

r that has spent the last six
a murder that I played no part
I know what else I can do or

Claims of Innocence

*An introduction to wrongful convictions and how
they might be challenged*

information can be sought
about my case but I am ashamed
even though I know I am innocent
9 years for a crime I did not do
to watch family members grow up
on starting my own family
it is the love and support of my

MICHAEL NAUGHTON
with GABE TAN



University of
BRISTOL

'The withholding or lack of information was one of the most important factors in both my conviction and overlong incarceration. In 1978 when I was convicted, there were no information packs handed out in prison. I was ignorant of the case against me and of the legal process used to help convict me. I learned the rules and regulations of prison as they were used to batter me into submission. Information was one of the most important factors in my eventual release.' - *Paul Blackburn, 25 years of wrongful imprisonment*

'A much needed plain man's guide for prisoners grappling with the nightmare of wrongful conviction.' - *Chris Mullin, Author, Error of Judgement*

'I am delighted to endorse this comprehensive book on wrongful convictions. In its clear and concise terms it will help readers start to grasp hold of a system which is overly complex and stacked against those who have been wrongfully convicted. The book will help all those who have suffered an injustice to have direction as they continue to fight to clear their names.' - *Mark Newby, Solicitor Advocate, Jordans LLP Doncaster; Director, Historical Abuse Appeal Panel (HAAP)*

'This new book, through the legal complexities which face those maintaining innocence, is really invaluable. It is clear, detailed and realistic. There are some men and women in our prisons, wrongly convicted for a variety of reasons, who are actually innocent. This book will be for them and their families a ray of hope.' - *Bruce Kent, Chair, Progressing Prisoners Maintaining Innocence (PPMI)*

'We who have for many years tried to help innocent people in prison and their families to challenge the wrongful convictions of which they are all victims, have long felt a desperate need for a concise explanation of the appeal process and how prosecution cases might be effectively challenged. I and colleagues in innocent prisoner support and campaigning organisations welcome the publication of this book which will be of great assistance to us and to prisoners and their families.' - *Dr Andrew Green, Co-Founder, INNOCENT, & United Against Injustice (UAI)*

'This book is refreshing in that it provides a balanced view of why people sometimes wrongly maintain their innocence and why others quite correctly insist they are factually innocent of crimes for which they have been convicted and wrongly imprisoned. The brief case studies make powerful reading and remind us that a lot still needs to be done to improve our system of justice.' - *Michael Barnes, Secretary, Falsely Accused Carers and Teachers (FACT)*

'After reading *Claims of Innocence* I can only endorse it because I served sentences with some of the people in this book and know them to be innocent. What society must remember is that for every innocent man and woman convicted of murder a guilty killer is on our streets ready to kill again' – *Bobby Cummines, Chief Executive, UNLOCK*

Also by Michael Naughton

RETHINKING MISCARRIAGES OF JUSTICE: Beyond the Tip of the Iceberg

(Palgrave Macmillan: 2007)

THE CRIMINAL CASES REVIEW COMMISSION: Hope for the Innocent? (Editor)

(Palgrave Macmillan: 2009)

Claims of Innocence

*An introduction to wrongful convictions and
how they might be challenged*

MICHAEL NAUGHTON

with GABE TAN

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Dedicated to innocent victims of wrongful conviction

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Finally, I am especially indebted to Gabe Tan, the research assistant on the project. It is in recognition of the extent of her contribution in researching the sections on criminal procedure, sharing her knowledge and experiences in the method for investigating claims of innocence and thoughts and input on the final product, that her name, rightly, appears on the cover.

Michael Naughton

University of Bristol

September 2010

About the Contributors

Dr Michael Naughton obtained his BSc (Hons) (First Class) and PhD from the University of Bristol. He is employed as a Senior Lecturer in the School of Law and School of Sociology, Politics and International Studies (SPAIS), University of Bristol. Michael specialises in the area of miscarriages of justice. He is the Founder and Director of the Innocence Network UK (INUK), the umbrella organisation for currently 20+ innocence projects in UK universities, which he established in the School of Law, University of Bristol, in September 2004. He is Founder and Director of the University of Bristol Innocence Project, the first innocence project in the UK, through which he directs pro bono investigations into cases of alleged wrongful imprisonment. He has written widely on issues related to miscarriages of justice and the wrongful conviction of the innocent for academic journals and broadsheet newspapers and is a regular contributor to television and radio. He is the author of *Criminal Cases Review Commission: Hope for the Innocent?* (Palgrave Macmillan, 2009) and *Rethinking Miscarriages of Justice: Beyond the tip of the iceberg* (Palgrave Macmillan, 2007).

Gabe Tan obtained both her LLB and MSc Socio-Legal Studies (Distinction) from the University of Bristol. Her MSc dissertation concerned the adequacy of aftercare provisions for victims of miscarriages of justice in England and Wales. Gabe is employed as a Research Assistant in the School of Law, University of Bristol. She works for the Innocence Network UK (INUK). As Head of Casework, Gabe receives all applications for assistance from alleged innocent victims of wrongful conviction, decides eligibility and allocates appropriate cases to member innocence projects for full investigations to determine whether the claim of innocence is valid. She also researches aspects of wrongful convictions that arise in the course of her work. Gabe is one of the founding members of the first innocence project in the UK, the University of Bristol Innocence Project (UoBIP), which she currently manages on a pro bono basis. Gabe has published articles and contributed to books on the topic of wrongful convictions and has had work published in leading peer-reviewed academic journals including *Critical Criminology: An International Journal* and *The International Journal of Evidence and Proof*.

Dr Eamonn O'Neill, an award-winning investigative journalist, is the Programme Director of the MSc in Investigative Journalism, University of Strathclyde, Glasgow, Scotland. His work on miscarriages of justice includes the 11 years he spent investigating the Robert Brown case which ended with a 25-year wrongful murder conviction being overturned by the Court of Appeal, London, in November 2002. Dr O'Neill's work has been honoured in national and international awards including: The Paul Foot Award; The British Press Awards; the Scottish BT Media Awards; and The British Film & Television Academy. He was the first British journalist to be awarded an American IRE (Investigative Reporters and Editors) honour in the Special Award (Tom Renner Award) category for his lifetime's investigative work on miscarriages of justice.

Introduction

The criminal justice system in England and Wales is confronted by alleged innocent victims of wrongful conviction on a daily basis. This includes alleged victims of wrongful convictions making appeals against their convictions given in magistrates' courts or in the Crown Court; prisoners maintaining innocence who refuse to comply with the dictates of the prison and parole systems; alleged innocent victims making applications to the Criminal Cases Review Commission (CCRC) when they fail to have their convictions quashed on appeal.

Despite this, straightforward information on the specific problem of the wrongful conviction of the innocent and the avenues that exist to challenge them is not available.

This Book responds to this gap in three parts:

Part 1 provides a general overview of the key causes of wrongful convictions, the range of reasons why alleged victims of wrongful convictions maintain innocence, and the problems faced by indeterminate-sentenced prisoners maintaining innocence in their attempts to achieve release on parole. It firmly establishes that innocent victims can be, and are, wrongly convicted, that some alleged victims of wrongful convictions are factually innocent, and that indeterminate-sentenced prisoners who claim that they are innocent may never be released unless they can overturn their convictions in the Court of Appeal (Criminal Division) (CACD).

Part 2 looks at how the legal system in England and Wales deals with claims of innocence by alleged victims of wrongful convictions. Although this book is chiefly concerned with those who claim that they were wrongly convicted in the Crown Court for serious criminal offences, Chapter 4 concerns appeals to the Crown Court in recognition of the thousands of convictions that are overturned each year in the Crown Court sitting as an appeal court for convictions given in magistrates' courts. Part 2 also includes information on appealing against convictions given in the Crown Court: on making applications to the Criminal Cases Review Commission (CCRC) for a review of an alleged miscarriage of justice, and the European Court of Human Rights and the European Court of Justice. In these chapters, the role of the High Court, judicial review and the Supreme Court is covered. The overall conclusion is that the existing legal system is a maze of technical procedures that can fail to overturn the wrongful convictions of innocent victims.

Part 3 takes a different tack and looks at the practical ways in which alleged innocent victims of wrongful conviction might prove their innocence. It, firstly, provides a method for investigating alleged wrongful convictions that includes the steps needed to ensure the retention of evidence and case documents, general

tips on how to investigate forms of evidence that might have contributed to an alleged wrongful conviction, and how the latest DNA techniques can be used to prove claims of innocence, thus providing victims an opportunity to obtain a full exoneration. Chapter 10 considers, critically, the need for due diligence in selecting a solicitor to assist in legal challenges to alleged wrongful convictions. Chapter 11 considers the emergence of innocence projects in the UK and how they can assist in investigating claims of innocence as well as their inherent limitations. Chapter 12, provided by Dr Eamonn O' Neill, looks at the part that the media can play in helping to overturn an alleged wrongful conviction, spelling out both the potential benefits and the possible pitfalls. The book concludes with a chapter that discusses compensation for miscarriages of justice that is only paid if there is 'clear evidence of innocence'. This, too, shines a light on the inadequacy of the existing appeals system. Quashing convictions because they are deemed to be unsafe does not exonerate factually innocent victims but leaves them tainted. Yet it is argued that successful appellants, who have their convictions overturned because they have discredited the evidence against them, showing it to be unreliable, should have the presumption of innocence that underpins the criminal justice system restored to them.

The overall aim is that this book will be useful to those concerned with the plight of factually innocent victims of wrongful conviction on both 'sides' – those who struggle to overturn convictions given to factually innocent victims and those concerned with the integrity of the criminal justice machinery that can convict factually innocent people and can fail them when they try to overturn these convictions in the appeal courts or by an application to the CCRC.

It must always be remembered that justice is not served when a factually innocent person is wrongly convicted for a crime that never occurred or when the real perpetrator of a crime remains at liberty with the potential to commit further crimes.

Summary of key points

- There are a variety of reasons why alleged victims of wrongful convictions claim that they are innocent when they are not. However, the criminal justice system is not perfect and it is inevitable that factually innocent people are wrongly convicted and imprisoned.
- The causes of wrongful conviction are wide-ranging and include all aspects of the pre-trial and trial stages of the criminal justice process from false allegations, police misconduct, prosecution and police non-disclosure, erroneous forensic science and expert evidence, and poor representation from criminal defence lawyers.
- Indeterminate-sentenced prisoners maintaining innocence may never be released from prisons as they will not show remorse for crimes that they say they did not commit and refuse to undertake specified offending behaviour programmes to provide the Parole Board with the evidence that it needs to recommend release.
- Proof that the evidence that led to the conviction is unreliable does not guarantee that the Court of Appeal (Criminal Division) will deem a wrongful conviction unsafe and quash it.
- The Criminal Cases Review Commission was set up in response to notorious cases such as Guildford Four and the Birmingham Six, but it cannot guarantee that innocent victims of wrongful conviction will have their cases referred back to the Court of Appeal (Criminal Division) if the evidence of innocence was available at the time of the original trial.
- A finding by the European Court of Human Rights that an alleged victim of wrongful conviction did not receive a fair trial is not legally binding in England and Wales and does not automatically mean that the Court of Appeal (Criminal Division) will overturn the conviction.
- Innocence projects were established in recognition of the failings of the Court of Appeal (Criminal Division) and the Criminal Cases Review Commission to guarantee that factually innocent victims of wrongful convictions will overturn their convictions. But innocence projects, too, are constrained by the lack of resources and investigatory powers.
- No evidence is foolproof and a systematic and thorough investigation might reveal their unreliability. Findings from research and new developments in science and scientific techniques can also assist in proving the innocence of alleged victims of wrongful conviction.
- Unless proof of factual innocence is found, factually innocent victims of wrongful conviction who spend many years in prison will continue to live with the stigma of the wrongful conviction, even if they overturn their conviction in the Court of Appeal (Criminal Division), and are unlikely to receive compensation.

Part 1

Understanding the problem of the wrongful conviction of the innocent

2

The key causes of wrongful convictions

The following quotation taken from the House of Lords ruling in the case of *Director of Public Prosecutions v. Shannon* [1974] 59 Cr.App.R.250 succinctly illustrates that the criminal justice system is fallible and innocent victims can be, and are, wrongly convicted:

‘The law in action is not concerned with absolute truth, but with proof before a fallible human tribunal to a requisite standard of probability in accordance with formal rules of evidence.’

The history of successful appeals against criminal conviction in England and Wales highlights the practical limitations of criminal trials, showing that ‘probabilities’ are not certainties and that there are a whole host of different ways that people can be wrongly convicted.

The key causes of wrongful convictions include:

False Confessions

Ian Lawless

In 2002, Ian Lawless was convicted and given a life sentence for the murder of a retired sea captain, Alf Wilkins. His conviction was based solely on confessions he had made to a number of people in a pub in Grimsby. Lawless has always maintained that the confessions were false and claimed that he was drunk when interviewed by the police.



Ian Lawless

Lawless overturned his conviction in 2009 after 8 years of imprisonment when an assessment by Professor Gisli Gudjonsson, a leading expert in false confessions, revealed that he suffered from a personality disorder and had a pathological need for attention. This condition makes him prone to making false confessions, especially when he is drunk.

Incompetent Police Investigation

Warren Blackwell

Warren Blackwell was convicted of sexual assault in 1999 following allegations by Shannon Taylor that Blackwell had attacked her outside a social club. After spending 3 years in prison, Blackwell's conviction was overturned when it emerged that Taylor had a history of making false allegations of sexual assault against other men and frequently changed her name so that she could not be identified by the police.



Father of two, Warren Blackwell, overturned his conviction in 2006 after a seven-year battle to clear his name

Following Blackwell's successful appeal, the Independent Police Complaints Commission (IPCC) revealed a series of errors by Northamptonshire Police that contributed to Blackwell's wrongful conviction. Concerns expressed by a police officer from another force that Shannon Taylor's evidence bore striking similarities with other false allegations she had made were ignored. The detective's notes, which described Taylor as 'unreliable' and 'unstable', were never passed on to the Crown Prosecution Service (CPS). Serious inconsistencies with Taylor's accounts were also insufficiently investigated by the police.

Police Misconduct

Cardiff Newsagent Three

Michael O'Brien, Ellis Sherwood and Darren Hall were convicted in 1988 of the murder and robbery of Cardiff newsagent Philip Saunders. Their convictions were

quashed in 1999 after it was revealed that Darren Hall, who confessed to the murder and implicated O'Brien and Sherwood, had a personality disorder which rendered his confession unreliable. In addition, a comprehensive inquiry revealed a series of incidents of serious misconduct by South Wales Police, including denying the three access to solicitors, conducting 'off the record' interviews, employing oppressive interrogation techniques, fabricating evidence that led to their conviction, and bullying and offering inducements to witnesses to give false evidence against the three.



The 'Cardiff Newsagent Three': Darren Hall, Michael O'Brien & Ellis Sherwood

Non-disclosure of Vital Evidence

Johnny Kamara

Johnny Kamara was convicted in 1981 with Ray Gilbert of the murder of John Suffield, a manager of a betting shop in Liverpool. His conviction was overturned after he had served 20 years in prison when it was found that the police had failed to disclose over 200 statements taken during the course of the investigation.



Johnny Kamara, aged 44 when his conviction was overturned in 2000.

False Allegations

George Anderson and Margaret Hewitt

George Anderson and Margaret Hewitt were convicted in 2004 of abusing children at a Barnardo's home more than 20 years earlier. Anderson was given an 18 year prison sentence for offences including rape, sexual assault and gross indecency which he had allegedly committed against five children between 1979 and 1981. Hewitt was sentenced to 11 years imprisonment after she was convicted of a total of 53 charges, including physical and sexual assault and gross indecency, which she was said to have committed against 8 children between 1977 and 1981. Their convictions were quashed after one of the complainants admitted that he had lied. It also emerged during the appeal hearing that prior to Anderson and Hewitt's arrest, the complainants were taken to see a compensation lawyer by a police officer.



Margaret Hewitt and George Anderson

Prison Informants

Reg Dudley and Bob Maynard

Reg Dudley and Bob Maynard were convicted in 1977 of the murder of Billy Moseley and Micky Cornwall. Their convictions were obtained primarily on the evidence of key prosecution witness Tony Wild, a fellow prisoner who claimed that Dudley and Maynard were boasting about the murders whilst they were on remand in Brixton Prison.



Reg Dudley, aged 77, and Bob Maynard, aged 63, when their murder convictions were quashed.

In 1998, Tony Wild admitted in a BBC *Rough Justice* documentary that he had fabricated the evidence against them to evade a long prison sentence for armed robbery. However, it took over four years from the retraction of Tony Wild's evidence for Dudley and Maynard's convictions to be overturned. They each served over 20 years of wrongful imprisonment

Flawed Expert Evidence

Sally Clark and Angela Cannings

Mothers Sally Clark and Angela Cannings were both given life sentences for murdering their children. Their convictions were based on the expert evidence of Professor Sir Roy Meadow who stated that the odds of two cot deaths occurring in the same family was 73,000,000 to 1. Their convictions were quashed in 2003 after it was revealed that their children had most likely died of natural causes and that Meadow's evidence was erroneous and misleading.



