3 and three quarter years left darlings”*, and concluded in error that *“it cannot be said that those letters were not evidence against the appellant in support of the charge which the prosecution were making up against her.”*
34. Lord Justice Darling, one of the Appeal Court judges, saw fit to make light of the matter during the Appeal and suggest (see **enclosed** report from The Times):

“Didn’t she [Edith] mean to say to him [Bywaters] that one day they might be sitting by the fire and he might be thinking to himself ‘That woman poisoned her husband and now I am in his place. What about me?’ (Laughter)”
35. The prosecution’s speculation about particular passages in the Letters detracted from key facts which entirely undermined the prosecution’s case. In particular, Avis was meant to attend the Criterion Theatre with Edith and her family on the evening of 3 October 1922, as a ticket had been

bought for her, and Avis was meant to stay with Edith overnight. In a letter to the Prime Minister dated 30 December 1922, Avis wrote:

“I can assure you Sir that my sister had no idea that her husband was going to be murdered, as it had been arranged a fortnight before that I should accompany them to the Theatre, & spend the night with her in Kensington Gdns, & she had no idea until she met her husband in the evening that I was not going to be of the party.”

36. At some point during the afternoon of 3 October 1922, Avis gave her ticket to a friend, probably Ida Louise Burton, so that she, Avis, could spend the evening with Bywaters. Under the by-line of ‘A life-long Friend of Mrs Thompson’, that same friend wrote two relevant pieces about Edith in *Lloyds Sunday News* (17 December 1922 and 24 December 1922) (**enclosed**). She was from Manor Park and had been to school with Edith and Avis. She visited Edith at Holloway along with Edith’s family. In her articles, she refers to her dinner with the theatre party of 3 October 1922, to the play they saw, and to conversations from shortly before the murder that night.
37. Avis’s ticket to the theatre matters because, as she notes, she was expected to travel home to Ilford with Edith and Percy after the theatre so as not to go home on her own (from East Ham Station to 231 Shakespeare Crescent, Avis’s home, was a mile-long walk). It is inconceivable that Edith would have set up an attack on Percy if Avis was to be present, as Edith was fully expecting her to be. As the editor of the ***Sunday Express***, James Douglas, wrote on 7 January 1923 (**enclosed**), ‘*If Mrs. Thompson had not been walking with her husband when he was murdered, would the jury have found her guilty of wilful murder? Why should she be hanged by reason of what may have been the unforeseen accident of her presence?*’.

The post-mortem examinations

38. It is crucial to bear in mind that the post-mortem examinations concluded that Percy died as a result of stab wounds and that no poison or glass was detected in Percy.
39. Dr Percy Drought conducted a post-mortem examination of Percy’s body on 5 October 1922 (**enclosed**) and found that Percy had been stabbed several times, including two deep stab wounds in the back of Percy’s neck, which would have “*required a considerable force*”, and that the second stab wound in the back of his neck proved fatal.
40. Dr Bernard Spilsbury conducted a post-mortem examination of Percy’s exhumed body on 3 November 1922. In his post-mortem examination report dated 1 December 1922 (**enclosed**), Dr Spilsbury stated that “*The cause of death was heart failure due to loss of blood from the three stab*

wounds in the neck, the principal wound being the one which had opened the carotid artery". Dr Spilsbury's conclusion as to the cause of Percy's death was consistent with Dr Drought's conclusion.

41. Crucially, Dr Spilsbury's post-mortem examination report also found that "*There were no signs of poisoning and no scars were visible in the wall*" and that "*The small and large intestines were normal and no scars were found in their walls [of the stomach]*". Dr Spilsbury concluded that there were "*no indications of poisoning and no changes suggestive of previous attempts of poisoning*" and that he had "*detected no glass in the contents of the intestine.*"
42. In view of this, the Solicitor-General's submission to the jury in his Opening Statement that "*a post-mortem examination showed that there were practically no traces of any poison*" was false and was calculated to mislead the jury.

The witness evidence

43. The evidence provided by Edith, Bywaters and numerous witnesses presented a consistent picture that Edith had been taken by surprise when Percy was attacked in the early hours of 4 October 1922, had not had any involvement in the attack and was distraught that Percy had been attacked.
44. After initially denying the murder, Bywaters confessed to the murder of Percy and made multiple voluntary statements attesting to Edith's innocence:-
 - 44.1. Bywaters made a voluntary statement dated 5 October 1922 in which he admitted to fatally wounding Percy and he confirmed that "*Mrs Edith Thompson was not aware of my movements on Tuesday night, 3rd October*". In that statement, Bywaters explained the reason for his actions: "*The reason I fought with Thompson was because he never acted like a man to his wife. He always seemed several degrees lower than a snake. I loved her and I could not go on seeing her leading that life*".
 - 44.2. When Edith and Bywaters were both charged with Percy's murder, Bywaters objected to Edith being charged by declaring "*It is wrong, it is wrong*".
 - 44.3. At the trial, Bywaters explained that he had witnessed a quarrel between Percy and Edith on 1 August 1921 relating to a sewing pin, during which "*Mr Thompson threw his wife across the morning room and on her passage across the room she overturned a chair*." Bywaters stated that he had stepped between them and suggested to Percy to separate from Edith because "*You are making Edie's life a hell. You know she is not happy with you.*" Bywaters confirmed that there was no agreement between him and Edith to carry out any violence against Percy and that nothing in the Letters had incited him to carry out any act of violence against Percy. Bywaters explained that his

confrontation with Percy in the early hours of 4 October 1922 was not premeditated. Bywaters also explained that many of the passages to which the prosecution had referred in support of their case that Edith and Bywaters had been plotting to kill Percy were actually references to committing suicide if Percy would not give Edith a divorce.

