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ALEXANDER Lewis-Ranwell killed three men during a psychotic episode in the delusional belief that they were paedophiles. In the days immediately prior, he was detained twice and seen or spoken to by mental health professionals employed by G4S Health Services Ltd. and Devon Partnership NHS Trust. He was found not guilty of murder by reason of insanity and ordered to be detained in hospital by the Criminal Court. Lewis-Ranwell sued G4S, the NHS Trust and related others in negligence and under the Human Rights Act 1998 for compensation for various heads of loss said to result from his acts and detention, including loss of earnings, and for an indemnity against possible claims by the victims' estates and dependants. The defendants' application for the negligence claim to be struck out on the basis of the illegality defence was rejected at first instance and by a majority of the Court of Appeal. The Supreme Court allowed the defendants' appeal: *Lewis-Ranwell v G4S Health Services Ltd.* [2026] UKSC 2, [2026] 2 W.L.R. 187 ("*Lewis-Ranwell*"). Unfortunately, the reasoning which led to this conclusion is not fully persuasive.

The Court proceeded first to determine whether the illegality defence is engaged when the conduct giving rise to the claimant's loss does not trigger liability to punishment in the criminal law because of the insanity defence. Lord Sumption had said in *Les Laboratoires Servier v Apotex* [2014] UKSC 55, [2015] 1 A.C. 430 that the defence includes acts which, though not criminal, "engage the interests of the State [. . .] or the public interest" (at [23]). Lord Hodge and Lord Lloyd-Jones, giving the unanimous judgment of the Court in *Lewis-Ranwell*, held that "killing another human being without lawful justification", even if it avoids criminal liability by virtue of the insanity defence, engages the public interest ([at 134]). First, previous authorities had established that acts of killing enlivening the criminal law defence of *diminished responsibility* engage the illegality defence, and the difference between insanity and diminished responsibility is "between positions on a spectrum of the severity of mental illness" (at [127]). Second, the order of the Criminal Court was an order which it was required to make in the public interest, to protect the public's safety; the claimant's conduct could thus be said to engage the public interest: the state was duty-bound to respond coercively to that conduct (at [131]). Their Lordships also made the point that in setting the threshold for when the defence is engaged, it is apt to remember that meeting it only triggers the balancing test set out in *Patel v Mirza* [2016]

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UKSC 42, [2017] A.C. 467 ("*Patel*"): it does not automatically entail that the claim for a head of loss is barred (at [117]).

The Court then applied the *Patel* framework by asking its three questions. The first is whether, having regard to the purpose(s) of the prohibition breached, allowing the claim would introduce inconsistency into the legal system. The first of the Court's reasons for finding an inconsistency was that "[i]t would be inconsistent for a civil court to order the payment of compensation to the claimant for the consequences of his lawful detention ordered by a criminal court" (at [145]). (In passing, one may note that this is not a matter of the purpose of the "prohibition" breached, but alleged inconsistency in the purposes of the norms that regulate *breach* of that prohibition.)

It is not clear why, however. The purposes of such detention are non-punitive (as Underhill L.J. observed in *Lewis-Ranwell v G4S Health Services Ltd.* [2024] EWCA Civ 138, [2024] K.B. 745, at [98]). These non-punitive purposes of public protection and protection of the person detained are still fulfilled to the letter if the claimant is compensated for being held in detention. If the purpose were punitive, then the matter would be different: punishing and compensating are at least arguably inconsistent to the extent that compensation undoes the burden of the punishment.

Earlier the judgment states that the conduct, though not subject to criminal punishment, was "unlawful and deserves to be condemned" (at [142]). This could suggest a different argument: the inconsistency is rather in ordering compensation for the consequences of what ought to be publicly condemned. The difficulty, on the one hand, is that the absence of criminal liability already reflects the view that the conduct ought not to be publicly condemned in one important way and, on the other hand, whether "condemnation" of an act independently of concern for the capacity of the actor for moral responsibility is appropriate. It might also be thought that an insane person's tort liability for trespass and the permissibility of using reasonable force to defend oneself against an insane person's threat of imminent physical violence is already sufficient public recognition of the *wrongness* of their act.