Sally Clark who died at the age of 42, four years after her murder convictions were quashed in 2003 and Angela Cannings who spent 18 months in prison and 4 years forced separation from her only surviving daughter until her convictions were overturned in 2003.

Poor Defence

Andrew Adams

In 1990, Jack Royal, a science teacher from Tyneside was shot dead on the doorstep of his home. Andrew Adams was convicted in 1993 for the murder despite the acquittal of his co-accused, John Hands. Adams overturned his conviction after serving 15 years in prison when a series of serious omissions, blunders and errors made by his defence team at trial was revealed at his appeal. In particular, due to their inadequate preparation for Adams' trial, numerous pieces of crucial evidence which could have undermined the prosecution's case were overlooked.



Successful appeals and innocence

Although successful appeals may not be evidence of factual innocence, the aforementioned examples serve as testimony to a diverse range of failings of the criminal justice system at the pre-trial and trial stages, to which factually innocent victims can, and do, fall prey.

However, despite the fact that factually innocent people can be wrongly convicted in criminal trials, as will be shown in Part 2, criminal appeals for convictions given in the Crown Court are highly technical matters which attempt to determine not whether appellants are factually guilty or factually innocent, but whether convictions are 'safe' or 'unsafe', according to the prevailing rules of the Court of Appeal (Criminal Division) (CACD) under the Criminal Appeal Act 1995.

Successful appeals in the CACD are mainly achieved by new evidence that shows criminal convictions to be unreliable and, therefore, deemed to be unsafe.

However, evidence available at the time of the original trial may not be admissible, even if it shows the evidence that led to the conviction to be flawed and supports the claim of innocence of a convicted person. Criminal appeals are not about rectifying the wrongs of criminal trials and ensuring that the factually innocent overturn their convictions.

As a result, factually innocent victims of wrongful convictions may never overturn their convictions if they are unable to fulfil the new evidence criteria.

Why alleged victims of wrongful conviction maintain innocence

The criminal justice system is routinely faced with people who claim that they are innocent of offences that they have been charged with or convicted of.

In the nine year period 2000-2008 (inclusive), an average of around 30% of defendants indicted in the Crown Court pleaded not guilty to at least one count of the offences that they were charged with.

Similarly, thousands of people convicted of criminal offences seek to challenge their convictions in the appeal courts in England and Wales each year. The Crown Court, for instance, receives an annual average of over 5,000 applications for appeals against convictions given by magistrates' courts. The Court of Appeal (Criminal Division) (CACD) receives over 1,600 applications for leave to appeal against conviction each year, equating to 6 people appealing against a conviction for a serious criminal offence each day.

As the scale of convicted persons maintaining innocence relates to the prison population, a survey by Inside Time in 2006 on prisoners in England and Wales indicated that almost 40% of those surveyed claimed that they were not guilty of the crime for which they were convicted.

However, there are varied reasons why alleged victims of wrongful conviction might maintain innocence when they are not innocent. These include:

- **Hope for a successful appeal:** Pleading guilty and/or admitting guilt effectively prevents the possibility of overturning a criminal conviction. As such, alleged victims might maintain innocence in the hope of obtaining a successful appeal against their convictions.
- **Ignorance of criminal law:** Some alleged victims of wrongful convictions might claim that they are innocent because they do not know or understand that their behaviour is criminal, for example, those convicted of joint enterprise crimes who say that they are innocent of murder because, although they participated in the fight, they did not directly cause the fatal injury to the victim. They do not understand that they were part of a 'common purpose' and that they are guilty according to current criminal law (and must accept moral culpability), which dictates that those engaged on joint enterprise crimes, for example, share culpability if the outcome was conceivable. A possible defence is available, however, if the co-defendant maintaining innocence can prove that s/he did not know that the co-defendant who admitted the stabbing/killing had a knife (see, for example, *R v English* [1997] 3 WLR 959). Similarly, alleged victims of wrongful conviction sometimes maintain innocence on the basis that they were intoxicated

at the time of the crime. They may believe that this somehow excuses criminal culpability on the assumed grounds that they cannot be responsible or legally blameworthy for a crime that they have little or no memory of. If the intoxication was involuntary, however, there may well be grounds for a legal defence (see, for example, *R v Richardson (Nigel John)* ([1999] 1 Cr. App. R. 392); *Director of Public Prosecutions v Majewski* ([1977] AC 4434); *R v Fotheringham* ([1988] 88 Cr App R 206); *R v Kingston* ([1994] 3 All ER 353).

- Disagreement with criminal law: This includes those who know that their actions constitute a criminal offence but *disagree* that it should, such as, those convicted of statutory rape of a minor who think that they should not have been convicted as the act was consensual. This category can also include those that believe as a matter of conscience their behaviour is morally right, such as political prisoners or animal rights and anti-war activists.
- Claims that there was a technical miscarriage of justice. For example, they committed the offence but maintain that they should not have been convicted as the evidence of their guilt was obtained unlawfully.
- Shame/stigma: Alleged victims might claim innocence because they are ashamed of what they have done or as a means of protecting their children, partners or parents from the shame/stigma of being associated with a criminal offender.

In addition to the foregoing categories of alleged victims of wrongful conviction who claim that they are innocent when they are not innocent, it is incontrovertible that some individuals who maintain innocence might, indeed, be factually innocent of the crimes that they have been convicted of.

As the previous chapter demonstrated, the criminal justice process is not perfect and factually innocent individuals can, and for a variety of reasons are, wrongly convicted and even imprisoned for crimes they have played no part in.

At the same time, due to the limitations of the existing appeals system, there are no guarantees the innocent will be able to obtain a successful appeal and/or achieve exoneration.

Case Study

The Cardiff Three, Tony Paris, Stephen Miller and Yusef Abdullahi, were convicted for the murder of Lynette White in 1988. Quashing their convictions in 1992, Lord Taylor asserted that the



*The Cardiff Three:
Tony Paris,
Stephen Miller
and Yusef
Abdullahi*

question of whether Steven Miller's admission to the murder of Lynette White were true or not was 'irrelevant'. The oppressive nature of his questioning (he was asked the same question 300 times) required the interview to be rejected as evidence. It was a breach of due process, more specifically the rules of evidence under the Police and Criminal Evidence Act (1984) (PACE). For over a decade after the Cardiff Three had overturned their convictions, doubts prevailed about whether or not the Cardiff Three were involved in the murder. Their factual innocence was only firmly established when the real killer of Lynette White, Jeffrey Gafoor, who had been traced by the National DNA Database, was convicted for her murder in July 2003.

4

The Parole Deal

Indeterminate-sentenced prisoners who maintain that they are innocent and are unable to overturn their convictions in the Court of Appeal (Criminal Division) (CACD) may remain languishing in prison for the rest of their lives.

Put simply, prisons are meant for the guilty, not the innocent. As such, innocent prisoners or, more correctly, prisoners who say that they are innocent, do not neatly fit into the regular requirements of the penal and parole regimes. For instance, they often refuse to comply with their sentence plans and many will not undertake offending behaviour programmes, especially those requiring an admission of guilt or a full and frank discussion of the crime that they were convicted of. For them, it is tantamount to admitting to crimes that they say that they did not commit.

It is well established that indeterminate-sentenced prisoners maintaining innocence find it much more difficult to progress through the prison system and achieve parole than prisoners who admit their guilt; they rarely achieve release on their tariff dates, the date set by the courts as to when the prisoner is eligible for release on parole; they often serve longer prison sentences than prisoners who admit their guilt; and are often unlikely to achieve release at all unless and until they have their alleged wrongful convictions overturned by the appeal courts.

At root, this stems from the mode of risk assessment currently used by the prison system and the Parole Board which places indeterminate-sentenced prisoners maintaining innocence in a catch-22 situation, commonly termed a 'parole deal'.

The term the 'parole deal' first entered public consciousness when Stephen Downing successfully appealed against his conviction for the murder of Wendy Sewell in January 2002. Stephen Downing had served 27 years in prison maintaining his innocence until he was able to overturn his conviction.

At the time, it was widely reported in the media that if he had acknowledged guilt, confronted his offending behaviour and, thus, demonstrated a reduced risk of re-offending, he would, more than likely, have served around 12-15 years.

It was, also, reported that during his imprisonment he was deprived of better jobs, training opportunities and parole consideration to put pressure on him to admit his guilt on the basis that he was — in the terminology of the Home Office - IDOM: 'in denial of murder'

The possibility that he had no offending behaviour to confront and that he presented no risk of reoffending as he was innocent of the crime was not even considered by the Parole Board.

The Parole Board's response

In reaction to the pressure of Stephen Downing's successful appeal, the Parole Board responded by appointing its first ever public relations officer to fend off negative publicity of its role in such matters. It argued that claims of a 'parole deal' were 'untrue', and, that it is a 'myth' to say that prisoners maintaining innocence must admit and express remorse for the crimes that they have been convicted of in order to get parole.

The Parole Board stressed that legal precedent has established that it would be unlawful for it to refuse parole solely on the grounds of denial of guilt or anything that flows from that (such as not being able to take part in offending behaviour programmes which focus on the crime committed). (As determined by *R -v- Secretary of State for Home Department ex parte Hepworth, Fenton-Palmer Baldonzy* and *R -v- Parole Board ex parte Winfield* [1997] EWHC Admin 324.).

On the other hand, the Parole Board simultaneously asserted that although it is required *not* to discriminate against prisoners maintaining innocence it is, equally, legally bound to assume the correctness of any conviction and take account not only of the offence, and the circumstances in which it was committed, but the circumstances and behaviour of the individual prisoner before and during the sentence. (As determined by *R- v- The Secretary for the Home Department & the Parole Board ex parte Owen John Oyston [unreported]* (see *The Independent*, 15 October 1999).

The Parole Board, then, works from the premise that convictions are correct and prisoners are guilty and it would be contrary to its statutory remit to even consider that some prisoners may be innocent. In 2005, Terry McCarthy, Head of Casework at the Parole Board said:

'... we are a[n] organisation created by law, and operating under the law. The law says the [Parole] Board must treat all prisoners as guilty ... What the courts have said repeatedly is that the Board must ignore any representations by the prisoner that he is innocent. The Board must assume he is guilty'.

Despite this, the Parole Board still contents itself that it is able to satisfy its statutory remit not to discriminate against prisoners maintaining innocence who will not comply with their sentence plans as it does not technically, nor officially, base its decisions not to recommend progression or release *solely* on the ground that a prisoner maintaining innocence will not acknowledge their guilt and undertake offence-related work.

Rather, as the Parole Board acknowledges, it is often unable to recommend progression or release to prisoners maintaining innocence who refuse to undertake offence-related work because it does not have the necessary evidence in the form of successfully completed specified offence-related courses to show that the prisoner maintaining innocence has reduced his/her risk of reoffending.

As a consequence of the parole deal, there are prisoners who have maintained innocence for the last 40 years who may never be released unless they overturn their convictions and are likely to die in prison, calling for new policies to be devised for dealing with prisoners maintaining innocence that take seriously the reality that innocent prisoners exist.

The criminal justice system provides numerous opportunities to make appeals against decisions (as outlined below), which is an explicit acknowledgment that wrongful convictions can and do occur and innocent people can be, and are, imprisoned.

As the Parole Board operates within the boundaries of the criminal justice system ('we are an organisation created by law'), logic dictates that it is not tenable to ignore the thousands of successful appeals against conviction in England and Wales each year and to deny the possibility (reality) of wrongful convictions and that some prisoners maintaining innocence are, in fact, innocent.

Case studies

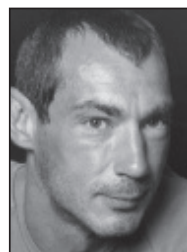
Like Stephen Downing, Paul Blackburn and Robert Brown each spent 25 years in prison maintaining their innocence. It is likely that if they had acknowledged guilt, confronted their offending behaviour and, thus, demonstrated a reduced risk of reoffending in the eyes of the Parole Board, they would, probably, have served around half that time.

During their wrongful imprisonment, they were also deprived of better jobs and training opportunities to put pressure on them to admit guilt on the basis that they were 'in denial' of their crimes.

Paul Blackburn was only 14 years old when he was coerced by the police into signing a false confession for attempted murder and sexual assault on a 9 year old boy and subsequently spent the next 25 years of his life behind bars. His conviction was quashed in 2005 two years after he had been released on life-livence.

Robert Brown spent 25 years in prison after he was tortured by the police into making a false confession for murder. His conviction was quashed in 2002 after the Court of Appeal heard evidence of serious police corruption and abuse.

Information to prisoners and families about the parole system can be found on the Parole Board website. Available at: http://www.paroleboard.gov.uk/prisoners_and_families



Paul Blackburn



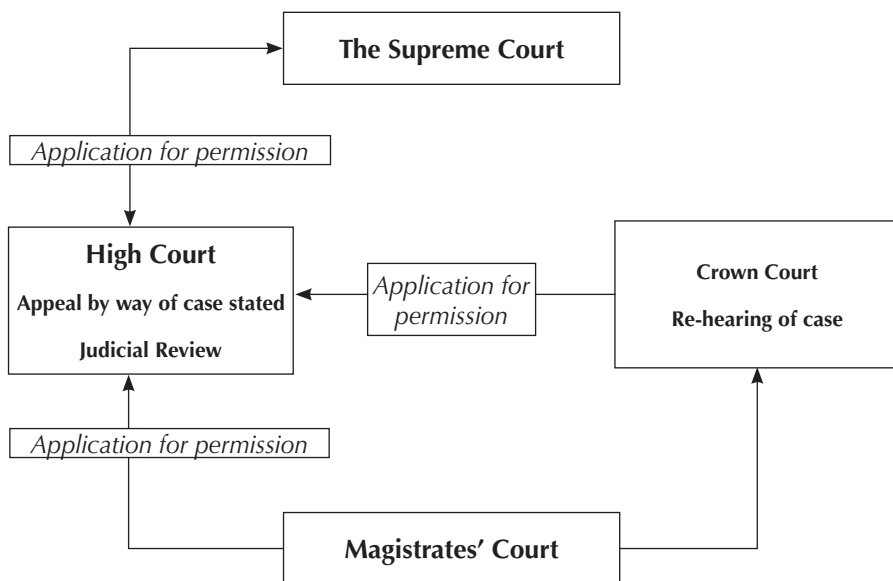
Robert Brown

Part 2

How the legal system deals with alleged wrongful convictions

Appeals Against Criminal Convictions Given in Magistrates' Courts

Diagram of Appeals Procedure for Convictions Given in Magistrates' Courts



There are three main routes to appeal against convictions given in magistrates' courts: appeal to the Crown Court; appeal to the High Court by way of case stated; and, applying for a judicial review in the High Court.

Appeal to the Crown Court

Procedure for appealing to the Crown Court

The main route to challenge a conviction given in a magistrates' court is by appealing to the Crown Court. There is no need to obtain leave to appeal for an appeal against a magistrates' court's decision to be granted and a notice of appeal would generally be sufficient.

There is, however, a tight time frame to prepare for an appeal. Under Part 63 of the Criminal Procedure Rules, an appellant normally has 21 days from the date of

sentence to serve a notice of appeal. The notice of appeal must be in writing and include a summary of the grounds of appeal, list of prosecution witnesses that the appellant intends to have cross-examined, and an estimate of how long the appeal is likely to last in the Crown Court.

Where the appellant has exceeded the 21-day time frame, s/he must serve with the appeal notice an application for an extension of the time limit and an explanation of why the appeal notice is late. The court will consider the reasons for the delay in deciding whether or not to allow an out-of-time appeal.

Criteria for appealing against conviction

The rules that govern appeals to the Crown Court against convictions given in magistrates' courts are set out in the Magistrates' Courts Act 1980. Under s.108 of the Act an appellant may only appeal to the Crown Court against conviction if s/he had pleaded not guilty at trial.

An exception to this rule is if the appellant maintains innocence and alleges after the conviction that the plea of guilty was 'equivocal', that is, that the guilty plea was entered as a result of duress or due to a fundamental misunderstanding. In these circumstances, the role of the Crown Court is solely to undertake an inquiry into whether or not the plea was indeed equivocal, and return the case back to the magistrates' court from which it came for a re-trial if it decides that it is.

It has to be pointed out, however, that a claim that a guilty plea was entered as a result of an offer by the prosecution for a lesser sentence will generally be refused by the Crown Court. As such, a defendant might plead guilty to a charge s/he is factually innocent of in exchange for the prospect of a lesser sentence, and will not be able to contest it subsequently.

Alternatively, the Crown Court may hear an appeal against conviction even if the appellant had pleaded guilty at trial if the case is referred to the Crown Court by the Criminal Cases Review Commission (see Chapter 6).

Re-hearings at Crown Courts

Appeals in the Crown Court against convictions given in magistrates' courts are by way of full re-hearings as stipulated under s.79 of the Supreme Court Act 1981. In line with criminal trials, re-hearings in the Crown Court do not seek to determine if the appellant is factually innocent or guilty but whether s/he is guilty or not guilty of the offence(s) s/he is accused of on the evidence presented at court.