45. At the trial, Edith confirmed in her evidence that she had been unhappy in her marriage but denied that she had had any involvement in Bywaters' fatal attack on Percy. Edith was cross-examined at length on the five passages from the Letters which referred to poison, glass and making plans. Edith denied ever having tried to administer poison or glass to Percy and explained that many of the passages on which the prosecution had sought to rely in support of their case that Edith and Bywaters had been plotting to kill Percy were actually references to Edith having requested a divorce from Percy, to finding a job abroad (as mentioned above) or to committing suicide.

The Judge's prejudicial comments and summing up

46. The principles of natural justice dictate that every defendant is entitled to a fair and impartial trial. Those principles were as relevant to the trial in December 1922 as they are to trials today. Criminal judges are responsible for overseeing trials in a fair and impartial way, for ruling on points of law and for ensuring that defendants receive a fair trial. The Judge's utmost impartiality was singularly important in this case where, unusually, it was the Crown, not the defence, who enjoyed the right to the final address. Bywaters' Counsel called it:-

"a curious position. In an ordinary case in this Court where a prisoner gives evidence and calls no other evidence as to facts, his counsel has the right of addressing the last word to the jury. Owing to the fact that a law officer of the Crown has been engaged to prosecute in this case, I am deprived of that privilege. Apparently the privilege was considered so important by those conducting the prosecution that the services of the Solicitor-General were engaged."

47. The Solicitor-General sought to play down the anomaly of this by noting "*after everything I have to say there will be the cooling influence of my lord.*"
48. It was incumbent on the Judge in summing up to direct the jury to the relevant law and to deliver a fair and impartial summary of the evidence. Instead, the Judge's summing up was anything but fair and impartial and was infused with the Judge's moral condemnation of Edith's and Bywaters' affair. For instance (and this is by no means an exhaustive list of the defects in the Judge's summing up):-
- 48.1. The Judge described the case to the jury as "*a common or ordinary charge of a wife and an adulterer murdering the husband*", having previously referred to Bywaters as

the “*adulterer*” throughout the trial, and repeatedly referred to Edith and Bywaters as “*the woman*” and “*the man*”. Referring to Edith and Bywaters in those terms served to dehumanise them and indicated the Judge’s moral disapproval of their affair.

- 48.2. The Judge assured the jury that it was possible that Edith had murdered Percy: “*I do not say that cases like this are very usual, but there are cases of husbands who, in order to marry someone else, want to get rid of a wife, and of wives who want to get rid of the husband. Let us say in the interest of the fair sex that they are more often on the other side, but such things are known and they are not unusual.*” Such assurance was neither appropriate nor necessary.
- 48.3. The Judge, after referring to a passage in Edith’s letters to Bywaters dated 21 September 1922 [exhibit 28] in which Edith stated that “[*Percy*] *has the right by law to all that you have the right to by nature and love*”, provided a highly condemnatory opinion of Edith’s and Bywaters’ extra-marital affections for each other: “*You are told that this is a case of a “great love”. I am only using it as a phrase. Take one of the letters as a test... “He has the right by law to all that you have the right to by nature and love.” If that nonsense means anything, it means that the love of a husband for his wife is something improper because marriage is acknowledged by the law, and that the love of a woman for her lover, illicit and clandestine, is something great and noble. I am certain that you, like any other right-minded persons, will be filled with disgust at such a notion. Let us get rid of all that atmosphere, and try this case in an ordinary common sense way.*” The Judge was conveying his strong personal views to the jury that an “*illicit and clandestine*” extra-marital relationship was morally repugnant and was inviting the jury to agree with his opinion on the basis that that was the opinion held by “*right-minded persons*”. Later on, the Judge ridiculed Edith’s and Bywaters’ feelings for each other as being “*insensate silly affection*”.
- 48.4. The Judge belittled Edith’s and Bywaters’ evidence of Edith’s innocence: “*You have noticed, I daresay, in the course of the case that where the woman made statements they are mostly something excusing her and implicating the man, but in some of them, when the man is making statements, they are always exculpating the woman. It is said that is chivalry and that is why he is doing it.*” Here the Judge is putting his opinion of Edith’s guilt forward, thereby inevitably influencing the jury against her.
- 48.5. When describing “*the relations between the parties*”, the Judge referred to Bywaters as “*this young lad*” who went on holiday with the Thompsons, a married couple, and “*it is pretty obvious that there were relations between them*”. Here the Judge is

advancing the prosecution's narrative of Edith, the older woman, preying on Bywaters, the younger man, and subjugating Bywaters to her will.

- 48.6. When referring to the manner in which Percy was killed, the Judge invited the jury to put aside Edith's and Bywaters' evidence as the jury might think that their evidence was made up: "*I am putting aside the evidence of the man and the woman because you may think the whole of it is made up. I do not say you will think it is made up, but you might.*" This is tantamount to overt manipulation of the jury to get them thinking his way.
49. The Judge's subjective views as to the immorality of Edith and Bywaters' relationship had no place in the summing up and unfairly prejudiced the jury's verdict against Edith, which was delivered less than two hours after the Judge had concluded his summing up.
50. Moreover, the Judge's emphasis to the jury on the evidential value of the Letters was misleading and prejudicial, given that nowhere in the Letters is there the slightest reference to the time, place or manner of Percy's murder. Indeed, the Judge remarked in summing up: "*And here it is that what I may call the necessary absence of evidence makes these letters of so much importance*". The Judge's suggestion that the absence of any other evidence against Edith increased the evidential value of the Letters was perverse, particularly in circumstances where the Letters were not relevant to the indictment being tried and there was objective evidence from the post-mortem examinations which supported Edith's innocence. It is astounding that the Judge referred in summing up to Edith's alleged intention to poison Percy 27 times but did not mention the post-mortem examinations once, which found no trace of poison in Percy's system.
51. Indeed, the Judge's selective use of "*certain extracts*" from the Letters in summing up was highly prejudicial. The Judge read out passages from the Letters referring to poison to try to demonstrate Edith's murderous intentions towards Percy and to fabricate an evidential link between Edith and the murder weapon. In particular, the Judge read out part of Exhibit 22 where Edith discussed a woman poisoning her husband in the book 'Bella, Donna', followed by part of Exhibit 26 where Edith noted that mercury is a poison. The Judge then read out part of Exhibit 60 where Edith told Bywaters "*Do not forget what we talked of in the Tea Room; I will still risk and try if you will*" and the Judge said that "*it is said it is poison or it is the dagger*". The Judge then read out this further extract from Exhibit 60: "*We have got many things to consider; shall we run away if we can get the money, or shall we try poison? We will talk it over.*" It was wholly improper for the Judge to suggest that Edith may have been referring to a dagger in that letter in circumstances where there was no mention of a dagger or a knife in either that Letter or any of the other Letters, and there was nothing in the

witness evidence to suggest that Edith had prior knowledge, let alone intent, that Bywaters would stab Percy.

