THE LAW OF INFANTICIDE

A Preliminary Review of the UK Infanticide Act 1938

Cambridge Pro Bono

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About the Report

The Cambridge Pro Bono Project

The Cambridge Pro Bono Project ('CPP') was established within the Faculty of Law in 2010, and launched by Professor Philippe Sands QC. Since then, the CPP has undertaken a number of major projects each year. Since its inauguration, the CPP has partnered with dozens of bodies, including NGOs, charities, barristers' chambers and courts. The CPP is a research centre, not a legal clinic. The CPP works on a model which draws on the subject-matter expertise of graduate doctoral researchers, masters students, and Faculty experts, to produce reports on a wide range of public interest matters, including in the fields of public international law, criminal law, and domestic British public law. This report was prepared by a volunteer group of postgraduate students from the University of Cambridge for barrister Karlia Lykourgou of Doughty Street Chambers. Jai Brunner, Shivank Singh, and Catherine Bugler were the project managers and were assisted by researchers Emma Scott, Jess Downing-Ide, Falyn Dwyer, Darren Lee, Anna Wood, Barkha Batra, Pranav Bafna, Michelle Yap, and Ali Khalifi. The report is based on research undertaken from November 2023 to May 2024 and therefore does not reflect developments that may have taken place since.

Scope

This report serves as a preliminary review of Infanticide Law in England and Wales. Infanticide is unique in that it is both an offence and a partial defence to the charges of murder and manslaughter. In the past two decades, several judges have expressed some doubt over the

efficacy of the law. Notably, in *R v Kai-Whitewind* (2005)[1], the Court of Appeal raised two areas of concern:

> 'The public interest requires that the problems arising from and connected to the offence of infanticide should be included in any review. We shall highlight two particular areas of concern. The first is **whether, as a matter of substantive law, infanticide should extend to circumstances subsequent to the birth,** but connected with it, such as the stresses imposed on a mother by the absence of natural bonding with her baby: in short, whether the current definition of infanticide reflects modern thinking. The **second problem arises when the mother who has in fact killed her infant is unable to admit it**. This may be because she is too unwell to do so, or too emotionally disturbed by what she has in fact done, or too deeply troubled by the consequences of an admission of guilt on her ability to care for any surviving children. When this happens, it is sometimes difficult to produce psychiatric evidence relating to the balance of the mother's mind. Yet, of itself, it does not automatically follow from denial that the balance of her mind was not disturbed: in some cases it may indeed help to confirm that it was. The law relating to infanticide is unsatisfactory and outdated. **The appeal in this sad case demonstrates the need for a thorough re−examination**'. (emphasis added)

An analysis of the judgments and sentencing remarks in these cases generally shows that psychiatric evidence is critical to the outcome. However, it can be difficult for the Court to reach psychiatric conclusions due to conflicting expert opinions on the nature of scientific evidence surrounding the psychiatric condition of mothers post-birth.

Many of the cases seem to question whether infanticide extends to circumstances subsequent but connected to birth, such as the stresses imposed on a mother by the absence of natural bonding with her baby. From analysing these cases we see a pattern of judges expressing

[1] *R v Kai-Whitewind* [2005] EWCA Crim 1092 [139].

sympathy towards the defendant and the issue. In some cases, judges have criticised the infanticide law and reduced the sentence owing to mitigating circumstances such as the defendant's young age.

In this report, we first provide an overview of the law of infanticide. We then proceed to identify and analyse cases where a mother has killed her infant below the age of twelve months. Next, we conduct a review of the medical literature on infanticide, to understand if there exists a scientific consensus around the nature and extent to which childbirth may disturb the mother's mental balance. Finally, we conduct a brief comparative analysis of Ireland and Australia, two common law jurisdictions that have very similar infanticide provisions to England and Wales.

What is Infanticide?

The Infanticide Act 1938

The Infanticide Act 1938 (the Act) establishes infanticide both as a standalone offence and a defence to the charges of murder and manslaughter. Following a consultation, the Law Commission in 2005 noted that it is the 'only offence in English law for which mental abnormality is a prerequisite.'[2] The key provision of the Act is s 1:

1. **Offence of infanticide**
   (1) Where a woman by any wilful act or omission causes the death of her child being child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, [3if] the circumstances were such that but for this Act the offence would have amounted to murder [4or manslaughter], she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
   (2) Where upon the trial of a woman for the murder [5or manslaughter] of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, [6if] the circumstances

[2] The Law Commission of England and Wales, *A New Homicide Act for England and Wales? A Consultation* (Consultation Paper No 177, 28 Nov 2005) 220.
[3] Words in s. 1(1) substituted (4.10.2010) by Coroners and Justice Act 2009
[4] ibid
[5] Words in s. 1(2) substituted (4.10.2010) by Coroners and Justice Act 2009
[6] ibid

were such that but for the provisions of this Act they might have returned a verdict of murder [[7]or manslaughter], return in lieu thereof a verdict of infanticide.

(3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane,… [8]…

(4) …[9]…

History

The offence and partial defence of Infanticide in its current form has been the subject of major amendment and discussion for several centuries. Until the 17th century, the crime of infanticide in England was not a separate offence and mothers who killed their children were charged and tried for murder, an offence then punishable by the death penalty.[10]

The nature of the offence, however, changed with the passage of the Act of 1624 which was enacted to '*Prevent the Destroying and Murthering of Bastard Children*'. The Act of 1624 made the act of concealment of death of a newborn child an offence as opposed to the act of killing the newborn child. By deeming the concealment as an offence, the law drew a presumption of guilt for murder and thus prescribed the death penalty for the offending mother. The only way to rebut this presumption was to produce a witness who could attest that the child was born alive. However, as such pregnancies were kept secret, the burden of producing a witness to rebut the presumption proved difficult to establish.[11]

Interestingly, the scope of the Act of 1624 was limited to the concealment of death of a 'bastard' child. This meant that the offence was only applicable to women birthing children out of

[7] ibid
[8] words repealed by Criminal Law Act 1967
[9] ibid
[10] Jack Lucas 'The Infrastructure of Infanticide: Illegitimate Punishment in Early Modern Britain' The Crimson Historical Review

[11] Katherine O'Donovan, 'The Medicalisation of Infanticide' [1984] Crim LR.

wedlock. The legislation left married women out of its ambit, presumably due to the assumption that married women had no reason to conceal the birth of a child.[12] Thus, married women were still charged and tried for murder if they committed infanticide.

The Act of 1624 was marred with difficulties in practice due to which in 1803 the Lord Ellenborough Act repealed it. However, the enactment of that 1803 Act inserted a proviso that, in acquitting a mother for the offence of murder, the jury could instead convict her for concealment of death. This offence would carry a sentence of imprisonment for a maximum of two years. The scope of the proviso continued to be limited to death of new-borns born out of wedlock. Married women included in the offence of concealment until 1861 when the Offences Against the Persons Act was introduced.

While the Act of 1803 repealed the Act of 1624, it reinstated the status quo of the 17th century where mothers who committed infanticide were charged with murder which was punishable with the death penalty. Despite the higher charge of murder, this allowed many women to be acquitted of the offence for reasons explained in the following paragraphs.

After the passage of the Act of 1803, trials for concealment between the 1830s and 1860s increased threefold. Of the 5,000 coroner's inquests a year for the death of a child in the nineteenth century, between 1849 and 1864 there were only 39 convictions for murder of a child. Of these 39 convictions, 34 of these cases involved the death of children born out of wedlock. Significantly, despite 39 convictions of murder, none of the women were executed. Similarly, from 1905 to 1921, 60 women were convicted of child murder and sentenced to death but the sentence was commuted in 59 of the cases.[13]

A significant factor which contributed to the acquittals was the failure of the prosecution to discharge their burden to prove the charge of murder. In order to prove the charge, the prosecution had to first prove that the child was born alive. This proved especially difficult as

[12] Constance B. Backhouse 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada' [1984] 34 UTLJ 447.
[13] Supra 1

the mothers would often give birth in secrecy which meant there were no witnesses. Coupled with the lack of medical care, sanitation, poverty and diseases, the death of children at birth was a fairly common occurrence.[14] In part, it might have been due to this factor that the act of murdering one's child might not have been seen as reprehensible.[15] Furthermore, even in cases where doctor's or coroner's reports were presented with proof that the child was born alive, it was difficult for the prosecution to then prove that the child was murdered by their mother and did not die of natural causes.[16] Lastly, the jury would often take a sympathetic view towards the accused mothers who were in most instances poor, destitute and incapable of supporting a child. It was crimes involving mothers out of wedlock, often to avoid social stigma and public shaming, that were most commonly prosecuted and, therefore, attracted most publicity. Many of these women were also servants who were taken advantage of by their masters. These social and economic realities thus reduced the heinousness of the crime in the eyes of the public and to have such women face the full brunt of criminal law was seen as not desirable by the juries.[17] Malcomson put in his XXXX study of infanticide that:

> '*The women were deprived of consolation and advice, wanting the most basic forms of social solace. Moreover, many of them, at least after the fact, must have been painfully aware of their own immediate responsibility for the baby's death. Unlike those modern women whose abortions are performed by others, with the aid of anaesthetics, in conditions of relative comfort, and whose aborted foetuses are quickly removed from view, [they] had to accept full responsibility by themselves, down to the execution of the*

[14] J A Osbourne, 'The Crime of Infanticide: Throwing Out the Baby with the Bathwater' [1987] 6 Canadian J of Family L 47, 53
[15] id.
[16] id.
[17] id.

> *smallest detail. The concealment, the planning, the delivery, the killing, the disposal of the body, the mopping up; each was a solitary act of personal responsibility.'*[18]

Consequently, there were very few cases where convictions were made. And even in such cases where the mothers were held guilty, the juries would recommend the mother to mercy. This led to the establishment of a practice in the Home Office whereby the commutation of the death penalty was advised for mothers convicted of murdering their child under or around the age of twelve months.[19]

This 'Black Cap Farce' thus created a perception that murdering one's child was a serious offence but in reality, the offence was treated with much leniency.

The 19th Century witnessed growing concerns regarding the severity of the punishment for mothers convicted of the murder of their infants. In most instances, the perception was that the women who were driven to this serious act did so due to the social stigma and public shaming that they would experience. This was further exacerbated by the poverty and the low social standing of most of these women. This was also reflected in the jury trials where, as highlighted above, most women were either acquitted or their sentences commuted. [20]

On account of the growing public concerns, the 'solemn mockery' of the judiciary and the rise of medico-psychological theories, the Infanticide Act of 1922 was enacted. The Act of 1922 made the act of killing one's newly born mother whose 'balance of mind was disturbed' a separate offence. The new offence carried the lesser charge of manslaughter which provided the judges with discretion in sentencing- bringing the prevalent practice of commuting the sentence by executive within the judicial ambit. Thus, the new Act got rid of the 'Black Cap Farce' by placing the discretion in the judge's hand when it came to sentencing. Though the Act

[18] P. C. Hoffer and N. E. H. Hull, 'Murdering Mothers: Infanticide in England and New England 7558-1803' (New York: New York University Press, 1984).
[19] Supra 1.
[20] The Law Commission of England and Wales, *A New Homicide Act for England and Wales? A Consultation* (Consultation Paper No 177, 28 Nov 2005) 220.

of 1922 was presumed to be based on medical theory about the effects of childbirth, it has been argued by various scholars that it was the result of dealing with the Black Cap Farce.[21]

The Act of 1922 was amended in 1938 whereby two major changes were introduced. The scope of the Act was enlarged by increasing the age of the victim child to twelve (12) months. This amendment was brought into effect as the restriction of the crime to newborn children led to arbitrary and unjust results.[22] Secondly, the medical justification for the accused mother was enlarged to include the impact of lactation on her mental state.

While the Act of 1922 and its amendment in 1938 are meant to have a psycho-medical foundation, this claim has been greatly scrutinised. Reference may be made to three reports in this regard to:

- The Butler Committee Report of 1975/ Report of Committee on Mentally Abnormal Offenders, 1975[23] which has challenged the relevance of the medical grounds on which the Act is based stating that '*puerperal psychoses are now regarded as no different from others, childbirth being only a precipitating factor.*'
- The Royal College of Psychiatrists Working Party on Infanticide in its 1978 Report has also stated that the medical basis of the Act is not proven.
- The 14th Report on Offences Against the Person by the Criminal Law Revision Committee Report in 1980 also expressed doubts about any evidence which reflects an association between lactation and mental disorder.

Although the medical foundation of the Act is uncertain, the latter of the two reports recommended widening the scope of the Act considering its social value. While the Butler Committee did recommend the abolition of the 1938 Act, it predicated the suggestion on the belief that the offence could be covered by the defence of diminished responsibility. Thus, even

[21] Supra 1, D. Seaborne Davies, 'Child Killing in English Law' [1937] 1 M.L.R.
[22] Supra 10.
[23] Report of the Committee on Mentally Abnormal Offenders (1975; Cmnd. 6244) (Butler Report).

the Butler Committee found the defence provided by the Act of 1938 was relevant and necessary.

The latest report by The Law Commission published in 2008 also suggested the retention of the offence/partial defence of infanticide in its current form.

The Criminal Procedure of Infanticide

When is a woman charged with infanticide?

In any circumstances where it appears a crime has been committed, the Crown Prosecution Service ('CPS') determines which offence will be charged. They have no obligation to choose a charge with a more favourable sentencing regime for the defendant, or one which makes it easier to raise a defence.

After identifying a potential case of infanticide, the CPS apply the Full Code Test. This two-stage test requires the CPS to consider.

1) Whether there is sufficient evidence for a realistic prospect of conviction; and
2) Whether it is in the public interest to pursue such a prosecution

As Lykourgou notes, offences where mothers kill their babies often have significant evidence pointing to the perpetrator to satisfy the first limb of the CPS test; and the second limb is usually satisfied, even where there is a strong indication of the defendant's vulnerability, due to the large public outcry these cases provoke.[24]

In Mackay's 1993 study on infanticide, he examined the files of 36 females who had killed one of their children under the age of 12 months.[25] These cases led to 15 infanticide convictions and 13 cases where it was decided not to proceed with a prosecution, owing to lack of evidence,

[24] Karlia Lykourgou, 'Mothers who kill: A Look at Infanticide' (Doughty Street Chambers, 9 October 2023) <https://insights.doughtystreet.co.uk/post/102ipk5/mothers-who-kill-a-look-at-infanticide> accessed 3 January 2024

[25] RD Mackay, 'The Consequences of Killing Very Young Children' [1993] 40 Criminal Law Review 21

or where it was felt not to be in the public interest.[26] In the remaining 8 cases, convictions were returned for manslaughter, cruelty offences or concealment of birth. In respect of the 15 infanticide convictions, 10 were the result of initial charges under the 1938 Act.[27] In the remaining 5 cases, murder was charged in 4, and manslaughter was charged in the other.[28] All these defendants eventually were charged with and permitted to plead guilty to infanticide.[29] Interestingly, in MacKay's second empirical study on infanticide, conducted for the Law Commission's *Murder, Manslaughter and Infanticide* report, a sample of 49 infanticide convictions highlights although the vast majority of defendants (75.5%) were initially charged with murder, after pre-trial negotiations, 63.3% faced charges of infanticide, and 36.7% faced charges of murder with a second count of infanticide added.[30] Generally, most cases surveyed result from a guilty plea to the offence and are accepted as such where there is evidence of an emotional disturbance at the time of the offence.[31]

In recent years, it would appear that there have been fewer charges, convictions and defences of infanticide raised successfully. Since 2019, three women have been convicted of murdering their newborn children.[32] In each case, the CPS proceeded with a murder charge and none of the women were successful in using infanticide as a defence.[33] Nonetheless, other women and girls have succeeded in invoking the infanticide offence after killing a newborn child. Milne analyses two cases of newborn child infanticide committed by 16-year-old girls; 'Tanya', who was suffering from PTSD, and 'Fiona', who pled guilty to a charge of infanticide after a psychiatrist concluded her complete pregnancy denial meant she acted in shock and panic when

[26] ibid
[27] ibid
[28] ibid
[29] ibid
[30] RD Mackay, 'Infanticide and Related Diminished Responsibility Manslaughters: An Empirical Study' in Law Commission, *Murder, Manslaughter, and Infanticide* (Law Com 304, 2006) Appendix D
[31] Helen Howard, 'The offence/defence of infanticide: A view from two perspectives' (2018) 82 The Journal of Criminal Law 470
[32] Karen Brennan and Emma Milne, '100 Years of Infanticide: The Law in Context' in Brennan and Milne (eds.) *100 Years of the Infanticide Act; Legacy, Impact and Future Directions* (Oxford; Hart Publishing, 2023)
[33] ibid

she killed the child following birth.[34] In all of these cases, the defence provided evidence of a 'disturbance of the balance of the mind'.[35]

The distinction, as Milne and Howard show, between the cases that resulted in an infanticide conviction, compared to the cases ending in a murder conviction, is that the CPS accepted a plea of infanticide for the defendant, or, more rarely, charged infanticide rather than murder.[36] The three murder convictions occurred more recently compared to the other cases that resulted in infanticide convictions. It may be observed that there is a hardening in the approach of the prosecution when it comes to infanticide pleas, with a push towards murder trials, leaving the decision to the jury.[37] Similarly, juries appear reluctant to apply the Infanticide Act to newborn child killings; from Milne and Howard's monitoring of cases, they conclude that no jury has convicted a woman who killed a newborn child of infanticide in the last 20 years.[38]

The Indictment

The indictment is the formal document containing a list of the charges against the accused, to which she pleads either guilty or not guilty at the beginning of her trial. The drafter will have been provided with copies of the documents served by the prosecution upon which the accused was sent from the Magistrate's Court to the Crown Court. Subject to the rules on the joinder of counts, the drafter may include in the indictment counts for *any* indictable offence that they consider to be disclosed by the evidence before the Magistrate's Court, whether or not the accused was sent for trial in respect of that offence.[39] For example, when the accused is sent to trial for manslaughter, the indictment could contain a single count for murder, and no count for

[34] Emma Milne, Criminal Justice Responses to Maternal Filicide: Judging the Failed Mother (London, Emerald Publishing, 2021)
[35] ibid
[36] Karen Brennan and Emma Milne, '100 Years of Infanticide: The Law in Context' in Brennan and Milne (eds.) *100 Years of the Infanticide Act; Legacy, Impact and Future Directions* (Oxford; Hart Publishing, 2023)
[37] Essex Law Research, '100 Years of the Infanticide Act: A Legacy of Controversy and Compassion' (2023)
[38] Karen Brennan and Emma Milne, '100 Years of Infanticide: The Law in Context' in Brennan and Milne (eds.) *100 Years of the Infanticide Act; Legacy, Impact and Future Directions* (Oxford; Hart Publishing, 2023)
[39] Administration of Justice (Miscellaneous Provisions) Act 1933 S2, (2); Criminal Procedure Rules, r14.2(5)

manslaughter, if counsel or the Crown Court officer considers that there is sufficient evidence of malice aforethought.