The Crown Court has powers under s.48 of the Supreme Court Act 1981 to uphold or quash a conviction, or, in certain circumstances, remit the case back to the magistrates' court where the conviction was given for a re-hearing.

It is also crucial to note that the Crown Court has the power to increase or lower the severity of the sentence imposed by magistrates' courts even if the appellant is only

appealing against his/her conviction. Further, as an appeal to the Crown Court is by way of a full re-hearing, if the appellant was convicted of one offence and found not guilty by a magistrates' court for other charges, the Crown Court has the power to convict the appellant of the charges that s/he had originally been acquitted of.

Challenging the Crown Court's decision at the High Court

If the conviction given in a magistrates' court is upheld following an appeal to the Crown Court, the following routes are available to challenge the ruling of the Crown Court:

make an application to the Crown Court for the case to be heard in the High Court by way of case stated on the basis that the ruling was wrong in law or in excess of jurisdiction under s.28 of the Supreme Court Act 1981; or,

make an application to the High Court for judicial review under s.29(3) of the Supreme Court Act 1981.

Success rate

Latest available figures from the Ministry of Justice show that between 2004-2008 (inclusive), the Crown Court received a total of 26,670 appeals against convictions given in magistrates' courts, equivalent to an annual average of 5,334 cases.

Of these, almost 40% of all appeals in the Crown Court are overturned, which equates to an average of around 2,059 successful appeals against convictions given in magistrates' courts each year.

Appeal to the High Court of Justice by way of Case Stated

Under s.111 of the Magistrates' Courts Act 1980, an appellant may challenge the conviction given at a magistrates' court by appealing to the High Court by way of case stated.

This route can only be used if the appeal is on the basis that the decision of a magistrates' court is wrong in law or is in excess of jurisdiction, that is a claim that the court has exceeded its powers under the Magistrates' Court Act 1980.

As with appeals to the Crown Court, an appellant has 21 days from the date of sentence to make an application to the magistrates' court that gave the conviction for the case to be stated before the High Court. The application must state the question(s) of law or jurisdiction of which the opinion of the High Court is being sought. The magistrates' court may refuse to state a case if it is of the view that the application is frivolous and the appellant may apply to the High Court for such a refusal to be challenged.

It is crucial to note that on making an appeal by way of case stated, the appellant

no longer has the right to appeal to the Crown Court against the magistrates' court's decision.

Success rate

A total of 59 appeals from magistrates' courts by way of case stated were heard by the High Court in 2008, of which 30 were successful.

Judicial Review in the High Court

A defendant may apply to the High Court for a judicial review on the basis that a magistrates' court had acted outside its powers or that there has been unfairness in the way the case was conducted. Whilst the High Court does, on occasion, allow judicial reviews on the basis that a magistrates' court had made an error in law, this should be raised by way of case stated rather than through a judicial review.

Leave to apply for judicial review must be sought and the application must be filed within 3 months of the date of a magistrates' court's decision.

If the judicial review against a magistrates' court's decision is successful, the High Court will most likely issue a 'quashing order' which quashes the conviction given by a magistrates' court. It may also remit the case back to a magistrates' court for reconsideration.

Alternatively, although highly rare, the High Court may issue a 'mandatory order' to force a magistrates' court to conduct a specific action or a 'prohibiting order' to stop the court from acting outside its powers.

The Supreme Court

Since 1 October 2009, The Supreme Court replaced the House of Lords as the highest court in the United Kingdom.

An appellant challenging a conviction given in a magistrates' court who failed his/her appeal in the High Court might apply to have the case heard at The Supreme Court.

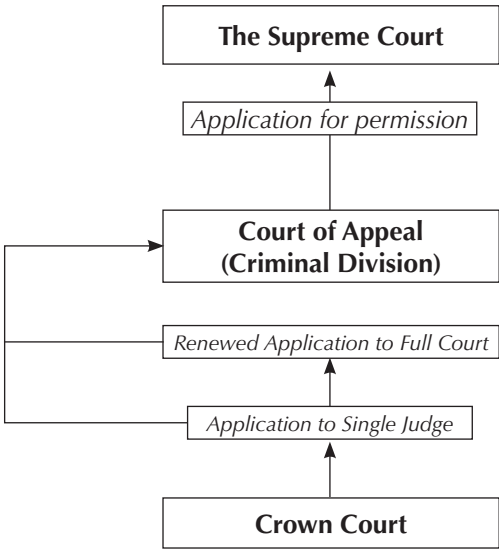
However, The Supreme Court only hears cases from the High Court under very limited circumstances where the case involves arguable points of law and is deemed to be of general public importance.

Permission has to be sought for a case to be heard at The Supreme Court by first making an application to the High Court, and then to the Supreme Court if the High Court refused to grant leave to appeal.

6

Appeals Against Criminal Convictions Given in the Crown Court

Diagram of Appeals Procedure for Convictions Given in the Crown Court



The Court of Appeal (Criminal Division) (CACD)

Appeals against criminal convictions given in the Crown Court are heard in the Court of Appeal (Criminal Division) (CACD). The legislation that governs the workings of the CACD is the Criminal Appeal Act 1968 and the Criminal Appeal Act 1995.

Applying for leave to appeal

There is no automatic right to an appeal against convictions given in the Crown Court. Under s.1 of the Criminal Appeal Act 1995, permission for an appeal (known as leave to appeal) has to be sought before an appeal can be granted.

To apply for leave to appeal against conviction, the appellant must submit a Notice and Grounds of Appeal or Application for Permission to Appeal (Form NG) to the Crown Court within 28 days of the date of conviction. Where an appellant has past the 28 day time limit, detailed reasons for the delay (grounds for extension of time)

must be attached to the grounds for appeal.

Form NG is received by the Criminal Appeal Office. The casework section of the Criminal Appeal Office will begin the process of putting all the relevant papers together, such as court transcripts of relevant parts of the trial and the perfected grounds for appeal.

Once this process is completed, the papers will be sent to a Single Judge who will decide whether or not to grant or refuse leave to appeal. If leave to appeal is granted, a date will be set for the hearing of the appeal by the Full Court (usually consisting of three judges).

Alternatively, if the application for leave to appeal is refused by a Single Judge, the appellant has 14 days to renew the application before the Full Court. The appeal process ends for the appellant if the Full Court confirms the Single Judge's decision not to grant leave to appeal. However, if leave to appeal is granted, a date will be set for the appeal hearing by the Full Court.

What are the chances of obtaining leave to appeal?

The latest available figures from the Ministry of Justice show that between 2004-2008 (inclusive), the CACD received an annual average of 1,627 applications for leave to appeal against conviction.

Out of 6,295 applications considered by a Single Judge during this five-year period, 1,499 were granted leave to appeal against conviction while the remaining 4,796 applications were refused. As such, 24% or almost a quarter of all those who made an application to a Single Judge were successful in having their case referred to the Full Court for an appeal.

The CACD received an average of 500 renewed applications to the Full Court for leave to appeal against conviction per year between 2004-2008. In the same period, an average of 139 renewed applications were granted by the Full Court. As such, 28% of all those who made a renewed application to the Full Court were successful in obtaining an appeal.

The nature of appeals at the Court of Appeal (Criminal Division)

Unlike appeals against convictions given in magistrates' courts that are heard in the Crown Court, appeals at the CACD are not re-hearings. As such, arguments made at the original trial cannot, as a general rule, be rehearsed again. Further, under s.23 of the Criminal Appeal 1968 the CACD will usually only accept new evidence or argument that was not available at the time of the original trial.

This means that evidence in the unused material or evidence which could have been made available that might challenge the prosecution's case cannot, in general, be raised in the appeal unless there is a reasonable explanation for the failure of the defence to adduce it at the time of the trial.

It has to be borne in mind that the CACD is also not concerned with factual innocence or guilt. Under s.2 of the Criminal Appeal Act 1995 the role of the CACD is solely to adjudicate the *safety* of the conviction and to quash a conviction if it decides that the conviction is 'unsafe':

2(1) Subject to the provisions of this Act, the Court of Appeal:

- (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and,
- (b) shall dismiss such an appeal in any other case.

A finding that the conviction is 'unsafe' is not the same as declaring the appellant to be factually innocent. This position has been reiterated by the CACD on a number of occasions. In quashing the convictions of the M25 Three, for instance, Lord Justice Mantell held:

'...we are bound to follow the approach set out earlier in this judgment, namely assuming the irregularities which we have identified had not occurred would a reasonable jury have been bound to return verdicts of guilty? In all conscience we cannot say that it would...Accordingly we cannot say that any of these convictions is safe. They must be quashed and the appeals allowed...For the better understanding of those who have listened to this judgment and of those who may report it hereafter *this is not a finding of innocence, far from it* (R v Davis, Rowe and Johnson, my italics)

In deciding whether or not a conviction is unsafe, the CACD will consider a number of issues including any procedural breaches at the pre-trial or trial stages, the correctness of any legal rulings made by the judge in the course of the trial, whether there were any misdirections by the trial judge, and any new evidence not available at the time of the trial that could impact upon the safety of the conviction.

If it is decided that the conviction is unsafe, the CACD will quash the conviction and allow the appeal. It also has the power to order a re-trial for the case to be heard again at the Crown Court.

Success rate

Between 2004-2008 (inclusive), an average of 37% of appeals against conviction were allowed by the CACD. This is equivalent to an annual average of 207 successful appeals against convictions given at the Crown Court each year.

As successful appeals often involve more than a single appellant, this means that at least 4 people overturn a criminal conviction given by the Crown Court for a serious criminal offence each and every week in England and Wales.

Appeal to the High Court by way of Case Stated

Unlike convictions given in magistrates' courts, it is generally not possible for an appellant to appeal against a conviction given at the Crown Court by way of case stated.

Under s.28(1) of the Supreme Court Act 1981, both the prosecution and the defence have the right to have a case stated before the High Court on the ground that the decision of the Crown Court is wrong in law or is in excess of jurisdiction. However, the jurisdiction of the High Court is limited by s.28(2)(a) of the Supreme Court Act 1981 which states that an application to state a case before the High Court *cannot* be made if it concerns 'a judgment or other decision of the Crown Court relating to trial on indictment'.

This means that only matters which have *no* bearing on the trial can be put before the High Court by way of case stated, for example, forfeiture of bail. As appeals against convictions mostly involve challenging issues relating to the conduct of the trial or adducing new evidence or argument which might influence the outcome of the original trial, such matters cannot be heard by the High Court.

Judicial Review in the High Court

The power of the High Court to judicially review decisions of the Crown Court is governed by s.29 of the Supreme Court Act 1981.

s.29(3) of the Supreme Court Act 1981 gives jurisdiction to the High Court over all matters in the Crown Court except for 'matters relating to trial on indictment'.

As with appeals by way of case stated, this means that only matters which have *no* bearing on the trial can be judicially reviewed by the High Court and it is generally not possible to challenge convictions given in the Crown Court through this route.

With the High Court having no jurisdiction to hear appeals by way of case stated or judicially review matters relating to the trial, the only available route by which an appellant can challenge a conviction given in the Crown Court is, therefore, by making an application for leave to appeal to the CACD.

The Supreme Court

The Supreme Court took over the judicial functions of the House of Lords on the 1 October 2009 and is the final Court of Appeal in the UK.

An appellant challenging a conviction given at the Crown Court who failed his/her appeal at the CACD might apply to have a further appeal at The Supreme Court.

An appeal to The Supreme Court may only be brought with the permission of the CACD or of The Supreme Court. An application for permission to appeal must be made first to the CACD and, if refused, to The Supreme Court.

The Criminal Cases Review Commission

Background

The Criminal Cases Review Commission (CCRC) is a recent development in a long line of attempted remedies against miscarriages of justice. It was established by the Criminal Appeal Act 1995, replacing the Criminal Case Unit of the C3 Division of the Home Office where the Home Secretary had the power to order re-investigations of alleged miscarriages of justice and send them back to the Court of Appeal (Criminal Division) (CACD) under s.17 of the Criminal Appeal Act 1968.

The CCRC followed a recommendation by the Royal Commission on Criminal Justice (1993) (RCCJ) that was prompted by the public crisis of confidence in the entire criminal justice system, which was caused by the cases of the Guildford Four and the Birmingham Six and a string of other notable cases in which Irish people were wrongly convicted upon suspicion of being connected with terrorist crimes that were committed by the IRA (Irish Republican Army).

In particular, it was found that successive Home Secretaries were failing to refer potential miscarriages of justice back to the CACD for political, as opposed to legal, reasons. To remedy this apparent constitutional problem, the CCRC was established formally on 1 January 1997 as an Independent Public Body that receives applications from alleged victims of miscarriages of justice in England, Wales and Northern Ireland who have previously failed in their appeals against criminal conviction but continue to question the validity of those convictions.

Case Studies

The Guildford Four, convicted for IRA-related bombings in the 1970s, contributed to causing a public crisis of confidence in the entire criminal justice system amid widespread belief that they were innocent. They spent more than 15 years of wrongful imprisonment each before overturning their convictions.

The Royal Commission on Criminal Justice which recommended the establishment of the Criminal Cases Review Commission was announced on the day that the Birmingham Six overturned their convictions in the Court of Appeal (Criminal Division). They each spent 16 years in prison.



Remit

The CCRC assumed the responsibilities for reviewing alleged or suspected miscarriages of criminal justice previously exercised by the Home Office and the Northern Ireland Office on 1 April 1997, although it received 279 outstanding case files from C3 on the day before in readiness.

The statutory role and responsibilities of the CCRC are set out in s.8 to s.25 of the Criminal Appeal Act 1995. It is remitted to review the criminal convictions and sentences of applicants who have been refused leave to appeal or have failed on appeal. It refers cases back to the appropriate appeal court where it is felt that there is a 'real possibility' that the conviction would not be upheld, i.e. that it would be overturned.

Statistics

Between April 1997 and 30 June 2010, the CCRC received 12,745 applications, approximately a thousand each year. It has referred an average of around 4% of its applications, or 456 cases to the relevant appeal courts, out of which around 422 appeals have been heard and 299 have been quashed. This equates to a 'success' rate of around 70%, or an annual average of approximately 20 convictions a year that have been overturned following a referral by the CCRC.

Limitations of the CCRC

Not interested in innocence

The CCRC website states:

'We do not consider innocence or guilt, but whether there is new evidence or argument that may cast doubt on the safety of an original decision'

Therein lies the crucial problem with the CCRC. Contrary to popular belief, the CCRC was not designed to rectify the errors of the criminal justice system and cannot ensure that innocent victims of wrongful conviction will obtain a referral back to the appeal courts, let alone overturn their wrongful convictions. It operates entirely within the parameters of the criminal appeals process in the role of a 'legal watchdog' to ensure that its decisions meet with its rules and procedures in the global interests of upholding its integrity; it seeks to determine whether convictions are lawful.

This means that the CCRC does not work on miscarriages of justice as understood in terms of the wrongful conviction of the innocent. It operates, instead, within a legal notion of a miscarriage of justice based on the correctness of criminal convictions in law. It only refers cases back to the appeal courts in which there is new evidence that may undermine the legal safety of criminal convictions.

There is nothing wrong with this *per se*, but it is contrary to what the CCRC is widely thought to exist to do, which is assist innocent people to overturn their wrongful convictions. Crucially, the CCRC does not question the possibility that the rules and procedures of the criminal justice system can cause miscarriages of justice and/or the wrongful conviction of the innocent and/or act against them being corrected.

Not independent

The 'real possibility' test means that the CCRC is not independent as it claims either. On the contrary, it is always in the realm of trying to second-guess how the appeal courts may view referred cases. This is because the CCRC has to bear in mind the decisions of the appeal courts in first appeals and cannot send cases back on the same grounds. It is best described as dealing not with new evidence but, rather, with new, new evidence when thinking about whether a case should be referred back to the appeal courts for a second time, and new, new, new evidence of it is deciding whether it should refer a case for a third appeal, and so on.

This means that although there is no limit in theory to the number of applications that alleged victims of miscarriages of justice can make to the CCRC, each application will be considered through a narrower lens with a diminishing chance of referral.

The knock-on effect of these limitations is that the CCRC's reviews are mere safety checks on the lawfulness or otherwise of criminal convictions, as opposed to in-depth inquisitorial investigations that seek the truth of claims of innocence by alleged victims of wrongful convictions.

As a result, cases may not be referred by the CCRC, even if it turns up evidence that indicates an applicant's claim of innocence is valid, if it does not satisfy the 'real possibility' test in the eyes of the CCRC, for example, if the evidence was available or could have been made available at the original trial.

Yet, there are various reasons why evidence of innocence may not have been presented at trial. For instance, the lawyers may have failed to trawl through the disclosed unused evidence and missed it completely. Similarly, the lawyers may have (in hindsight) made a bad tactical decision in not presenting the evidence of innocence in court. In such scenarios, pertinent questions are: Why should the client/alleged innocent victim of a wrongful conviction be denied justice because of the failures of his/her lawyers? And, why is not all evidence that was not put before a jury regarded as new?

Judicial Review

The decision of the CCRC is final and cannot be appealed against. However, unsuccessful applicants may apply to the Administrative Court (High Court) for a judicial review if they think that the CCRC's refusal of application or its decision not to refer their cases back to the appeal court is unlawful, irrational or unreasonable.