52. Moreover, the Judge's choice of words in summing up was prejudicial. Until summing up, the murder weapon had been referred to neutrally by all parties and witnesses as a knife whereas during summing up, the Judge made a point of referring to it as "*a dagger; it is a weapon that has to be seized with the fist – it is a stabbing weapon*". Referring to the knife as a dagger was a deliberate attempt by the Judge to emphasize the premeditated nature of Percy's murder to the jury (notwithstanding the total lack of evidence in support of this) and to encourage the jury to find Edith guilty of inciting Percy's murder.
53. Finally, the Judge's dismissive remarks about the important testimony of John Webber (**Webber**) further illustrates his lack of objectivity towards Edith. Webber lived close to the scene of Percy's murder and gave evidence at the trial which supported the case for Edith's innocence. Webber's evidence was that, at the time of the murder, he heard "*a woman's voice, crying, "oh don't, oh don't!" in the most piteous manner*", as he was "*about to retire to bed*". On hearing that, "*[he] went out into the street*".
54. When the Judge first addressed Webber's evidence, he inaccurately claimed that Webber lived in a house "*somewhere opposite, and it was five minutes before he came out, and he heard Mrs Thompson in a piteous tone say "oh, don't, oh don't"*". Webber in fact lived 97 yards down the road on the same side as the scene of the crime, not "*opposite*", and he did not hear Edith after he came out, but before. Edith's screams were the reason why he came out. When the Judge returned to Webber's evidence in his address to the jury, he disingenuously introduced it as "*one other very curious piece of evidence ... I am not saying it is true; it is for you to say whether it is accurate, or whether it is imaginary, or whether he has made a mistake; but there is the evidence.*"
55. In the words of Filson Young, the editor of the 1923 *Notable British Trials* volume, Webber's account, was:-

"evidence, surely, not that Mrs Thompson assisted and approved of the crime, but that she tried to prevent it; yet I think the only bearing of this evidence alluded to by the judge was that it went to prove that Mrs Thompson was present and a witness of the murder. It does not seem to me that that is the true value of this piece of evidence, or that nearly enough weight was given to it as bearing out what I believe to have been the fact: that Mrs Thompson, however much she might have desired that a kind Providence would remove her husband from her path, was just as horrified as anyone else when she saw that the furious assault of Bywaters upon him was, in fact, a murderous assault."

56. As set out above, the Judge's summing up was grossly unfair and highly prejudicial. Edith was convicted of Percy's murder on the basis of an unfair trial and her conviction is clearly unsafe.

The law on granting pardons

57. The Justice Secretary may exercise the Royal Prerogative of Mercy on behalf of Her Majesty the Queen to grant a free pardon for civilians convicted of crimes in England and Wales. The Royal Prerogative of Mercy is a broad and flexible doctrine which acts as a constitutional safeguard against mistakes. The effect of a free pardon is not to quash a conviction but to relieve a person of "*all pains, penalties, and punishments whatsoever that from the said conviction may ensue*" (**R v Foster (Barry)** [1985] QB 115). The exercise of the power can be subject to Judicial Review by the Divisional Court (**R v Secretary of State for the Home Department, ex parte Bentley** [1994] Q.B. 349).

58. The traditional approach of the Home Office was to grant a free pardon if the individual was "*morally and technically innocent of the crime*". However, the power is arguably more flexible than that and should be adapted to meet the particular circumstances of the case in order to provide civil redress for miscarriages of justice. At 365C-365D of **Bentley** [1994] Q.B. 349, Watkins LJ held that:

"it is an error to regard the prerogative of mercy as a prerogative right which is only exercisable in cases which fall into specific categories. The prerogative is a flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. We would adopt the language used by the Court of Appeal in New Zealand in Burt v. Governor-General [1992] 3 N.Z.L.R. 672 , 681: "the prerogative of mercy [can no longer be regarded as] no more than an arbitrary monarchical right of grace and favour." It is now a constitutional safeguard against mistakes. It follows, therefore, that, in our view, there is no objection in principle to the grant of a posthumous conditional pardon where a death sentence has already been carried out. The grant of such a pardon is a recognition by the state that a mistake was made and that a reprieve should have been granted."

59. Under section 16 of the Criminal Appeal Act 1995, the Justice Secretary can seek advice from the Criminal Cases Review Commission as to whether to exercise the Royal Prerogative of Mercy in relation to a conviction.

Conclusion

60. When applying the traditional approach of the Home Office, Edith deserves to be granted a free pardon because she was morally and technically innocent of murdering Percy. The Letters were the

only evidence against Edith and they were not probative of Edith's guilt to any charge of murder. The Letters were irrelevant to the charge of wilful murder, were not read out in full and did not provide any evidence at all that Edith aided and abetted Bywaters to stab Percy to death. Moreover, Dr Spilsbury's post-mortem examination report proved that the fantastical tales of poison and glass in the Letters had not been carried out and were mere fiction.