The count must, however, be based on the evidence before the Magistrate's Court. In addition, a charge upon which the accused was not sent for trial can only form part of the indictment if it is 'in substitution for or in addition to' a count upon which she *was* sent.

The circumstances in which several counts against an accused may be put in one indictment are set out in CrimPR r.14.2(3), which states:

An indictment may contain more than one count if all the offences charged –

a) Are founded on the same facts; or
b) Form or are part of a series of offences of the same or original character.

Charges 'founded on the same facts'

Situations involving infanticide are likely to fall within the first limb of CrimPR, r.142(3). The simplest application of this rule is to be found in cases such as *Mansfield*, where M was charged in an indictment containing ten counts. The single act of setting fire to a hotel gave rise to charges of ten offences: 3 counts of arson and 7 of murder. This rule will also apply where the accused allegedly committed several offences in a continuous course of conduct. Thus, if X robs a bank; drives a 'get-away' car at high speeds in a built-up area and then, when finally cornered, struggles with police officers to avoid unrest, they could be charged in one indictment with robbery, dangerous driving, and assault with intent to resist arrest. In cases concerning infanticide, therefore, the accused may be charged with child cruelty, infanticide and murder.

As mentioned above, Mackay's 2006 empirical study for the Law Commission's *Murder, Manslaughter and Infanticide* Report noted that 36.7% of defendants faced charges of murder with a second count of infanticide added.[40] For example, in *R v Silipa Keresi*, the defendant was charged with murder and infanticide. In this case, the accused left her newborn son to die

[40] RD Mackay, 'Infanticide and Related Diminished Responsibility Manslaughters: An Empirical Study' in Law Commission, *Murder, Manslaughter, and Infanticide* (Law Com 304,2006) Appendix D

in woodland in the New Forest. The defendant denied both charges and was convicted of murder.[41]

The Code for Crown Prosecutors and the Indictment

The Code for Crown Prosecutors (the Code) contains guidance as to the counts which ought to be included in an indictment (the Code refers to 'charges', which is the generic term, but 'counts' is the more appropriate term when dealing with an indictment). The Code exhorts Crown Prosecutors to 'select charges which;

a) Reflect the seriousness and extent of the offending supported by the evidence;
b) Give the court adequate powers to sentence and most appropriate post-conviction orders; and
c) Enable the case to be presented in a clear and simple way' (para 6.1).

Further, Crown Prosecutors are told not to include more charges than necessary just to encourage a defendant to plead guilty to a few. Nor should they include a more serious charge just to encourage the defendant to plead guilty to a lesser charge (para 6.3).

The Trial

Pleas

A trial on indictment begins with the arraignment, which consists of putting the counts in the indictment to the accused so that she can plead guilty or not guilty. A plea of not guilty puts the entire prosecution case in issue. Essentially, therefore, the prosecution will have to prove the

[41]RD Mackay, 'Infanticide and Diminished Responsibility' in Brennan and Milne (eds.) *100 Years of the Infanticide Act: Legacy, Impact and Future Directions* (Oxford; Hart Publishing, 2023)

requisite standard (i.e. beyond reasonable doubt) of each essential element of the offence charged, as defined by the substantive law of crime. The prosecution must establish;

A) That the accused committed the *actus reus* of the crime AND
B) That, at the relevant time, the accused has the appropriate *mens rea*

Moreover, the prosecution must be able to do this initially through evidence which they tender as part of their case. In the case of infanticide, the prosecution must satisfy the elements set out in S1.(1) of the Infanticide Act 1938;

> 'Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child'

A further consequence of a not guilty plea is that it generally requires the prosecution to negate any defences which are open to the accused. Thus, if the accused is charged with murder, the prosecution must show that the defence of infanticide, contained in S1.(2) of the Infanticide Act, is not satisfied in the current case. It is, however, for the defence to raise the issue in the first place by showing (through cross-examination of prosecution witnesses and/or the testimony of defence witnesses) that the defence might be applicable. Once the possibility of the defence applying has been fairly raised, the prosecution must show beyond reasonable doubt that the accused is not entitled to rely on it.

Alternatively, the accused can enter a plea of guilty. Following this, there is no need to empanel a jury as the accused has convicted herself out of her own mouth. The court may proceed straight to sentence, or if it needs more information about the accused, it may adjourn for the preparation of reports.

Halfway between a plea of guilty and not guilty is the plea of guilty to a lesser offence. It is a corollary of the option given to juries in certain cases by s.6 of the Criminal Law Act 1967 to return a verdict of 'not guilty as charged but guilty of some other (lesser) offence'. In this

context, a count for murder, the jury can convict of infanticide. Whenever a count is put to the accused on which the jury could find her guilty of a lesser offence, she may offer a plea of not guilty as charged but guilty of the lesser offence.[42] If the plea is accepted, she stands acquitted of the offence charged, and the court proceeds to sentence her for the lesser matter.[43]

The prosecution is not obliged to accept a preferred plea of guilty of a lesser offence. The Code for Crown Prosecutors (para 9.2) stipulates that the defendant's plea to a lesser charge should be accepted only if the court will be able to pass a sentence that matches the seriousness of the offence. Crown prosecutors are told that they must not accept a guilty plea because it is convenient. If the prosecutor is not prepared to accept the defendant's plea of guilty to a lesser offence, he can insist on the trial proceeding. The court then enters a straightforward not guilty plea on behalf of the accused and a jury is empanelled. The evidence is then called in the normal way. At the end of the case, the jury can either convict as charged, convict of the lesser offence or just acquit. Importantly, even if the prosecution are willing to a accept a plea of guilty to a lesser offence, the judge may indicate that this is not an appropriate course of action to adopt.[44]

The defence of infanticide

As mentioned above, the defence of infanticide is raised at trial. S1(2) of the Infanticide Act states;

> 'Where upon the trial of a woman for the murder [*or manslaughter]* of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if, the circumstances were such that but for the

[42] Criminal Law Act , S6(1)(b)
[43] Criminal Law Act 1967, S6(5)
[44] *Soanes* [1948] 1 All ER 289

> provisions of this Act they might have returned a verdict of murder [or manslaughter], return in lieu thereof a verdict of infanticide.'[45]

Importantly, while the defendant who pleads infanticide as a defence must be able to show that the balance of her mind was disturbed at the time of the killing, there is no requirement that she demonstrate that she was suffering from an identifiable mental disorder, nor that the imbalance caused her to kill. The law simply requires a 'mere temporal connection';[46] that the defendant woman was suffering from a disturbance in the balance of her mind at the time she killed her infant. Following *R v Tunstill*, 'by reason of' does not mean 'solely by reason of'; rather, it is sufficient that the effects of childbirth was a 'substantial or operating cause' of the disturbance in the balance of the mind.[47] This is recognised as an important difference between infanticide law and the defence of diminished responsibility, where the law *does* require the offender's responsibility to be impaired in a specific way, for example affecting their ability to make sound judgements or exercise self-control.[48] Likewise, the defence of insanity requires a link between a 'disease of the mind' and the defendant either not knowing the nature and quality of her act, or that it was wrong.[49] The failure of the law to require a causal connection has been criticised. For example, Howard argues that although the lack of a causal connection requirement allows for a more compassionate response to the offender, this 'tips the balance too far away from the harm caused'.[50] Importantly, where infanticide is raised as a defence, the burden of proof is on the prosecution to disprove it beyond reasonable doubt. [51] Thus, when infanticide is raised as a defence, to obtain a murder conviction, the Crown must prove that

[45] The Infanticide Act 1938, s 1(2)
[46] Allie Loughan, 'The Strange Case of Infanticide Doctrine' (2012) 32 Oxford Journal of Legal Studies 685
[47] R v Tunstill [2018] EWCA Crim 1696
[48] Homicide Act 1957, S.2
[49] R v M'Naghten [1843] 8 E.R. 718; (1843) 10 Cl.& F.200
[50] Helen Howard, 'The offence/defence of infanticide: A view from two perspectives' (2018) 82 The Journal of Criminal Law 470
[51] RD Mackay, 'Infanticide and Diminished Responsibility' in Brennan and Milne (eds.) *100 Years of the Infanticide Act: Legacy, Impact and Future Directions* (Oxford; Hart Publishing, 2023)

there is no reasonable doubt that the accused did not kill the child 'by reason of her mind being disturbed'.

Cases

We have identified 17 cases since 2002 in England and Wales where a woman has been found or pleaded guilty to causing the death of her biological child under the age of 1 year (see Appendix I).

Seven cases resulted in a murder conviction, with minimum specified terms ranging from 12 to 18 years.

One case resulted in a woman pleading guilty to manslaughter. She was sentenced to 12 months' imprisonment, suspended for two years.

Nine cases resulted in an infanticide conviction. 7 women pleaded guilty; 2 women were found guilty following a trial in which their principal charge was murder. Sentences ranged from hospital detention orders to community orders or rehabilitation.

Discrepancies in the case law

There is limited access to the relevant material to understand the complexities of murder and infanticide cases, and why some cases result in a murder finding while others do not. Sentencing remarks are not published on the judicial database and therefore not publicly available except on request.

While on the facts, there seems to be little distinction on the gravity of the facts between a finding of murder and a finding of infanticide, it is impossible to draw any conclusions on this matter, as most cases were determined by a jury and we do not have any access to the psychiatric evidence which is critical to a finding of infanticide.

It is apparent from reading judgments and sentencing remarks that psychiatric evidence is critical to the outcome of these cases but can be difficult for the Court to resolve due to

conflicting expert opinions on the nature of scientific evidence surrounding the psychiatric condition of mothers' post-birth.

The balance of the mind and childbirth

There are many difficulties associated with the analysis of causes of disturbance to the mother's 'balance of mind'. The statute requires a nexus between the disturbance and the effects of childbirth (or lactation). However, it is often unclear if postpartum mental impairment is linked to childbirth or other prepartum factors such as prior psychiatric conditions and environmental stresses, or a combination of both. The cases of *R v Kai-Whitewind* (2005)[52], *R v Tunstill*(2018)[53], and *R v Sultan (*2013)[54] illustrate this confusion.

R v Kai-Whitewind[55]

The Court of Appeal cited a 1975 report into 'Mentally Abnormal Offenders' that said

> '[t]he disturbance of the 'balance of mind' that the Act required can rarely be said to arise directly from incomplete recovery from the effects of childbirth, and even less so from the effects of lactation. A combination of environmental stress and personality disorder are the usual aetiological factors and the relationship to 'incomplete recovery from the effects of childbirth or lactation' specified in the Infanticide Act is often somewhat remote'.

It also cited a 1980 recommendation to include where the balance of the mind was also due to 'environmental' or other stresses.

Ultimately the Court noted two areas of concern:

[52] *R v Kai-Whitewind* [2005] EWCA Crim 1092.
[53] *R v Tunstill* [2018] EWCA Crim 1696.
[54] *R v Sultan,* Hull Crown Court, sentenced on 12 Nov 2013.
[55] *R v Kai-Whitewind* [2005] EWCA Crim 1092.

1. Whether the current definition of infanticide reflects current thinking, including on stresses imposed by a lack of natural bonding.
2. When a mother has killed her child and is unable to admit it, this may be because she is too unwell to do so, too emotionally disturbed by what she has done, too troubled by the consequences on her ability to care for surviving children. It is – in these cases – difficult to produce psychiatric evidence relating to the balance of the mother's mind.

R v Tunstill[56]

In *Tunstill,* the Court of Appeal undertook a detailed analysis of the link between disturbance of mind and childbirth. In particular, it considered whether the disturbance to the balance of the mother's mind must be *solely* caused by reason of the effects of childbirth or lactation.

The trial judge had declined to leave infanticide as a possible alternative to the verdicts of murder or manslaughter for the jury to consider. The trial judge relied on the obiter of Judge LJ in *Kai-Whitewind*, in which he had observed that for infanticide to be available as an alternative verdict for the jury to consider, there must be 'evidence that the 'balance of her mind was disturbed' either because the mother has not recovered from giving birth to the child, or the effect of lactation on her. No other circumstances are relevant'.[57] The trial judge interpreted this to mean that the mother's mental disturbance must be solely caused by the effects of childbirth and infanticide.

The Court of Appeal disagreed with the trial judge's reasoning. Treacy LJ reasoned that the trial judge's interpretation ran 'counter to the intent of the legislation'. He emphasised that the phrase 'by reason of' in Section 1(2) of the Infanticide Act cannot necessarily be understood as meaning 'solely by reason of'. Thus, he concluded that as long as the effects of childbirth/lactation are 'an operative or substantial' cause of the mental disturbance – 'even if

[56] *R v Tunstill* [2018] EWCA Crim 1696.
[57] *R v Kai-Whitewind* [2005] 2 Cr App R 457 [134].

there are other underlying mental problems' – infanticide may be presented as an alternative verdict.[58]

In addition, the Court of Appeal noted that the causal link must be between the disturbance of the mother's mind and her giving birth, not between the disturbance of the mind and the act or omission causing death.

Ultimately, the Court of Appeal agreed with the appellant that there was evidence capable of showing that the balance of the appellant's mind was, at the time of the killing, disturbed. It held that the evidence of the appellant's two psychiatrists was to the effect that her pre-existing condition, together with the effect of having given birth, was the cause of that disturbance of the balance of the mind.

Notably, Treacy LJ's observations regarding Section 1(1) have been included in the Judicial College's *The Crown Court Compendium,* regarding jury directions in infanticide cases.[59]

R v Sultan[60]

The Crown Court noted the following:

> 'During the first feeding session there was a sudden explosion of violence whilst your mind was disturbed.'
>
> 'The sudden explosion of violence was due to your unbalanced mind derived from postnatal depression.'

[58] *R v Tunstill* [2018] EWCA Crim 1696 [30]-[32].
[59] Judicial College, *The Crown Court Compendium – Part I: Jury and Trial Management and Summing Up* (June 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Crown-Court-Compendium-Part-I-June-2023-updated-Feb-2024.pdf > [19.16].
[60] *R v Sultan,* Hull Crown Court, sentenced on 12 Nov 2013.

> 'I also will not lose sight of the fact of your disturbance of mind as revealed in the psychiatric report.'

The Judge believed the case had 'passed the custody threshold' but said: 'However, you are an entirely broken woman and your disturbance of mind at the time, coupled with your guilty plea, enables me to take a different course.'

Variation in Sentencing

As aforementioned, we have identified 17 cases since 2002 in England and Wales where a woman has been found or pleaded guilty to causing the death of her biological child under the age of 12 months. Below we tabulate the sentence outcomes in these cases.

Table 1.1: Murder Convictions

in cases involving the death of a child under 12 months of age

Name of Accused	Plea or Found Guilty at Trial?	Sentence	Commentary
Kai-Whitewind (2005)	Found guilty at trial	Life imprisonment with minimum specified term of 12 years	Appellant charged with murder. Infanticide not raised in this case; appellant pleaded not guilty and relied upon a defence of alternative causes of death, including SIDs (Sudden Infant Death syndrome)
Smith (2015)	Found guilty at trial	Life imprisonment with minimum specified term of 12 years	Applicant charged with murder. Not clear whether infanticide was raised; however, the lack of media reports referring to infanticide in the context of this case suggest that it was

			not. An application for parole in 2023 was denied.
Wilson (2014)	Found guilty at trial	Life imprisonment with minimum specified term of 17 years	Appellant charged with murder. Infanticide does not appear to have been raised. Initial sentence of life imprisonment with minimum specified term of 14 years increased on appeal.
Cobley (2019)	Found guilty at trial	Life imprisonment with minimum specified term of 18 years	Appellant charged with murder. Infanticide was not raised. The appellant originally intended to call and to rely upon expert psychiatric evidence to the effect that she had suffered an acute stress reaction that had disturbed the balance of her mind and her ability to think logically. However, after hearing the appellant give evidence, the expert psychiatrist informed her defence team that he no longer believed that her mental functioning had been sufficiently disturbed so as to explain her actions.