Since 2002, a pre-action protocol was introduced to reduce the number of applications

for judicial review to the Administrative Court. This requires the applicant to write a letter to the CCRC setting out the basis of his/her challenge before proceeding with an application for judicial review. The CCRC will then decide within 14 days whether the challenge should be conceded or contested.

It is crucial to note that due to the wide discretion and powers that the CCRC has in its handling of applications under the Criminal Appeal Act 1995, there is a very high threshold to be crossed for the Administrative Court to decide that the CCRC has acted unlawfully. Consequently, very rarely does it permit applications for judicial review against the CCRC's decisions.

The difficulty in challenging the CCRC's decision through a judicial review is evident from the statistics. In 2009-10, there were 22 applications for judicial review of the CCRC's decision and no case was granted leave to proceed to judicial review. In 2008-09, 21 applications for judicial review of the CCRC's decision were filed but only 2 applications were granted permission by the Administrative Court to proceed with a judicial review.

Most importantly, even if permission for judicial review is granted, the Administrative Court cannot overrule the decision of the CCRC. Rather, it can only request the CCRC to revisit its decision. This means that even if the CCRC re-opens an application upon a judicial review ruling, it can still uphold its decision not to refer a case back to the appeal court.

As such, in spite of the serious limitations of the CCRC in assisting alleged innocent victims of wrongful conviction as this chapter has demonstrated, the current system of judicial review provides little recourse to challenge the decisions of the CCRC and make it accountable.

Case study

Gary Mills and Tony Poole were convicted of the murder of Hensley Wiltshire in January 1990, whom they have always claimed died as a result of being assaulted whilst he was in police custody. Following their unsuccessful appeals to the CACD and the House of Lords, Mills and Poole made an application to the CCRC in 1998 which reached a decision in November 2000 not to refer their convictions to the CACD.



*Tony Poole and
Gary Mills*

The two then sought a judicial review of the CCRC's decision. Although the court dismissed their application, holding that the CCRC was entitled to its conclusions, it expressed serious concerns and unease over the safety of their convictions and urged the CCRC to reconsider its decision.

In May 2002, the CCRC referred the convictions of Mills and Poole back to the CACD. The referral was based largely on the same arguments that were put to the CCRC three years earlier, which had been rejected. In July 2003, five years after their application to the CCRC, Mills and Poole had their convictions overturned by the CACD.

The Royal Prerogative of Mercy

If you have evidence of innocence that the CCRC does not think passes the 'real possibility test' and so will not refer your case back to the CACD then all hope is not lost.

Criminal Appeal Act 1995 s.16(2) permits the CCRC to refer applications to the Secretary of State if it is of the opinion that the applicant is innocent but lacking the necessary legal grounds for the appeals system and that there should, instead, be a recommendation to exercise the Royal Prerogative of Mercy and give the applicant a full and free pardon.

Prior to the establishment of the CCRC, Free Pardons were not uncommon, with seven granted against criminal convictions over the period 1987-1997 for a variety of offences including theft, possession of a firearm, drug offences and a couple of assault offences.

Since the establishment of the CCRC, however, no Free Pardons have been granted against conviction, and the CCRC has not used its powers to ask for one for any of its 12,000 plus applicants.

Perhaps this is not surprising. In its role as a filter for the CACD, the CCRC does not actively seek out evidence of factual innocence, but rather, fresh evidence that questions the safety of the conviction in law. As such, CCRC reviews of alleged wrongful convictions are not likely to uncover evidence of innocence that would provide the confidence necessary to seek to ask for a Free Pardon on behalf of an applicant.

Despite this, the CCRC needs to be pressed by alleged innocent victims of wrongful conviction to investigate claims of innocence more appropriately and use its power under s.16 of the Criminal Appeal Act when clear evidence of innocence exists.

The CCRC website has information on its role in reviewing alleged miscarriages of justice, including information on how it reviews applications and funding. Available at: <<http://www.ccrcc.gov.uk/canwe.htm>>

A more critical guide on making applications to the CCRC can be found on the United Against Injustice (UAI) website. See 'Applications to the Criminal Cases Review Commission: a guide for applicants and their supporters'. Available at: <<http://www.unitedagainstinjustice.org.uk/advice/CCRC%20applications%20guide.html#constraints>>

8

European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ)

It is fairly common to hear about alleged victims of wrongful conviction taking their cases to the European Court of Human Rights (ECtHR) or the European Court of Justice (ECJ). However, it is crucial to note that neither the ECtHR nor the ECJ are appeal courts. They cannot rehear cases, quash, vary or revise the decisions of national courts.

The European Court of Human Rights

The ECtHR based in Strasbourg was established in 1959 under the European Convention of Human Rights. Its task is to ensure that member states respect the rights set out in the Convention. The rights protected by the European Convention of Human Rights and its Protocols are as follows:

- the right to life;
- the right to a fair hearing in civil and criminal matters;
- the right to respect for private and family life;
- freedom of expression;
- freedom of thought, conscience and religion;
- the right to an effective remedy;
- the right to the peaceful enjoyment of possessions; and
- the right to vote and to stand for election.

In addition, the Convention rights and its Protocols prohibit the following:

- torture and inhuman or degrading treatment or punishment;
- arbitrary and unlawful detention;
- discrimination in the enjoyment of the rights and freedoms set out in the Convention;
- the expulsion by a State of its own nationals or its refusing them entry;
- the death penalty; and
- the collective expulsion of aliens

As mentioned above, the ECtHR cannot overrule the decisions of domestic courts or decide whether or not convictions should be overturned. However, complaints may be lodged to the ECtHR against the UK State on the grounds that the acts or omissions of one or more of its public authorities (such as a court or the police)

have violated the European Convention of Human Rights. It is important to note that general complaints cannot be made about any alleged unfairness of a law or a measure imposed by the State. Nor can complaints be made on behalf of others. Rather, complaints must show that the alleged violation has directly affected the person making the application.

Under what circumstances can a case be taken to the ECtHR?

Cases can only be taken to the ECtHR when all domestic remedies have been exhausted. This means that alleged victims must not only have exhausted the normal appeals process, they must also have failed in their appeal attempt in The Supreme Court before they can proceed with an application to the ECtHR.

In addition, the complaint about the violation(s) must have been raised during the appeals process. In other words, alleged victims cannot raise the complaint only at the point of application to the ECtHR.

Time limit

All applications to the ECtHR must be made within six months of the date of the judgment of the highest court. The ECtHR will not accept applications made after that period.

How will your complaint be processed?

The ECtHR will first assess the alleged victim's application to decide whether or not it is admissible. If several complaints have been lodged, the ECtHR may deem one or more of them admissible and dismiss the others.

Appeals against the ECtHR decisions are not possible. If complaints are held to be inadmissible, that decision is final and cannot be reversed.

If the ECtHR holds complaints to be admissible, it will encourage the parties concerned i.e. the alleged victim making the complaint and the UK State to reach a settlement in the first instance. If no settlement can be reached, the ECtHR will consider the application and decide whether or not the State has violated the European Convention of Human Rights of the applicant.

Do note that due to the current backlog of cases, applicants may have to wait for a year before the ECtHR can conduct a first assessment.

What happens if the ECtHR rules that there has been a violation?

Although the appeal courts and other relevant public bodies such as the Criminal Cases Review Commission (CCRC) have to take into account the ruling of the ECtHR, they are not legally bound to follow the decision of the ECtHR. As such, if the ECtHR rules that an applicant's rights under the European Convention of Human Rights have been violated this does not necessarily mean that his/her case will be

referred to the appeal courts by the CCRC and/or that the appeal courts will quash the conviction.

Many alleged victims of wrongful conviction cite Article 6 of the European Convention of Human Rights – Right to a Fair Trial, in their applications to the ECtHR. However, it is crucial to note that the role of the ECtHR is distinct from the role of the appeal courts. If an application on the grounds of Article 6 is deemed to be admissible by the ECtHR, the remit of the ECtHR is limited to assessing the *fairness* of the trial. This is substantially different from the role of the Court of Appeal (Criminal Division) (CACD), which, as mentioned in Chapter 5, is solely concerned with the *safety* of a conviction when deciding whether or not it should be overturned.

As such, whilst the CACD has to take into account a ruling by the ECtHR that an appellant did not have a fair trial under Article 6 of the European Convention of Human Rights, it might still dismiss the appeal on the basis that it does not think that the violation was such that it affected the safety of the conviction.

Case study

R v Davis, Rowe and Johnson (M25 Three)

Michael Davis, Raphael Rowe and Randolph Johnson were convicted in 1990 of murder and a series of robberies which took place on the M25 motorway in December 1988. It later emerged that one of the key witnesses at trial was a police informant who had received a financial reward from the police and avoided prosecution for his involvement in the crimes in exchange for giving evidence against Rowe and Johnson. Although this, along with other previously undisclosed evidence which gave support to their claims of innocence, was put before the CACD in 1993, their appeals were dismissed on grounds that these issues did not affect the safety of their convictions.

The following year, Rowe and Johnson made an application to the ECtHR. In 2000, it ruled that the failure to disclose the key prosecution witness's status as a paid police informant before the trial was in breach of their right to a fair trial under Article 6(1) of the European Convention of Human Rights.

In the same year, following a referral by the CCRC, the convictions of all three men were quashed by the CACD.



*Raphael Rowe
and Michael
Davis*

The European Court of Justice

The European Court of Justice (ECJ), based in Luxembourg, is the highest court of the European Union. Set up in 1952, the role of the ECJ is to ensure that EU legislation is interpreted and applied uniformly in all member states.

As with the ECtHR, alleged victims cannot appeal the decisions of national courts to the ECJ. The role of the ECJ is simply to interpret and provide advice to national courts on questions relating to EU law.

It is also not possible for alleged victims of wrongful conviction to refer matters directly to the ECJ and it is down to the national court concerned to refer a question relating to EU law to the ECJ. Any courts, including the High Court and the CACD, can refer questions of EU law to the ECJ for advice.

The referral can be made on the court's own accord or at the request of any parties before it. However, the decision on whether or not to refer a question to the ECJ is entirely at the discretion of the court, except in cases where the court concerned is acting as the final court of appeal and no further challenge against its decision can be made domestically. In such circumstances, the court must refer the question to the ECJ.

Part 3

Proving your innocence

A method for investigating claims of innocence

Introduction

Once an alleged victim of a wrongful conviction has lost in his/her appeal and been refused a referral back to the Court of Appeal (Criminal Division) (CACD) by the Criminal Cases Review Commission (CCRC) there is a very slim chance that they will be able to overturn the conviction.

In these circumstances, victims of wrongful conviction are likely to have also exhausted the legal aid system and it will be down to themselves, their families, supporters, pro bono lawyers and voluntary groups to unearth the evidence of innocence and present it to relevant authorities such as the CCRC if they hope to get the conviction referred back to the CACD to be overturned. Investigating an alleged wrongful conviction is a lengthy and challenging process. Cases of high profile miscarriages of justice such as the Cardiff Newsagent Three, Paul Blackburn, Robert Brown, Sean Hodgson, and so on, show that it can take years and even decades of investigation before the evidence that led to the quashing of the conviction is found.

This chapter is not meant to be a comprehensive guide on how to investigate an alleged wrongful conviction. Rather, its aim is to provide a general and systematic method of investigation that can assist alleged victims of wrongful conviction and those seeking to investigate claims of innocence.

Step 1: Ensuring the retention of evidence and case documents

Before commencing an investigation into an alleged wrongful conviction, it is crucial to ensure that ALL evidence and documents obtained in the course of investigation are not destroyed. To this end, the following provides an outline of the respective retention policies of the Police, the Forensic Science Service (FSS) and solicitors firms.

Retention of material by the police

The duty of the police to retain material relevant to the investigation is set out in the Code of Practice made under s.23 of the Criminal Procedure and Investigations Act 1996 (CPIA).

Under the Code of Practice, all material which may be relevant to the investigation must be retained by the police until a decision is made on whether or not a person should be charged with the offence. If the Crown Prosecution Service (CPS) decides to proceed with criminal charges, all relevant material must be retained at least until the defendant is convicted, acquitted or the CPS decides not to proceed with the case.

Upon a conviction, all relevant material must be retained by the police until:

- the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order;
- six months from the date of conviction in cases where a custodial sentence has not been imposed, or, where the custodial sentence given is less than 6 months.

If an appeal against conviction is in progress, all material must be retained until the appeal is determined. Similarly, if an application has been made to the CCRC, all material must be retained until the CCRC reaches a decision or until the appeal resulting from a referral by the CCRC is heard.

If you are still seeking to challenge your conviction even after you have lost in your appeal or the CCRC has refused to refer your case back to the appeal courts, it is vital that you make a formal written request to the relevant police force for all material relating to your case to be retained.

Retention of material by the FSS and other forensic science providers

The CPIA does not cover third parties such as the FSS. Instead, the main provisions relating to the retention of case material are detailed in a *Memorandum of Understanding* between the Association of Chief Police Officers (ACPO) and the FSS. These are simply ‘best practices’, rather than mandatory provisions that impose specific duties on forensic scientists in relation to the preservation of material.

All items submitted by the police to the FSS will normally be returned to the police upon completion of the laboratory examination except in circumstances where the samples are thought to pose a potential hazard (e.g. biological samples such as blood), or, where an agreement has been reached with a relevant police force/organisation for the FSS to retain them, or part of them, under specialised storage conditions, for reference purposes or for possible future re-examination using improved techniques.

The FSS will maintain a documented audit trail in relation to retained and destroyed material.

The FSS will retain material for **30 years** as a matter of course in serious cases including the following:

- Murder (including attempted murder)
- Other suspicious deaths
- Section 18 assaults
- Terrorism
- Explosives
- Rape

- Kidnapping and abduction
- Blackmail
- Robbery
- Aggravated burglary

Materials relating to all other types of offences will be retained for a minimum period of **7 years**.

However, materials in the following type of cases will only be stored for **3 years**:

- Simple possession of drugs
- Driving after consuming alcohol or drugs
- Alcohol technical defence

It is important to note that the 30, 7 and 3 years retention periods **do not** cover 'items of a perishable nature' such as bodily fluid samples which can be listed for destruction even prior to the conviction. A 'Notification of Intention to Destroy Items of a Perishable Nature' will be sent to the defence team prior to destruction which lists the items that the FSS are intending to dispose of.

As with material retained by the police, exhibits and samples held by the FSS could be vital in proving a claim of innocence. They could be tested and analysed with forms of forensic science techniques not utilised or not available at the time of the police investigation which could yield results that exonerate an alleged victim of wrongful conviction.

It is crucial that alleged victims of wrongful convictions instruct their defence team to respond to the FSS's 'Notification of Intention to Destroy Items of a Perishable Nature' and request for the destruction to be stayed - stopped. In addition, a formal request to the FSS should be made for other non-perishable materials to be retained beyond the minimum retention period.

In addition, even though the original item has been destroyed, it is possible that material taken from the item has been retained. Checks should be made whether such derived samples exist; for example, DNA extracts that may have been frozen. Items listed on the destruction order might also still exist even if the original defence solicitor had failed to make a request for them to be retained. It is, therefore, worth contacting the FSS to ascertain the specific items and samples that they still hold in relation to your case.

Finally, it is important to point out that the police are increasingly using other forensic science providers. The retention policy with forensic science providers other than the FSS is contained within the General Specification Schedule 6A Items 3.22-3.26 Storage, Retention and Disposal. The details of this policy are the same as the *Memorandum of Understanding* between the Association of Chief Police Officers (ACPO) and the FSS, i.e. the 3, 7 and 30 year guidance, with the option for

forces to request extension periods.

It is recommended that it be requested in writing to the forensic science provider and the investigating police force that all items be retained. The reason that the police need to be contacted is that once a forensic science provider has finished with a case, most exhibits will be sent back to the police. However, certain items such as microscope slides, DNA extracts, acetate sheets containing fibre tape lifts etc will be retained by the forensic science provider for a variable amount of time.

Case study

Sean Hodgson was convicted for the murder of 22 year old Teresa De Simone in 1979. In March 2009, after serving 27 years in prison, his conviction was overturned when DNA testing of the semen sample collected at the crime scene did not match his profile. Hodgson could have been exonerated 11 years earlier had the FSS not incorrectly declared that all exhibits in the case were destroyed when the first request for DNA testing on the samples was made.



Retention of material by solicitors

The Law Society does not specify how long individual files should be retained. Most law firms will retain files for a minimum of six years from when the case is closed. It is crucial that alleged victims of wrongful conviction instruct their solicitor **in writing** not to destroy their files, including instructions and briefs, attendance notes and correspondences sent to third parties on their behalf.

Solicitors will typically invite their clients to take possession of their own papers when the case is closed. However, this is not always ideal if the client is in prison as most prisons only allow inmates to retain a limited quantity of paperwork in their cells. If alleged victims of wrongful conviction are in prison, it is advisable that they either ask for their file to be transferred to a reliable family member or supporter or ask for it to be retained within the law firm's storage facility until they find another solicitor that their case documents can be transferred to.

