

Do judicial procedures obstruct miscarriages of justice from being overturned?

This document attempts to outline justifications for a review of current judicial procedures regarding the criminal justice system and purported miscarriages of justice. It attempts to illustrate how a department and its procedures impact upon the actions of another. One of the key issues addressed is that of the rules of disclosure. In specific instances where it is purported there has been a miscarriage of justice this process has not been addressed adequately, thus causing the search for the truth in an adversarial system such as ours to obscure the real issue of innocence, in addition to other issues such as police misconduct. This document does not request the Committee to address the guilt or innocence of a particular person or to intervene in the judicial process, but to review the following procedures undertaken by specific government departments:

1. Review the methods by which evidence that is not protected under the public interest (PII) can be adduced from the police or forensic science service, including an evaluation of the laws surrounding this for example, The Freedom of Information Act 2000 and The Data Protection Act 1998 in addition to organisations such as the Information Commission Office.
2. Address the underfunding of the Criminal Cases Review Commission (CCRC) with a critique of the handling of their case load, complaints procedure and those instances where the CCRC refuses to act according to its powers conferred by the Criminal Appeal Act 1995.
3. Review the effectiveness of MIRSHAP/HOLMES quality metric.
4. Scrutinise the procedure whereby a constabulary investigates another force or indeed their own.
5. Address the inadequacy of the IPCC in overseeing and obtaining satisfactory results, where the Director of Public Prosecutions (DPP) deems them to be meritorious in securing a conviction.
6. Understand how the use of PII has in certain instances been abused by the DPP and the Police causing documents being deprived from the Defence at trial and in subsequent appeals.
7. Establish how the use of PII in such a manner may cause the public to lose confidence in the criminal justice system where it can be seen that its instigation has simply been to prevent corruption from being brought into the public arena at the cost of an innocent person's liberty, often allowing the real perpetrator to go free to commit further crimes.
8. Assess the current laws that allow a defendant to be named publicly prior to trial, with a view to debating whether such laws affect a right to a fair trial and establish the value in disclosing the name of a defendant prior to conviction. This needs to be addressed owing to a person who is charged with a serious offence being tried in their locality as Jeremy Bamber, Ms May and Eddie Gilfoyle were, aiding the safety of those individuals where the charges are dropped and finally, reducing the

temptation for prosecution witnesses to be induced by press offers of money for their stories upon a successful conviction.

The brief overview in this document illustrates that when observing the facts of the handling of just three example cases, those of Eddie Gilfoyle, Ms May and Jeremy Bamber, there are striking similarities as to the flaws in the procedures that are part of the criminal justice system. This is especially so in the complaints procedure, indeed the similarities extend to other cases but these three miscarriages of justice illustrate a remarkable resemblance of flaws owing to the length of time the convictions have been sustained.

Eddie Gilfoyle

In 1993 Eddie Gilfoyle was found guilty of murdering his wife Paula who was eight and a half months pregnant. He was sentenced to life imprisonment, yet maintained his innocence for nineteen years, he is currently on licence.

Subsequent to complaints made by Mr Gilfoyle's family in 1993, the Police Complaints Authority (PCA) instructed Lancashire Constabulary to investigate over a hundred complaints of police misconduct by the original investigating force, Merseyside Police. In 1994, the 'Gooch' report was made by the supervising officer. It was a damning report revealing evidence illustrating Mr Gilfoyle's innocence while alleging police malpractice and tampering with evidence. As a result of the enquiry, disciplinary action was recommended against thirteen officers in the Merseyside Force. Most of these thirteen were simply given advice, while three of the officers, a Detective Superintendent, a Detective Chief Inspector and a Detective Constable were charged with three disciplinary offences of 'Neglect of Duty.' The PCA refused to disclose details of the particular charges brought. Eventually when the findings were brought to the attention of the DPP in 1994, it was decided there was no case to answer owing to insufficient evidence to gain convictions against the three officers. The case was then returned to Merseyside Police by the PCA, where the officers simply faced disciplinary hearings. Subsequently to this, four years later the Chief Constable of Merseyside held a disciplinary hearing where all charges were dismissed against two of the officers, while the third, the Detective Superintendent was charged, but escaped any consequences owing to his being allowed to retire prior to the hearing. In any event all charges were eventually dropped.

The ramifications of the 'Gooch' enquiry evidentially would have had a material effect upon Mr Gilfoyle's first appeal. Although the 'Gooch' enquiry was supervised by the PCA the 'Gooch Report' which details the finding of the Gooch enquiry, was the property of the Chief Constable of Merseyside and he refused to disclose it to the Defence. This was because Public Interest Immunity was attached to it. Mr Gilfoyle was not allowed to be privy to the evidence obtained in that report in that instance. It was not until Mr Gilfoyle obtained a High Court Order to allow him access to the evidence in the report that the Merseyside Police made disclosure, yet upon scrutiny the bulk of the evidence in the report had been

edited with whole pages and paragraphs blanked out. Thus Mr Gilfoyle's first appeal was lost in October 1995, without any disclosure as to the evidence obtained owing to the 'Gooch' report. Even now the full report, remains conspicuously under PII.