61. In addition, or in the alternative, when applying the broader approach in ***Bentley***, Edith deserves to be granted a free pardon because it is evident that the Judge's handling of the trial and the Judge's summing up were so prejudicial that no reasonable appeal court would have allowed the conviction against Edith to stand. Whilst a married woman's adultery was considered immoral by the Judge and many others at the time of the trial, moral repugnance should not form the basis of a conviction for murder; only factual evidence can do so. The Judge's moral objection to Edith's and Bywaters' extramarital affair was evident in his condemnation of Edith's expressions of affection towards Bywaters in the Letters. The Judge's bias against Edith was also evident in his willingness to support the prosecution's narrative that Edith had incited Bywaters to murder Percy and in his propensity to reject Edith's evidence. The Judge failed to oversee the trial in a fair and impartial way and unfairly prejudiced the jury's opinion of Edith.
62. Whichever approach is applied, Edith's conviction for Percy's murder is clearly unsafe and the RPM should be exercised to grant Edith a free pardon in the interests of restorative justice and in order to clear Edith's name.
63. In conclusion, Edith has been the victim of a grave miscarriage of justice and we respectfully request that Edith be granted a free pardon under the RPM in relation to her conviction for Percy's murder.
64. If you have any questions, please do not hesitate to contact Nicholas Brown on nicholasbrown@bdbpitmans.com / 020 7783 3410.

We look forward to hearing from you.

Yours faithfully



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Mr Nicholas Brown
BDP Pitmans

Ref: TO986559
Date: 19 October 2022

By email - NicholasBrown@bdbpitmans.com

**APPLICATION FOR AN EXERCISE OF THE ROYAL PREROGATIVE OF MERCY (RPM)
FOR EDITH JESSIE THOMPSON**

Dear Mr Brown,

I am writing to provide you with the Secretary of State for Justice's decision on your request dated 8 July 2022 to recommend to His Majesty the King an exercise of her Royal Prerogative of Mercy (RPM) in the case Edith Jessie Thompson. You make this application on behalf of Professor Rene Weis, who has been made her heir and executor by the family.

Edith Jessie Thompson was executed on 9 January 1923 for the murder of her late husband Mr Percy Thompson following an unsuccessful appeal on 21 December 1922.

I am not minded to recommend to His Majesty the King, an exercise of the RPM in the case of Edith Jessie Thompson at this stage. I appreciate this will not be the outcome you or Professor Weis would be hoping for but I will set out the reasoning behind the decision below.

The established conventions that are to be considered when recommending an exercise of the RPM are that it is impractical for the case to be referred to the appellate court, all other judicial routes must have been exhausted and that new evidence has come to light which demonstrates conclusively that either no offence was committed or that the defendant did not commit the offence. In addition, it must be clear that a person be morally and technically innocent to be recommended for an exercise of the RPM.

The above considerations give due regard to the constitutional position that the courts, not the Government nor His Majesty can determine guilt. The exercise of RPM is used with great exceptionality and generally only given in the circumstances outlined above.

In terms of there being new evidence in this case, you have not identified any new evidence which demonstrates conclusively that no offence was committed, or that Edith did not commit the offence for which she was convicted. Professor Weis' detailed research makes the case that by modern standards of fairness, some of the evidence may today be ruled inadmissible by the trial court and it was this issue, on the admissibility of some of Edith's letters, which formed the subject of the original appeal.

Professor Weis has carried out a great deal of research into the details of this case and he highlights how, in his view, societal attitudes towards Edith Thompson led to unfair decisions in admitting some of her letters as evidence in the trial and then in refusing her appeal on the same issue. Unfortunately, this perceived tainting of the original rulings on admissibility of evidence does not amount to new evidence to support an exercise of the RPM.

Your client has also not yet approached the Criminal Cases Review Commission (CCRC). They are an independent body who have the power to investigate criminal cases and to refer cases for appeal. Until they have been approached and made a finding on this case, the full range of judicial routes cannot be held to have been exhausted. In applying to the CCRC you should consider the passage of time since the conviction and also the relationship to the deceased. You can find more information at ccrc.gov.uk. Section 6 of the Policy at CW-POL-02 - Making an Application version 1.0 covers applications on behalf of deceased persons and cites the relevant legislation.

Whilst I appreciate that this is not the outcome you would have hoped for, I hope this letter sets out the reasons for the decision.

There is no right of appeal against this decision, but you are free to seek independent advice on the options available to you, either from a solicitor, Citizens Advice (CA) or a Law Centre. You can contact the Law Centres Network on 020 3637 1330 or by accessing their website www.lawcentres.org.uk and a CA office can be found at www.citizensadvice.org.uk. To locate a solicitor nearest to you, you can use a free service run by the Law Society <https://solicitors.lawsociety.org.uk/>.

Yours sincerely,

RPM

The Rt Hon Dominic Raab MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Our Ref
CYG/LUB/104312.0002
Date
17 November 2022

**By Email: Rupal.Patel-Suchak109@Justice.gov.uk; mojas@Justice.gov.uk;
sioban.heywood@justice.gov.uk; dominic.raab.mp@parliament.uk**

Dear Sir

Request for a posthumous pardon for Edith Jessie Thompson under the Royal Prerogative of Mercy

1. We write further to our detailed letter of representations dated 7 July 2022 requesting a posthumous pardon for Edith Jessie Thompson (**Edith**) pursuant to the Royal Prerogative of Mercy (**RPM**) on behalf of our client, Professor René Weis, and to the short letter of response that we received from “RPM” (**the RPM team**) dated 19 October 2022 (**RPM Response Letter**) refusing our request.
2. In writing to you, we appreciate that the RPM Response Letter was prepared prior to your resumption in office as Lord Chancellor and Secretary of State for Justice.
3. We are extremely concerned to note that the reasons expressed in the RPM Response Letter for refusing to recommend the exercise of the RPM in respect of Edith’s conviction for the murder of her husband are based on an incorrect understanding and application of the law and established conventions relating to the RPM.