It is vital that alleged victims of wrongful conviction do not lose any documents that have been released to them or their families/supporters. If alleged victims of wrongful conviction are seeking assistance from other law firms or voluntary groups such as innocence projects, they must always send their documents or copies of them by registered mail to ensure that they do not get lost in the post.

In addition, alleged victims of wrongful conviction should not dispose of any documents or evidence which they think may be irrelevant to their case. Witness statements, reports and other documents which they may think are unhelpful to their claim of innocence might subsequently prove to be highly important in proving that they are innocent!

Step 2: Understanding how and why the jury convicted

The first step in investigating any alleged wrongful conviction is to examine the trial proceedings and try to understand how and why the jury decided to convict.

The best way of making sense of how the conviction was obtained is by reading through the trial transcript and the judge's summing up. Although, ideally, the transcript of the entire trial should be obtained, this can be very costly, often amounting to thousands of pounds. Transcripts of the judge's summing up of the verdict can be obtained by the Registrar on application for leave to appeal against conviction.

Read the trial transcript and/or judge's summing up carefully and make a detailed record of the following:

The Prosecution's case

- What is the prosecution's version of what happened, i.e. why the crime happened (e.g. motive), when and where the crime happened, and, how the alleged crime was committed.
- What evidence was produced by the prosecution to support its version of events?
- What evidence was produced by the prosecution to undermine the defence's case?
- It would be useful to construct a list of all the prosecution witnesses (including expert witnesses, forensic scientists and police officers) who testified in court or whose statements were read out in court, and, the evidence given by each of these witnesses.

The Defence's case

- What is the defence's version of events, i.e. the defendant's account of what s/he was doing at the time the alleged crime took place, where s/he was, and why it was not the defendant who committed the alleged crime.
- What evidence was produced by the defence to support its version of events?
- What evidence was produced by the defence to undermine the prosecution's case?
- Once again, it helps to construct a list of all the defence witnesses whose evidence was used in court and the evidence given by each respective witness. Look, also, for any significant gaps in the judge's summing up of the evidence and note the weight s/he attaches to the evidence of each witness.

Evidence of ‘facts’

‘Factual evidence’ consists of evidence that is clear and undisputed and is not contested by the prosecution or the defence. What constitutes ‘factual evidence’ varies from case to case. It might include telephone records, utility bills, employment logs, pathology reports, CCTV footages or witnesses’ accounts of when the victim, defendant or witness was last seen at a particular place, etc.

Step 3: Going beyond the trial documents

Going through the judge’s summing up and the trial transcripts only provides a picture of the circumstances that led to the conviction. Whilst this is a crucial starting point, it is equally, if not more, important to go beyond the key trial documents and get to grips with how the police investigation was conducted, how the evidence was obtained, and whether there is evidence that could support your case at trial which was not disclosed by the prosecution or which was omitted by the defence team.

The following provides a general (although not exhaustive) checklist of materials that might be required for a thorough investigation to be undertaken:

1. Schedule of Non-Sensitive Unused Material. This is a record of all unused material classified by the disclosure officer as ‘non-sensitive’ that is given to the defence so that they can consider whether or not to seek further disclosure.
2. Unused Materials. These include witness statements, forensic reports and other records that are contained in the Schedule of Non-Sensitive Unused Material.
3. Defence statements
4. Medical examination reports
5. Any Public Interest Immunity (PII) applications made to the court
6. Interview transcripts
7. Transcripts of interviews with other suspects
8. Previous convictions of the defendant, witnesses and other suspects
9. Scene of crime records, photographs and videos
10. Laboratory case files
11. Incident Report Log Book
12. HOLMES computer records
13. CID Office Diary. This is not disclosed unless requested by solicitor.

14. Notebooks or desk diaries of CID Officers. This is not disclosed unless requested by solicitor.
15. Custody records
16. Search warrants
17. Records of House-to-House Enquiries
18. RIPA application forms. These are applications for permission to place bugs and make recordings.
19. Post-mortem photographs
20. Pathology and scientific reports
21. Solicitor's correspondence file
22. Appeal documents such as advice on appeal, appeal judgment
23. CCRC Statement of Reasons
24. All disclosed material secured in the course of review by the CCRC

Bear in mind, also, that other agencies may also hold documents relevant to your defence, e.g. local authorities may have maps of scenes of crime, CCTV pictures. Medical and social care agencies may hold relevant records relating to your accuser and/or witnesses. Your legal adviser may be able to access these.

Step 4: Investigating the evidence that led to your conviction

Once a person has been convicted, simply saying to the appeal courts or the CCRC, 'I am innocent' or 'the prosecution witness lied in court and the evidence against me is false or flawed' is not going to overturn the conviction. Indeed, the presumption of innocence can be said to be reversed when a person is found guilty of a criminal offence. This means that you have to actively find evidence that undermines the prosecution's case and/or produce new evidence that could positively establish that alleged victims of wrongful conviction are innocent of the crime that they have been convicted of.

This section provides some general tips on how you can investigate the evidence that led to the alleged wrongful conviction. Of course, case investigation strategies vary from case to case but the overarching principle is to understand the key evidence that led to the conviction and seek to undermine it or disprove it totally. The following provides an outline of the main forms of evidence that are often used by the prosecution to obtain convictions and how you might investigate them to prove their unreliability:

Witness testimonies

Witness testimonies can range from an accuser's allegations, testimonies of a co-accused to witnesses who support part of the prosecution's case against an alleged victims of wrongful conviction (for example, a witness might testify that an alleged victim of a wrongful conviction confessed to him/her; they might testify that they witnessed them committing the crime; they might say that they saw them in the vicinity of the crime scene round the time when the crime allegedly occurred; or, they might say that they told them in the past that they planned to commit the crime).

As demonstrated by cases of wrongful convictions that have been overturned (see Chapter 2), there are a variety of reasons why witnesses might make false allegations or give false testimonies. They might have been pressured by the police to give false evidence, they might have a financial or other incentive to do so, they might have a grudge against the alleged victim of wrongful conviction, or they might have a psychological disorder which makes them prone to making false allegations.

However, unless the witnesses or the accuser(s) are willing to retract their evidence, it is insufficient to simply state the reasons why they might lie. Evidence needs to be found that contradicts their statements or testimonies. The following are some pointers and key questions you should investigate when seeking to disprove the evidence of a prosecution witness:

- Arrange all used and unused witness statements in chronological order. This will give some sense of the order in which witnesses were interviewed by the police and when a particular piece of evidence came to light.

- Look at the statement(s) given by the witness to the police or the transcript(s) of his/her interview(s) with the police. Is the evidence given to the police consistent with the evidence that the witness gave in court? If not, what are the reasons behind the change in evidence?
- If a witness provided more than one statement, and the evidence which incriminates the alleged victim of wrongful conviction only came out in the later statement, it is crucial to question why the witness did not provide the evidence in his or her earlier statement(s).
- Look at the police notebook to find out what led the police to interview a particular witness.
- If you think that a witness might have been pressured or offered incentives by the police to give false evidence, try to obtain the particular police officer's disciplinary records.
- Look into all the unused material, particularly unused witness statements - is there anything in the unused material that contradicts the witness's evidence?
- Try to obtain as much information as you can about the background of the witness or the accuser. Does s/he have a history of making false allegations? Is the witness a vulnerable witness? Could the witness or the accuser have a psychological disorder that makes him or her prone to giving false testimonies?
- Are there any potential witnesses, including alibis, who could support the alleged victim of a wrongful conviction's defence that their defence solicitor at trial failed to interview and/or produce in court? If so, obtain affidavits from them.
- Could the alleged victim of a wrongful conviction's employment logs, phone records, receipts, travel documents, bank statements, utility bills, etc., prove that they were not in the location on the date(s) when the offence was alleged to have taken place?
- Has the witness or accuser confessed to other people that they have given false testimonies since the conviction? If so, obtain affidavits from the person(s) that the witness or accuser has confessed to.

Eyewitness identification

Eyewitness misidentification is the most common cause of wrongful convictions in the United States, featuring in over 75 per cent of convictions which have subsequently been overturned through DNA testing. Although the actual statistics are unknown, this phenomenon does not appear to be as prevalent in the United Kingdom.

However, if eyewitness identification evidence featured in the prosecution's case at trial and you think that the eyewitness might have been genuinely mistaken, (i.e. you are not claiming that the eyewitness lied to the police or in court) the following

pointers could assist in proving that the eyewitness identification evidence is unreliable:

- **Turnbull Directions:** These are guidelines which were developed in the case of *R v Turnbull* where Lord Widgery CJ laid down warnings which should be given to the jury where a defendant is claiming mistaken identification by an eyewitness. These warnings include: the length of time the witness saw the suspect and the distance between them; visibility at the time the witness saw the suspect and whether there are any objects which might obstruct the witness's view; whether the witness knows the suspect or has seen him/her before; any particular reason for the witness to remember the suspect; time lapse between seeing the suspect and giving evidence; any inconsistencies or errors in the description given by the witness.
- Check whether the identification procedure complies with the Police and Criminal Evidence Act 1984, particularly, the Code of Practice for the Identification of Persons by Police Officers (Code D).
- If the alleged victim of a wrongful conviction was identified on an ID parade, examine the pre-parade procedure. For instance, was the witness shown CCTV footage prior to the ID parade? If so, the witness might have based his/her identification on what was in the footage, rather than what s/he actually witnessed.
- The witness should not see the suspect or any photographs or description of the suspect prior to the ID parade. Check whether the witness could have had sight of a photograph of the suspect prior to the ID parade, or had sight of the suspect in the police station prior to the ID parade.
- Could the witness have read or heard any description of the suspect from the media prior to making the identification?
- If the identification is made by way of showing of photographs, the following steps should be complied with in accordance with the regulations set out in PACE: i) The process must be supervised by a Sergeant; ii) The first description given by the witness must be recorded before any photographs are shown to the witness; iii) Only one witness at a time may view the photographs; iv) There must be not less than 12 photographs shown to the witness; v) The showing of photographs should stop if a positive ID is made by a witness; vi) A record of the whole process should be kept.
- Could there be any potential problems with the way the ID parade was carried out? For instance, if the witness is from the same area as the volunteers and/or knows them, s/he may select the defendant not because s/he positively identifies him/her as the person s/he had seen committing the crime, but by way of elimination.
- If the parade is held seated, the witness does not have the opportunity to examine

the defendant's height and may incorrectly identify the defendant although s/he could not possibly be the offender because of the height difference.

- Always compare the witness identification with the very first description of the suspect, which may be by way of description given in a '999' call or a verbal description given by a witness to a police officer at the scene of crime.
- Post-parade identification: If a witness did not identify the defendant during the ID parade, but makes the identification subsequently, such post-parade identification evidence has to be treated with extreme caution. Questions need to be asked about whether or not the witness could have been influenced for example, by the media, other witnesses or, even, police officers, and whether his or her reason for failing to identify the defendant during the ID parade stacks up.
- Are there descriptions from other witness(es) in the unused material which do not match the identification evidence of the Prosecution witness?

The above is culled from Crampton, S. (2005) 'Identification Issues'. Available at: <<http://www.unitedagainstinjustice.org.uk>>

Confessions

False confession has featured in many high profile cases of wrongful convictions in England and Wales. There is a long list of examples, including the Guildford Four, Birmingham Six, Cardiff Three, Cardiff Newsagent Three, Paul Blackburn, Robert Brown and, more recently, the cases of Sean Hodgson and Ian Lawless. These cases demonstrate two key reasons why innocent individuals would confess to crimes they did not commit. They might have been subjected to coercive or inappropriate police interrogation techniques. Alternatively, they might suffer from a psychological or personality disorder that makes them vulnerable to making false confessions.

If an alleged victim of wrongful conviction is convicted on the basis of a confession, and s/he is now claiming that the confession is false, the following pointers might assist in showing the unreliability of the confession:

- Following the introduction of PACE, all police interviews with suspects have to be audio recorded. This has changed police investigation practices and confessions now play a much lesser role in the achieving of convictions. However, if an alleged victim of a wrongful conviction is claiming that they were forced into making a false confession post-PACE, check whether the police have complied with the provisions set out under the PACE Code of Practice C, which deals with questioning and treatment of suspects, and PACE Code of Practice E, which sets out the procedures that the interviewing officer should follow when recording the interview.
- If the alleged victim of a wrongful conviction is a vulnerable suspect, for instance, if s/he was a minor at the time of questioning or suffers from a mental or physical disability, check to see if the proper procedures for interviewing vulnerable suspects were adhered to.
- Does the confession contain descriptions, for instance, of how the crime was committed which do not fit with the evidence?
- Look through all the statements and transcripts of interviews with the alleged victim of a wrongful conviction. At which point did the confession emerge? Are there any inconsistencies in the evidence given by the alleged victim of a wrongful conviction in the course of the police investigation? Did the alleged victim attempt to retract their confession in the course of the police investigation?
- Look at the custody record – how long was the alleged victim of a wrongful conviction detained in custody before making the confession?
- Was the confession made in the presence of a solicitor?
- If the alleged victim of a wrongful conviction is alleging that the confession was fabricated by the police, send the statement for analysis by a forensic psychologist. There might be words or forms of expression contained in the statement that does not fit with the age and/or educational background of the alleged victim

- If the alleged victim might have an undiagnosed mental or personality disorder which could make him/her vulnerable to making a false confession, arrange for a diagnosis by a forensic psychologist.

Forensic science and/or expert evidence

Expert evidence is a growing form of evidence used by the police and the prosecution to gain convictions. This includes evidence such as DNA, fingerprints, fibres, cell site evidence, digital evidence obtained from computers, facial mapping analysis, or simply the opinions and testimonies of expert witnesses. Despite the 'CSI effect' and the widespread belief in its reliability, much forensic science and expert testimonies are far from foolproof. Research and cases of wrongful convictions which have subsequently been overturned demonstrate the limitations of such forms of evidence and how they can cause the wrongful conviction of innocent people.

The wide range and variety of forensic science evidence means that it is not possible to provide a comprehensive account of the limitations of each form of forensic evidence here. Generally this form of evidence has two components: 1. Is there a match between something from the crime scene and the suspect? For example, clothes, DNA, hairs, fibres, paint, semen; and, 2. What is the significance of that match? That is, how many people or things could that match be made to? So, if a paint is very common then it has very little value as evidence if it was found on a suspect, but if it is very rare type of specialist paint then it has more evidential value. This section provides some tips on how to conduct an investigation into the reliability of such forms of evidence and resources that might assist in your research.

- **Trace the trace evidence:** If you believe that the material that was matched was somehow introduced to the evidence, such as DNA or fibres, it is crucial that the entire process is reviewed from the collection of the evidence to its presentation in court. The purpose of that check is to see if there was any opportunity for the evidence to be transferred in a different way to that claimed by the Crown. For example, a police officer visiting a firearms scene then interviewing the suspect could transfer gunshot residue to the suspect's clothes. Try to establish a timeline or diary of exactly what happened to the evidential item. Go through the scene of crime records – when, where and who collected the evidence? Who and when did the scene of crime officer give the evidence to? Where and under what conditions was the evidence stored? When was it sent to the forensic laboratory for analysis? Who conducted the analysis and when? Does the statement(s) or evidence provided by the forensic scientist reflect the results that s/he had obtained? Were the proper procedures followed in the collection and examination of the evidence? There should have been records created at the time; statements may or may not be based on these. It is the record made at the time that is the most useful document to have.
- Try to find out as much as you can about the expert evidence that led to the

conviction, including the specific techniques involved, best practices and the potential limitations of the form of evidence. A good starting point in the National Academy of Science's Report: *Strengthening Forensic Science in the United States: A Path Forward*. This report provides a comprehensive discussion about the problems with a whole range of forensic methods and technologies. You can search the internet for experts. However, most experts will not do much more unless you have a lawyer as, although the evidence may be scientifically flawed, there may be legal reasons why that is not enough to mount an appeal.

- If you find an expert to re-examine the evidence that led to the conviction make sure that the expert has the necessary expertise in the area of evidence you are seeking opinion on. This is not easy for the lay person, so you may want to speak to a few experts before making your mind up.
- Discover whether there are cases in the UK or internationally where victims of wrongful conviction have overturned their convictions and the form of forensic evidence that you are challenging featured in the evidence that led to their wrongful convictions.
- Be cautious of terms used by forensic scientists such as 'cannot be excluded'; 'consistent with' or 'indistinguishable'. These terms are potentially misleading and can cause confusion or wrongly placed emphasis on evidence or argument presented to a jury of ordinary people. For instance, the terms 'cannot be excluded' and 'indistinguishable' are not the same as saying that the evidence is an identical match. Similarly, evidence which is 'consistent with' the prosecution's case might equally be 'consistent with' a variety of other scenarios which might support the defence's case. It is important to understand the subtleties of terms used by experts or even lawyers.
- Clarify any questions you have raised from your research with the expert.
- Could the evidence be tested using more advanced techniques?
- If the alleged victim of a wrongful conviction was convicted on evidence such as DNA, fingerprints or bite marks, and they are absolutely convinced that this/these could not originate from them, get the actual evidence re-tested by another forensic expert.