In 1996, a second complaint was made by Mr Gilfoyle's family about the Detective Chief Inspector (a senior police officer) and again the PCA supervised the complaint, it was investigated by Cheshire Police, while the officer in question was promoted during the period under which he was being investigated. The PCA in turn passed their findings to the Chief Constable of Merseyside Police who then was to decide whether the officer had committed a criminal offence. No charges were brought, as the PCA stated that while there was partially substantiated evidence, there was none of perverting the course of justice during the initial investigation. It was recommended that the officer receive advice from the Assistant Chief Constable. Once again Mr Gilfoyle's appeal was lost in 2000, owing to the Appeal Court refusing to adduce evidence from both the Lancashire and Cheshire Constabularies.

In 2009, The Times newspaper attempted to obtain handwritten documents from Merseyside Police under The Freedom of Information Act 2000, while in 1994 the PCA had reported that there were no such documents in existence as to the interviewing of relevant officers. Handwritten interview documents formed part of an internal Merseyside Police enquiry conducted in 1992 into the handling of the alleged crime scene by Merseyside Police Officers. The enquiry ran alongside the murder investigation and was conducted by a senior officer from Merseyside Police. His report is now known as the Humphreys Report and the enquiry and report was completed in August 1992. This was prior to Mr Gilfoyle being charged with the murder. The report was highly critical of the police handling of the alleged crime scene. Prior to the trial the Merseyside Police took steps to withhold this report from the Defence and the CPS and consequently it did not feature at the trial. The handwritten documents were in fact discovered to exist in 1995, while the journalist who made the application in 2009 was informed otherwise. Through his contacts the journalist obtained a bundle of missing documents, among them were the handwritten notes that Merseyside Police had purported never existed, while on the face of it, in 1994, the PCA had simply accepted the explanation of Merseyside Police that they did not exist. The notes that were denied to have existed contained material evidence as to the details of Paula's death. The accounts included details of the time of her death, which prima facie would have given Mr Gilfoyle an alibi at trial. Originally at trial the Defence were advised that there was no recording of the time of death of Paula, (similarly, there was no time of death recorded for any of the deceased in the Jeremy Bamber trial. The Crown Prosecution Service (CPS), refused to deal with this new evidence, insisting that Paula's time of death had been dealt with properly at trial. Thus The Times eventually published the documents, in June 2010. The Attorney General, Dominic Grieve and the CPS apologised after it became known that the government had been given the wrong information about when the CPS first became aware of the Humphreys Report. It was clear that the police had taken steps to withhold the

Humphreys report from both the prosecution and the defence during trial. This was a report that outlined the police blunders while at the crime scene, (this is similar to the circumstances surrounding the Dickinson report and its evidence was withheld from the Bamber trial and two subsequent appeals).

Eddie Gilfoyle was released on licence with his conviction still intact after eighteen years in December 2010. The parole board illegally implemented a gagging order as part of his release conditions, this was subsequently lifted after media exposure.

Susan May

Susan May was convicted of the murder of her Aunt in May 1993. She has always maintained innocence and after serving twelve years in prison Ms May was freed on parole having lost two appeals, the CCRC have now closed their files on Susan May's case.

The investigation into Susan May's case has been regarded with a view to the Byford Reforms and the common law rules of disclosure in criminal cases. From this it is deemed not to have met the relevant legislation or recommendations. Ms May has been trying to obtain documentation from the police for many years, but to no avail. This is in breach of the Attorney Generals' Guidelines, S.7 (a) of the Criminal Procedure and Investigations Act 1996, and the Human Rights Act 1998.

Both the CCRC and the PCA have found as fact that Susan May's police statements were improperly taken and in breach of the Police and Criminal Evidence Act 1984 (PACE) regulations, thus rendering them tainted and inadmissible at trial or in appeal. While these regulatory bodies that are an integral part of the criminal justice system, they make material evidential judgements as to the investigation of a case, it appears that their findings are not deemed relevant where the accused's guilt or innocence is in issue. Notwithstanding their findings, their recommendations appear to have been ignored.

While findings by Susan May's legal and forensic teams show that the credibility of both the police and forensic scientists has been impugned. Susan May's case document 'Reasons to Doubt' catalogues a trail of misconduct by forensic teams and police, resulting in proof of evidence being tainted by officers. There are also relevant unresolved enquiries which have not been pursued, including nine fingerprints from the crime scene which remain unidentified, (as in the Jeremy Bamber case there also remain lines of enquiry un-pursued regarding the integrity of the continuity of evidence provided by the photographs).