Tunstill (2018)	Found guilty at trial	Life imprisonment with minimum specified term of 17 years	Tried on two occasions; convicted of murder on both occasions (appeal against first conviction allowed on the basis that the jury should have been offered a lesser alternative charge of infanticide). At second trial, charged with murder and, in the alternative, infanticide. The appellant had sought to raise the partial defence of diminished responsibility. Appellant died in prison in 2023.
Mayo (2023)	Found guilty at trial	Life imprisonment with minimum specified term of 12 years	Appellant charged with murder. Infanticide was put to the jury.
Keresi (2021)	Found guilty at trial	Life imprisonment with minimum specified term of 9 years	Media reports suggest that the accused 'denied murder and an alternative charge of infanticide', suggesting that she was charged with both offences.
Goncalves-Taborda and **Olaiya-Imam** (2023)	Found guilty at trial	**Goncalves-Taborda:** Life imprisonment with minimum specified term of 17 years	Goncalves-Taborda was charged with the murder of the child and child neglect. Olaiya-Imam was charged with allowing the death of a child. Goncalves-Taborda was convicted of murder and

			Olaiya-Imam was convicted of allowing the death of a child (for which he was sentenced to 10 years' imprisonment). Infanticide was not raised.

Table 1.2: Infanticide Convictions

in cases involving the death of a child under 12 months of age

Name of Accused	Plea or Found Guilty at Trial?	Sentence	Commentary
Harrigan (2009)	Plea	3 years' imprisonment and 2 years mental health treatment	Accused originally charged with murder
Norris (2010)	Plea	Detailed under the Mental Health Act	Accused originally charged with murder. However, the charge was substituted for infanticide, which the Crown said was acceptable
Jacques (2012)	Plea	Detained under s 37 hospital order; also handed a restriction order under s 41 of the Mental Health Act	Media reporting does not make clear the nature of the original charge. Media reporting merely states that the accused pleaded guilty to infanticide
Amantova (2014)	Plea	Detained under hospital order	Accused originally charged with murder.
Sultan (2013)	Plea	3 year supervision order; further barred from engaging with children in regulated activities and disqualified from working with children	Accused originally charged with murder.
Black (2014)	Plea	Indefinite hospital detention under the Mental Health Act	Media reporting does not make clear the nature of the original charge. Media reporting merely

			states that the accused pleaded guilty to infanticide
Suminaite (2017)	Plea	Community order of 24 months with a 60-day rehabilitation requirement order	Accused originally charged with murder. Although the accused pleaded guilty to infanticide and was sentenced on that basis, the court ordered that the murder charge was to 'lie on file' (according to media report).
Rai (2021)	Found guilty at trial	Two year community order	Accused charged with murder and, in the alternative, infanticide. Following a two week trial, she was found not guilty of murder but guilty of infanticide. At the time of her sentence, she had already served 385 days in custody.

Table 1.3: Manslaughter Convictions

in cases involving the death of a child under 12 months of age

Name of Accused	Plea or Found Guilty at Trial?	Sentence	Commentary
McHattie (2008)	Plea	12 months imprisonment, suspended for two years	Media reporting does not make clear the nature of the original charge. Media reporting merely states that the accused pleaded guilty to manslaughter. The accused was, at or around the

			same time, sentenced to 26 weeks' imprisonment, suspended for a year, for sexual activity with a 14 year old boy.

Sympathetic Sentencing Remarks by Judges

Judges are at times highly sympathetic to the defendants and sympathetic sentencing remarks by judges were noted in a few cases – for example, *R v Keresi*[61], *R v Rai*[62], *R v Jacques*[63].

R v Keresi[64]

The Court considered mitigating factors such as the mother's mental health, fear of deportation, victim of domestic abuse, the fact that he believed her to be a 'good mother' to her other children. The Court stated:

> 'This was an act of desperation of a vulnerable woman'
>
> 'The abandonment of Malakai was an act of desperation by a vulnerable woman, facing challenging circumstances. The emotional effect of your giving birth outdoors and unaccompanied was profound.'

Keresi was suffering 'acute stress and anxiety' at the time of the birth, had 'poor coping strategies', and was reluctant to seek help from the authorities as she lived in fear of deportation.

[61] *R v Keresi*, Winchester Crown Court, sentenced on 2 Dec 2021.
[62] *R v Rai*, Winchester Crown Court, sentenced on 26 Jul 2021.
[63] *R v Jacques,* Leicester Crown Court, sentenced on 8 June 2012.
[64] *R v Keresi*, Winchester Crown Court, sentenced on 2 Dec 2021.

The Court stated: 'I accept you acted in a way that was wholly out of character and you would not have done what you did but for the extreme nature of your personal circumstances'.

R v Rai[65]

The Judge said that 'the mitigation in this case, as in many cases of its type, is overwhelming'. The defendant was living away from her home country, did not speak English, and was unable to access services for pregnant women and new mothers.

The defendant had spent 385 days in custody, equivalent to a sentence of more than two years, which would have been 'particularly difficult' due to the pandemic and her not speaking English. The defendant had experienced 'trauma' as a result of the pregnancy, particularly in the context of the 'patriarchal society in Nepal'. The pregnancy was described as something that would have 'brought great shame' on her and her family. The Court stated: 'The law therefore recognises that what is required in this type of case is very often compassion and support and rehabilitation, rather than punishment and retribution. That is certainly true in your case.'

Psychiatry

For infanticide to have occurred, the Infanticide Act 1938 requires the mother to have suffered a mental disturbance which was caused by childbirth or lactation. The Act presumes that childbirth/lactation can cause such mental disturbance to a mother that it is may substantially contribute to causing the death of her child. Does the medical/psychiatric literature support this presumption?

[65] *R v Rai*, Winchester Crown Court, sentenced on 26 Jul 2021.

To examine this question, we conducted a preliminary review of the medical/psychiatric literature on the potential causes of infanticide. We take this opportunity to reiterate that the researchers were from the Cambridge Law Faculty and were not trained in medical research. The objective of this exercise was to undertake generalist research on the views of the medical community on the issue. On the one hand, there is consensus amongst experts as to the psychological and socio-economic risk factors that correlate to infanticide cases. However, there is substantial disagreement about the 'nature and extent of the connection between childbirth, lactation and mental disturbance'.[66]

In the medical literature, infanticide is frequently distinguished from neonaticide. Porter and Gavin explain, '[i]nfanticide is the killing of young children, whereas neonaticide is the killing of the infant within the first 24 hours after birth'.[67] By contrast, the UK Infanticide Act 1938 makes no such distinction and treats both as cases of infanticide. To effectively make sense of the medical literature, we will review the risk factors for infanticide and neonaticide separately.

Neonaticide

Contrary to common perception, pre-existing psychiatric illness does not appear to be the primary causal factor for neonaticide. In his cross-sectional analysis of various studies, Craig (2004) identified the following risk factors:[68]

1. Primiparous mothers (i.e. those having a child for the first time).
2. Age: Of 139 cases studied, half were less than 19 years of age.
3. Single women.

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[66] Lorana Bartels, Patricia Easteal, 'Mothers Who Kill: The Forensic Use and Judicial Reception of Evidence of Postnatal Depression and other Psychiatric Disorders in Australian Filicide Cases' 37 Melbourne Law Review 297, 299

[67] Theresa Porter, Helen Gavin, 'Infanticide and Neonaticide: A Review of 40 Years of Research Literature on Incidence and Causes' (2010) 11(3) Trauma, Violence & Abuse 99, 99.

[68] Michael Craig, 'Perinatal risk factors for neonaticide and infant homicide: can we identify those at risk?' (2004) 97(2) Journal of the Royal Society of Medicine 57

4. Women living with their parents.
5. Limited communication between mother-to-be and her family
    - This has further been broken down into: (a) strict fundamentalist upbringings and (b) parents committed to religious ideas
6. Other studies include personal characteristics of the women, citing them as:
    - Immature
    - Timid
    - Below average intelligence
    - Passive: according to Gummersbach, passivity may determine whether a woman opts for abortion, or commits neonaticide later in the term
    - Denial as a coping strategy: women may rationalise away or misinterpret normal signs of pregnancy.
7. Fear of stigma of having an illegitimate child (also backed by various studies cited)

Craig emphasises that women who commit neonaticide do not generally have an underlying psychiatric illness. This is corroborated by several studies. For example, in their cross-sectional study, Noonan and Milia suggest that women who commit infanticide have 'rarely experienced mental health issues.'[69]

This is also supported in studies summarised by Gavin,[70] who describes how research confirms that the majority of neonaticidal women are not mentally ill at the time of the murder:

[69] Giulia Milia, Maria Noonan, 'Experiences and perspectives of women who have committed neonaticide, infanticide and filicide: A systematic review and qualitative evidence synthesis' (2022) 29(6) Journal of Psychiatric and Mental Health Nursing, 813

[70] Theresa Porter, Helen Gavin, 'Infanticide and Neonaticide: A Review of 40 Years of Research Literature on Incidence and Causes' (2010) 11(3) Trauma, Violence & Abuse, 99

- A 2007 review of 81 women who either denied or concealed their pregnancies, found that none had psychotic denial and a psychiatry consult was only requested on four of the women.
- Another 2016 review of 37 women found that most of the perpetrators did not have a major mental illness.
- Similarly, a 1979 UK study found that the majority of the neonaticidal women were not suffering from psychosis or depression.

These general factors are reiterated in several other psychiatric studies. A particular focus is on the concealment of pregnancy: in particular, the literature is clear on the idea that women who give birth after a concealed pregnancy and an unassisted birth 'may experience particular effects on their mental states' – in particular, a dissociative fear or panic that leads them to commit neonaticide.[71] Per Spinelli, women with unassisted births were shown to have:

- Dissociative psychosis (10 cases)
- Dissociative hallucinations (14 cases) and
- Intermittent amnesia delivery (14 cases)
- Psychotic symptoms at the sight of the infant (9 cases)

Infanticide

Factors relating to infanticide are largely similar to those surrounding neonaticide. Per Craig,[72] some differences are as follows:

[71] Karen Brenan, Emma Milne, 'Criminalising Neonaticide: Reflections on Law and Practice in England and Wales' in Milne, Brennan, and Turtons (eds) *Women and the Criminal Justice System: Failing Victims and Offenders?* (Palgrave 2018)

[72] N1

1. Status: women who commit infanticide are often married or living with their partner
2. Age: infanticidal women generally fall into an older age category – usually over 25, with an average age of about 34 years
3. Underlying psychiatric illness[73]: This is considered more relevant in infanticide considerations as opposed to neonaticide considerations, because psychiatric symptoms may be related to hormonal or physical changes that start presenting about one month after birth. It is suggested that:
    - Women are at 25% more of a risk of developing psychiatric symptoms in the month after childbirth
    - 10-15% of mothers have major depressive episodes in the year after giving birth

Indeed, the first year of life (as opposed to hours with regard to neonaticide) is described as 'time of peak prevalence for psychiatric illness in women'[74] – but the DSM 5 does not include postpartum disorders in its formal classification.

Other factors identified in relation to infanticide include a lack of education – indeed, per Gavin's summary, women who drop out of school are suggested to be eight times more likely to commit infanticide than women who received a college education.[75] Infanticide is also suggested to be caused by women being in a 'postpartum state of extreme hormonal fluctuation.'[76] This, however, is a contested conclusion: while some suggest psychosis may be caused by hormonal changes, others show that hormones do not significantly alter psychiatric health – rather, it is suggested that they allow an 'overt presentation of an underlying bipolar

[73] see also, Emma Robertson Blackmore et al, 'Reproductive Outcomes and Risk of Subsequent Illness in Women Diagnosed with Postpartum Psychosis' (2013) 15 Bipolar Disorders 394, 399, 401-02.
[74] M.G. Spinelli, 'Maternal infanticide associated with mental illness: Prevention and the promise of saved lives' (2004) 161(9) The American Journal of Psychiatry, 1548

[75] N3

[76] ibid

disorder.'[77] They suggest that although psychosis is 'related to physiological changes after birth, this generally 'precipitates in genetically vulnerable women,' or those with 'treatable causes and comorbidities' such as infections or autoimmune diseases.[78]

Conclusion

For a mother to be guilty of infanticide, rather than murder, the Infanticide Act requires her to have suffered a mental disturbance 'by reason of her not having fully recovered from the effect of giving birth…or…the effect of lactation'.[79] There must be a causal connection between childbirth (or lactation) and the mother's subsequent mental disturbance. However, as the medical literature indicates, postpartum mental disorders correlate to multiple causal factors, many of which occur prior to childbirth. These prior causal factors may be linked to genetic predisposition or complex socio-economic factors. In short, the medical link between childbirth and mental disturbance remains largely 'underdetermined'.[80] Thus, it is often impossible in cases of infanticide to draw a linear causal connection between childbirth and disturbance to the balance of mind. While there is no consensus in the medical literature that childbirth alone can cause sufficient mental disturbance to cause the mother to commit infanticide, there is some medical evidence correlating childbirth and the months that follow with heightened risk of psychiatric illness. Accordingly, the extent of causal connection remains unclear.

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[77] Dorothy Sit, Anthony Rotschild, Katherine Wisner, 'A Review of Postpartum Psychosis' 15(4) J Womens Health (2006) 352.

[78] Veerle Bergink, Natalie Raasgon, Katherine Wisner, 'Postpartum Psychosis: Madness, Mania, and Melancholia in Motherhood' (2016) 173(12) American Journal of Psychiatry 1179.

[79] The Infanticide Act 1938, s 1(1).

[80] Lillian De Bortoli, Jan Coles and Mairead Dolan, 'Maternal Infanticide in Australia: Mental Disturbance during the Postpartum Period' (2013) 20 Psychiatry, Psychology and Law 301, 307-08.

Comparative Snapshot

In this section, we look at two other jurisdictions that have enacted very similar statutes to the Infanticide Act 1938: Ireland and Australia. The aim of this section is to provide a brief insight into trends in Ireland and Australia, which serve as possible avenues for future reform in the United Kingdom.

Ireland

Shortly after the British Parliament enacted the infanticide statute, the Republic of Ireland enacted its Infanticide Act in 1949.[81] The Irish statute includes the following provisions:

> (1) On the preliminary investigation by the District Court of a charge against a woman for the murder of her child, being a child under the age of twelve months, the Justice may, if he thinks proper, alter the charge to one of infanticide and send her forward for trial on that charge.
>
> (2) Where, upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are satisfied that she is guilty of infanticide, they shall return a verdict of infanticide.
>
> (3) A woman shall be guilty of felony, namely, infanticide if—
>
> > (a) by any wilful act or omission she causes the death of her child, being a child under the age of twelve months, and

[81] Infanticide Act 1949 s. 1.

> (b) the circumstances are such that, but for this section, the act or omission would have amounted to murder, and
>
> (c) at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child and may for that offence be tried and punished as for manslaughter
>
> (4) Section 60 of the Offences Against the Person Act, 1861, shall have effect as if the reference therein to the murder of any child included a reference to infanticide.

Section 60 of the Offences Against the Person Act, 1861 concerns concealing the birth of a child, and reads as follows:

> If any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour: Provided, that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such

> person had been convicted upon an indictment for the concealment of the birth.[82]

Ireland draws heavily on England and Wales' infanticide law. As Karen Brennan explains, Ireland's Infanticide Act 1949 'enshrined verbatim the medical basis of the English infanticide law, namely that a woman could be convicted of infanticide if, at the time of killing her infant, the balance of her mind was disturbed by reason of her not having fully recovered from the effect of childbirth or by reason of the effect of lactation consequent upon childbirth.'[83] However, the Irish statute is not a carbon copy of the English and Welsh law. Section 1(1) of the Irish statute mandates that the initial charge in infanticide cases must always be murder. Brennan explains that Irish lawmakers inserted Section 1(1), to address the concern that the offence of infanticide might 'diminish the value of infant life or, in connection with this, the deterrent effect of the criminal law.'[84]

Brennan argues that the primary legislative intent behind enacting the statutes was 'to ensure that women could be treated more leniently by the law and that compassion could be provided in a formal and legitimate manner.'[85] As Brennan further explains,

> 'Where a woman was sent for trial for or convicted of infanticide, she would be tried and punished as if she had been charged with or convicted of manslaughter. Importantly, this meant she would be tried at the Circuit Criminal Court, a court of lower criminal

[82] Offences Against the Person Act 1861 s. 60.

[83] Karen Brennan, 'Traditions of English Liberal Thought: A History of the Enactment of an Infanticide Law in Ireland' (2013) 50 Irish Jurist 100, 101.

[84] ibid 101.

[85] Brennen (n 3) 137.

> jurisdiction, and would be subject to a flexible sentencing regime with a maximum penalty of life imprisonment.'[86]

This was a marked demonstration of mercy, as until Ireland's passage of the Criminal Justice Act 1964, death was the mandatory sentence for those convicted of murder.