Investigating police investigations

In addition to challenging the evidence that led to the alleged wrongful conviction, relevant policies such as M.I.R.S.A.P. (Major Incident Room Standardised Administrative Procedures) published by the Home Office, the Senior Investigating Officers Manual/Briefing Papers provide guidelines on how police investigations should be conducted.

Police action often arises in response to intelligence and information contained in statements, documents and exhibits. Check that relevant facts/accounts have

been noted (not glossed over), and have been sequentially numbered, timed, dated, signed and give clear unambiguous instructions requiring an investigator to undertake a specific task in order to fill or eliminate a knowledge gap.

All information should be cross referenced to source documents. Draw up a time line of critical events AND police interventions. A quick way to audit investigations is firstly to identify the key statements, then audit the 'actions' generated by the information contained in the statement(s). Once this is done comparisons can be made with the actual actions taken and what might reasonably have been expected to have happened.

In the case of alleged child abuse, for example, one might expect to see the extent to which efforts were made to trace independent witnesses and locate documents. There would also need to be evidence of background checks on witnesses, the extent to which evidence might unwittingly be recycled e.g. through counselling contacts, support groups, etc.

Efforts should also be made to cross-reference the information obtained with source documents and to examine any corroborative evidence received. When examining policy books always look for any procedural gaps or omissions in the process and in the evidence obtained.

Step 5: Proving your innocence through DNA

If an alleged victim of a wrongful conviction has been convicted of an offence that they are claiming they did not commit, it is possible that other or further DNA analysis could exonerate them by identifying the real perpetrators of the crime or excluding them as a suspect.

Since 1989, there have been almost 260 DNA exonerations in the United States. In nearly half of these cases, the true suspects/perpetrators were identified. DNA exonerations are comparatively rare in the UK. To date, there have only been two known cases where convictions were overturned post-appeal on the basis that new DNA evidence. The first is the case of Michael Shirley who spent 16 years in prison maintaining his innocence for the murder of Linda Cook. His conviction was quashed in 2003 when DNA testing on the semen found on swabs taken from the deceased yielded results which did not match Shirley or the victim. More recently is the case of Sean Hodgson mentioned above, who overturned his conviction after 27 years of imprisonment when DNA analysis on a semen sample found at the crime scene confirmed that he could not have committed the murder of Teresa De Simone.

Although DNA testing was available since the late 1980s, it did not become a common police practice until the mid 1990s. Further, DNA testing techniques have significantly developed over the last decade and it is now possible to obtain DNA profiles from far lesser quantities of samples, even if the sample is degraded.

If an alleged victim of a wrongful conviction was convicted before the mid 1990s and DNA testing was not used in the course of the police investigation of their case, it is definitely worth checking whether there are any exhibits, such as the alleged murder weapon, clothing worn by the victim or biological samples obtained from the victim or the crime scene such as blood, hair, semen, or unidentified fingerprint(s) which could be subjected to DNA analysis.

If DNA testing was conducted but did not yield any results that inculpated or excluded you, the exhibits or samples could also be subjected to other forms of DNA testing not used by the FSS at the time of the police investigation. The following provides an overview of different forms of DNA testing techniques currently available and what they could do:

SGM Plus

Second Generation Multiplex (SGM) Plus is the main DNA profiling technique used in the UK since 1999. It tests for ten markers known as Short Tandem Repeats (STRs) and a gender marker. Over 80% of DNA profiles on the NDNAD are SGM Plus profiles. It is more sensitive and discriminating than its predecessor, the SGM technique, and with a good profile has a match probability in the region of 1 in 1 billion.

Y-STR

The SGMPlus kit analyses male and female DNA. The Y-STR technique analyses and identifies only male DNA. It is therefore useful in assessing evidence of male contributors to mixtures of DNA, but the statistics are of less evidential value than the SGM Plus technique.

Low-Copy Number DNA

Low Copy Number (LCN) DNA is a more sensitive variation of SGM Plus. LCN DNA analysis was formally introduced by the FSS into its casework in 1999. Whereas conventional SGM Plus analysis requires 50-100 cells for there to be sufficient DNA to yield a profile, LCN requires just a few cells, allowing DNA profiles to be successfully yielded from miniscule amounts of biological materials – such as skin cell or sweat residue from a single fingerprint on a variety of items which an offender may have come into contact with. Although there are limitations in using LCN DNA profiles as evidence to obtain convictions due to its susceptibility to contamination and incorrect results, LCN DNA can be used in some circumstances to produce reliable profiles that could lead to exoneration.

Touch DNA

Touch DNA is frequently used to obtain DNA from surfaces which have no visible stains such as blood or semen, but which might contain cellular material.

Although often confused, Touch DNA is different from LCN DNA. LCN DNA involves analyzing small quantities of DNA through sensitivity enhancement techniques. A Touch DNA sample obtained from skin cells are amplified the same way as blood, semen and other biological samples. The results yielded are therefore deemed to be much more reliable than LCN DNA.

A word of caution

Obtaining a DNA profile from the crime scene which does not match an alleged victim of a wrongful conviction is not automatic evidence of exoneration. All DNA evidence has to be interpreted within a context. If an alleged victim of a wrongful conviction was convicted of a sexual assault, and the DNA profile belonging to someone else was obtained from semen found at the crime scene or on the victim, this may be strong evidence that they are not the person who had committed the offence. Similarly, if further analysis on blood or fingerprints on a murder weapon yields results which do not match the alleged victim of a wrongful conviction, this may be evidence that s/he might indeed be innocent of the crime. Much depends on the specific case circumstances. Expert assistance is essential in this area.

On the other hand, if Low Copy Number DNA testing, for instance, yields a DNA profile from the scene of crime, and the origins of the DNA profile is unknown, i.e. you cannot tell whether the DNA profile came from blood, saliva, or sweat etc., this may not be sufficient evidence to establish the innocence of an alleged victim of a wrongful conviction.

This is because the DNA profile could have been deposited as a result of contamination or by someone completely unconnected to the crime. Inherent limitations with various forms of DNA techniques also mean that unless a full SGM Plus profile is obtained, it is difficult and, indeed, risky to try to identify someone else as the true perpetrator of the crime from the DNA testing results.

This is not to say that you should not attempt DNA testing at all. Indeed, if new DNA techniques are available which could yield results where previous tests could not, then this is something you should consider. However, be realistic about what DNA testing can and cannot achieve and always bear in mind that there are no guarantees that it could produce the outcome an alleged victim of a wrongful conviction may want. Again, expert advice, including a lawyer, can greatly assist in deciding whether to go ahead with further testing.

Step 6: Giving the full story

It is crucial when making an application for an appeal or to the CCRC for a referral back to the appeal courts, that you present the entire narrative of innocence i.e. the full and detailed story of why you are innocent of the crime you have been convicted of, even though the official appeal or CCRC application forms do not ask for it.

DO NOT restrict your applications to what you might think constitute legal grounds of appeal or grounds of referral by the CCRC (e.g. new evidence). Provide the full details of your claim of innocence: what happened at the time when you were alleged to have committed the crime; why you were arrested and charged; why you were (wrongly) convicted; and ALL of the evidence that supports your claim of innocence.

This is crucial for a number of reasons. First, the full story will help to put any submitted grounds of appeal or grounds of referral by the CCRC into context. For instance, if an application for appeal or to the CCRC is made on the ground that the prosecution had failed to disclose the disciplinary record of a police officer, it is important that the appeal court or the CCRC also understands that you are alleging to be wrongly convicted as a result of false evidence given by a prosecution witness whom you suspect was pressured or given incentives by the police officer concerned to make a false testimony.

Second, a single, legal ground alone might not be sufficient for the appeal court to deem your conviction unsafe or the CCRC to feel your case fulfils the 'real possibility test' and refer your case back to the appeal courts (see Chapter 7). However, when considered alongside all other evidence that supports your claim of innocence, even if it was previously presented at trial or could have been presented at your trial and, hence, unlikely to constitute grounds of appeal or referral by the CCRC, it might 'tip the balance' and convince the CCRC to refer the case back to the appeal court and/or the appeal court to overturn the conviction.

Finally, it must always be remembered that judges sitting on the appeal courts, commissioners and case review managers at the CCRC are humans too! Even though they have to work within the rules of the appeal system, it can only benefit your case if you are able to persuade them of your innocence by giving them as full as possible account of why you have been wrongly convicted.

For information on presenting a case see 'Presenting a Case' on the United Against Injustice (UAI) website. Available at:

<<http://www.unitedagainstinjustice.org.uk/advice/presentation.html>>

At the heart of all of the major wrongful conviction cases cited previously are defence solicitors who were committed to the plight of the alleged innocent victims and dedicated themselves to assisting them to overturn their criminal convictions.

Such criminal appeal solicitors are vital in attempts to overturn alleged wrongful convictions. They can use their legal powers to ask for, and obtain, disclosure of evidence, challenge decisions made by authorities such as the Crown Prosecution Service (CPS) or the police, ensure that correspondence to prisoners is confidential and not opened before it reaches them, obtain affidavits from witnesses who want to provide alibis or retract their incriminating statements, they can commission new tests to be conducted to produce new evidence that can call the safety of the conviction into question, they can make applications for appeal or to the Criminal Cases Review Commission (CCRC).

The crucial question is, how do alleged victims of wrongful convictions choose a good solicitor to represent them at appeal or an application to the CCRC?

The short answer is to avoid being wrongly convicted in the first place by having good representation at trial as innocent victims are often unable to ever overturn their criminal convictions. Unfortunately, the reality is that many victims of wrongful conviction learn the hardest way of all by trusting their fate to a solicitor who fails to live up to their expectations. Stories abound of alleged innocent victims of wrongful conviction who had inexperienced solicitors at trial who had never undertaken a murder or rape case before, for example, and who were adamant that their clients could not get convicted because they did not consider that the prosecution evidence was strong enough.

In response, it is common for alleged innocent victims of wrongful conviction to dispense with the services of their defence lawyers when they are convicted for crimes that they say they did not commit or immediately after they fail to overturn their convictions at their first appeal. The thinking seems to be that a different solicitor, one that specialises in criminal appeals or applications to the CCRC, will be able to rectify the inadequacies and/or mistakes of the defence solicitor at trial and the wrongful conviction will be overturned and everything will be put right.

This kind of thinking displays a gross misunderstanding of the criminal appeals system and the role that criminal appeal solicitors play within the system of which they form an intrinsic part. As outlined in Chapter 6, criminal appeals for serious criminal convictions given in the Crown Court are not re-hearings of the entire case but, rather, assessments by CACD judges of whether the evidence in the appeal undermines the safety of the conviction. The arguments are often more about

process than evidence.

Although there are clearly criminal appeal solicitors who are committed to investigating cases thoroughly to assist their clients to overturn their conviction, sometimes even on a pro bono basis when legal aid funding is not available, such lawyers are in the minority. Criminal appeal solicitors do not, generally, operate to correct errors made by their professional colleagues at trial or seek to prove that their clients are innocent. Rather, they work within the framework of the criminal appeals system seeking out new evidence or argument that was not available at the time of the original trial. Criminal appeal lawyers do not tend to see the evidence from the trial, whether it was used or was unused, as appropriate for appeals because it already exists so, by definition, does not fit with their understanding that they are in pursuit of new evidence that will satisfy the CACD or the CCRC.

Instead, what might be termed 'desktop reviews' are preferred of the transcript of the judge's summing up for any apparent misdirection in law or any possible breaches of procedures in the trial process that could constitute grounds of appeal. But such reviews, which simply mirror those undertaken by the CCRC, are unlikely to help alleged innocent victims of wrongful conviction who have already failed in appeal and/or also been refused a referral by the CCRC to prove their innocence.

The need for due diligence

In light of the above, when thinking about employing the services of a criminal appeal solicitor due diligence is essential. Due diligence refers to the care a reasonable person should take before entering into an agreement or a transaction with another party.

An analogy with building contractors is useful in clarifying the point. If we are thinking about investing in home improvements we would, more than likely, do due diligence on the prospective builder to ascertain their suitability for the job at hand: we would take care in choosing a competent building contractor and may consult the Federation of Master Builders (FMB); we would want to know answers to specific such questions as what qualifications and experiences does the builder have? Have they undertaken such building works before? Have any complaints been made about them or their work? Do they have any letters of recommendation from satisfied customers?

It seems odd, then, that we would think such questions quite natural when contracting building works but can feel awkward about asking such questions to a solicitor or barrister. Yet the lack of due diligence in the undertakings of defence lawyers at trial can cost an innocent person their freedom and a lack of due diligence in their appeal lawyers can mean that they may never overturn their wrongful convictions.

Perhaps the answer lies in the fact that if we are going to spend money on building

works or perhaps take out a further mortgage we will be inclined to want to make sure that our money is spent wisely and that we are not ripped off.

Alternatively, alleged innocent victims of wrongful conviction are often reliant on solicitors who work for legal aid and may feel reluctant about asking such difficult questions when the service to them is free. But legal aid solicitors are not doing their clients a favour and they do not work for free. Alleged victims of wrongful convictions have a right to legal representation and legal aid solicitors need their cases to work on so that they can be paid by the Legal Services Commission (LSC).

It is also true that alleged innocent victims of wrongful convictions are desperate for some help and are hopeful that they will, one day, overturn their convictions. When one of the dozens of solicitors that they write to expresses an interest in looking at their case they are, naturally, grateful for their interest. This renders alleged innocent victims of wrongful conviction highly vulnerable to potentially unscrupulous solicitors who may utilise their claim of innocence to obtain money from the LSC for their own ends, possibly to keep their law firms afloat.

In concluding this chapter, the following is a checklist of questions that alleged victims of wrongful convictions are advised to ask any solicitor before instructing them to work for them on their appeal:

- What are your qualifications? It might help to look at their C.V.
- Will you be working on my case? Alleged innocent victims of wrongful conviction may think that they have a qualified solicitor working on their case but may have an unqualified para-legal caseworker.
- What experience do you have of criminal appeals?
- What is your success rate?
- Have you ever overturned cases that are similar to mine? You may have been convicted of murder, rape or historic abuse. You need to ensure that the solicitor has experience in the specific area that is relevant to your case. If a solicitor tells you that you do not have grounds for appeal it is always worth seeking a second opinion.
- Which notable successful appeal cases have you worked on? Along with this question ask whether the evidence that led to the conviction being overturned was found by the solicitor or the victim themselves and their supporters. That is, you want to know if the solicitor actually investigates claims of innocence for clients.
- Have you had any complaints made against you by previous clients? If they have, you also want to know if the complaint was successful.
- Do you have any recommendations from previous clients?
- How will you keep me up to date with the progress being made on my case?

In addition to these questions, alleged victims of wrongful convictions should check with the Law Society of England and Wales to confirm that the solicitor is qualified. Check also with the Solicitors Regulation Authority (SRA) and the Legal Complaints Service (LCS) to determine the solicitor's disciplinary record.

Advising alleged innocent victims of wrongful convictions to do due diligence on their solicitors is not to blame victims for the failures of their legal teams. It is a response to the everyday realities of wrongful convictions where victims sometimes pay the price, often with their freedom, for the failures of their lawyers. Due diligence at the appeal or CCRC stage is a way in which alleged victims of wrongful conviction can regain some semblance of control as they try to overturn their convictions and achieve justice.

Good solicitors should welcome the above questions and checks on their qualifications and disciplinary records that alleged victims of wrongful convictions are advised to ask. It will give them an opportunity to put your mind at rest that they are qualified and experienced to work under your instruction on your appeal. If a solicitor evades your questions or gives you vague answers you may want to try another solicitor.

Always remember that solicitors work for their clients under their instruction and are not doing them a favour. Remember, too, that if a solicitor makes a hash of a case it is likely that it will be their client who bears the brunt. It is of vital importance that alleged victims of wrongful convictions have a solicitor working on their appeal who is passionate about assisting them and with whom they have a good rapport if they are to stand any chance of overturning their conviction.

See the Directory at the back of this book for addresses and phone numbers of the Law Society of England and Wales, the Legal Complaints Service (LCS) and the Solicitors Regulation Authority (SRA).

Innocence Projects

Since 2005, universities across England, Wales and Scotland have established innocence projects to investigate cases of alleged wrongful convictions. To date, there are almost 30 innocence projects in the UK, of which more than 20 are members of the Innocence Network UK (INUK), the organisation that I established to facilitate and support casework, research and communications in the area of wrongful convictions.

The innocence projects movement emerged in response to growing concerns that the criminal justice system cannot guarantee that innocent victims of wrongful conviction will be able to have their convictions overturned.

As discussed in Chapter 7, the Criminal Cases Review Commission (CCRC) was not designed to rectify the errors of the system and to ensure that wrongful convictions are overturned. As a review body, it is not constituted to undertake thorough investigations into cases of alleged wrongful conviction to try to establish the truthfulness or otherwise of a claim of innocence.

On the contrary, it is entirely tied to the legal process and is, generally, only able to consider new evidence or argument not available at the time of the trial which might impact upon the legal safety of a conviction. This means that evidence of innocence contained in the unused evidence that was not adduced at the time of the trial may not constitute grounds of referral by the CCRC.

INUK's innocence projects do not offer campaigning or victim-support services. They undertake free, impartial casework investigations to alleged factually innocent victims of wrongful conviction who have exhausted the normal appeals process.