Fresh Evidence

4. The RPM Response Letter said that fresh evidence of innocence is required in order for the exercise of the RPM to be recommended: *“The established conventions that are to be considered when recommending an exercise of the RPM are that it is impractical for the case to be referred to the appellate court, all other judicial routes must have been exhausted and that new evidence has come to light which demonstrates conclusively that either no offence was committed or that the defendant did not commit the offence. In addition, it must be clear that a person be morally and technically innocent to be recommended for an exercise of the RPM.”*

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5. In reliance on the purported requirement of fresh evidence, the RPM Response Letter refused to recommend the exercise of the RPM in respect of Edith's conviction because they had "*not identified any new evidence which demonstrates conclusively that no offence was committed, or that Edith did not commit the offence for which she was convicted.*" In reaching that decision, the RPM team noted that our client's case was that "*societal attitudes towards Edith Thompson led to unfair decisions in admitting some of her letters as evidence in the trial and then in refusing her appeal on the same issue*".
6. It is clear from legal authorities and from previous RPM recommendations made by your predecessors that, contrary to the RPM Response Letter:-
 - 6.1. fresh evidence is not required for pardons to be granted under the RPM;
 - 6.2. the purpose of the RPM is to act as a constitutional safeguard against mistakes; and
 - 6.3. the power is flexible and should be adapted to meet the circumstances of a particular case.
7. In ***R v Secretary of State for the Home Department, ex p Bentley*** [1994] 2 WLR 101, a judicial review of the Home Secretary's decision not to recommend the use of the RPM in relation to Derek Bentley's conviction for murder, Watkins LJ held (at paragraphs 365C-365D) that:-

"...it is an error to regard the prerogative of mercy as a prerogative right which is only exercisable in cases which fall into specific categories. The prerogative is a flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. We would adopt the language used by the Court of Appeal in New Zealand in Burt v. Governor-General [1992] 3 N.Z.L.R. 672 , 681: "the prerogative of mercy [can no longer be regarded as] no more than an arbitrary monarchical right of grace and favour." It is now a constitutional safeguard against mistakes. It follows, therefore, that, in our view, there is no objection in principle to the grant of a posthumous conditional pardon where a death sentence has already been carried out. The grant of such a pardon is a recognition by the state that a mistake was made and that a reprieve should have been granted."
8. In that case, the High Court confirmed that "*some aspects of the exercise of the Royal prerogative are amenable to the judicial process*" and held that the "*Home Secretary failed to recognise the fact that the prerogative of mercy is capable of being exercised in many different circumstances*".
9. After the High Court remitted the matter back to the Home Secretary in order to "*devise some formula which would amount to a clear acknowledgment that an injustice was done*", the Home Secretary decided to grant a posthumous pardon to Derek Bentley notwithstanding that there was no fresh evidence of his innocence. Instead, the posthumous pardon to Mr Bentley was granted as a result of public outcry at the sheer injustice of Mr Bentley's execution for the fatal shooting of PC Miles in circumstances where it was someone else who had pulled the trigger and where Mr Bentley's low IQ was not given due consideration at trial.
10. Similarly, a posthumous pardon was granted to Alan Turing in 2013 in relation to his conviction for homosexual activity without there being any fresh evidence of his innocence. In 2012, a posthumous pardon to Turing had been refused because "*the law at the time required a prosecution and, as such, long-standing policy has been to accept that such convictions took place and, rather*

than trying to alter the historical context and to put right what cannot be put right, ensure instead that we never again return to those times” (Lord McNally). However, a year later, the then Justice Secretary, Chris Grayling, effected a U-turn and recommended the exercise of the RPM to grant Mr Turing a posthumous pardon because “we would now consider [his conviction] unjust and discriminatory”.

11. The RPM team’s decision to refuse to recommend a posthumous pardon to Edith in respect of her conviction for Mr Thompson’s murder on the ground that there was no fresh evidence of Edith’s innocence since her trial is wrong in law and is inconsistent with your predecessors’ decisions to recommend the granting of pardons under the RPM without fresh evidence of innocence being available.

Involvement of the Criminal Cases Review Commission (CCRC)

12. The RPM Response Letter states that our client “*has also not yet approached the Criminal Cases Review Commission. They are an independent body who have the power to investigate criminal cases and to refer cases for appeal*” (underline added for emphasis).
13. We do not understand the suggestion that our client should also have approached the CCRC in circumstances where:-
 - 13.1. our client does not have a statutory right to approach the CCRC for assistance in respect of RPM requests (that right is preserved only for you under section 16 of the Criminal Appeals Act 1995, as explained in the [CCRC Policy Document 26](#));
 - 13.2. applying for a pardon and applying for a fresh appeal against a criminal conviction are separate processes with different legal tests;
 - 13.3. we are not currently seeking to apply for a fresh appeal against Edith’s conviction; and
 - 13.4. there is no requirement for us to apply for a fresh appeal against Edith’s conviction at the same time as or prior to applying for a pardon.
14. Any implication in the RPM Response Letter that our client should also have applied to the CCRC, and that the failure to do so is a reason not to recommend the exercise of the RPM, would be wrong in law.

Next steps

15. Our letter dated 7 July 2022 goes into detail as to why Edith was morally and technically innocent of her husband’s murder, why her conviction and execution for her husband’s murder represents a severe miscarriage of justice and why she deserves to be granted a posthumous pardon under the RPM in order to clear her name.
16. It seems to us that the reasons expressed in the RPM Response Letter for refusing to recommend a posthumous pardon to Edith are in error and not in accordance with the law.



17. As such, we would respectfully request that our letter dated 7 July 2022 is considered afresh, with due care and with the flexible nature of the power in mind.

18. We would be grateful if you could please confirm that our letter dated 7 July 2022 is being considered afresh and provide an indication as to when we can expect to receive a substantive response.

Yours faithfully

A handwritten signature in black ink that reads 'BDB Pitmans LLP'.