In the past two decades, Ireland has increasingly tied infanticide to the defence of diminished responsibility. The Criminal Law (Insanity) Act 2006 (Insanity Act) s.22 amended the Infanticide Act 1949 s.1(3), so that infanticide is now punishable under s.6(3) of that Act as if the offender had been found guilty of manslaughter on grounds of diminished responsibility.[87] In particular, the Insanity Act s.22(a) substituted Infanticide Act 1949 subsection (3)(c) 'by reason of the effect of lactation' with 'by reason of a mental disorder (within the meaning of Insanity Act).'[88] Furthermore, the Insanity Act s.22(b) substituted 'and punished as for manslaughter' with 'as for manslaughter and, on conviction may be dealt with under section 6(3) of the Insanity Act as if she had been found guilty of manslaughter on the grounds of diminished responsibility.'[89]

Australia

In the past two decades, multiple Australian states have conducted reviews of their infanticide provisions. Notably, New South Wales (NSW) and Victoria elected to retain their infanticide

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[86] Brennen (n 3) 100-101.

[87] Brennan (n 3) 100.

[88] The Criminal Law (Insanity) Act 2006 s. 22(a). Here we see an expansion beyond the focus on lactation to include a broader range of mental disorders. Mental disorder according to the *Criminal Law (Insanity) Act 2006* includes mental illness, mental disability, dementia or any disease of the mind but does not include intoxication.

[89] The Criminal Law (Insanity) Act 2006 s. 22(b).

laws, reasoning that infanticide should remain as a statutory alternative to the offence of murder. By contrast, Western Australia chose to abolish its infanticide statute. We provide an overview of each of these states' infanticide and their approaches to reform.

Before analysing the infanticide laws of specific states, it must be emphasised that, in general, Australian infanticide laws are rarely used. In a recent study of infanticide across Australia, Loughnan found that 'legal reliance on infanticide provisions is limited and uneven, with prosecutors tending to rely on charges of murder and manslaughter instead, and defence counsel raising other defences'.[90] Further, infanticide is rarely pleaded by the defence. Loughnan concluded that 'the laws encode a veneer of leniency for all mothers who kill their children, but in practice they are reserved for a small set of cases'.[91] Loughnan's findings are reflected in the data. For instance, in Victoria, we only found seven prosecutions in the last decade. Similarly, in NSW, there were only four prosecuted cases between 2001 and 2011.[92] Our research has revealed only one case in NSW since 2013 which considered infanticide.[93] Finally, where infanticide is charged, imprisonment following a conviction for infanticide is rare.

[90] Arlie Loughnan, 'The Use and Non-Use of Infanticide Provisions in Australian Criminal Laws' in Karen Brennan and Emma Milne (eds), *100 Years of the Infanticide Act: Legacy, Impact and Future Directions* (Hart Publishing 2023).
[91] ibid.
[92] New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences* (Report 138, 2013) 109, 115.
[93] *R v MB (No 2)* [2014] NSWSC 1755.

New South Wales

New South Wales has an infanticide provision which operates as an offence[94] or a partial defence[95]. A partial defence reduces an offence of murder to an offence of manslaughter. NSW also has a partial defence of diminished responsibility.

Section 22A of the Crimes Act 1900 (NSW) currently provides:

1) A woman is guilty of infanticide and not of murder if—
    a. the woman by an act or omission causes the death of a child, in circumstances that would constitute murder, within 12 months of giving birth to the child, and
    b. at the time of the act or omission, the woman had a mental health impairment that was consequent on or exacerbated by giving birth to the child.
2) A jury may, at the trial of a woman for the murder of her child, find the woman guilty of infanticide and not of murder if the jury is of the opinion that—
    a. the woman by an act or omission caused the death of the child, in circumstances that would constitute murder, within 12 months of giving birth to the child, and
    b. at the time of the act or omission, the woman had a mental health impairment that was consequent on or exacerbated by giving birth to the child.
3) A woman found guilty of infanticide under this section may be dealt with and punished as if the woman had been guilty of the offence of manslaughter of the child.
4) Nothing in this section affects the power of the jury on an indictment for the murder of a child to return—
    a. a verdict of manslaughter, or
    b. a special verdict of act proven but not criminally responsible (within the meaning of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020), or

[94] *Crimes Act 1900* (NSW), s 22A(1).
[95] *Crimes Act 1900* (NSW), s 22A(2).

c. concealment of birth.

How does it work in practice?

In practice, infanticide is rarely pleaded. In its 2013 review of the provision, the NSW Law Reform Commission noted that infanticide is rarely used. In NSW, there have been four prosecuted cases between 2001 and 2011. From the information available, the prosecution accepted a plea of guilty to infanticide, rather than by a jury trial.[96] The sentences were usually good behaviour bonds. The NSWLRC stated that the women 'generally [had] a mental health impairment and their victims [were] over three months old'.[97] However, the NSWLRC noted that there are likely cases of infanticide and neonaticide missing from criminal statistics.

Since 2013, there has only been one case prosecuted: *R v MB (No 2)*.[98] The mother, MB, was charged with murder and raised infanticide as a defence. The trial judge, in a special hearing after the mother had been declared to be unfit to be tried, found that the defence of infanticide was not made out, and the mother was convicted of murder. The trial judge found that, under the previous wording of s 22A, the 'disturbance of mind must be by reason solely of her not having fully recovered from the effect of the process of giving birth', and this was not demonstrated in MB's case.[99]

There have been no court judgments dealing with infanticide since the most recent amendments to s 22A in 2020.

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[96] New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences* (Report 138, 2013) 109, 115 (see Ch 5 on Infanticide).
[97] New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences* (Report 138, 2013) 113 [5.15].
[98] [2014] NSWSC 1755.
[99] [2014] NSWSC 1755, [295].

Has the law undergone reform?

In 1997, the NSW Law Reform Commission ('NSWLRC') recommended[100] that the infanticide provision (s 22A) be repealed.[101] It reasoned that infanticide should be subsumed within the diminished responsibility, which would have the advantage of expanding the range of mental disturbances that could give rise to the partial defence of diminished responsibility. Parliament did not implement this recommendation.

In 2013, the NSWLRC revisited its review of infanticide. This time, it recommended retaining the law. It found that infanticide 'respond[s] adequately' to a unique set of circumstances that 'may not, in all cases, be adequately dealt with' by other partial defences.[102]

In recommending retention, the NSWLRC made certain substantial suggestions for amendment. Firstly, it recommended removing the biological nexus between childbirth and mental disturbance. [103] This reflects the lack of medical consensus as to the nature and extent of the causal connection between childbirth and mental disturbance. Furthermore, the NSWLRC recommended reframing mental impairment by 'removing the requirement that the balance of the mother's mind be disturbed'.[104] In addition, it argued that the wilfulness requirement be removed, since a mother who is suffering from postpartum psychosis or other similar mental impairments may not be said to be acting wilfully. Finally, it recommended removing reference to lactation, which would bring NSW more in line with Victoria and Tasmania.

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[100] New South Wales Law Reform Commission, *Partial Defences to Murder: Provocation and Infanticide* (Report 83, 1997); see also New South Wales Law Reform Commission, *Provocation, Diminished Responsibility and Infanticide* (Discussion Paper 31, 1993).
[101] As recommended in New South Wales Law Reform Commission, *Partial Defences to Murder: Diminished Responsibility* (Report 82, 1997).
[102] New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences* Report No 138 (2013) 122.
[103] New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences* Report No 138 (2013) 122-23.
[104] Lorana Bartels, Patricia Easteal, 'Mothers Who Kill: The Forensic Use and Judicial Reception of Evidence of Postnatal Depression and other Psychaitric Disorders in Australian Filicide Cases' 37 Melbourne Law Review 297, 306.

Victoria

Victoria has an infanticide provision, which operates as an alternative verdict to murder.[105] The victim child can be up to two years old. The maximum sentence is 5 years' imprisonment. Section 6 of the *Crimes Act 1958* (Vic) provides:

1) If a woman carries out conduct that causes the death of her child in circumstances that would constitute murder and, at the time of carrying out the conduct, the balance of her mind was disturbed because of—
    a. her not having fully recovered from the effect of giving birth to that child within the preceding 2 years; or
    b. a disorder consequent on her giving birth to that child within the preceding 2 years—she is guilty of infanticide, and not of murder, and liable to level 6 imprisonment (5 years maximum).
2) On an indictment for murder, a woman found not guilty of murder may be found guilty of infanticide.

    Note: *See sections 10(3) and 421 for other alternative verdicts*.

3) Nothing in this Act affects the power of the jury on a charge of murder of a child to return a verdict of not guilty because of mental impairment.'

Section 5A of the *Crimes Act 1958* (Vic) specifies an offence of *c*hild homicide, which applies up to the child being 6 years of age.[106] The maximum sentence is 25 years' imprisonment.

> 'A person who, by his or her conduct, kills a child who is under the age of 6 years in circumstances that constitute manslaughter is guilty of child homicide and liable to level 2 imprisonment (25 years maximum).'

[105] *Crimes Act 1949* (Vic), s 6(2).
[106] *Crimes Act 1958* (Vic), s 5A.

Victoria does not have a defence of diminished responsibility.

How does it work in practice?

A search of the Victorian Supreme Court cases database revealed 7 cases of infanticide prosecuted over the past 10 years (2013 to 2023).[107] All defendants pleaded guilty to the charge of infanticide, suggesting that the prosecution accepted this charge as appropriate and did not proceed to trial. Most defendants were sentenced to a community-based order, as the table below shows:

Case name	Sentence
DPP v Nguyen [2023] VSC 325	3 years adjourned undertaking to be of good behaviour
DPP v MA [2022] VSC 170	3 years adjourned undertaking to be of good behaviour
DPP v UA [2018] VSC 423	30 months community correction order
The Queen v Nikat [2017] VSC 713	12 months community correction order
The Queen v Guode [2017] VSC 285	12 months' imprisonment[108]
The Queen v ZZMM [2015] VSC 524	12 months community correction order
DPP v QPX [2014] VSC 189	12 months community correction order

[107] Search conducted of Victorian Supreme Court and Victorian Court of Appeal cases with 'infanticide' in catchwords on Lexis Advance on 11 January 2024.
[108] Note that this sentence was appealed, but the sentence for infanticide was not disturbed on appeal: *Guode v The Queen* [2020] VSCA 257.

Goude was the first woman in Victoria to be sentenced to a term of imprisonment for infanticide.[109] Her case was unique in that she was also charged with two counts of murder and one count of attempted murder in relation to three of her other children, all arising from the same incident (driving into a lake with the four children in the car). Bartles and Easteal speculate that there may be a correlation between the likelihood of imprisonment and violence inflicted.[110] Other possible predictors of imprisonment may be the number of victims, the sentencing judge's perception of the mother's degree of culpability, or gender bias (i.e. to what extent did the mother deviate from the societal conception of a 'good mother').[111]

Has the law undergone reform?

In 2004, the Victorian Law Reform Commission ('VLRC') recommended retaining infanticide:

> 'We agree with the previous Law Reform Commission of Victoria that the killing of a young child by its natural mother constitutes a 'distinctive form of human tragedy' which should be reflected in the offence for which the accused is convicted. For this reason, the Commission recommends the retention of infanticide, with some modifications to ensure the offence better reflects modern medical understanding about factors which can lead to such killing.' [112]

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[109] Arlie Loughnan, 'The Use and Non-Use of Infanticide Provisions in Australian Criminal Laws' in Karen Brennan and Emma Milne (eds), *100 Years of the Infanticide Act: Legacy, Impact and Future Directions* (Hart 2023) 174.
[110] Lorana Bartels, Patricia Easteal, 'Mothers Who Kill: The Forensic Use and Judicial Reception of Evidence of Postnatal Depression and other Psychaitric Disorders in Australian Filicide Cases' 37 Melbourne Law Review 297, 336-337.
[111] ibid.
[112] Victorian Law Reform Commission, *Defences to Homicide: Final Report* (2004) 261.

The VLRC recommended two key amendments. Firstly, it recommended replacing the reference to lactation with 'disorder consequent on [the mother] giving birth'. Meaning, the disturbance to the balance of the mother's mind may have been caused by childbirth or any disorder consequent to childbirth.

Secondly, the VLRC recommended extending the scope of the provision so that it covers victims up to the age of two years, as opposed to just one year. It cited statistical evidence which showed that most cases of child killings by mothers take place within the first two years after birth. The VLRC reasoned that an amendment was necessary to remedy any inconsistencies in 'how the killings of older children are dealt with'.[113]

Western Australia

Western Australia's infanticide offence was repealed in 2008,[114] following the recommendation of the Western Australian Law Reform Commission ('WALRC').[115]

Prior to the repeal, the provision was s 281A of the *Criminal Code* (WA):

> 281A. 'Infanticide', meaning of
>
> (1) When a woman or girl who unlawfully kills her child under circumstances which, but for this section, would constitute wilful murder or murder, does the act which causes death when the balance of her mind is disturbed because she is not fully recovered from the effect of giving birth to the child or because of the effect of lactation consequent upon the birth of the child, she is guilty of infanticide only.
>
> Alternative offence: s. 283, 290 or 291.

[113] Victorian Law Reform Commission, *Defences to Homicide: Final Report* (2004) 257.
[114] *Criminal Law Amendment (Homicide) Act 2008* (WA), s 13.
[115] Western Australian Law Reform Commission, *Review of the Law of Homicide: Final Report* (2007), 117.

(2) In this section 'child' means a child under the age of 12 months.

The penalty was a maximum of 7 years' imprisonment.[116]

Why was it abolished?

In contrast to NSW and Victoria, Western Australia repealed its infanticide law following a Law Reform Commission inquiry in 2007.[117] The Commission found that the offence of infanticide was very rarely being charged. In the decade prior to the Commission's report, there had only been one conviction of infanticide. The Commission emphasised how the Public Prosecutor was regularly deciding against prosecution in cases of neonaticide, as it was difficult to prove that the baby was born alive. Other factors that often made conviction unlikely included: difficulty of establishing the circumstances surrounding the birth and death of the child (since in most cases of neonaticide, the mother has concealed the birth and gives birth alone); insufficient evidence of intent to kill or harm the child; youth of the offender; difficulty of establishing whether the child was born alive; insufficient evidence of a deliberate act or omission on the part of the mother; the public interest in proceeding with a prosecution; and the possibility of successfully raising a defence of insanity or automatism.[118]

In addition to pointing to low prosecution rates, the Law Reform Commission argued that the offence of infanticide lacked a principled basis. It described the infanticide provision as 'fundamentally flawed'.[119] It laid out three main criticisms of the offence: the lack of evidence for the biological link between childbirth or lactation and disturbance of the mind; the inherent gender bias; and the arbitrariness of the age limit.

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[116] *Criminal Code* (WA) s 287A.
[117] Law Reform Commission of Western Australia, *Review of the Law of Homicide: Final Report,* Project No 97 (2007) 108.
[118] Western Australian Law Reform Commission, *Review of the Law of Homicide: Final Report* (2007), 104.
[119] ibid 115.

Finally, the Commission concluded that there was no reason to retain the offence of infanticide when the defence of insanity was available. It emphasised that, under its recommended reforms to WA's disposition regime, custody orders in homicide cases would only be presumptive rather than compulsory.

Conclusion

Each of the Australian jurisdictions studied in this section have struggled with the best way to regulate infanticide. All three jurisdictions started with an infanticide provision modelled on the English provision, and all three have significantly amended the provision. In Western Australia, it was repealed entirely. In Victoria, the age limit of the child was extended for two years. In New South Wales, the Law Reform Commission recommended repeal, and then following parliamentary inaction, recommended modernising the language. Each of the Law Reform Commission reports demonstrate different approaches that attempt to reconcile compassion for mothers who kill with the desire for consistency and accuracy in the criminal law. Nonetheless, as Loughnan notes, prosecutions for infanticide remain varied and unpredictable.

Conclusion

Our preliminary review of the law of infanticide in England and Wales has found that though the provision is rarely used, when it is used it has a significant impact in that it is likely to substantially reduce the sentence of the accused, relative to murder.

On the question of whether the law should undergo another review by the Law Commission, we consider the following issues could profitably be examined:

1) As cases such as *Kai-Whitewind* and *Tunstill* show, the statute creates some ambiguity as to the precise nexus required between disturbance to the balance of the mother's mind and the effects of childbirth/lactation. Furthermore, the psychiatric literature suggests that, in cases of infanticide/neonaticide, a mother's postnatal mental disturbance may be linked to socio-economic factors and/or prenatal mental illness. This raises the issue of **whether to reword ss. 1(1) and (2) of the Infanticide Act 1938 to clarify the nature of the link between mental disturbance and childbirth**:
    a. For instance, New South Wales has amended its infanticide provision to specify that the mental impairment may be 'exacerbated by' childbirth: 'mental health impairment that was **consequent on or exacerbated by** giving birth to the child' (emphasis added).[120]
    b. In *Tunstill,* Treacy LJ observed that the phrase 'by reason of' in s. 1(2) cannot necessarily be understood as meaning 'solely by reason of'. He reasoned that a jury may consider infanticide as an alternative verdict, even if the mother's mental disturbance may have partially been caused by underlying factors independent of the effects of childbirth. It may be appropriate to review **whether both s. 1(1) and s. 1(2) should be amended to reflect Treacy LJ's interpretation of 'by reason of'**.

[120] New South Wales Crimes Act 1900, s 22A(1)(b).

2) **Whether the reference to lactation should be removed in ss.1(1) and 1(1)**. Our review of the psychiatric literature found no specific link between lactation and postnatal psychosis. It is unclear whether there is a scientific basis for singling out lactation in the statute. It may be considered whether to follow the example of, for instance, Victoria's amendment to its infanticide provision, where it changed 'effects of lactation' to the much broader, 'a disorder consequent on her giving birth'.[121]
3) In Victoria, Australia, the infanticide statute has been amended to increase the age of the child from twelve months to two years. It may be appropriate to review **whether to increase the age of the child in ss. 1(1) and (2) of the UK Act to two years (or some other age)**. It is currently unclear whether there is a reasoned basis for distinguishing between children over and under the age of twelve months, especially given that the effects of postpartum psychosis may persist for more than one year.