The Court's second reason was that holding the defendants liable would be "inconsistent with the claimant's liability in tort" as insanity is not a defence to battery (at [146]). The logic of the Court's argument is that if the claimant's loss results from the claimant committing a tort, then it would be inconsistent to require another person to pay compensation for that loss. Yet one person can be under a duty to take care to protect a person from committing a tort. Consider a solicitor who negligently advises a person of the scope of their property rights in land: the latter is liable in trespass to land even if they reasonably believe that the land is theirs on the basis of the advice. The solicitor would clearly be liable to

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the client in respect of their client's trespassory liability. If there are such duties to protect others from committing a tort, then the argument of inconsistency cuts the other way: barring claims for breach of such duties through the illegality defence entails that those duties will *never* be enforced. The law recognises a duty, only never to enforce it.

The Court's third reason was that allowing the claim would be inconsistent with the absence of a right on the part of the dependants of the victims against the defendants, which were unlikely to owe *the victims* a duty of care, not having assumed a responsibility to them (cf. *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] 1 A.C. 1732). Although the exclusion of such a claim is "principled", the public might "fairly consider the law to be unjust if it were to allow the claimant to claim in tort against the defendants" (at [147]). That is: although it *is* just not to recognise a duty of care to the victims owed by the defendants, because the public *might consider* it unjust that the claimant receives enforcement of his private right against the defendants, this justifies barring the enforcement of the claimant's private right. It does seem true that the public might think this. If the first two reasons are not sufficiently compelling, the Court's answer to the first stage of the *Patel* framework hinges essentially on a possible negative public perception of allowing the claim. This comes dangerously close to the discredited public conscience test of illegality.

Special consideration was given to the claimant's claim to be indemnified against claims by the three victims in battery. This was held to be inconsistent with the law on duty of care: it would "cut across and undermine" the absence of a duty of care owed by the defendants to protect the victims from the deliberate wrong of a third party (at [148]). If the victims lack such a right as a matter of principle, it is again unclear why this is so. It was also thought likely to fail for reasons independent of the illegality defence such as remoteness. However, the Court gave a further reason, seemingly independent of the illegality defence, that "[s]uch a claim should be barred on grounds of public policy. In bringing the claim for an indemnity the claimant is seeking to rely on his own wrongful acts" (at [149]). With respect, *this* cannot be the objection to such a claim; there simply is no general "public policy" bar against the enforcement of rights to be indemnified in respect of one's own wrongful act. Hence the possibility of insuring against one's liability for a wrong.

Turning to the second stage of the *Patel* framework, would any relevant public policies be rendered less effective or ineffective by denying the claim? The Court accepted that allowing the claim might enhance standards in mental health care, but found, without elaboration, that alternative procedures such as inquests and public inquiries provide a better means to this end (at [156]).

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Finally, as to the third *Patel* question, it was not disproportionate to deny the claim: the claimant brutally killed three innocent people; his conduct was "central" to the heads of loss claimed; the defendants had behaved negligently but the claimant had committed an unlawful killing (at [162]).

Compare the following situation. Suppose that a mechanic negligently repairs a car's brakes and the car's driver kills a child when the brakes unforeseeably fail. The driver suffers a psychiatric illness as a result of this innocent killing. Now, it is true that the driver commits no *tort* in killing the child and is not *blameworthy* for killing. Yet one might still say that the driver breached the stringent moral duty against killing another and that such innocent killings engage the public interest. Nonetheless, it would seem extraordinarily harsh to deny a claim by the driver against the mechanic here in respect of their psychiatric illness. A person who kills another while insane is equally a morally blameless killer. It is not clear why one should distinguish their case from this hypothetical one. Does the fact that the claimant *intended* to kill make the crucial difference? It is not clear why it should, assuming that the claimant was unable to understand the moral wrongfulness of such an intention in the circumstances.

In sum, the central reasoning purporting to show that allowing the claim introduces an inconsistency into the legal system of the kind that justifies barring the enforcement of a person's rights is unpersuasive. Sometimes legal wrongs must go unremedied, but only with good reason.

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