BDB Pitmans LLP

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The Rt Hon Dominic Raab MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

Our Ref
CYG/ENB/104312.0002
Date
20 December 2022

By Email and By Post

Dear Secretary of State

Proposed claim for judicial review
Ref: TO986559

We are instructed by Professor René Weis in relation to the decision letter dated 19 October 2022 in response to our client's application for an exercise of the Royal Prerogative of Mercy (**RPM**) in favour of Edith Jessie Thompson (**Edith**).

This letter is a letter before claim sent in accordance with the Pre-Action Protocol for Judicial Review (**the Pre-Action Protocol**).

1. The Proposed Claimant

- 1.1. The Proposed Claimant is Professor René Weis. Our client's address is Flat 2, 55 Chiswick High Road, London W4 2LT.
- 1.2. Professor Weis is Emeritus Professor of English Literature at University College London. He is the author of *Criminal Justice: The true story of Edith Thompson* (Hamish Hamilton 1988 / Penguin 2001). His website <https://edithjessiethompson.co.uk/> is the standard reference work for information about Edith's case. It is a free online resource which features complete and accurate transcripts of all of Edith's letters, the authorised transcript of the trial, the autopsy and post-mortem reports on her murdered husband, and other relevant source materials.
- 1.3. Professor Weis has been made Edith's heir and executor by Edith's family.

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2. The Proposed Defendant and their case reference details

2.1. The Proposed Defendant is the Secretary of State for Justice, Ministry of Justice, 102 Petty France, London SW1H 9AJ.

2.2. The MOJ's case reference number is TO986559.

3. Details of the Proposed Claimant's legal advisers and their case reference details

3.1. The Proposed Claimant's legal advisers are BDB Pitmans LLP at One Bartholomew Close, London EC1A 7BL and their case reference is 104312.0002.

4. The decision being challenged

4.1. Professor Weis seeks to challenge the lawfulness of the decision of the Secretary of State for Justice dated 19 October 2022 (**the Decision**) to refuse the application dated 7 July 2022 for a posthumous free pardon to be granted to Edith pursuant to the RPM in respect of Edith's conviction and state execution for the murder of her late husband, Mr Percy Thompson (**Percy**).

4.2. The challenge is brought on the basis that it is founded on an incorrect understanding and application of the law and established conventions on the exercise of the RPM. The specific grounds for challenging the Decision are set out below.

4.3. The Proposed Claimant reserves the right to add to, or substitute, the proposed grounds of claim following receipt of the Pre-Action Protocol response.

5. Reply date

5.1. In accordance with the Pre-Action Protocol, the Proposed Defendant must provide a substantive response within 14 days, namely by **3 January 2023**.

6. Details of any interested parties

6.1. None (so far as we are aware).

7. Factual Background

7.1. Edith was unhappy in her marriage to Percy and became close to Frederick Bywaters (**Bywaters**), who was a family friend. In June 1921, Edith entered into an extra-marital relationship with Bywaters. Between September 1921 and September 1922, Bywaters was often at sea and Edith wrote to Bywaters frequently.

- 7.2. Shortly after midnight on the 4 October 1922, Edith and Percy were walking home from Ilford station when they were confronted by Bywaters on Belgrave Road. Bywaters engaged in a fight with Percy and stabbed Percy multiple times. Percy died at the scene. The post-mortem results concluded that Percy died as a result of stab wounds to his neck.
- 7.3. The police arrested Edith and Bywaters and charged them both with Percy's murder. Between 6 and 11 December 1922, Edith and Bywaters were tried together for the indictment of wilful murder. The prosecution chose not to try them on a second indictment containing five counts of conspiracy to murder, soliciting to murder, inciting to commit a misdemeanour, administering poison with intent to murder and administering a destructive thing with intent to murder.
- 7.4. Edith and Bywaters were both found guilty of Percy's murder and convicted on 11 December 1922. Edith and Bywaters appealed their convictions but their appeals were dismissed on 21 December 1922. Edith was executed by hanging at Holloway prison on 9 January 1923. Bywaters was executed by hanging at Pentonville prison on the same date.

8. The Proposed Claimant's application

- 8.1. By letter dated 7 July 2022, we applied on behalf of Professor Weis to the Secretary of State for Justice to recommend that a posthumous free pardon be granted to Edith pursuant to the RPM in respect of her conviction and execution for Percy's murder (**the Application**). We enclose the Application and enclosures for your reference.
- 8.2. The Application set out in detail why Edith's trial was grossly unfair and prejudicial, why she was morally and technically innocent of Percy's murder, why her conviction and execution for his murder amounted to a grave miscarriage of justice and why she deserves to be granted a posthumous free pardon under the RPM.
- 8.3. In particular, the Application detailed how Edith's trial was tainted by the Judge's decision to admit irrelevant letters between Edith and Bywaters and the Judge's moral condemnation of Edith's marital infidelity. In summary:-
 - 8.3.1. Edith's letters did not provide any evidence that Edith had incited Bywaters to murder Percy. Instead, they contained expressions of Edith's affection for Bywaters, fantastical tales of poison and glass and suicidal ideations which the prosecution and the Judge used to advance a narrative to the jury of Edith as an immoral adulterer preying on a younger man and inducing him to kill her husband. The letters were the only evidence alleged against Edith in the case and were not relevant to the indictment being tried.