To date, the INUK and its network of member innocence projects are collectively working on over 80 cases of alleged wrongful convictions. Most of these cases involve prisoners serving life or long term sentences for serious offences, over half of whom have already been refused by the CCRC.

What do INUK innocence projects do?

Working under the supervision of staff directors and with the assistance of solicitors and barristers also working on a pro bono (free) basis, innocence projects work to agreed protocols to undertake thorough investigations into claims of innocence. These Protocols, which set out the minimum standards required of member innocence projects in the investigation of cases referred by INUK, are in line with the Attorney General's Pro Bono Protocols (available on the INUK website).

The investigations undertaken by innocence projects generally involve going

through all available unused material, conducting research on forms of evidence and areas of law relevant to the case, following up on any vital leads that could assist in the case, interviewing witnesses and finding new methods such as forensic science technologies that could help to establish whether a claim of innocence is valid.

The objective of INUK's innocence project investigations is to help to exonerate potentially factually innocent individuals in cases where, upon further investigation, there are serious doubts about the reliability of the evidence that led to the conviction and/or where evidence of factual innocence is found.

INUK's innocence projects will make an application to the CCRC (or in Scotland to the Scottish Criminal Cases Review Commission (SCCRC)) if the evidence of possible innocence found is new and not available at the time of the trial, in line with the referral criteria of the CCRC.

It is also possible that INUK's innocence projects will petition the Secretary of State for a Free Pardon under the exercise of the Royal Prerogative of Mercy if a case has already failed in appeal or been refused a referral by the CCRC in cases where there is evidence of innocence that does not meet the CCRC referral criteria.

It is still early days in the innocence project movement and there is, inevitably, going to be a lag between setting up INUK and cases being overturned by the appeal courts following innocence project investigations.

However, there are positive signs that INUK's innocence projects can be helpful as there are currently 8 cases under review by the CCRC and 1 case under review at the SCCRC that were referred to member innocence projects. In addition, one of the cases worked on by the University of Bristol Innocence Project, Simon Hall, was referred back to the Court of Appeal (Criminal Division) (CACD) by the CCRC.

Casework remit and eligibility criteria

Member innocence projects of the INUK only work on cases where an applicant is claiming to be *factually innocent*. This is defined as cases where an individual is claiming to have absolutely no criminal responsibility for the crime occurred including claims that no crime has occurred at all, for example, where deaths are accidental or resultant of natural causes as opposed to criminal homicides.

- INUK's innocence projects **do not** consider claims of technical miscarriages of justice including (but not limited to) the following:
- Sentencing issues
- Claims of partial defence, such as diminished responsibility
- Claims of partial innocence, for instance, where an individual is maintaining innocence of the offence he/she is convicted of but admits legal culpability

for one or more lesser offences, for example, a claim that a murder conviction should have been a conviction for manslaughter or GBH.

Applications to INUK are assessed objectively on a case-by-case basis and are prioritised according to the lines of enquiry and evidence available for an innocence project to pursue. So, for instance, alleged innocent victims of wrongful conviction who could potentially be exonerated through DNA would be prioritised for referral to a member innocence project over convictions for offences based solely on the allegations made by complainants that have little chance of being disproved.

The key limitations of innocence projects

Whilst innocence projects help to meet the unmet legal needs of alleged victims of wrongful conviction whose cases have exhausted the appeals process and fall outside the scope of legal aid, innocence projects are continually grappling with a whole host of problems which limit the casework assistance that they can provide to those they seek to help.

Although the number of member innocence projects has continually grown over the last five years, at the time of writing there remain almost 100 eligible cases on the INUK database that are still awaiting referral to a member innocence project for investigation. As such, there is no guarantee that all cases which are deemed to be eligible will be able to have their claims of innocence investigated by an INUK innocence project in the near future.

Another major limitation of innocence projects is that they do not have the powers of investigation that statutory bodies such as the CCRC possess. As a result, innocence projects are often unable to access and/or obtain confidential or sensitive information such as medical records, police log books and diaries and information contained in the police's HOLMES database

At present, neither INUK nor its member innocence projects have the financial resources to commission forensic testing or analysis, although the INUK does have forensic scientists who can offer preliminary review and advice on cases worked on by its member innocence projects on a *pro bono* basis. As such, whilst innocence projects are able to assist with identifying and conducting research on the forms of forensic science technology that can help to establish a claim of innocence, the actual tests and analyses can usually only be carried out if the CCRC commissions it. In such circumstances, INUK member innocence projects will make an application to the CCRC requesting for the required tests to be commissioned.

Finally, as a relatively new venture, innocence projects might lack the skills and knowledge required to assist their 'clients'. In response, INUK supports the casework undertaken by its member innocence projects by sharing its contacts with lawyers, forensic experts, professional investigators, and so on, who can provide advice and assistance on areas of casework that innocence projects do not have the expertise to

deal with. INUK also provides conferences and training events for students and staff and facilitates a forum where members can share their experiences and expertise. It is hoped that as the innocence projects movement continues to grow and develop so, too, will their expertise and capacity to provide more effective assistance to alleged victims of wrongful conviction.

The need for due diligence

In light of the inherent shortcomings of innocence projects and the discussion on solicitors in the last Chapter, it is advisable that anyone seeking the assistance of an innocence project do due diligence by asking the following questions first:

- What is your motivation for working on my case? Innocence projects vary. Many innocence projects were established as a vehicle for legal education, to give law students opportunities to gain experiences and legal skills by working on real cases. This is not necessarily a problem so long as there are clear assurances from the innocence project that student education will not take priority or impact detrimentally on making progress with the investigation into your claim of innocence.
- Do you have the necessary facilities to ensure that my documents are safe with you?
- Do you have professional indemnity insurance?
- How many cases are you working on?
- Is the staff director of the innocence project actively working on my case or is it primarily the students?
- How do you ensure continuity between teams of students working on my case?
- Are you an INUK innocence project? If not, what is your casework criteria and what casework protocols, if any, do you work to?
- Who decides the investigative strategy and the work that needs to be undertaken on my case?
- What kind of investigations do you undertake? If you think that there is a line of enquiry that an innocence project should follow up, for instance, a witness that you think they should trace and interview, ask them if they are willing and able to do this and if not why not. Not all innocence projects are the same. Some will be proactive in their investigations to determine whether claims of innocence are valid or not, others will restrict themselves only to 'desktop reviews' of key trial and appeal documents in search of possible legal grounds of appeal.
- How many students will be working on my case?

- How much time will be dedicated to my case? How many hours a week? Will you work on my case only during term time or will the investigation be continual throughout the year?
- How often will you write to me to update me on the progress of your investigation?
- What training do the students receive?
- Do you have evidence of any casework successes?
- Under what circumstances will you terminate your investigation of my case?
- Do you have a complaints policy?

Using the media

By Dr Eamonn O' Neill

Introduction

The issue of alleged wrongful convictions has been inextricably bound up with the UK's media for at least a century. Ever since journalists and authors (Arthur Conan Doyle comes to mind) decided it was their moral duty to throw their weight and considerable profiles behind cases of alleged miscarriages of justice and bring these to the public's attention, whether through letter-writing campaigns to an Editor, or signing a petition, or actually investigating a case and publishing their findings, the media and this important issue have formed a powerful and dangerous partnership.

Historical context

There are many instances of the press and the issue of wrongful convictions coming together. For the purposes of this book however, it is best to briefly focus on the single example already mentioned, Conan Doyle. The cases he supported and assisted on exemplify how much has changed down the decades and paradoxically, also how much has stayed the same.

His two most famous cases involved George Edalji and Oscar Slater: a half-Indian living in England, and a German-Jew living in Scotland. It would be hard work to find two more marginalised members of ethnic-minorities from a century ago, yet through a sense of moral outrage Conan Doyle found himself supporting and publicising both cases widely. The author's standing and reputation catapulted the cases into the public eye and support for them slowly grew until both were satisfactorily resolved.

The involvement of the great writer, the press and the public showed that there was an appetite amongst society for acknowledging that the criminal justice system sometimes gets it wrong and convicts the innocent of crimes they did not commit. Indeed, Conan Doyle's exposure of the Edalji case helped bring about reform of the justice system itself and contributed to the formation of the Court of Criminal Appeal in 1907.

Conan Doyle's relationship with Oscar Slater however, was more fractious and by the time the man was released from prison a war of words broke out between them and they ended their relationship on difficult terms. A notable aspect to the Slater case however, was the fact that Conan Doyle was attracted to the case after reading a brilliant little pamphlet-book written by a lawyer named William Roughead, a

much overlooked person in the whole saga. It was that humble document, which systematically dismantled the case against Slater, which was the spark that ignited the eventual firestorm.

The cases contain many familiar elements which are apparent to anyone with even a cursory knowledge of the history of wrongful convictions in the UK. There is the individual claiming innocence from inside a prison; there is the central mystery of the case itself which is served up for public consumption via the press; there is usually a central victim who readers can also identify with; there is the tantalising possibility that the Establishment – in the form of the police and justice system – got it ‘wrong’ which is always of interest to most open societies; there is the high-profile supporter of the case (and it helps if he is also the author of novels about the world’s greatest detective) who adds credibility to the case, redressing the moral balance when dealing with someone the system has already convicted and locked-up; there is the opportunity for wider society to jump onboard a campaign focusing on a member of an ethnic minority who seems to have suffered injustice for maybe being in the wrong place at the wrong time with the wrong name and nationality; and finally, there is the chance for everyone involved to don the detective’s cloak for a while and try and find the answers to the central questions themselves. All of these parts form an attractive package for journalists, editors and readers and therefore it is no wonder wrongful convictions and the press often form an intoxicating marriage. From time to time however, as in any marriage, things can go wrong.

Occasionally, the same cocktail of ingredients can produce a completely different outcome. The heroic work of Chris Mullin on the Birmingham Six case, for example, shows how a brilliant, exemplary and genuinely imaginative piece of investigative journalism (in his superb book and for *World in Action* on Granada TV) can lead to sections of the tabloid press – notably *The Sun* – vilifying him at every turn. Only with hindsight can we see that their fight with him wasn’t legal, factual or even journalistic – it was purely political. Mullin’s enemies were willing to castigate him in order to annihilate the merest possibility that the public would ever know that the Establishment had wrongfully convicted six Irishmen whose only crime was being who they were in the wrong place and at the wrong time. Lesser journalists would have cracked under the pressure and it is to Mullin’s everlasting credit that his truth did eventually come out.

Just as energetic and enterprising journalism can uncover powerful facts that assist in alleged wrongful conviction cases, poorly-judged and downright lazy journalism can cause mayhem. In the same case of the Birmingham Six, for example, tabloid newspapers not only published erroneous facts before the trial which could have swayed a jury but they went further and called for capital punishment to be brought back. Reading headlines from that era suggests that the newspaper editors had taken leave of their senses and were happy to urge the readers to literally lynch the accused (and as it turned out, innocent) men at the centre of the firestorm. Tougher laws and guidelines flowed from those famous cases making it riskier to jump the gun on cases, but recent examples like Barry George show that certain sections of the media are still willing to frame the facts in a certain way to suit

their preconceived agendas. I have plodded around editors more times than I care to mention trying to interest them in possible wrongful convictions stories. More than once I've been told they would prefer me to interview gangsters because 'that's more glamorous' and I was told several times that such-and-such a prisoner claiming innocence must have done the crime because 'he looks guilty'.

On the other hand intrepid and tenacious reporters do exist at both local and national level. Although the great days of figures like Ludovic Kennedy and the fantastic BBC team at *Rough Justice* have come and gone, it's worth remembering that from time to time, the press does get on board an alleged miscarriage of justice case and uses its considerable resources to investigate and publish on a case. The recent *Guardian* 'Justice on Trial' series was an example of British investigative and socially-engaged journalism at its best. In particular, I felt it was powerful because it comprehensively conveyed the depth and complexity of wrongful convictions in their entirety. It left readers in no doubt that the usual press coverage of cases ending in defiant speeches on the court steps and the popping champagne corks in the background, is fleeting. The nasty reality of the damage done to individuals like Sally Clark and Stuart Gair is rarely covered yet far more revealing and instructional when it is.

Some useful points to remember

- If you are in prison and claiming innocence then writing to a journalist is not a bad idea. However, it might be better to have your lawyer, family or friends reach out instead. Maintaining a degree of emotional separation is useful in the first stages of a press initiative.
- Remember that journalists are ethically bound to investigate any claims of innocence for themselves. They are, for the most part, trained not to sign up to anyone's campaign. They are also trained to be professionally sceptical. So initially do not mistake their apparent detachment as disinterest. Send them your information and let them get on with it.
- If you are a part of an Innocence Project dealing with the press, be as professional as possible. Set ground-rules to conversations (e.g. do you really understand what 'Off the record' means?) and be realistic in your aims. Ask yourself if a story in the local/national newspaper will assist the case? Be honest about the pros and cons of engaging with the wider media also.
- Bear in mind that journalists are influenced by many forces when they get involved in an alleged wrongful conviction case. They might be under pressure from their editor to bring in a 'big' story; they might be keen to prove themselves but have zero-support from an editor when they first speak to you; they might have plenty of investigative skills and resources which could move a case forward; but they might also be well-meaning but unskilled in this field.

- Also, never forget that a journalist expends effort in direct relation to the story they expect will come at the end of the process. Sometimes a ‘story’ in a newspaper full of revelatory facts wrapped up in a scorching narrative might get the readers’ pulse racing but might also land the case in a ditch too. Not all publicity is good publicity. Are the facts unearthed by a journalist for an article on the case at hand better served being looked at by a lawyer connected to the case? Should publication be postponed? These are important questions that you must bear in mind because if you don’t and a story gains its own momentum, you cannot blame the press.
- Timing is everything. Speaking as a journalist myself, I admit that the urge to print a hot story on a miscarriage of justice case frequently overcame the need to call a lawyer and ask whether immediate publishing was a good idea. As a professional reporter that’s how it should be – most of the time. It was only bitter experience on the Robert Brown case which I pursued in print and broadcast for 11 years, that has persuaded me that holding back a development in a story can sometimes pay off for all involved. An example of this from that case involved a witness who claimed that Robert Brown had turned up at her door covered in blood on the day he allegedly murdered a 56 year-old woman named Annie Walsh in Hulme, Manchester. Careful reading of statements led me to doubt this claim and in due-course the witness in question was interviewed for a documentary I produced and directed during which she completely reversed her position. In TV terms this was a scoop but in reality it led to the Appeal Court eventually dismissing this woman’s evidence on the basis she was a flip-flopping witness who could not be trusted. If I had been smarter I would have interviewed her and made sure her new evidence was also recorded afterwards – and separately – by a lawyer. This would have protected all involved and enshrined, to a degree, the seriousness of her claims. So, I now strive to work in a partnership arrangement with lawyers, whilst still maintaining strict professional boundaries where possible. My legal colleagues know I am aiming to put the fullest version of facts before the reading and viewing public, but I am also aware they have their priorities too. It’s an imperfect arrangement, but if we’re united in believing social justice is best served by freeing the innocent and letting the public know what’s going on inside a wrongful conviction case, then we usually find a way to do our jobs without crashing into each other.
- Witnesses do sometimes talk to the journalists more easily however: it’s a fact of life. This is another reason to build a strong and open partnership with the press. I have been astonished on a number of occasions to have witnesses tell me crucial facts which they have denied all knowledge of hours before to police officers, criminal defence lawyers and case staff from the CCRC. I suspect what separated journalists like me is the simple fact we have no legal powers to compel a witness to speak out. So, despite the dodgy image journalists sometimes attract in fictional portrayals, they are seen as the last court of appeal for many on the spectrum of

witnesses who want to have their say.

- Lastly, if all else fails, then a well-placed press piece can undoubtedly shunt a possible wrongful conviction case forward. It can catch the eye of a policeman, a lawyer, and even a judge. The brutal reality is that much of the criminal justice system does work in the shadows. There are fewer and fewer journalists attending courts every day in the UK. This means that the scrutiny of the solitary reporter with a pen and pad sitting in the press gallery has, for the most part, vanished. So the occasionally light-beam of attention from a journalist can jolt the system into action. But bear in mind that reporters are now under greater pressure to produce more articles in shorter times than ever before. Publishers and editors seem to believe in the magical powers of technology to make their journalists be in two places at once and never make mistakes. This means that alleged wrongful conviction cases which demand time and resources to examine, are pushed to one side. Reporters will appreciate someone sending them clearly printed, well-written and coherent proposals suggesting they examine such cases. Do not rant, do not write in strange coloured ink and do not weave wild conspiracy theories. That kind of correspondence ends up in the wastepaper basket. Lay out the facts of the case concisely and in a factually-based narrative. Include a timeline and any coverage you have from the original case. If the reporter responds then be prepared to show them the material you have and then step back.

Conclusion

Inevitably, journalists can sometimes uncover facts which might challenge a claim of wrongful conviction. I urge caution and focus when this occurs. Examine the material, put it in context and see where you end up. I have been asked in recent years to look at, for example, an alleged murder of an individual who was found dead in Scotland in rather murky circumstances. Without divulging too much information, the deceased's relative felt a murder had possibly occurred and asked me to investigate it. Within a few weeks, I arrived at the conclusion that in fact, the police were *correct*, and that the weight of evidence suggested either suicide or accidental death – probably the former.

