



Reaching a verdict

The Criminal Cases Review Commission has been widely criticised for its professional standards and a remit that fails to overturn miscarriages of justice. As *Eduardo Reyes* reports, such failings have undermined faith in its operation

MISCARRIAGES OF JUSTICE

For lawyers there are few more emotive matters than a miscarriage of justice. Small wonder then that the angst around the failures of the Criminal Cases Review Commission (CCRC) is much more than existential. Defence lawyers and campaigners for reform of the CCRC describe an organisation that is hamstrung by a body of legislation that increasingly assumes the guilt of any defendant; whose staff are inconsistent; and whose closeness to the Court of Appeal leads the CCRC to bring only predictable cases before it.

At a symposium on the reform of the CCRC, held at the end of March at the offices of Norton Rose in London, even the former CCRC commissioner David Jessel confessed he was discomfited by the organisation's performance. Not surprisingly Susan Caddick, the sister of alleged miscarriage of justice victim Eddie Gilfoyle (pictured, left, with his sister), went much further. 'The CCRC should be a national treasure,' she told the audience. 'But it is not, and we should all be ashamed of that.' Her presentation was listened to in rapt silence and acknowledged at the end with loud applause.

Safeguards fail at every level

As is now well known, when Caddick's brother was convicted of his wife's murder, Merseyside police had concealed from the court evidence that pointed to suicide. Errors by the police had also led to crucial evidence at the scene being ignored and destroyed. But it was what followed over the succeeding 20-year period that has been a Kafka-esque experience for Gilfoyle and his family.

Lancashire police, called in to look at the case as an independent force, found no evidence of a crime. But when Gilfoyle's case was sent to the Court of Appeal in 1995 on the basis of Lancashire's report, the appeal judge ruled that none of the Lancashire force's evidence could be heard because disciplinary matters at Merseyside were ongoing, meaning that Lancashire police's report was not completed. Key disciplinary matters were then resolved a day later.

In 2000, when the CCRC sent the case back again, the judge ruled

that the Lancashire investigation was not new evidence, as it had been used in Gilfoyle's first appeal. So, again, it was not used in evidence.

Gilfoyle's case will now go to the Court of Appeal again, following the chance discovery by Gilfoyle's solicitor of previously undisclosed evidence, including letters written by his wife that supported the theory that her death was suicide.

While some plead points in mitigation for the CCRC's performance and that of the Court of Appeal, no one asserts that either institution comes out of its dealings with the Gilfoyle case looking good.

It was not meant to be that way of course. As John Cooper QC recalls: 'At the time the CCRC was set up [in 1997], the campaigning group Justice was so optimistic about its foundation that it stopped its work on miscarriages of justice.' No longer would miscarriage cases be at the mercy of the home secretary.

To see how it should have turned out, one could look at the work, and standing, of the Independent Police Complaints Commission (IPPC). The IPPC may have its failings, but its remit includes the requirement to investigate – and as Caddick puts it, 'the CCRC don't investigate, miscarriages of justice', they review the evidence. Where others have presented new evidence for review, she adds, 'it's all done for them'.

Context is everything

While there are aspects of the CCRC's conduct and remit that lay it open to specific, if telling, criticisms, as Cooper points out, it operates in a context that acts against a miscarriage being overturned.

The drift of public policy, Cooper argues, is heavily weighted against defendants' rights, because it has been designed to make it easier to secure convictions. 'Legislation is conviction-oriented,' he notes, 'whether by design or chance' the majority of legislation aims to 'encourage a conviction.'

The last defence-oriented piece of legislation, Cooper notes, was the 1984 Police and Criminal Evidence Act: 'That is the arena the CCRC has to refer to.' An impecunious criminal justice system is also a factor, he adds, resulting in an attitude designed to 'keep trials on track' – an attitude that removes some

CCRC reform agenda

The Criminal Cases Review Commission was set up in 1997 as an independent public body under the 1995 Criminal Appeal Act. Its purpose is to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts.