Jeremy Bamber

In October 1986 Jeremy Bamber was found guilty by a majority verdict, 10 – 2 of murdering five members of his family. He was sentenced to life with a minimum of twenty-five years, later upgraded to a whole life tariff. Jeremy Bamber has always maintained his innocence,

while obtaining and fighting for original handwritten material at the time of the incident has been essential in his fight to clear his name.

An internal enquiry was carried out into the original investigation of the case by DCI Dickinson in 1986. The majority of documents, including the full report remained undisclosed to the Defence until after the CCRC put the case to appeal in 2002. Furthermore, contents from this enquiry have illustrated serious contradictions impugning the credibility of statements and confirmation of key witnesses committing perjury in court. Interviews reflect worrying inconsistencies relating to the crime scene. These were denied to Jeremy Bamber at trial and both appeals.

The City of London Police (COLP) launched an investigation on behalf of the PCA in 1991, after Jeremy Bamber, without the aid of a lawyer, made thirteen serious allegations of criminality against Essex Police officers. Charges were brought by COLP against five Essex Police Officers and it is only recently that some of the documents from the enquiry were mistakenly disclosed. Many of these papers show that police misconduct was simply explained as 'administrative error.' Other documents leaked show that Essex Police refused to disclose a number of original statements to the defence, as it was felt that non-disclosure would 'obviate the risk of Bamber making further complaints.' Jeremy Bamber now has a number of helpful documents illustrating that the chain of evidence relating directly to the provenance of the sound moderator that was material to the prosecution's case was in fact tampered with, evidence includes witness statements made to COLP by members of the Forensic Science Service detailing that their statements had been altered without their knowledge.

COLP in conjunction with the PCA and the DPP found that there was no case to answer as to the allegations made by Jeremy Bamber and all charges were dropped. Thus the then Home Secretary was misled and ruled that the case could not be returned to the Appeal Court. Just as in Eddie Gilfoyle's case the final report disclosed to Jeremy Bamber pre his 2002 appeal had whole pages and paragraphs blanked out, much like the 'Gooch' report. However, in 2004 a second report was 'leaked' which is a different version with many of the missing paragraphs appearing, providing valuable evidence for Jeremy Bamber's appeal currently lodged with the CCRC.

In 1996, Essex Police Special Branch illegally destroyed all DNA exhibits (apart from the sound moderator) despite a judicial review ruling in favour of Bamber which ordered the Home Office to disclose the materials. No one has ever been called to account for this. Other police reports show that many pieces of evidence supposedly destroyed still existed after the date of their 'destruction.'

Jeremy Bamber has been trying to obtain vital documents since he was first convicted twenty six years ago. Documents show many requests to Essex Police for disclosure of various evidence, all refused by Essex Police for a variety of reasons. Their current

justification for non-disclosure is owing to the exemptions under the Freedom of Information Act 2000, Ss. 40(1) and (2), and under S. 30 (investigations and proceedings). Jeremy Bamber has also applied for evidence under the Data Protection Act, but again was refused as the preceding sections of the Freedom of Information Act counteract disclosure under this Act, while the Information Commissioners Office also responds to complaints, they state they too are powerless to act for the same reasons. Eddie Gilfoyle is still trying to obtain documents generated over twenty years ago in his case.

CCRC and Jeremy Bamber's case

The CCRC have consistently refused to invoke their powers under S. 17 of the Criminal Appeals Act 1995 to obtain relevant documents despite there being meritorious reasons for wanting to scrutinise original documents and photographic evidence.

In July 2010, Jeremy Bamber sought a six month period to undertake vital forensic work offered to him pro bono. The CCRC refused this period, closing the submissions deadline and then took another six months before coming to a provisional refusal in February 2011. The CCRC have consistently refused to investigate evidence relating to issues they state have already been addressed by COLP, but Jeremy Bamber now has evidence to show that the COLP investigation was heavily flawed. The CCRC have handled Jeremy Bamber's complaint since 2004, and it is only this year after publicity and public consensus that they have agreed to full disclosure of the photographs they hold. Thus for the first time in twenty-six years Jeremy Bamber's defence team has now seen a selection of the 175 additional photographs. For almost eight years the CCRC denied Jeremy Bamber's forensic team access to the photographs at their laboratories and instead insisted they be viewed at their offices. In contrast the CCRC's own expert witness had access to negatives which were delivered to his laboratories. The CCRC also accept that full disclosure of photographs has now been made by Essex Police, notwithstanding that there are some ninety-seven missing negatives, including whole negative strips and some cut away from the disclosed strips. The IPCC and Essex Police have dismissed all complaints by Jeremy Bamber about the original investigation.