[121] Victorian Law Reform Commission, *Defences to Homicide: Final Report* (2004)

Appendix I: England & Wales Cases

We have identified 17 cases since 2002 in England and Wales where a woman has been found or pleaded guilty to causing the death of her biological child under 12 months of age.

The tables below contain brief summaries of these cases.

R v Amantova	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - BBC– https://www.bbc.co.uk/news/uk-england-london-30343865 - Mirror– https://www.mirror.co.uk/news/uk-news/elita-amantova-woman-buried-newborn-4753544 Sentenced 5 December 2014
Judge/s	Paul Worsley QC J
Court	Central Criminal Court
Was infanticide raised?	Yes
Decision – maker at first instance	Judge
Conviction & Sentence	Initially murder, then guilty plea to infanticide accepted Sentenced to a hospital order
Facts of the Case (from news articles)	- Elita Amantova, 39, from Latvia, was living in a graveyard in Tooting before giving birth in August 2012 - She admitted to burying her baby the same day she gave birth, but found the birth 'too traumatic' to answer questions about it - On 10 September 2012 a worker found a baby's leg and foot on the ground at the tractor yard at Doctor Johnson Avenue next to Tooting Common. - In a search, another limb was found, the thigh and calf had been eaten through exposing bone - Believed a fox dug up the body parts on Tooting Common

	- DNA testing identified Amantova as the mother, and on September 17 2012, she was found outside Sainsbury's in Garrat Lane watching people coming and going saying it was a 'nice day' - She was arrested but could not be interviewed until the following February because of her serious mental illness - Amantove arrived in the UK in 2008, but after losing her job she fell into the company of organised criminals in Norfolk and worked as a prostitute - When she became pregnant, Amantova was homeless and living off of berries and bread left out for birds, sleeping on gravestones and wearing a blonde wig - She was previously diagnosed with a schizophrenia-type mental condition in Latvia in her 30s but it was exacerbated by childbirth - She refused to tell police whether the baby was dead or alive before she buried it, but in an interview in April 2013 she admitted to a doctor that the child had been alive - She was charged with murder, but the prosecution accepted her plea of not guilty to murder but guilty of infanticide
Sentencing remarks (from news articles)	Judge Worsley QC said infanticide was a 'rare offence' and while 'the court must always mark the serious fact a life has been taken', a hospital order was appropriate in this case. The judge said that due to the enduring illness the defendant was suffering, she would probably need lifelong treatment and care
Key Takeaways / Insights	- In this case it appears to be the mother's *pre-existing* mental illness which was 'exacerbated' by childbirth that resulted in the reduced charge of infanticide.

R v Babita Rai	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - a press release from the Hampshire and Isle of Wight Constabulary: https://www.hampshire.police.uk/news/hampshire/news/news/2021/july/woman-sentenced-for-infanticide-of-baby-girl-in-aldershot/ - a news report from Hampshire Live which quoted heavily from the sentencing remarks: https://www.hampshirelive.news/news/hampshire-news/a-tragedy-involved-timeline-baby-5702372 Date of sentence: Monday 26 July 2021
Judge/s	Johnson J
Court	Winchester Crown Court

Was infanticide raised?	Yes – convicted of infanticide following a two-week trial. The jury found her not guilty of murder.
Decision – maker at first instance	Jury
Conviction & Sentence	Infanticide Community order of 2 years and rehabilitation order of 30 days She had served 385 days in custody.
Facts of the Case	- The defendant moved to Aldershot from Nepal in 2017 and lived with family. She was pregnant at the time and concealed that pregnancy while in the UK. The judge described her as being in 'denial' that she was pregnant. - On 15 May 2017, the defendant gave birth to a baby near some trees just outside of a park in Aldershot. - There was evidence to suggest that there may have been another person who accompanied her, but the defendant did not give further information about that. - In a short period of time after birth, the child suffered horrific multiple blunt force or crushing injuries and died. - The baby was moved around 90cms into the park and was found by a park worker four days later.
Sentencing remarks (from Hampshire Live article)	- The judge said: 'When you came to give birth, the psychological trauma from which you had been suffering came to a head. No longer could you deny the existence of what was now a living newborn baby girl. You or very possibly a person you were with inflicted dreadful injuries on that baby girl. She was left for dead and she did die within a very short time.' - However, the judge said that 'the mitigation in this case, as in many cases of its type, is overwhelming'. - The defendant had experienced 'trauma' as a result of the pregnancy, particularly in the context of the 'patriarchal society in Nepal'. The pregnancy was described as something that would have 'brought great shame' on her and her family. - 'The law therefore recognises that what is required in this type of case is very often compassion and support and rehabilitation, rather than punishment and retribution. That is certainly true in your case.' - The defendant was living away from her home country, did not speak English, and was unable to access services for pregnant women and new mothers. - The defendant had spent 385 days in custody, equivalent to a sentence of more than two years, which would have been 'particularly difficult' due to the pandemic and her not speaking English. - The judge said a prison sentence was not required for public protection and would not address any risk Rai may pose to a future child of hers, particularly one from an unwanted pregnancy
Key Takeaways / Insights	- The court heard that, in the past 42 years, there has only been one recorded instance of a term of imprisonment being imposed for infanticide. That sentence was later overturned by the Court of Appeal.

	- The full sentencing remarks are not accessible, so the full context of the remarks is not apparent. However, as reported by Hampshire Live, the sentence and remarks appear to be compassionate. - Before the trial, the defendant attempted to prevent the media from publishing her full name and address, but this failed: [2021] EWHC 339 (Admin); [2021] EWCA Civ 604

R v Black	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - BBC: https://www.bbc.co.uk/news/uk-england-nottinghamshire-27415918 - Daily Mail: https://www.dailymail.co.uk/news/article-2628274/Mother-suffering-post-natal-depression-paranoid-thought-TV-talking-drowning-baby-girl-bath-dumping-body-factory-car-park.html Date of sentence: 14 May 2014
Judge/s	Thirlwall J
Court	Nottingham Crown Court
Was infanticide raised?	Yes – plea of guilty to infanticide.
Decision – maker at first instance	Judge.
Conviction & Sentence	Infanticide. Indefinite detention in mental hospital.
Facts of the Case (from news articles)	- The baby was 7 months old when she died; the defendant was 40 at the time of sentence. - The baby was sick and was crying through the night. - She did not tell police or doctors what happened to the baby, but the defendant was seen on CCTV climbing up and tipping the child's body over a fence. The child's body was observed by witnesses to be wet with clear liquid coming from her mouth. The defendant called 999 but paramedics were unable to revive the baby. - She told neighbours at the scene 'I don't know what I have done. I am never going to be able to live this down. My head is spinning.' - In the months leading up to the baby's death, there was evidence that the defendant's mind was significantly disturbed. She thought the TV was 'telling her to do things' and her husband was a UK government employee who had been placed in their home to spy on her.

	- Three psychiatrists agreed that she was continuing to suffer from a mental illness which required further treatment.
Sentencing remarks (from news articles)	Thirwall J: 'You are suffering from a mental illness that makes it necessary that you be detained for treatment.'
Key Takeaways / Insights	- Not much detail available on the sentencing remarks. - The psychiatric illness seems to have been present before the baby's death. But it's not clear whether the illness arose before or after the birth. - Not a case of neonaticide – the baby was 7 months old.

R v Cobley	
Citation/s	Sentence: Leicester Crown Court (7 June 2019) Appeal: [2021] EWCA Crim 954 (29 June 2021)
Judge/s	Sentence: Carr J Appeal: Macur LJ, Jay J, Foster J
Court	Court of Appeal (Criminal Division)
Appeal from	Crown Court at Leicester
Was infanticide raised?	No – up until the conclusion of the applicant's evidence, the defence team had intended to call and rely upon the expert evidence of Dr Muzaffar, Consultant Psychiatrist. He had considered that there was evidence of an acute stress reaction which had disturbed the balance of her mind and her ability to think logically (which met the criteria for a defence of infanticide and/or diminished responsibility). However, after hearing the applicant give evidence, Dr Muzaffar informed the defence team that he no longer believed that her mental functioning had been sufficiently disturbed as to explain her actions [20]-[21].

Decision – maker at first instance	Jury
Conviction & Sentence	Murder – minimum term of imprisonment 18 years.
Facts of the Case	*NB paragraph references are to the Court of Appeal judgment* - Birth: The applicant gave birth to a baby in the night of 26 April 2017. She had concealed the pregnancy. She gave birth in the outside toilet at her parents' farm [2]. She was about 27 years old. - Other pregnancies: The applicant had previously had a termination following an unplanned pregnancy. Her second pregnancy was also unplanned and the birth of her child E in March 2014 was a surprise – she gave birth in the upstairs bathroom of the family home [3]. The health visitor was initially concerned about the applicant bonding with E, but by October 2014 there was observable positive interaction [4]. - Conflicting accounts: On 29 April 2017 (3 days after the birth) the applicant collapsed and was taken to hospital. She initially told the paramedics that she had expelled a large mass from her vagina, she didn't know what [6]. She told nursing staff that she had flushed away what she thought was a menstrual blood clot [7]. However, later that evening, she told her father that she had given birth, the baby was stillborn, and she had put the baby in a bag in the garden [8]. A number of other bloodstained items were found at the farm and in her bedroom [8]. - Police: In a police interview, she told police that she hadn't known she was pregnant until she gave birth. She said the baby hadn't moved or made a sound so she was sure the child was dead. She panicked and hid the body. She was ashamed but denied that she had done anything to cause the baby harm [9]. - Internet searches: her phone revealed searches in the early hours of 27 April including ' what happens if you drop a new-born baby: and 'how how long can a new-born baby last without milk and in the freezing cold' [10] - Post-mortem: The baby was breathing and was alive after birth: the baby would have made some sound and moved. The umbilical cord appeared to have been cut with scissors [11]. The baby was premature (approx. 32 weeks) [1]. The baby had multiple severe traumatic injuries to her brain, which were sustained while she was alive. The injuries were likely caused by violent shaking with multiple impacts or a significant/violent bang against a hard surface more than once [12]. - Prosecution case: the prosecution case was that the applicant deliberately and intentionally killed her baby. She knew she was pregnant, and knew she was in labour when she went outside, in order to give birth in secret. She at least suspected the baby was still alive when she disposed of the body. She was faking her amnesia [13]-[16]. - Applicant's evidence: the applicant said that she had an inkling she might be pregnant but tried to bury her head in the sand. She agreed that she had made the internet searches, but denied that she: thought about harming the baby; thought that the baby was born alive; tried to stop the baby from making any noise [17]. She said she was panicking when she put the baby in the bag, the baby was lying there lifeless. She could not remember causing any injury to the baby – she agreed that she must have done so, but it would not have been intentional. She couldn't remember making further searches. She said she was scared and ashamed, which is why she didn't initially tell the paramedics or hospital staff that she had been pregnant. She denied deliberately withholding information [18]-[19]. - Psychiatrist opinion: as noted above ('Was infanticide raised?'), the psychiatrist changed his opinion after hearing the applicant give evidence [20]-[21].

	- Due to the psychiatrist's withdrawal, the defence case at trial was lack of necessary intent to cause the death of the baby [25].
Sentencing remarks	- Aggravating factors were that (i) the killing involved a significant degree of pre-meditation; (ii) the baby was unlikely to have survived for long, but there would have been distress; (iii) the victim was a defenceless newborn baby; (iv) there was a concealment of the body intended to be permanent. The assault was also particularly brutal. - The applicant was previously of good character, although this carried limited weight. The surviving child was being cared for by her grandparents. - The starting point for the sentence was 15 years. The aggravating factors justified a material increase in the starting point, to 18 years.
Grounds of Appeal	- The applications were: to admit fresh evidence; to appeal; and for an extension of time to appeal. - Fresh evidence: after conviction, the applicant's parents had sought the opinion of another psychiatrist (Dr di Lustro). The prosecution also sought a second opinion from Dr Rampling. Both agreed that the applicant was suffering from a depressive disorder which would have significantly impaired her ability to form a rational judgment at the time of the offence, so the partial defence of diminished responsibility would be available ([29]-[30]). - If successful in the application, the applicant would have applied for a retrial.
Outcome of Appeal / Reasons	Applications dismissed. - The Court considered that the new psychiatrists' opinion was based on the applicant's self-reporting and disregarded concomitant events and her evidence at trial. Therefore, it was not necessary or expedient in the interests of justice to admit the fresh evidence because the conviction was not undermined by the evidence. [67] - Even assuming that the jury would had found that there was an abnormality of mental functioning at the time of the killing, 'the issue of whether the applicant had a substantial impairment of ability to understand/form national judgment/exercise control and whether it is a cause or explanation for the killing is not so readily resolved.' This was to be judged against the empirical evidence at the time [52].
Key Takeaways / Insights	- Interestingly, the Court of Appeal noted that 'the applicant's criminal responsibility was more properly reflected in a verdict of manslaughter. However, the applicant was convicted of murder' [27]-[28]. It appears that unreasonable verdict was not raised as a ground of appeal. - There is some recognition of the circumstances that patients can form different levels of engagement with different professionals and therefore provide different levels of information – this may be relevant to questioning why defendants provide conflicting accounts to different psychiatrists eg of different genders. However, this was of lesser relevance in this case as the applicant had given a similar account to a female psychiatrist. [46] - The fresh evidence was obtained after the conviction and there was some suspicion that the applicant had given self-serving information to the new psychiatrists.

R v Goncalves-Taborda & Olaiya-Imam	
Sources	N/A – sentencing remarks not available online – this summary was prepared by reference to: - https://www.essex.police.uk/news/essex/news/news/2023/july/pair-convicted-following-death-of-11-week-old-baby-in-2020/ - https://www.essex.police.uk/news/essex/news/news/2023/october/main-text/ - https://www.essexlive.news/news/essex-news/heart-wrenching-tale-how-essex-8690902 - https://www.essexlive.news/news/essex-news/faces-killer-mum-selfish-partner-8844895 - https://www.essexlive.news/news/essex-news/essex-mum-jailed-life-after-8844949 - https://www.essexlive.news/news/essex-news/essex-mum-convicted-killing-defenceless-8631385 - https://www.bbc.co.uk/news/uk-england-essex-66317627 - https://www.itv.com/news/anglia/2023-07-26/parents-convicted-after-baby-boy-died-with-fractured-skull-and-ribs - https://www.itv.com/news/anglia/2023-10-20/mother-who-killed-her-baby-son-tried-to-blame-it-on-intruder - https://www.dailymail.co.uk/news/article-10418465/Two-people-charged-death-two-month-old-boy-Harlow-Essex.html - https://www.dailymail.co.uk/news/article-12186621/Mother-33-battered-newborn-baby-death-striking-head-hard-surface.html - https://www.independent.co.uk/news/uk/crime/eloddie-goncalves-court-cases-essex-b2356057.html
Judge/s	
Court	Chelmsford Crown Court
Appeal from	
Was infanticide raised?	No - both pleaded not-guilty.
Decision-maker at first instance	Jury in the Colchester Magistrates' Court Judge in the Chelmsford Crown Court
Conviction & Sentence	- Eloddie Goncalves-Taborda: Murder - life imprisonment with a minimum specified term of 17 years - Muritala Olaiya-Imam: Allowing the death of a child - 10 years imprisonment
Facts of the Case	- Around 10am on Wednesday 19 August, 2020, emergency services were called to an address in Harlow after 11 week-old Malik was found unresponsive by his mother, Eloddie Goncalves-Taborda. - Malik was pronounced dead at the scene. A post-mortem found he died of a head injury. - When questioned by police, Eloddie Goncalves-Taborda stated that she awoke at 9.30am to find her baby son lifeless in bed beside her and that she

	contacted ambulance immediately. - As part of the police investigation, Eloddie Goncalves-Taborda was required to provide a sample of urine for drug and alcohol analysis. Officers discovered she had plotted with partner Muritala Olaiya-Imam to contaminate her sample by mixing their urine samples. A blood sample provided by Eloddie Goncalves-Taborda identified the presence of cannabis and alcohol, placing her one-and-a-half times over the legal drink drive limit. - Upon examination, Malik's small body had 21 rib fractures, broken wrists and his skull was fractured in two places. The injuries were indicative of shaking and a blunt impact trauma to his head. - Expert evidence at the six-week trial confirmed that his injuries were more likely non-accidental, the majority of which were caused between two and 12 hours prior to his death. The baby's left wrist was fractured 3-6 days prior to death. - Throughout the investigation by Essex and Kent Police's Serious Crime Directorate, both mother and father denied responsibility for Malik's death and attempting to pervert the course of justice. o Eloddie Goncalves-Taborda was interviewed by detectives multiple times over an 18-month period. Throughout the interviews she continued to deny responsibility for causing Malik's death, going as far as to blame an unknown intruder for her son's death, a claim for which detectives did not find any supporting evidence. o Father Muritala Olaiya-Imam told the investigating team during interviews that, although he wasn't present at the time of Malik's death, he was distraught and loved his son. He denied being involved in any child cruelty and that he was unaware of the earlier wrist fracture. - Detectives later charged Goncalves-Taborda with Malik's murder and child neglect, while Olaiya-Imam was further charged with allowing the death of a child. Both were charged with attempting to pervert the course of justice. - Both parents denied the charges when they appeared at Colchester Magistrates' Court on 19th January 2022, electing to stand trial, remanded in custody. - On Wednesday 26 July, at Chelmsford Crown Court, Eloddie Goncalves-Taborda, 32 and Muritala Olaiya-Imam, 36 formerly of Dagenham were convicted of all charges. - Mother Eloddie Goncalves-Taborda was jailed for life, to serve a minimum of 17 years for the murder of her 11-week-old son, Malik, when she appeared at Chelmsford Crown Court on Friday 20 October. At the same hearing, her partner, Muritala Olaiya-Imam, was jailed for ten years for allowing his death.
Grounds of Appeal	
Outcome of Appeal / Reasons	
Key Takeaways / Insights	- It took the jury just five hours and 51 minutes to come to a conclusion on the charges that the pair faced.