Based in Birmingham, the CCRC has about 100 staff, including a core of about 50 caseworkers, supported by administrative staff.

There are nine commissioners, appointed in accordance with the Office of the Commissioner for Public Appointments' Code of Practice. It does not represent the prosecution or defence.

Since its foundation, the CCRC has had 458 referred cases heard by the Court of Appeal. Convictions in 320 of those were quashed, 134 were upheld, and four were reserved.

The Innocence Network UK, which undertakes investigations into alleged wrongful convictions, has proposed reforms to the CCRC, including the following:

- The CCRC should not simply seek 'fresh evidence', but review all the evidence in cases.
- The CCRC should refer a case if it thinks that the applicant is or might be innocent.
- The CCRC should make use of its power to recommend the use of the royal prerogative of mercy in cases where the Court of Appeal refuses to overturn an application referred to it by the CCRC.

crucial safeguards that could ensure a fair first trial.

This attitude to justice's safeguards, QualitySolicitors Jordans partner Mark Newby claims, extends beyond trials to the review process itself. In common with other practitioners concerned with the operations of the CCRC, Newby believes that CCRC caseworkers reviewing cases vary hugely in their professionalism, are inconsistent and miss crucial points. 'Some case reviewers are very good,' he notes, 'and some are very bad'.

Newby cites one case where the CCRC refused to refer a case to the Court of Appeal because it claimed key forensics evidence had been dealt with at trial, where it had not.

In another, he says, the CCRC would not look at the significance of DNA on a victim's clothing that did not match that of a convicted person. In general, he believes, the CCRC's caseworkers are too willing to speculate on the reasons for inconsistencies in the evidence surrounding the case.

Newby recalls a further case where a CCRC caseworker speculated that the accused's distinctive head bump could have disappeared on the day of the crime. This, it was insisted, would discount evidence that he had been wrongly identified.

According to this analysis, CCRC caseworkers are not just deciding

to 'second-guess' aspects of the cases they are reviewing out of laziness, despite Newby's 'serious concerns about consistency'. Rather caseworkers are responding to the ways that their roles are circumscribed. As Caddick and Cooper note, the CCRC does not investigate. It is reluctant to use new expert evidence in the process of reviewing cases. And requests to examine a case on forensics terms can be dismissed as 'speculative'. Additionally, as Newby points out: 'We have to expand the powers of the CCRC to obtain private documents.'

A question of priorities

Cooper, who recently represented the family of Dr Crippen in their attempt to have his conviction for murder overturned, also suggests that 'there should be no self-by date for cases'. His plea, he insists, is no posthumous piece of theatre on behalf of Crippen. Instead, it is a recognition that for someone convicted, but no longer in custody, the continued existence of their conviction may be unfair, where evidence exists that could quash that conviction.

'The priority ranking system should be reviewed,' Cooper says. Considering cases where the convicted person is in custody, before those where the convicted

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MISCARRIAGES OF JUSTICE

Sally Clark an 'easier' case?

The case of solicitor Sally Clark (pictured right with husband Stephen), who was wrongly convicted of murdering her two newborn sons, was regarded by speakers at



the Symposium as typifying the 'easier' cases the CCRC takes to the Court of Appeal. This seems to support the argument that the 'bar' is set too high for miscarriage cases. For Clark and her family, quashing her conviction took two attempts, their own independent investigation and the intervention of external bodies.

Clark was jailed for life in November 1999. Central to her conviction was the flawed evidence of paediatrician Professor Sir Roy Meadow, who appeared for the prosecution. Meadow estimated the chance of two siblings dying of 'cot death syndrome' as one in 73 million.

Following the conviction, in an unprecedented act, the Royal Statistical Society wrote to the lord chancellor stating that there was no statistical basis for the figure. The odds, the society's letter said, were much lower.

Even so, the first attempt to have her conviction quashed was thrown out by the Court of Appeal in October 2000. The judge accepted that Meadow's evidence was flawed, but maintained that evidence of her guilt remained 'overwhelming'.