- 8.3.2. The post-mortem results concluded that Percy died due to a loss of blood from stab wounds in his neck and that there were no signs of poisoning or ingestion of glass. Despite this objective evidence that Edith was innocent of the crime of wilful murder, the Judge referred in summing up to Edith's alleged intention to poison Percy 27 times and did not mention the post-mortem results once.
- 8.3.3. In summing up, the Judge also dismissed important testimony of John Webber, who overheard Edith crying "*oh don't, oh don't!*" in the most piteous manner" at the time of the fatal attack, and instead the Judge asserted to the jury that "*the love of a woman for her lover*" would make "*you, like any other right-minded persons...be filled with disgust*".
- 8.4. The Application summarised the legal principles underpinning the exercise of the RPM. In short:-
- 8.4.1. The Justice Secretary can recommend the exercise of the RPM to grant a pardon to civilians convicted of crimes in England and Wales. The RPM is a broad and flexible doctrine which acts as a constitutional safeguard against mistakes. The effect of a free pardon is not to quash a conviction but to relieve a person of "*all pains, penalties, and punishments whatsoever that from the said conviction may ensue*" (*R v Foster (Barry)* [1985] QB 115). The exercise of the power can be subject to Judicial Review by the Divisional Court (*R v Secretary of State for the Home Department, ex parte Bentley* [1994] Q.B. 349).
- 8.4.2. The traditional approach has been to grant a free pardon pursuant to the RPM if the individual is "*morally and technically innocent of the crime*".
- 8.4.3. Watkins LJ confirmed in *Bentley* that the power is arguably more flexible than that and should be adapted to meet the particular circumstances of the case in order to provide civil redress for miscarriages of justice. At 365C-365D, Watkins LJ held that:
- 8.4.3.1. "*it is an error to regard the prerogative of mercy as a prerogative right which is only exercisable in cases which fall into specific categories. The prerogative is a flexible power and its exercise can and should be adapted to meet the circumstances of the particular case. We would adopt the language used by the Court of Appeal in New Zealand in Burt v. Governor-General [1992] 3 N.Z.L.R. 672, 681: "the prerogative of mercy [can no longer be regarded as] no more than an arbitrary monarchical right of grace and favour." It is now a constitutional safeguard against mistakes. It follows, therefore, that, in our view, there is no objection in principle to the grant of a posthumous conditional pardon where a death sentence has already been*

carried out. The grant of such a pardon is a recognition by the state that a mistake was made and that a reprieve should have been granted.”

8.5. Under section 16 of the Criminal Appeal Act 1995 (**CCA**), the Secretary of State for Justice can seek advice from the Criminal Cases Review Commission (**CCRC**) as to whether to exercise the RPM in relation to a conviction. If the Secretary of State chooses to seek the CCRC’s assistance, the Secretary of State must treat the CCRC’s statement as conclusive.

8.6. Applying the traditional approach and the broader approach in *Bentley*, the Application concluded that Edith deserves to be granted a free pardon because:-

8.6.1. she was morally and technically innocent of the crime; and

8.6.2. the Judge’s oversight and summing up of the trial were so prejudicial that Edith’s conviction was clearly unsafe and no reasonable appeal court would have allowed the conviction against Edith to stand.

9. Details of the Decision

9.1. The Secretary of State’s Decision (enclosed) refused to recommend that the RPM be exercised to grant Edith a free pardon. The only reasons that the Secretary of State provided for refusing the Application were that:-

9.1.1. Fresh evidence of innocence is required in order for the Secretary of State to recommend the exercise of the RPM (**Reason One**) and the Application had “*not identified any new evidence which demonstrates conclusively that no offence was committed, or that Edith did not commit the offence for which she was convicted.*” In reaching that decision, the Secretary of State said that the “*perceived tainting of the original rulings on admissibility of evidence does not amount to new evidence to support an exercise of the RPM*”.

9.1.2. The Proposed Claimant had “*also not yet approached the Criminal Cases Review Commission. They are an independent body who have the power to investigate criminal cases and to refer cases for appeal*” (**Reason Two**).

10. Grounds for challenging the Decision

10.1. The Proposed Claimant seeks to challenge the legality of the Decision on the grounds that it is based on an incorrect understanding of an application of the law and established conventions relating to the exercise of the RPM.

Reason One

- 10.2. It is clear from legal authorities and previous RPM recommendations made by predecessors that fresh evidence is not required in order for pardons to be granted pursuant to the RPM. The purpose of the RPM is to act as a constitutional safeguard against mistakes and the power should be exercised flexibly and adapted to meet the circumstances of a particular case. We refer back to Watkins LJ's dicta in *Bentley* (at paragraphs 365C-365D) that *"it is an error to regard the prerogative of mercy as a prerogative right which is only exercisable in cases which fall into specific categories. The prerogative is a flexible power and its exercise can and should be adapted to meet the circumstances of the particular case... It is now a constitutional safeguard against mistakes. It follows, therefore, that, in our view, there is no objection in principle to the grant of a posthumous conditional pardon where a death sentence has already been carried out. The grant of such a pardon is a recognition by the state that a mistake was made and that a reprieve should have been granted."*
- 10.3. The *Bentley* case was a judicial review of the Home Secretary's decision not to recommend the use of the RPM in relation to Derek Bentley's conviction for murder. In that case, the High Court confirmed that *"some aspects of the exercise of the Royal prerogative are amenable to the judicial process"* and held that the *"Home Secretary failed to recognise the fact that the prerogative of mercy is capable of being exercised in many different circumstances"*. After the High Court remitted the matter back to the Home Secretary in order to *"devise some formula which would amount to a clear acknowledgment that an injustice was done"*, the Home Secretary decided to grant a posthumous pardon to Derek Bentley notwithstanding that there was no fresh evidence of his innocence. Instead, the pardon was granted as a result of the sheer injustice of Mr Bentley's execution for the fatal shooting of PC Miles in circumstances where it was someone else who had pulled the trigger and where Mr Bentley's low IQ was not given due consideration at trial.
- 10.4. Similarly, a posthumous pardon was granted to Alan Turing in 2013 in relation to his conviction for homosexual activity without there being any fresh evidence of his innocence. In 2012, a posthumous pardon to Turing had been refused because *"the law at the time required a prosecution and, as such, long-standing policy has been to accept that such convictions took place and, rather than trying to alter the historical context and to put right what cannot be put right, ensure instead that we never again return to those times"* (per Lord McNally). However, a year later, the Justice Secretary effected a U-turn and recommended the exercise of the RPM to grant Mr Turing a pardon because *"we would now consider [his conviction] unjust and discriminatory"*.