I felt I'd fulfilled my aim of getting at the 'best obtainable version of the truth', yet this won me no friends: my editor was unhappy because his preconceived 'murder-mystery' story wasn't shaping up as he'd hoped and more seriously, the deceased's relative was angry I had gathered evidence which challenged their preconceived narrative (i.e. murder).

So, be open to the journalist working on an alleged wrongful conviction sometimes turning up something which challenges your position. It happens more often than you might think.

Restoring the presumption of innocence to successful appellants

In concluding this book, the importance of the notion of innocence in the eyes of the public is emphasised and the failures of the criminal justice system to remedy the harm caused to innocent victims of wrongful conviction is highlighted.

In the eyes of the public, the criminal justice system operates to convict the guilty and acquit the innocent. From this perspective, if it should happen that an innocent person is convicted in 'error', then most people would probably think that the appeals system should operate to overturn the conviction in a speedy fashion to reduce the harm that is caused to the victim and their family and restore the legitimacy of the criminal justice system.

The idea that the criminal justice system should be about convicting the guilty and acquitting the innocent is communicated to the public in political statements about how the criminal justice system should function and it is transmitted in portrayals of wrongful convictions and wrongful acquittals in newspapers, television, films and, even, music.

At a very basic level, people want to know if alleged victims of wrongful conviction are innocent or not – if they did it. We want to know if people who claim to be innocent deserve our sympathy and redress from the State or if they got off with it.

As this relates to how the criminal justice system actually operates, alleged innocent victims of wrongful conviction strive to have their convictions overturned in an appeal court thinking that this legal recognition will also correct their wrongful conviction in the eyes of the public.

The reality is that obtaining a successful appeal does not exonerate alleged innocent victims of wrongful conviction entirely, either in a legal sense or in the eyes of the public.

The following extract is from the successful appeal judgement that quashed the convictions of the Bridgwater Four (Patrick Molloy, Jim Robinson, Michael Hickey and Vincent Hickey), widely considered to be innocent of the murder of Carl Bridgwater:

'This Court is not concerned with the guilt or innocence of the appellants, but only with the safety of their convictions. This may, at first sight, appear an unsatisfactory state of affairs, until it is remembered that the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distorted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened' (R v Hickey & Ors [1997] EWCA Crim 2028).

Such judgements fuel whispering campaigns that victims of wrongful conviction are

not innocent and that they 'got off on a technicality', as, indeed, all criminal appeals are highly technical affairs governed by strict rules and procedures.

This, in turn, can act to allow the issue of accountability for the wrongful conviction of the innocent to be sidestepped. It, in effect, acts to downplay the failures of the criminal justice system that led to the wrongful convictions of innocent persons until such unlikely time that the real perpetrators of the crimes for which they were convicted are apprehended and convicted. It suggests that until such an unlikely scenario as the real guilty offender is convicted, their innocence should remain in doubt.

This illustrates that the criminal justice system takes innocence away from victims of wrongful conviction but only very rarely is able to restore it.

Yet, the innocence or otherwise of innocent victims of wrongful convictions is not dependent on the real offenders being apprehended. They are either innocent or they are not.

It is also true, that innocent victims can be wrongly convicted of serious offences when no crime has even occurred. For instance, mothers convicted of murdering their own children who may have died of unexplained natural causes. If the children did die of unexplained natural causes no crime actually occurred.

Given the limits of the existing way that the CACD and the CCRC function, not all innocent victims of wrongful conviction will be able to overturn their convictions; nor will all victims of wrongful convictions will be as fortunate as the Cardiff Three or Sean Hodgson who had the real perpetrators of the crimes for which they were convicted identified by DNA and have their factual innocence established.

If convictions are overturned because new evidence means that they are deemed to be unsafe by the CACD, victims are likely to have a stain on their character for as long as their innocence is not proven.

This is precisely the experience of victims of wrongful conviction who overturned their convictions on contested expert evidence such as Barry George, who spent seven years in prison wrongly convicted for the murder of television presenter Jill Dando until he was acquitted in a re-trial in August 2008. Today, Barry George continues to live with the stigma and public doubts about his innocence on the basis that although the expert evidence that led to their wrongful convictions was discredited, it did not prove that he is innocent.

Mike O' Brien, one of the so-called Cardiff Newsagent Three, convicted for the murder of Philip Saunders, was so keen to prove his innocence in the eyes of the public that almost 10 years after he overturned his conviction he took, and passed, a televised lie detector test. But, there are still those that will doubt his innocence and probably will until such time as the killer of Philip Saunders is brought to justice.

Finally, the decision not to award Sion Jenkins (and others who have successfully overturned their convictions) compensation for his six years of imprisonment emphasises the crucial importance of the notion of innocence.

Case Study

Sion Jenkins was convicted in 1998 for the murder of his step-daughter Billie-Jo Jenkins. His first appeal was unsuccessful in 1999 but his second appeal in August 2004 was successful and the CACD ordered a retrial, with Sion Jenkins being released on bail.



The juries in two subsequent retrials were unable to reach majority verdicts and at the Central criminal Court in London (Old Bailey). In February 2006, The Crown Prosecution Service (CPS) announced that it would seek no further retrials and Sion Jenkins was officially declared not guilty and acquitted.

Sion Jenkins applied for compensation but was refused in August 2010 with a spokesperson from the Ministry of Justice quoted in a BBC News story on the decision as follows:

‘The Court of Appeal has made clear that, in the court’s view, the right test to adopt in deciding whether someone is entitled to compensation is whether they have been shown to be clearly innocent.’

This is profoundly problematic. Criminal trials and appeals are not concerned with absolute truth and whether defendants are clearly innocent. Criminal trials are fallible human tribunals that seek to determine whether defendants are guilty or not guilty of the criminal offence that they are charged with on the basis of the evidence before the court/jury.

Criminal appeals are obtained by new evidence that was not available at the time of the original trial that shows that the evidence that led to the conviction is not reliable, that is, the conviction is unsafe and can no longer stand.

The requirement for successful appellants to ‘clearly show that they are innocent’ is something that can only be shown by those rare cases that are overturned by DNA evidence that leads to the discovery of the real perpetrator that proves innocence and exonerates the victim of the wrongful conviction, for example, Cardiff Three, Stefan Kiszko and Sean Hodgson.

In this light, successful appellants who are able to overturn their convictions by showing that they are unsafe because the evidence that led to the conviction is not reliable should have the presumption of innocence that underpins the criminal justice system restored to them until such time that there is reliable evidence that shows that they are **clearly** guilty.

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Directory of useful organisations

The information provided in this annotated directory of organisations deemed relevant to alleged wrongful convictions does not imply an endorsement of the organisations listed, nor can responsibility be accepted for the content of any linked website. It must also be noted that the information was correct at the time of publication and it cannot be guaranteed that the addresses and websites listed will work all of the time as we have no control over the availability of linked pages.

Free legal or casework assistance

Innocence Network UK (INUK)

The Innocence Network UK (INUK) facilitates casework investigations by member innocence projects in universities in England, Wales and Scotland on claims of innocence by alleged victims of wrongful conviction who have exhausted the normal appeals process.

Write to: Innocence Network UK (INUK), School of Law, University of Bristol, Wills Memorial Building, Queens Road, Bristol. BS8 1RJ

Website: <<http://www.innocencenetwork.org.uk>>

Liberty

Liberty is also known as the National Council for Civil Liberties. Founded in 1934, it is a cross-party, non-party membership organisation at the heart of the movement for fundamental rights and freedoms in England and Wales. Liberty campaigns to protect basic rights and freedoms through the courts, in Parliament and in the wider community. It does this through a combination of public campaigning, test case litigation, parliamentary lobbying, policy analysis and the provision of free advice and information.

Address: 21 Tabard Street, London. SE1 4LA.

Telephone: 020 7403 3888 or 0203 145 0460

Website: <<http://www.liberty-human-rights.org.uk>>

LawWorks (formerly the Solicitor's Pro Bono Unit (SPBU))

LawWorks is a charity which aims to provide free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid.

Write to: LawWorks, National Pro Bono Centre, 48 Chancery Lane, London. WC2A 1JF

Telephone: 020 7092 3940

Website: <<http://www.lawworks.org.uk>>

Bar Pro Bono Unit

The Bar Pro Bono Unit acts as a clearing house, matching barristers prepared to undertake pro bono work with those who need their help.

Write to: Bar Pro Bono Unit, The National Pro Bono Centre, 48 Chancery Lane, London. WC2A 1JF

Telephone: 020 7092 3960

Website: <<http://www.barprobono.org.uk>>

Campaigning/victim/family support organisations

Attempting to prove factual innocence and overturn alleged wrongful convictions is a traumatic experience for victims and their families. The following is a list of some

organisations that give support to alleged innocent victims of wrongful convictions and their families, publish and distribute advice information, and/or lobby for law reform.

United Against Injustice (UAI)

UAI is an association of independent member organisations set up to federate miscarriage of justice campaigns, support groups and organisations. It provides advice, support and information to its members. UAI does not promote individual cases.

Website: <<http://www.unitedagainstinjustice.org.uk>>

The member organisations of UAI are:

INNOCENT

INNOCENT is a Manchester-based organisation which supports and campaigns for alleged victims of wrongful conviction and imprisonment. It comprises of families, friends and supporters of prisoners who have come together to help each other.

Address: Dept. 54, PO Box 282, Oldham. OL1 3FY

Website: <<http://www.innocent.org.uk>>

E-mail: innocent@uk2.net

Yorkshire and Humberside Against Injustice

Address: PO Box 597, Harrogate. HG1 9WZ

Website: <<http://yhai.org.uk>>

E-mail: yhai2006@hotmail.co.uk

London Against Injustice

Meetings are usually the second Tuesday of every month, 7.30 pm, at The Devereux, 20 Deveraux Court, Strand, London. WC2R 3JJ

Website: <<http://www.londonagainstinjustice.co.uk/index.htm>>

E-mail: info@londonagainstinjustice.co.uk

The following organisations provide specialist support in the area of false allegations of sexual and physical abuse:

False Allegations Support Organisation (FASO)

FASO is a voluntary organisation set up to provide information, practical advice and support for anyone affected by false allegations of abuse.

Address: PO Box 4, Crosskeys, Newport. NP11 7YA

Telephone: 0870 241 66 50

Website: <<http://www.false-allegations.org.uk>>

E-mail: support@false-allegations.org.uk

Falsely Accused Carers and Teachers (FACT)

FACT is a UK wide voluntary organisation which exists to support carers, teachers and other professionals falsely accused or wrongly convicted of abuse, to assist investigations and to lobby for change in investigative practice and in the criminal justice system.

Address: PO Box 3074, Cardiff, Wales. CF3 3WZ

Telephone: 02920 777 499

Website: <<http://www.factuk.org>>

E-mail: sec@factuk.org

Other useful organisations:

Progressing Prisoners Maintaining Innocence (PPMI)

PPMI is a working group established in 2004 to raise awareness about the obstacles to progression and parole faced by indeterminate-sentenced prisoners who maintain innocence. The remit of PPMI is essentially to establish the scale of the problem of prisoners maintaining innocence, to raise public awareness about it, and to draw the attention of those in the Ministry of Justice and at the Parole Board to the situation which existed and needed to be addressed. PPMI does not assist in individual cases.

For more information, see: Bromley, A. (2009) 'Innocence a Handicap to Progression' Inside Time, June. Available at: <www.insidetime.org>

SAFARI (Supporting All Falsely Accused with Reference Information)

SAFARI provides information that is likely to be of use to those who are in a position to make necessary changes in our investigative and judicial systems, those who have been affected by false accusations, including the family & friends of victims, and those who have suffered from being pressurised into making false accusations.

Website: <<http://home.vicnet.net.au/~safari>>

Miscarriages of Justice UK (MOJUK)

MOJUK provides information, publicity, free advice and assistance on how to set up a campaign to those people who claim they have been wrongly convicted and that a miscarriage of justice may have occurred.

Website: <<http://www.mojuk.org.uk>>

The Miscarriages of Justice Organisation (MOJO)

MOJO is an organisation set up by Paddy Hill (of the case known as the Birmingham Six) and John McManus. It is dedicated to assisting innocent people both in prison and after their release. Their main objectives are to help counsel innocent people after they are released from prison and to gradually help them come to terms with the modern world. MOJO also acts as an advocacy service helping innocent victims who are still inside prison claiming they are innocent. This is carried out by recommending 'good' defence lawyers, as well as forensic experts and contacts within the media to raise the profile of their cases and bring them to the public's attention.

Address: G MAC 3rd Floor, 34 Albion Street, Glasgow. G1 1LH.

Telephone: 0141 552 7253

Website: <<http://www.mojoscotland.com>>

E-mail: mojoscotland@mac.com

Insidedoubt

INSIDEDOUBT is a website that provides information for anyone who needs help campaigning against miscarriages of justice.

Website: <<http://www.insidedoubt.co.uk>>

E-mail: contact@insidedoubt.co.uk

Key criminal justice system agencies

Criminal Cases Review Commission (CCRC)

The CCRC is the body set up by the Criminal Appeal Act 1995 to investigate possible

miscarriages of justice in England, Wales and Northern Ireland and make referrals to the Court of Appeal (Criminal Division) if there is a 'real possibility' that they will be overturned.

Write to: Criminal Cases Review Commission, Alpha Tower, Suffolk Street Queensway, Birmingham. B1 1TT

Telephone: 0121 633 1800

Website: <<http://ccrc.gov.uk>>

The Crown Prosecution Service (CPS)

The CPS is responsible for prosecuting criminal cases investigated by the police in England and Wales.

Write to: Rose Court, 2 Southwark Bridge, London. SE1 9HS

Website: <<http://www.cps.gov.uk>>

The Parole Board for England and Wales

The Parole Board is an independent body that works with its criminal justice partners to protect the public by risk assessing prisoners to decide whether they can be safely released into the community.

Address: The Parole Board for England and Wales, Grenadier House, 99-105 Horseferry Road, London. SW1P 2DX

Telephone: 0845 251 2220

Website: <<http://www.paroleboard.gov.uk>>

Complaints against solicitors and barristers

Bar Standards Board (BSB)

As the independent regulatory board of the Bar Council, the BSB regulates barristers called to the Bar in England and Wales. It also deals with complaints against barristers.

Write to: Bar Standards Board, 289-293 High Holborn, London. WC1V 7HZ

Telephone: 020 7611 1444

Website: <<http://www.barstandardsboard.org.uk>>

Legal Complaints Service (LCS)

The LCS investigates complaints about solicitors made by members of the public.

Write to: Legal Complaints Service, Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire. CV32 5AE

Telephone: 01926 820082

Website: <<http://www.legalcomplaints.org.uk>>

Solicitors Regulation Authority (SRA)

The Solicitors Regulation Authority (SRA) regulates more than 110,000 solicitors in England and Wales, as well as registered European lawyers and registered foreign lawyers. The SRA is the independent regulatory body of the Law Society of England and Wales.

Write to: Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch. B98 0TD

Telephone: 0870 606 2555

Website: <<http://www.sra.org.uk>>

The Law Society of England and Wales

The Law Society is the overall body that represents solicitors in England and Wales.

Write to: ENGLAND: The Law Society's Hall, 113 Chancery Lane, London. WC2A 1PL

WALES: Law Society Office in Wales, Capital Tower, Greyfriars Road, Cardiff. CF10 3AG

Website: <<http://www.lawsociety.org.uk>>

Complaints against the police

Independent Police Complaints Commission (IPCC)

The IPCC is an organisation that has overall responsibility for the system for complaints against the police.

Write to: Independent Police Complaints Commission, Independent House, Whitwick Business Park, Stenson Road, Coalville. LE67 4JP

Telephone: 08453 002 002

Website: <<http://www.ipcc.gov.uk>>

Forensics

The Forensic Science Service (FSS)

The Forensic Science Service (FSS) is the leading provider of forensic science services to the Police Forces of England and Wales.

Write to: Forensic Science Service Ltd, Trident Court, 2920 Solihull Parkway, Birmingham Business Park, Birmingham. B37 7YN

Website: <<http://www.forensic.gov.uk>>

The Forensic Institute

The Forensic Institute provides specialist forensic scientific, medical, and managerial consultancy, expert witness services, and training in civil or criminal investigations and legal proceedings. It also has an extensive network of experts to provide the expanding knowledge upon which The Institute is founded.

Write to: The Forensic Institute, Baltic Chambers, 50 Wellington Street, Glasgow. G2 6HJ

Website: <<http://www.theforensicinstitute.com>>

Free on-line access legal research resources

British and Irish Legal Information Institute (BAILII)

An extensive archive of British and Irish case law and legislation, European Union case law, Law Commission reports, and other law-related British and Irish material.

Website: <<http://www.bailii.org>>

The UK Statute Law Database (SLD)

The SLD is the official revised edition of the primary legislation of the United Kingdom made available online.

Website: <<http://www.statutelaw.gov.uk>>