R v Harrigan	
Citation/s	N/A: Sentencing remarks are not available online and there is not reported appellate court decision on which reliance may be placed. The following summary has been prepared by reference to the following: - BBC News: http://news.bbc.co.uk/1/hi/england/northamptonshire/8272961.stm - Mirror: https://www.mirror.co.uk/news/uk-news/teenage-mum-who-killed-baby-420842#google_vignette Sentenced on 24 September 2009.
Judge/s	Charles Wide QC J
Court	Leicester Crown Court
Was infanticide raised?	Yes. Ms Harrigan pleaded guilty to infanticide.
Decision-maker at first instance	Judge.
Conviction & Sentence	Conviction: Infanticide. Sentence: Community order with supervision for 36 months and mental health treatment for two years.
Facts of the Case	Circumstances leading to the death Ms Harrigan, aged 19, was alleged to have stuffed rolled-up leaves into the mouth of her newborn son, Eithan, on 22 April 2008. - The body of the deceased newborn was found under a lawnmower in the garden. - On the morning of 22 April 2008, Ms Harrigan's mother found the kitchen carpet had been moved and there was a 'red jelly-like substance on the floor'. - Ms Harrigan claimed to be unwell. Her mother suspected that she had had another baby and inquired of Ms Harrigan where the newborn was located. Upon being asked, Ms Harrigan allegedly burst into tears. - Paramedics found the newborn unresponsive and covered in twigs and blood. He was pronounced dead at the scene. Ms Harrigan's personal circumstances - Ms Harrigan already had one son at the time of the offending. - She had kept the second pregnancy secret from her mother. Medical evidence

	- A post-mortem examination identified two rolled-up leaves in Eithan's body. One had been placed in his mouth and another in his pharynx. - Because oxygen was found in his lungs, it was determined that he had been born alive. - The pathologist conducting the post-mortem examination could not rule out the possibility of a hand having been placed over the newborn's mouth and nose. - The official cause of death was asphyxiation. <u>Psychiatric evidence</u> Psychiatrists who examined Ms Harrigan agreed that she 'clearly was suffering'. - Ms Harrigan claims that she does not have a recollection of putting leaves in her son's mouth. - The media reports that this is why a charge of infanticide was agreed.
Sentencing remarks	The following remarks are reported in media reports: Judge Charles Wide QC said that '[t]his is a tragic case'. Allegedly, the Judge said to Ms Harrigan, 'You need help'. Continuing, the Judge said, 'You plainly satisfy the requirements for making a community order with a mental health treatment requirement'.
Key Takeaways / Insights	- This is a case of neonaticide. There is limited information available about Ms Harrigan's personal circumstances. It is clear that she was very young and already had a child to look after. There is no mention in the media reports as to whether she had a partner. It seems that her mother was in her life but Ms Harrigan nonetheless felt compelled to hide her second pregnancy from her mother. It is not clear whether it is possible to infer anything from that decision. - The psychiatric evidence all indicated that Ms Harrigan 'clearly was suffering' and she claims to have no recollection of having placed leaves in her son's mouth. - Overall, as the Judge said, this is simply a tragic case.

R v Jacques	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - BBC– https://www.bbc.co.uk/news/uk-england-leicestershire-18368250 - Mirror– https://www.mirror.co.uk/news/uk-news/carly-jacques-trial-depressed-mum-869343 - Yorkshire Post– https://www.yorkshirepost.co.uk/news/delusional-mother-with-depression-killed-baby-she-loved-to-bits-1898642

	Sentenced 8 June 2012
Judge/s	Michael Pert J
Court	Leicester Crown Court
Was infanticide raised?	Yes
Decision – maker at first instance	Judge
Conviction & Sentence	Plead guilty to infanticide Sentenced to a Section 37 Hospital Order. She was also handed a Section 41 Restriction Order under the Mental Health Act 1983 (means Court thinks she may be a risk to the public and can thus only be discharged from hospital if the Secretary of State for Justice agrees)
Facts of the Case	- Carly Jacques, 32, plead guilty to the infanticide of her seven-month old daughter, Skye - Jacques had started to show signs of post-natal depression after her husband admitted he had been having an affair with one of her best friends - Jacques then started heavily using cannabis - She began to suffer from anxiety, depression, and delusions - She thought neighbours were talking about her and wanted to cause her and her daughter harm, and she told people she was being drugged - Jacques also told people she thought there was a body in her attic and believed she was being filmed in her home. - She was prescribed Prozac by her GP but only took it for a short period - She was also referred to a counsellor but only went to two sessions - A week before she killed her daughter, she tried to take her own life and was only stopped by her husband and parents - Jacques's husband found her holding their dead baby, she also slashed her own wrists and neck - The baby's cause of death was recorded as smothering
Sentencing remarks (from news articles)	- Judge Pert: 'I am satisfied that what led you to that terrible act was illness rather than wickedness.' - 'You are suffering from a depressive illness and at the time of the death you were suffering from a depressive disorder with psychotic symptoms.' - Judge Pert called for Jacques to be given treatment rather than punishment
Key Takeaways / Insights	Interesting that post-natal depression was at least partly framed as situational (resulting from her husband's affair) rather than purely biological; potentially challenges the current framing of UK infanticide law's dependence on balance of mind being disturbed from effect of giving birth or effect of lactation

R v Kai-Whitewind (Appeal Decision)	
Citation/s	[2005] EWCA Crim 1092; [2005] 5 WLUK 3; [2005] 2 CR. App. R. 31; [2006] Crim.L.R.348
Judge/s	Judge LG, Hallett DCJ, Leveson J
Court	Court of Appeal (Criminal Division)
Appeal from	Crown Court at Birmingham
Was infanticide raised?	No – the appellant pleaded not-guilty and relied on a defense of alternative causes of death, including SIDS.
Decision – maker at first instance	Jury
Conviction & Sentence	Murder – life imprisonment with a minimum specified term of 12 years
Facts of the Case	- The appellant was married to Kim, who was the father of her eldest daughter but not her second daughter. The appellate gave birth to her third child, Bidziil, was born in May 2002. The appellant said the child was conceived during a rape by a man who was not her husband. - When Bidziil was 12 days old, the mother was visited by a health visitor. She disclosed the rape, her depressive episodes, and thoughts about killing her child. She was not on anti-depressants because she was breastfeeding her baby. - On 6 June, Bidziil suffered a fracture of the right femur and bruising to his right elbow. She told the NHS it occurred when her husband was changing Bidziil's nappy. He later admitted responsibility asserting they were accidental. He was arrested and the matter was taken on by social services. - Bidziil lived with his maternal grandmother when discharged and the father had supervised visits. The appellant continued to express milk so the baby could be fed. The health visitor believed the appellant was bonding with Bidziil on two visits but remained concerned about her depression. - On 26 July, Bidziil returned to live with the appellant. She was struggling to breastfeed the baby – something which she placed considerable reliance on, believing it was a way she might easily bond with her child. - On 27 July, she called NHS Direct and reported two incidences of vomiting by Bidziil - On 1 August, following a visit with the maternal grandmother, the appellant was struggling to feed Bidziil. She walked a short distance to Boots with Bidziil and returned home. At some stage, Bidziil developed a nosebleed. Notably, the post-mortem suggested that by the time bleeding had started, Bidziil would have been in deep distress with death imminent.

	- The appellant made two calls to the NHS, one at 4:50 and one at 5:10 pm. On the second, she reported the nosebleed, and the nurse asked the mother to wake the baby. The appellant became distressed that she couldn't find a pulse. - Police arrived at 5:30 and attempted resuscitation. The baby was propped up on the sofa and was not breathing. Paramedics also attempted resuscitation, but he was pronounced dead at the hospital. - The appellant denied smothering or stopping the child from breathing. A t-shirt was found in the house with Bidziil's blood. Fresh blood was found in the child's lungs and airways. A consultant pediatric pathologist ruled out natural causes and suggested that obstruction of the airways was 'far and away the most likely' cause of the internal bleeding. An ophthalmic pathologist did not believe the child's eyes were diagnostic of oxygen deprivation. - A consultant pediatric and perinatal pathologist, Dr Rushton, gave evidence for the defense, and was critical about the insufficient samples tested from Bidziil following his death. He did not agree that asphyxia was the only explanation for the internal bleeding. The appeal court agreed with the first instance judge that his evidence had difficulties.
Grounds of Appeal	- The issue at trial was whether the child was a victim of a deliberate killing or died from natural/unexplained causes. - The appeal argued the conviction was 'entirely based' on conflicting expert opinions. - Alternatively, it was submitted that fresh evidence undermined the safety of the conviction. - The appeal division dismissed the concerns about conflicting expert opinions, noting there was ample evidence before the jury to justify the verdict. - The Court also considered the 'fresh evidence' and upon interrogation, found nothing that would advance the appellant's case.
Outcome of Appeal / Reasons	- Dismissed - Relevant Obiter Dicta o No evidence was adduced to sustain a defense of diminished responsibility or demonstrate infanticide. These were not issues considered at trial. o The appeal court cited a 1975 report into 'Mentally Abnormal Offenders' that said '*The disturbance of the 'balance of mind' that the Act required can rarely be said to arise directly from incomplete recovery from the effects of childbirth, and even less so from the effects of lactation. A combination of environmental stress and personality disorder are the usual aetiological factors and the relationship to 'incomplete recovery from the effects of childbirth or lactation' specified in the Infanticide Act is often somewhat remote'.* o They also cited a 1980 recommendation to include where the balance of the mind was also due to 'environmental or other stresses'. o Ultimately the Court noted two areas of concern 1. Whether the current definition of infanticide reflects current thinking including stresses imposed by a lack of natural bonding 2. When a mother has killed her child and is unable to admit it, this may be because she is too unwell to do so, too emotionally disturbed by what she has done, too troubled by the consequences on her ability to care for surviving children. It is – in these cases – difficult to produce psychiatric evidence relating to the balance of the mother's mind.

Key Takeaways / Insights	- Critical insights into the challenges of an infanticide defense or charge. Appeal division supports a change in legislation in two key areas o To include social and psychological factors in the definition of infanticide o To acknowledge the challenges with a mother admitting the murder of her child for the benefit of an infanticide charge.

R v Keresi	
Sources	N/A – sentencing remarks not available online – this summary was prepared by reference to: - https://www.hampshirelive.news/news/hampshire-news/reasons-mum-who-murdered-newborn-6295824 - https://www.hampshire.police.uk/news/hampshire/news/news/2021/december/mother-who-left-newborn-son-in-woodland-to-die-is-sentenced/#:~:text=Keresi%2C%20of%20Pylewell%20Road%2C%20Hythe,jury%20at%20Winchester%20Crown%20Court.&text=The%20judge%2C%20Mr%20Justice%20Garnham,can%20be%20considered%20for%20parole. - https://www.bbc.co.uk/news/uk-england-hampshire-59509306 - https://www.dailymail.co.uk/news/article-10258807/Soldiers-wife-GUILTY-murdering-newborn-Mother-38-convicted-killing-son.html - https://metro.co.uk/2021/12/02/mum-who-murdered-newborn-by-dumping-him-in-woods-jailed-for-life-15706171/ - https://www.bbc.co.uk/news/uk-england-hampshire-59400061 - https://www.theguardian.com/commentisfree/2023/jun/30/women-kill-newborns-murder-infanticide-paris-mayo-courts - https://www.itv.com/news/meridian/2021-12-02/ex-solders-wife-who-left-newborn-son-to-die-in-woods-is-jailed-for-life - https://www.standard.co.uk/news/uk/baby-maliki-abandoned-silipa-keresi-nine-years-jail-b969714.html
Citation/s	Sentenced 2 Dec 2021
Judge/s	Justice Garnham QC
Court	Winchester Crown Court
Appeal from	
Was infanticide raised?	Yes - Keresi ‘denied murder and an alternate charge of infanticide’
Decision-maker at first instance	Found guilty by jury, sentenced by judge
Conviction &	Murder - life imprisonment with a minimum specified term of 9 years

Sentence	
Facts of the Case	- Silipa Keresi, aged 28, abandoned her newborn baby in woodland. The baby was found wrapped in a bloodstained bath towel by a dog walker on the afternoon of 5 March 2020. The baby's cause of death was 'omission of care', he suffered severe hypothermia and died within 24 hours of birth, consistent with being abandoned. - Keresi, who has four other children, told the court she was 'stressed and depressed' when she found out she was 26 weeks pregnant in November 2019. Keresi had wanted an abortion but was over the time limit when she inquired in November 2019. She did not tell her husband. - By the end of 2019 the family had lost their right to stay in the UK, were receiving no social security benefits, and had been living in a small hotel room. - Following an earlier pregnancy, Silipa Keresi told health visitors she was being subjected to domestic violence. - The court heard she left the hotel room in the early hours and gave birth by a roadside, before carrying her child into the woods and leaving him at the foot of a tree. - Passing a life sentence, Mr Justice Garnham said the child was left 'exposed, defenceless and abandoned', and added that 'Regardless of your circumstances, abandoning your baby was a truly dreadful thing to do.' How the sentencing guidelines for murder were used in this case - For Keresi, Judge Garnham decided that the case came under starting point five which states: 'If the offender was aged 18 or over when the offence was committed and the case does not fall within paragraph 2(1), 3(1) or 4(1), the appropriate starting point, in determining the minimum term, is 15 years.' - Judge Garnham said that this case was not the 'average' murder and said it was a case to show 'appropriate mercy' in the sentencing. To elaborate, a number of mitigating factors were applied to the sentencing of Keresi. - First of all, Judge Garnham noted that the mother had 'denied the pregnancy' to herself and others, 'pretending it was not happening', and had planned very little for the arrival of the baby. In the months that followed the November 2019 abortion appointment, Keresi ignored NHS midwives and medical staff trying to contact her. She also failed to tell her husband, family and friends of the pregnancy despite her growing body. With her previous children, Keresi had spontaneous vaginal deliveries, this means her other children were born quickly, within minutes. The judge acknowledged that when she gave birth to Malaki she would not have had much warning and would have been unprepared. Furthermore, by wrapping him up in a white towel, the judge said that the baby was 'poorly concealed' and was easy to trace back to Keresi. - Her poor mental health at the time of giving birth was also noted as a mitigating factor. During the trial, it was said that she was stressed, depressed and worried about life. Keresi said that her husband, Dharma Keresi, had been beating her and hitting her with his army belt since around 2008. Mr Keresi had worked for the British Army until 2017, when he was asked to leave, or face dismissal, because of reports that he had been harming his wife. After he left the army, the family were made homeless and lost their right to live in the UK. In early 2020 they were living in a small hotel room, with no kitchen facilities and had to rely on food bank donations. At the time of the pregnancy Keresi was worried about finances, afraid of her husband's response, fearful of deportation, and concerned that the authorities would take away her children. - Judge Garnham also took into consideration Keresi's relationship with her other children, stating that he believed she posed no threat to them or the wider public. Adding that he believed her to be a 'good mother' who, before March 2020, did her

	best and worked hard for her children.
	- Important quotes from Judge Garnham
	  o 'This was an act of desperation of a vulnerable woman'
	  o 'The abandonment of Malakai was an act of desperation by a vulnerable woman, facing challenging circumstances. The emotional effect of your giving birth outdoors and unaccompanied was profound.'
	  o Keresi was suffering 'acute stress and anxiety' at the time of the birth, had 'poor coping strategies', and was reluctant to seek help from the authorities as she lived in fear of deportation.
	  o 'I accept you acted in a way that was wholly out of character and you would not have done what you did but for the extreme nature of your personal circumstances'.
	  o 'I have no doubt you feel some genuine and enduring remorse.'
	- After consideration of those points, Judge Garnham reduced the minimum sentence by six years. This means Keresi is to serve a nine year jail sentence before she can apply for parole.

Grounds of Appeal	
Outcome of Appeal / Reasons	
Key Takeaways / Insights	- Notable remarks + application of the sentencing guidelines for murder by the judge who sympathised with Silipa Keresi

R v McHattie	
Citation/s	N/A: Sentencing remarks are not available online and there is not reported appellate court decision on which reliance may be placed. The following summary has been prepared by reference to the following: - Daily Mail: https://www.dailymail.co.uk/news/article-1034940/Mother-killed-baby-throwing-ground-walks-free.html - BBC News: http://news.bbc.co.uk/1/hi/england/bradford/7507334.stm Sentenced on 23 May 2008.
Judge/s	Peter Collier QC (Recorder of Leeds)
Court	Leeds Crown Court
Was infanticide raised?	No.