- 10.5. The Secretary of State's decision to refuse to recommend that a posthumous pardon be granted to Edith because there was no fresh evidence of Edith's innocence is wrong in law and is inconsistent with previous decisions recommending that pardons be granted pursuant to the RPM without the existence of fresh evidence of innocence.

Reason Two

- 10.6. Contrary to Reason Two, there is no requirement for the Proposed Claimant to have approached the CCRC in order for a pardon to be granted to Edith pursuant to the RPM and the Secretary of State is wrong in law to rely on this as a reason for refusing to recommend the exercise of the RPM.
- 10.7. Applying for a pardon pursuant to the RPM and applying for a fresh appeal against a criminal conviction are separate processes with different legal tests. The Proposed Claimant is not currently seeking to apply for a fresh appeal against Edith's conviction. There is no requirement for a fresh criminal appeal against Edith's conviction to be sought at the same time as or prior to applying for a pardon be granted to Edith pursuant to the RPM.
- 10.8. Furthermore, the Proposed Claimant does not have a statutory right to approach the CCRC for assistance in respect of an application for a pardon to be granted pursuant to the RPM. On the other hand, seeking assistance from the CCRC in respect of an RPM request is a course available to the Secretary of State under section 16 of the Criminal Appeals Act 1995. This is explained in the [CCRC's Policy Document 26](#).

11. Actions that the Proposed Defendant is expected to take

- 11.1. The Secretary of State should agree to urgently consider the matter afresh, on a proper basis and with the correct legal principles in mind.
- 11.2. In accordance with the Pre-Action Protocol, we require a substantive response to this letter within 14 days, namely by **3 January 2023**. We wrote to the Secretary of State on 17 November 2022 (**enclosed**) requesting that the Decision be considered afresh for the reasons set out in this letter, but we have not received a substantive response. Accordingly, the Secretary of State has already had over one month within which to consider the position.

12. Alternative Dispute Resolution proposals

- 12.1. The Proposed Claimant is willing to consider any proposals in relation to Alternative Dispute Resolution (**ADR**). However, the Proposed Claimant is not prepared to enter

into any form of ADR that would extend beyond the 3-month deadline for issuing an application for judicial review of the Decision, which is 18 January 2023.

- 12.2. Should the Secretary of State fail to provide a satisfactory response by the deadline and/or ADR prove unsuccessful, we will be advising our client to issue judicial reviewing proceedings and seek to recover his costs from you.

13. Details of any information sought

- 13.1. The Application demonstrates that Edith's case is exceptional and that a free pardon should be granted to Edith pursuant to the RPM in the interests of remedying a grave miscarriage of justice and absolving Edith's reputation. Professor Weis trusts that the Secretary of State will reconsider the matter afresh and decide to recommend that a free pardon be granted to Edith pursuant to the RPM.
- 13.2. In the event that the Secretary of State considers the matter afresh and declines to recommend that a pardon be granted to Edith pursuant to the RPM, he should provide a detailed explanation of the reasons, including by reference to precedents such as those cited in this letter.

14. Details of any documents that are considered relevant and necessary

- 14.1. Please provide copies of any documentation arising from the prosecution, trial and appeal that has been retained by the Government.

15. The address for reply and service of court documents

- 15.1. The address for replying to this letter and serving documents is BDB Pitmans LLP, One Bartholomew Close, London EC1A 7BL.
- 15.2. If you have any questions, please contact Nick Brown at nicholasbrown@bdbpitmans.com.
- 15.3. Please ensure that your response is sent by email to nicholasbrown@bdbpitmans.com.



We look forward to your response.

Yours sincerely

A handwritten signature in black ink that reads 'BDB Pitmans LLP'.

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Ministry of Justice

Miscarriages of
Justice Application Service
(MOJAS)

Ref: CYG/LUB/104312.0002

Date: 21 December 2022

BDB Pitmans LLP
One Bartholomew Close
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EC1A 7BL

Email: NicholasBrown@bdbpitmans.com

Pre-Action Protocol Response

Dear Mr Brown,

Thank you for your email sent on the afternoon of 20 December containing the Pre-Action Protocol (PAP) letter.

You should have received a response earlier this afternoon to your email of the 17 November informing you that the application for the exercise of the Royal Prerogative of Mercy will be reconsidered.

The contents of your PAP letter have been noted, but I do not intend to respond to them substantively as I believe they are now academic due to the earlier decision to reconsider the application.

Yours sincerely,

Miscarriages of Justice Application Service



Ministry
of Justice

Helen Pitcher OBE
Criminal Cases Review Commission

Date : 6 February 2023

By email: PitcherH@ccrc.gov.uk
Cc: NeekpayS@ccrc.gov.uk
CurtisJ@ccrc.gov.uk

Dear Helen,

SECTION 16 OF THE CRIMINAL APPEAL ACT 1995 REFERRAL OF AN APPLICATION FOR AN EXERCISE OF THE ROYAL PREROGATIVE OF MERCY (RPM) FOR EDITH THOMPSON

I write on behalf of the Secretary of State for Justice, Dominic Raab, to seek the assistance of the Commission with regards to an application for RPM of 7 July 2022 in the case Edith Thompson. The application was made by BDPitmans on behalf of Professor Rene Weis, who is the heir and executor to the estate.

Section 16 of the Criminal Appeal Act 1995 provides the Secretary of State for Justice with the power to refer to the Criminal Cases Review Commission (CCRC) "*any matter which arises in the consideration of whether to recommend the exercise of His Majesty's prerogative of mercy in relation to a conviction*" on which he desires the CCRC's assistance. The Secretary of State has asked that Professor Weis' application be referred to the Commission to allow a full investigation of the application to take place and for the Commission to give a statement of their conclusions and decision on it.

I appreciate that it is not possible at this stage to say how long it will take to reach a decision on these matters and that some cases may take many months to reach a final decision. I look forward to receiving the formal response from the Commission in due course.

Yours sincerely,

C Timmins
Royal Prerogative of Mercy