Jeremy Bamber and his campaigners have made continuous complaints to both the CCRC Customer Services Department and to Mrs Kneller the Director of Case Work about the handling of his case, letters and e mails all met with no response. The CCRC recently denied photographic material to the Defence lawyer's which was actually paid for by the Defence without any justification.

Media Influence

The influence of the media in all three cases has been startlingly powerful, both prior to trial and afterwards. In the Jeremy Bamber case a chief prosecution witness Julie Mugford was paid 25k by the NOTW for her story upon Jeremy Bamber's conviction which the Press

Council ruled in breach of their “Declaration of Principle on cheque book journalism” regarding media interviews of people associated with criminal trials. Jeremy Bamber maintains Mugford signed a contract with the NOTW before the trial had ended which would put her in contempt of court. Yet, there has been no investigation by the courts, police or CPS to obtain the actual contract which was still in existence in 2002, where she refers to the small print in her statement to the police, while stating she cannot recall the date when she signed it, the CPS accepted that the contract was lost. Clearly press interference in the criminal justice system is rife with the recent NOTW scandal and frequent examples of a suspect’s name being given to the press. The conduct of relevant justice departments has forced Jeremy Bamber to turn to the media to expose and publicise his case and apply pressure on the CCRC to facilitate disclosure.

Is the IPCC any more effective than the PCA?

In 2009, after further complaints by Jeremy Bamber to Essex Police they still refused to act. They will however, where instructed to do so by the CCRC, the CCRC readily accepts any explanation given to them by the police without scrutinising the facts of the case. After the CCRC gave Jeremy Bamber a provisional refusal to refer the case to the Appeal Court on 11th February 2011, the complaints to the police were ignored yet again. In fact between January 2011 and May 2011, Jeremy Bamber lodged fifty-six complaints about police misconduct directly to Essex Police, while the IPCC, mindful of the CCRC’s refusal to refer the case back to the Court of Appeal, granted a dispensation applied for by Essex Police. Much of Jeremy Bamber’s complaints included the fabrication of evidence by officers, and that the evidence presented to the CCRC by the police was not a true account of what actually happened at the crime scene. Without obtaining full disclosure it is not possible for Jeremy Bamber to present a meritorious case to the CCRC. While the IPCC’s advice to him is to challenge their decision not to investigate, ‘in law.’ Further complaints have been made regarding police conduct and decency when four photographs surfaced showing police playing pranks at the crime scene.

Conclusion

This document has briefly outlined failings by various departments of the criminal justice system in facilitating a system that is fair and impartial. Mainly it has been shown that non-disclosure of relevant evidence has been used by various Forces throughout the country to maintain wrongful convictions in order to ensure that the public has faith in the police while doing their job. The terrible cost is when the accused is innocent and is proven to be so despite internal barriers within the system attempting to strangle their hopes of freedom. When it is proven that there has been a dreadful miscarriage of justice the public then question the very essence of the notion of democracy.

Similarly, there is not only a moral cost, there is the cost to the tax payer of maintaining that person in a prison. The DPP has not prosecuted certain officers for their misconduct and

instead has subjected documents to PII. Even documents not under PII are still not disclosed, while the Information Commissioner's Office is unable to assist the defence. The IPCC is unwilling and unhelpful in obtaining successful investigation and prosecution of the police. The CCRC is the ultimate gate keeper of such issues, but for various reasons mainly owing to underfunding and a seemingly political agenda is unwilling to obtain vital documents and undertake forensic work, the result being that an appellant is trapped within the system for many, many years.

Often cases are closed after the unwillingness of the CCRC to act. In the case of Susan May, a police officer was asked to investigate his own work, not unsurprisingly he found that he had not mishandled the investigation. While the CCRC have accepted that there are many flaws in the handling of her case by the police, they have closed their file on Ms May. The CCRC is not funded adequately and lacks the motivation to operate accordingly. Where the CCRC refuses to act where does the appellant then go if there is a case of misconduct? MP's are reluctant to become involved owing to their belief that the CCRC is undertaking its constitutional duties accordingly. In 2005, Andrew Hunter MP raised the issue of non-disclosure by Essex Police in the Commons and was simply informed that the CCRC had the powers to obtain relevant document but in 2011, Jeremy Bamber is still awaiting full disclosure of relevant documents. Prisoners have little resource for legal, forensic and campaign costs, they simply rely on the charity of others. In Jeremy Bamber's case non-disclosure and dead line pressures implemented by the CCRC have hindered forensic work considerably. Clearly the procedures within the criminal justice system are failing to protect the human rights of those maintaining their innocence. Jeremy Bamber's case is still with the CCRC in their appeals process. The IPCC have recently lodged a complaint by Jeremy Bamber about COLP's conduct back in 1991 after new evidence has been adduced.

Supporting documents are available should you wish to see evidence for the claims made in this letter.