Decision-maker at first instance	Judge.
Conviction & Sentence	Conviction: Manslaughter. Sentence: 12 months' imprisonment suspended or a period of two years.
Facts of the Case	Circumstances leading to the death of the child - The child, Reece, was six-months old at the time of his death; Ms McHattie was aged 26 at the time of receiving her sentence (22 at the time of the offending). - Reece was found with serious head injuries by paramedics at the accused's home on 22 October 2004. He had suffered a fractured skull, brain swelling and bleeding in the eyes. He died in hospital three days later. - Originally, Ms McHattie told police that Reece had fallen from the sofa, causing the injuries that he sustained. - Ms McHattie only admitted assaulting Reece years later, after medical experts determined that the injuries sustained were inconsistent with her versions of events. - An X-ray revealed an old fracture of the child's collarbone. A doctor from Leeds General Infirmary said that the account provided by Ms McHattie was inconsistent with the child's injuries. - The media reports that Ms McHattie 'lost her temper with horrific consequences after baby Reece wouldn't stop crying because he was teething'. According to reports, the court was told that Ms McHattie, stressed by the child's crying, shook the child and threw him against a hard object, fracturing his skull. The accused's personal circumstances - Ms McHattie fell pregnant after starting a relationship with a work colleague. The colleague left her after she refused to have an abortion. - Reece was born in April 2004. The court was informed that Ms McHattie had little help with him. Her mother had died and her father lived abroad. - Two days prior to Reece's death, Ms McHattie took an overdose of paracetamol whilst at the hospital and needed to be taken to casualty. She had apparently taken five packets of tablets and informed nurses that she wished to end things because she knew that Reece was going to die. Separate instance of offending - Separate to the manslaughter charge to which this summary relates, Ms McHattie was given a 26-week sentence, suspended for a year, for sexual activity with a 14 year old boy. Further details are not provided in the media report. Plea of guilty to manslaughter charge - The accused pleaded guilty to manslaughter.

Sentencing remarks	According to media reports, Judge Peter Collier said, in sentencing: - 'The bottom line is that Reece died at your hands. You momentarily lost control, you injured him and from those injuries he subsequently died'. - 'I am satisfied you will live with the knowledge and guilt every day of your life and I also know it's very unlikely that you will be able to bring up a child of your own'. - 'Twelve months' imprisonment is the shortest sentence that matches the seriousness of your offence. … I am going to suspend that sentence for the next two years'.
Key Takeaways / Insights	- Limited material available to establish remarks made in sentencing. - Ms McHattie appears to have been struggling with raising her child unassisted, noting that her partner left her after she refused to procure an abortion. She had no familial support to assist her in raising her child. This, coupled with the fact that she had engaged in sexual conduct with a minor, seems to have created a great deal of stress in her life. - The evidence suggested that the child was well cared for. Defence counsel submitted that '[o]n a daily basis, this mum was taking superlative care of her baby. … It is therefore astonishing to find that in one catastrophic moment she gave way to the stresses that had built up in the days and hours before'.

R v Norris	
Citation/s	N/A. No sentencing remarks or appellate decision available. The following summary has been prepared based on the following: - The Guardian: https://www.theguardian.com/uk/2010/nov/12/mother-smothered-baby-son-court - BBC News: https://www.bbc.co.uk/news/uk-england-devon-21744093 - Daily Mail: https://www.dailymail.co.uk/news/article-1329124/Teacher-Katy-Norris-kills-son-post-natal-depression-medication-taken-away.html Sentenced on or around 12 November 2010.
Judge/s	Jack J
Court	Crown Court at Exeter
Was infanticide raised?	Yes. Ms Norris is said to have 'admitted' infanticide, which charge was substituted for the original charge of murder. She must have been convicted, given s 37(1) of the Mental Health Act 1983 refers to a person having been 'convicted before the Crown Court of an offence punishable with imprisonment…'.

Decision-maker at first instance	Judge.
Conviction & Sentence	Conviction: Infanticide Sentence: Section 37 hospital order under the Mental Health Act 1983.
Facts of the Case	Background to the case - On 20 April 2010, Ms Norris killed her 10 day old son, Leo, born 10 April 2010. - The prosecutor alleged that Ms Norris went into the bedroom where Leo was sleeping and smother him with a cushion. After Leo had died, Ms Norris is alleged to have placed his body into a cupboard and then informed her mother-in-law what she had done. Circumstances of Ms Norris - Ms Norris was a school teacher aged 30 at the time of the offending (aged 31 at the time of sentencing). - At the time of the infant's death, Ms Norris was suffering from severe post-natal depression. She was refused repeat prescription of anti-depressants despite her condition worsening within days of becoming a mother for the first time. - The court was informed that Ms Norris wanted to 'feel normal again', as she had done before becoming pregnant. - Ms Norris allegedly told police that, following the incident, she 'felt normal again', a feeling she remembered from before the pregnancy and birth. Sentencing - Ms Norris was originally charged with murder. However, the charge was substituted for infanticide, which the Crown said was acceptable. The full charge was said to be 'that she smothered a child under 12 months of age with a cushion while the balance of her mind was disturbed'. - She did not appear in court in person but admitted infanticide via video link from a psychiatric unit in Milton Keynes, where she had been receiving treatment since April.
Sentencing remarks	
Key Takeaways / Insights	N/A

R v Paris Mayo

Sources	N/A – sentencing remarks not available online – this summary was prepared by reference to: - Crown Prosecution Service— https://www.cps.gov.uk/west-midlands/news/cps-statement-sentencing-paris-mayo - BBC– https://www.bbc.com/news/uk-england-hereford-worcester-65999897 - ITV-- https://www.itv.com/news/central/2023-06-26/judges-remarks-as-teenage-mum-jailed-for-killing-newborn - Guardian— https://www.theguardian.com/uk-news/2023/jun/26/teenager-murdered-newborn-son-herefordshire-jailed-paris-mayo
Judge/s	Garnham J
Court	Worcester Crown Court
Was infanticide raised?	Infanticide was put to the jury
Decision – maker at first instance	Jury
Conviction & Sentence	Murder – life imprisonment with a minimum specified term of 12 years
Facts of the Case	- Fell pregnant at age 14. Denied this to herself and others, and did nothing to prepare for birth, sought no medical assistance nor tell family who she agreed would have been supportive (including sisters with children). - During the evening of 23 March (aged 15), gave birth quietly in the living room, did not want to wake parents upstairs. The baby Stanley was born alive and breathing. Defendant assaulted him in the head (probably under his foot). This did not kill the baby – continued to breathe for an hour. - Brother came home at 10:30pm – called out to him not to ender the living room. Defendant then stuffed cotton wool balls down his throat. Stanley then died of asphyxiation & head injury - Placed body in black plastic bin liner, left near the back door, texted brother asking him to take it out in the morning. Brother noticed unusual weight and blood smears. Defendant's mother opened and found the dead child. - Judge acknowledged the child had a tough time – things were difficult at home, and the mother was managing a lot (including caring for the defendant's father, despite being separated – he died 10 days after this event).

	- Aggravating factors – vulnerability of Stanley based on age, and guilty of 'fundamental abuse of the trust that is placed in every mother by her child.' Also considered the mental and physical suffering inflicted on the victim, and the fact she attempted to conceal the death. - Mitigating factors included previous good character, mental health evidenced by ignoring pregnancy (noting the jury did not accepted the balance of the mind was so disturbed to justify infanticide), acute stress and anxiety at the time of the offence – emotion and physical effect of giving birth alone, serious delay of trial, and her overall vulnerability as a 15yo ill supported child. o Note that her age was taken into account when setting the starting point for the sentence as 9 years rather than 12.
Outcome of Appeal / Reasons	- Success

R v Smith	
Citation/s	Sentence: Sentencing remarks could not be located. Accordingly, the summary below has been prepared based on the following: • BBC News: https://www.bbc.co.uk/news/uk-wales-south-west-wales-18743013 • Mirror: https://www.mirror.co.uk/news/uk-news/michelle-smith-baby-murder-swansea-1135647 Permission to appeal: *R v Michelle Smith* [2016] EWCA Crim 1825
Judge/s	First Instance: Spencer J Permission to Appeal: Lord Thomas of Cwmgiedd CJ, Davies J, Lewis J
Court	Court of Appeal (Criminal Division)
Appeal From	Crown Court at Swansea
Was infanticide raised?	Unclear based on the Court of Appeal's reasons; however, it seems that it was not raised.
Decision-maker at first instance	Jury
Conviction & Sentence	Conviction: Murder.

	Sentence: Life imprisonment with a minimum specified term of 12 years. **NB**: An application for parole in 2023 was denied: link.
Facts of the Case	The following summary is based upon the reasons of the Court of Appeal (see above). Background facts - The child allegedly murdered by Ms Smith was named Amy. Amy was born on 28 September 2007: see [3]. - Ms Smith was married to Christopher Smith: see [3]. Prior to having Amy, Ms Smith had two children, one child aged 5 and another child then aged 3: [3]. - By November 2007, Amy had been bottle-fed for approximately four weeks. At 11.50 am on 9 November 2007, a health visitor attended Ms Smith's address. Amy appeared to be healthy and to have gained weight. The health visitor departed at about 12.30 pm. Between that time and shortly before 3.54 pm, Ms Smith had sole care of Amy: [4]. - Shortly before 3.54 pm, Mr Smith returned home. Upon doing so, he found Amy in a collapsed state. An ambulance was called but, upon inspecting Amy, paramedics were unable to find any vital signs. Amy was taken to hospital where she was pronounced dead: [5]. She was 43 days old when she died. - Although the Court of Appeal judgment does not record these facts, media reports suggest that Amy had been taken to hospital on three separate occasions prior to her death. On one occasion, Amy was tested and the report returned a positive result for dihydrocodeine (**DHC**) (the drug ultimately said to have been administered and to have caused Amy's death). Doctors were allegedly not informed of this result. The Crown's case - The Crown's case was that Ms Smith had administered poison to Amy, which caused her death: [6]. The Crown alleged that Ms Smith had crushed up DHC tablets and placed the powder into a bottle feed at some time after the health visitor had left and before Mr Smith returned home: [8]. - In addition, there was evidence that, some time later, upon attending a police station in compliance with her bail conditions, Ms Smith told the desk sergeant that she had killed Amy. When interviewed, she retracted the statement: [9]. Trial - Ms Smith was tried before the Crown Court at Swansea before Spencer J and a jury: [1]. - On 6 July 2012, Ms Smith was convicted of murder: [1]. - On 9 November 2012, she was sentenced to life imprisonment with a minimum specified term of 12 years: [1]. Permission to appeal - Ms Smith applied for leave to appeal against her conviction but, on 16 January 2013, Ms Smith abandoned her application by Notice of Abandonment: [2]. This occurred after it was determined that there were good explanations to the three purported grounds of appeal on which she sought to rely (see below): [11].

	- Ms Smith subsequently applied to the Criminal Cases Review Commission, which gave clear reasons for their not being prepared to make a reference: [12]. - Ms Smith sought advice from the Centre for Criminal Appeals, who referred the matter to a pro bono partner in an international law firm. He concluded that there were no arguable grounds of appeal: [13]. - On 28 April 2016, the Court of Appeal set aside the Notice of Abandonment. Accordingly, the Court of Appeal had jurisdiction, as did the single judge, to reconsider the renewed application for leave to appeal: see [2].
Sentencing remarks	According to media reports, Spencer J said the following in sentencing: - Only Ms Smith knew why she 'chose to deliberately administer [sic] that drug to a helpless baby'. - 'In all probability you were in some way craving and seeking attention by presenting Amy to the doctors at hospital'. This seems to be a reference to the three separate occasions on which Amy was presented to hospital prior to her death. - Ms Smith's actions must have involved a 'substantial premeditation'. Continuing, '[t]he giving of this drug to Amy required, as it must have done, the crushing of tablet or tablets, which involved a significant degree of planning and premeditation'. - Amy was young and vulnerable and Ms Smith's actions were 'a gross abuse of [her] position as [Amy's] mother'.
Grounds of Appeal	Ms Smith originally relied upon three grounds of appeal (see [10]): 1. No proper toxicology analysis had been undertaken through expert evidence addressed by her legal team. 2. There had been a failure to call Mr Smith to give evidence. 3. There had been a failure to call good character evidence. As indicated above and below, these grounds were ultimately abandoned when the appeal was abandoned. It is not clear precisely what other grounds (if any) were relied upon (although it may have been a general 'unsafe conviction' ground).
Outcome of Appeal / Reasons	Permission to appeal refused. In relation to the initial three grounds of appeal: - In accordance with the court's procedures, and in light of the serious allegations made against 'distinguished leading counsel who appeared on behalf of [Ms Smith] at trial', a detailed request was sought to explain each of the grounds of appeal: [11]. - In relation to the first ground, expert evidence had been obtained in relation to DHC but it had been unhelpful to Ms Smith: [11]. - In relation to the second ground, detailed consideration was given to calling Mr Smith but good reasons were identified not to call him: [11]. - In relation to the third ground, consideration was given to calling good character evidence. In the end, only one person was called: [11].

	At that stage, the appeal was abandoned. The single judge considered the application for leave to appeal. The Court of Appeal observed that the single judge 'concluded that there was nothing unsafe about the conviction': [14]. The Court of Appeal agreed, observing that '[t]here is nothing to suggest that the conviction of the applicant was in any way unsafe': [15].
Key Takeaways / Insights	- Limited information available in relation to the remarks made in sentencing. - The Court of Appeal (and other authorities involved from time to time, including the Criminal Cases Review Commission) appear to have had little sympathy for Ms Smith. The evidence appears to have been compelling, given that the single judge who determined the application for permission to appeal and the Court of Appeal concluded that there was nothing to suggest that the conviction was unsafe: [14]-[15]. - Circumstantial evidence referred to in media reports suggests that there may have been prior attempts to poison Amy. However, given that those matters did not feature heavily in the Court of Appeal's judgment, it may well not have been considered to be particularly compelling evidence. - Interestingly, Ms Smith is said originally to have confessed to having killed Amy; however, that confession was swiftly withdrawn. Media reports suggest that Ms Smith continues to maintain her innocence. - As indicated above, Ms Smith is eligible for parole but an application made last year was denied.

R v Sultan	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - BBC– https://www.bbc.co.uk/news/uk-england-humber-24908037 - Mirror– https://www.mirror.co.uk/news/uk-news/natasha-sultan-postnatal-depression-suffering-2783646 Sentenced 12 November 2013
Judge/s	Jeremy Richardson QC J
Court	Hull Crown Court
Was infanticide raised?	Yes

Decision – maker at first instance	Judge
Conviction & Sentence	Due to stand trial for murder but admitted the lesser charge of infanticide Sentenced to a three year supervision order; the judge also barred Sultan from engaging with children in regulated activities and disqualified her from working with children
Facts of the Case (from news articles)	- Natasha Sultan, 21, admitted killing her six-week-old daughter while she was 'in a maelstrom of fatigue and mental disorder' caused by postnatal depression and lack of sleep - Sultan went to her GP and was prescribed anti-depressants but she did not take the full dose - Sultan killed her daughter by deliberately impacting her head upon a hard surface - Sultan initially denied any knowledge of injury to the child, and then changed her story, claiming to have dropped her daughter accidentally, before eventually admitting that she caused the fatal fracture of the skull
Sentencing remarks (from news articles)	Richardson QC J: 'You are an utterly broken woman who will have to live with this for the remainder of your life, whether it's short or long.' 'If you should ever have any other children, the social services department will plainly be involved and it may be that you are not permitted to bring up any future child give what has happened.' 'For the remainder of your life you will have to live with the fact you killed your six-week-old daughter. That burden will never be lifted.' 'It seems there was some reluctance [to take the full dose of anti-depressants] based upon a feeling of shame that you were unable to cope as a mother.' 'It is self-evident that you were very tired and suffering from the effects of untreated postnatal depression when the events of the night of October 7, 2012 took place.' 'You were exhausted by the demands of constant night time care for your baby who at that stage was only six weeks old.' 'During the first feeding session there was a sudden explosion of violence whist your mind was disturbed.' 'There will be many parents of infants who appreciate the situation in which you found yourself.' 'The sudden explosion of violence was due to your unbalanced mind derived from postnatal depression.' 'What is harder to understand, however, is your conduct afterwards.'

	'You went to bed having visited serious violence upon your daughter.' 'You neglected her obvious and urgent need for medical attention. You simply went to bed.' 'You even went through the charade of endeavoring to show how the accident, as you then called it, might have happened.' 'I also will not lose sight of the fact of your disturbance of mind as revealed in the psychiatric report.' 'It is clear you were in a maelstrom of fatigue and mental disorder when you acted as you did throughout the whole episode.' The judge also noted that there were no sentencing guidelines to help him or any relevant previous cases on which he could base his sentence He believed the case had 'passed the custody threshold' but he said: 'However, you are an entirely broken woman and your disturbance of mind at the time, coupled with your guilty plea, enables me to take a different course.' 'A short prison sentence would be inappropriate. A long prison sentence would be unjust.'
Key Takeaways / Insights	- Rather cruel sentencing remarks from Richardson QC; not at all to diminish the atrocity of the act, but calling someone suffering from postnatal depression an 'utterly broken woman' really seems to underscore the idea of proper womanhood = perfect motherhood - Notable that the maximum sentence for infanticide is life imprisonment, and Judge Richardson felt he had no sentencing guidelines nor relevant previous cases on which he could base his sentence

R v Suminaite	
Sources	N/A – sentencing remarks not available online – this summary was prepared by reference to articles: - Metro: https://metro.co.uk/2017/01/31/tragic-mother-who-killed-her-baby-is-spared-jail-6416647/ - Express: https://www.express.co.uk/news/uk/761381/Mum-who-strangled-baby-to-death-walks-free-from-court Date of sentence: 31 January 2017
Judge/s	Nicol J
Court	Old Bailey
Was infanticide raised?	Yes – she denied murder but prosecutors accepted a plea of guilty to infanticide.