It was only in January 2003 that Clark was freed, her conviction recognised as 'unsafe'. This followed evidence uncovered by Clark's husband (that had not been revealed to the defence team or the jury) that one of Clark's sons had 'lethal' levels of a bacterial infection.

Despite the intervention of the Royal Statistical Society and evidence from the Foundation for the Study of Infant Deaths, it was evidence uncovered through the work of a family member that proved critical in overturning Clark's conviction. The case highlights the absence of any investigatory function at the CCRC.

Clark died in March 2007. According to her family, she never recovered from the trauma of her imprisonment.

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person is at liberty because they have served their time, he notes, is unsatisfactory. It is a point Caddick sees all too clearly – for although her brother now has his liberty, 'the damage done' by his conviction is not just 'irreparable', but continues to hurt both Gilfoyle and his family.

Public policy may be overwhelmingly conviction-oriented – driven by the need to secure a conviction for the sake of 'victims of crime'. But listening to Caddick speak, on behalf of her brother and family, it is striking how similarly she presents to the testimony of

eloquent victims of crime. It is, perhaps, that clear resemblance in these parallel experiences that makes it difficult to believe that 'business as usual' at the CCRC can continue. ■

The Law Society's 2012 Criminal Law Conference 'Fighting for Justice' will be held on 4 May at the Law Society, 113 Chancery Lane, London. Speakers include the attorney general Dominic Grieve QC and leading practitioners and academics involved in criminal justice. For more details see: tinyurl.com/6v62u78.



The Law Society

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Preliminary Notice of Council Elections 2012

Preliminary notice is hereby given, in accordance with Bye-Law 56, that elections of members of the Council will shortly be taking place for the following constituencies, which will fall vacant on the expiry of the terms of office of the current Council member at the Annual General Meeting on 5 July 2012:

	Title of constituency	No. of vacancies	
No 2	The City of London	1	David Angus McIntosh
No 3	Holborn	1	David Treharne Morgan
No 4	North East London	1	Timothy John Mutti
No 5	West London	1	Michael Morris Franks
No 8	The City of Westminster	1	Peter Gordon Adams
No 17	Dorset	1	Timothy Dermot Joseph O'Sullivan
No 18	West Country and Gwent	1	Patricia Margaret Lush
No 20	Mid and West Wales	1	Carolyn Kirby
No 24	Wolverhampton and Staffordshire	1	Christopher Andrew Clark
No 26	Merseyside and District	1	Charles Edward Buchan Jones
No 27	Manchester, Salford, Stockport and District	1	Nigel Gold Sidney Day
No 29	Cumbria and Lancaster	1	Gaynor Lewis Wragg
No 30	Northumbria	1	Vacancy
No 31	Yorkshire	1	Mary Clare Johnson
No 34	Lincolnshire	1	Stuart John Collingham*
No 40	Essex	1	Brian Robert John Owen Hughes MBE*

* Denotes that the member concerned has indicated that he/she is not proposing to stand for re election.

Nominations

Nominations are invited from solicitors (who must be members of the Law Society) who have a registered address in the constituency concerned or who are members of a local law society in the constituency. Candidates must be nominated by two other Law Society members who must have a registered address in the constituency.

A description of a Council member's role and responsibilities, guidance notes for candidates and a nomination form are downloadable from our website at www.lawsociety.org.uk under 'about us/constitution and structure/Council, board and committee vacancies'. Alternatively, contact us at councilelections@lawsociety.org.uk, or by telephone on 020 7320 5736.

The Society wishes to encourage nominations from all eligible solicitors irrespective of gender, race, colour, age, sexual orientation or disability.

Nominations should be received by the Chief Executive, The Law Society, 113 Chancery Lane, London WC2A 1PL (LDE 56) not later than **5.00 pm on Thursday 26 April 2012**.

Term of office

The successful candidates will take office at the conclusion of the AGM on 5 July 2012.

The term of office of a Council member is four years.

Desmond Hudson
Chief Executive

The Law Society's Hall, 113 Chancery Lane, London WC2A 1PL

2 April 2012