Decision – maker at first instance	Judge – guilty plea.
Conviction & Sentence	Infanticide. Community order of 24 months with a 60-day rehabilitation requirement order. The murder charge was ordered to lie on file.
Facts of the Case (from news articles)	- The defendant was from Lithuania. She kept her pregnancy hidden from authorities and her long-term partner, with whom she already had a child. - She gave birth in the bathroom at home. The child was found in a baby bath hidden in wet towels with a ligature tied tightly around her neck. - The defendant described giving birth quickly and easily and said the baby was moving and trying to cry. She said she wrapped her hands around the child's neck, strangled her, and held her in the shower to drown her. - She said she did not know why she did it as she had no mental problems
Sentencing remarks (from news articles)	- The judge said: 'The unlawful homicide of anyone is a tragedy, especially in the case when the victim is so young, even more so that is the case when the child dies at the hands of her mother.' - 'However, your own circumstances were tragic in themselves and that is reflected in the nature of the offence to which you have pleaded guilty.' - 'You were overwhelmed by the stress of your situation and in a state of partial denial during the pregnancy.' - 'At the time of giving birth your were in a state of extreme anxiety and panic amounting to a temporary impairment of the balance of your mind.'
Key Takeaways / Insights	- Would be useful to obtain the full sentencing remarks – it is unclear what the 'tragic' circumstances were. - It is interesting that the defendant had a memory of committing the offence, but could not explain why she did it – in other cases, it seems more common to not remember.

R* v *Tunstill *(Appeal from original decision)*	
Citation/s	[2018] EWCA Crim 1696; 2018 WL 04698294
Judge/s	Treacy LJ, Yip J, and Marson QC J
Court	Court of Appeal (Criminal Division)
Appeal from	Preston Crown Court

Was infanticide raised?	Appellant raised the partial defense of diminished responsibility.
Decision – maker at first instance	Jury
Conviction & Sentence	Murder – life imprisonment with a minimum specified term of 20 years
Facts of the Case	- Shortly after giving birth to a daughter in the bathroom at home (37 weeks gestation), the appellant killed the baby. The child was killed by 14 separate stab wounds using scissors. The baby was then placed in a plastic carrier bag and put in the kitchen bin. - The appellant then sat in the living room with her partner, who reports himself as being engrossed in video games. They went to bed and he thought she was having some form of miscarriage. She went to hospital later stating she thought she'd suffered a miscarriage but when it was apparent she had recently given birth, the police were called. - When interviewed, she claimed she had a miscarriage the previous Saturday, there were no signs of life, and believed herself to be four weeks pregnant. She has previously googled 'late term miscarriages a home' and 'inducing miscarriage' and 'how to cut umbilical cord'. - She reported having no recollection of the event, claiming mental illness and a lack of intention. - Three medical experts disagreed on whether the appellant was mentally ill at the time – one said paranoid schizophrenia, one said severe depression and psychosis, the other said no evidence except self-report. - Two supported a partial defence of diminished responsibility and a defence of infanticide. One doctor rejected both. - The judge found there was evidence capable of supporting a defence of diminished responsibility. - The defence submitted the judge should leave infanticide as an alternative for the jury, but the judge rejected that application, stating the most that could be made out was the balance of the appellant's mind was disturbed by a pre-existing mental disorder, exacerbated by birth. Pre-existing mental disorder was not relevant. - Appellant argued that infanticide should have been an alternative verdict available to the jury. - The bench agreed, stating there was evidence capable of showing that the balance of the appellant's mind was, at the time of the killing, disturbed. They said the evidence of the appellant's two psychiatrists was to the effect that her pre-existing condition, together with the effect of having given birth, was the cause of that disturbance of the balance of the mind. o Court accepted : 'it would seem anomalous to us that a person who, prior to childbirth, is in a fragile mental state and whose balance of mind is distributed as a result of a failure to recover from childbirth should be placed in a

	different and less favourable position from someone affected solely by the experience of childbirth.' - Court does not think 'by reason of' need to be read as 'solely by reason of'. - Court also notes that causal link is between the disturbance of the mother's mind and her giving birth, not between the disturbance of the mind and the act or omission causing death.
Grounds of Appeal	- It was erroneous of the trial judge to withdraw infanticide from the jury.
Outcome of Appeal / Reasons	- Success • On retrial, she was still found guilty of murder and sentenced to 17 years. • In 2023, she died in prison.
Key Takeaways / Insights	- They comment on the obiter put forward in *Kai-Whitewind*, noting that both the Law Commission and Parliament have consider s 1 and neither has sought to amend the wording as to the circumstances in which the balance of a mother's mind is disturbed.

R v Wilson	
Citation/s	N/A – sentencing remarks not available online – this summary was prepared by reference to: - BBC– https://www.bbc.co.uk/news/uk-england-berkshire-27037881 - Guardian– https://www.theguardian.com/uk-news/2014/jan/24/woman-jailed-murder-son-callum-wilson - Mirror– https://www.mirror.co.uk/news/uk-news/emma-wilson-mum-jailed-battering-3057891
Judge/s	Treacy LJ, Spencer J & Simler J
Court	Court of Appeal (Criminal Division)
Appeal from	Central Criminal Court (initial sentencing by Judge Stephen Kramer)

Was infanticide raised?	Does not appear so
Decision – maker at first instance	Jury
Conviction & Sentence	Murder – life imprisonment with a minimum specified term of 17 years (increased from 14 years on appeal)
Facts of the Case (from news articles)	- Emma Wilson, 25 years old at the time of conviction, was charged with murdering her 11-month-old son, Callum Wilson - Wilson initially kept Callum's birth a secret - Callum spent the first few months of his life in foster care, before being returned to his mother - Reports stated Wilson has no mental disorder or illness - Health and social workers spotted scratches on Callum during visits over the next few months, which Wilson blamed on Callum's 23-month-old - Wilson had also told staff parents at a playgroup that Callum was her cousin's son, and claimed on one occasion that bruising on Callum's face had been caused by an older sister, who did not exist - Callum was taken to hospital in a 'collapsed state' with a brain injury and multiple fractures on 18 March 2011, and died two days later. - Callum's fatal brain injury was caused by a direct blow or from striking his head against something while his broken leg may have been caused by banging against a hard surface - One blow caused his retina to detach leaving him blind - Wilson had taken selfies with Callum that showed the injuries inflicted on him
Grounds of Appeal	- Wilson denied the murder and maintained that stance at trial
Outcome of Appeal	Success
Sentencing remarks	Judge Kramer told Wilson she was an adept liar and went on: 'You must have been the person who caused the injuries which the court saw in photographs that for some reason you took.'

(from news articles)	'You come from a good, loving and supportive large family. You were clearly a good mother to your other son but for some reason you rejected Callum. If looking after two children was too much for your there was support there in the shape of your family and health professionals. You have shown no emotion throughout the trial– it is a troubling feature in this case.'
Key Takeaways / Insights	- Crown prosecutor noted it was not the crown's case that Wilson *intended* to kill her son, but that she carried out a violent act against a vulnerable child. - Consistent pattern of keeping Callum's birth a secret/lying about his origins and even that he had a sister (inconsistent insofar as denied that Callum was her son but also claimed she had another non-existent daughter) - Seems relevant that the judge in the first instance called attention to her supportive family network as an aggravating factor in her case - Wilson maintained her innocence throughout trial

Appendix II: Australian Cases

R v Keli Lane	
Citation/s	[2011] NSWSC 289 (sentence)
Judge/s	Whealy JA
Court	Supreme Court of New South Wales
Was infanticide raised?	No – she maintained that she gave the baby to its father and never saw it again.
Decision – maker at first instance	Jury.
Conviction & Sentence	Convicted of murder. Sentenced to life imprisonment, non-parole period of 13 years and 5 months.
Facts of the Case	• Prior to the birth of Tegan (the victim of the murder), the defendant had had two terminations in her teens. She had also carried 1 child to term in secrecy, whom she placed for adoption. [4]-[6] • The defendant had carried Tegan to term in secret from her family and friends. Following the birth and being discharged from hospital, the defendant attended a friend's wedding. The defendant never mentioned the pregnancy or birth. [10] • The evidence was completely silent as to what happened after she left hospital. The Crown case, which the jury accepted, was that the defendant murdered the baby and disposed of her body. There was no evidence as to the manner of death, time of death, or manner of disposal. The defence case was that the defendant gave the child to its father. [11]

	• After Tegan's birth, the defendant carried another baby to term, in secret, and attempted to place that baby for adoption as well [17]
Sentencing remarks	• There was no evidence that the defendant suffered any disturbance to her mental processes so as to support a diagnosis of a mental illness or an abnormality/impairment of the mind – this was not the defence case [27]. There was some speculation that she had a personality disorder, but this was not diagnosed • The judge referred to the need for denunciation and recognition for general deterrence, because of the vulnerability of an infant child. • Because of the lack of evidence of what caused the baby's death, culpability was a difficult issue. The judge considered that mitigating factors included: (i) lack of evidence of premeditation; (ii) the decision was made in a situation of some desperation, exacerbated by the personality disorder [49]. • The offence was well below the most serious level for an offence of the same kind [50].
Key Takeaways / Insights	• The expert psychiatrist noted that the defendant did not fall within the normal social criteria for neonaticide. • The judge observed that studies of young babies killed by their mothers were relevant because they 'highlight the proposition that infant killing is a broader phenomenon that we as a society would perhaps wish to know or admit' [29].

R v MB (No 2)	
Citation/s	[2014] NSWSC 1755
Judge/s	Bellew J
Court	Supreme Court of New South Wales. Special hearing under *Mental Health (Forensic Provisions) Act 1990* ('the Act') to determine whether accused should be acquitted.
Was infanticide raised?	Yes. MB pleaded not guilty to murder. The court considered infanticide as a partial defence. The Crown bore the onus of establishing that at the time of the defendant deliberately drowning the baby (OB), MB's mind was not disturbed by reason of not having fully recovered from the effect of giving birth to OB, nor by reason of the effect of lactation consequent upon the birth of OB.
Decision – maker at first instance	Judge – special hearing conducted by judge alone after accused found unfit to be tried.
Conviction & Sentence	Convicted of murder.
Facts of the Case	• After the birth of OB, MB displayed continuing anxiety about OB's health [9], including that the baby had a genetic disorder. • During the period leading up to OB's death, the accused expressed concerns to her friends about OB being less than 'perfect' and made references to jumping off a cliff with OB and throwing her in the bin [12]. • When OB was seven months old, MB called emergency services as OB was face down in the bath. Postmortem examination revealed the cause of death was consistent with drowning, and injuries were observed on OB's head [15].

	• The defence case was that the death was an accident [227]
Consideration of infanticide	• The judge decided that in order for MB to be able to rely on the infanticide provision, the disturbance of mind must have been by reason *solely* of her not fully having recovered from giving birth. The evidence did not support that conclusion – the psychiatric evidence made clear that a series of factors placed the accused under considerable stress, including the separation and divorce of her parents, fears of losing the pregnancy, and contracting gestational diabetes. All of these matters played a part in precipitating MB's schizophrenic illness [295] • Therefore, the Crown had discharged its onus that infanticide had no application. • A defence of substantial impairment was also rejected [311]
Key Takeaways / Insights	This case was the first to hold that the impairment of the mind in s 22A had to be *solely* caused by the effects of childbirth.

DPP v UA	
Citation/s	[2018] VSC 423
Judge/s	COGHLAN JA
Court	Supreme Court of Victoria Whether to impose a Court Secure Treatment Order pursuant to s 94B of the Sentencing Act 1991 or a Community Correction Order following guilty plea.
Was infanticide raised?	Yes. U A pled guilty to Infanticide. The plea deems D to have 'caused N's death when the balance of [D's] mind was disturbed, at the time, because [D] had not fully recovered from the effect of having given birth to her within the previous two years.' - Crimes Act 1958 s 6(1)(a) [2]. Case is also 'unusual' because it involves an underlying condition, schizophrenia, in addition to the effect of childbirth [11]. According to the expert's opinion, D never psychologically recovered from the birth of her youngest child (the victim), which therefore qualified her under the statute. Coghlan JA doubted whether this was a case of infanticide, rather than mental impairment, although the former was accepted by the parties [13].
Decision – maker at first instance	Judge – plea of guilty
Conviction & Sentence	Following a prolong period of in-patient treatment, the court deemed that D was ready to be released under a CCO for a period of 30 months. D must attend regular health assessment as a result to monitor treatment and mental state.
Facts of the Case	• D emigrated to Australia at a young age after living in a refugee camp in Kenya for several years, fleeing the civil-war in Somalia. • D [28-year-old woman] was home alone with her three daughters and her son when she slashed her infant daughter's throat with a knife [3].

	• D confessed what she did to her husband immediately, who called the emergency services [3]. • Prior to committing the crime, D suffered from a miscarriage (prior to having any children) and had lost their mother with whom they had a close relationship. D was depressed by these events and their mental state sharply declined • D had been admitted to the hospital psychiatric unit several times and was diagnosed with paranoid schizophrenia, post-partum depression, and post-partum psychosis relapse. • Started receiving treatment to avoid having further children. Stopped taking psychiatric medication due to paranoia and delusions, exacerbating her schizophrenia and resulting in relapses. • During prior schizophrenic episodes, D stabbed her husband 7 times and attempted to stab her children. In a later episode, D struck her husband in the face twice. Was arrested s. 351 of the Mental Health Act 2014 following this last incident and admitted to the psychiatric unit of Northern Hospital. • D cited 'the unavailability of childcare, the lack of accommodation, and her inability to care for her children.' as making her mental state deteriorate further.
Consideration of infanticide	• The judge considered that cases with pre-existing conditions may be more appropriately dealt with under diminished responsibility / impaired mental state rather than a defence/plea of infanticide.
Key Takeaways / Insights	• The courts appear more open to treatment followed by Community Correction Order, permitting re-integration of D into their local community rather than imprisonment. • Yet, 'but for the guilty plea the Court would have imposed a sentence of imprisonment of three years and six months with a minimum non-parole period of two years'

R v Akon Guode	
Citation/s	[2017] VSC 285
Judge/s	Lasry J
Court	Supreme Court of Victoria Sentencing following a guilty plea of murder, attempted murder, and infanticide
Was infanticide raised?	Yes. D pled guilty to Infanticide, as well as several other offences such as murder. Was originally charged with the murder of her youngest child, but this was changed to infanticide. 'The offence of infanticide is defined in s 6 of the Crimes Act 1958, which provides that if a woman carries out conduct that causes the death of her child in circumstances that would constitute murder and, at the time of carrying out the conduct, the balance of her mind was disturbed because of her not having fully recovered from the effect of giving birth to that child within the preceding two years or a disorder consequent on her giving birth to that child within the preceding two years she is guilty of infanticide.' [50]
Decision – maker at first instance	Judge – plea of guilty
Conviction & Sentence	• D pled guilty to the murder of two children and infanticide of another. D could not avail herself of infanticide with respect to the two prior children, as they were more than two years old.

	• On charge 1, the charge of infanticide, sentenced to 12 months' imprisonment. • On charge 2, murder, sentenced to 22 years' imprisonment. • On charge 3, murder, sentenced to 22 years' imprisonment • On charge 4, attempted murder, sentenced to six years' imprisonment. • Sentences run cumulatively with an effective sentence of 26 years 6 months and with parole after 20 years.
Facts of the Case	• D, a 35-year-old woman, was originally from South Sudan, having lost family members during the civil war. • Her first husband was a soldier and was killed in front of her and her family in Eritrea. Following this incident, D was raped. • D found to be suffering from PTSD and mood disorder. • Obtained refugee status and moved to Australia. • Suffered from a serious post-partum hemorrhage following the birth of her last child. • Following the birth of her last child, D suffered from a major depressive disorder. • D also suffered 'pressures [including] the difficulties arising from [her] relationship... a degree of ostracism from [her] community and very severe financial problems.' [45] • D drove into a lake with four children in her car, killing three. • D pled guilty to infanticide of her youngest child, murder of the other two, and attempted murder of the surviving child.
Consideration of infanticide	• The judge considered this case to be unusual, as it is the first infanticide case to involve the murder and attempted murder of other children as well. Infanticide was utilised during sentencing to display that D was operating under an impairment of judgement.
Key Takeaways / Insights	• Based on this case and *UA*, factors such as originating from a conflict zone, witnessing traumatic events from a young age, poor socioeconomic conditions, and having a ME background are all

	common to infanticide cases and appear to have some correlative or contributing effect. Both this defendant and that in *UA* came to Australia as refugees from the Somalian and Sudanese civil wars respectively. • Despite pleading guilty to infanticide, D was nonetheless sentenced to twelve months' imprisonment for this offence alone. Further, the impact of D's mental state on her act of infanticide was the same on her acts of murder and attempted murder, and yet, the sentences were disproportionately higher for effectively the same criminal act.