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Justice Committee Invites You to Make Submissions on 'Disclosure'

[You may not be able to respond to this from this inside prison, but if you have a submission, you can write it up and post it to a family member or friend and they can do it for you]

The Justice Committee has launched an inquiry into the disclosure of evidence in criminal cases. It follows the announcement of the Committee's intention to examine the issue on 25th January. Since November 2017 there have been several reports of criminal cases collapsing due to failings in disclosure of evidence. In July 2017 a report by HM Inspectorate of the Crown Prosecution Service (HMCPSI) had highlighted "extensive issues" with handling of disclosure, following which the Attorney General initiated a review which is ongoing. The cases that have been reported in the last few months demonstrate the importance of disclosure and the pertinence of the issues raised by the Inspectorate. The cases reported in the media relate predominately to the very serious crimes of sexual assault and rape and – in one case reported in January 2018 – to people trafficking. In more than one of the reported rape cases, questions were raised about whether the defendant should have been charged in the first place. This inquiry aims to investigate disclosure procedures fully to ensure they are fit for purpose and that the steps proposed to address existing issues are sufficient to resolve them. The Committee's findings will feed into the Attorney General's ongoing review.

Terms of reference: The Committee welcomes written evidence to answer some or all of the following questions: 1) Are the current policies, rules and procedures satisfactory to enable appropriate disclosure of evidence and support the defendant's right to a fair trial? 2) How effective are current policies, rules and procedures – particularly in the light of the growth in electronically stored material (such as text or social media messages)? 3) To what extent (if at all) have any recent or ongoing changes to the wider policy landscape, including in relation to legal aid, had an impact on disclosure? 4) How do the current policies, rules and procedures on disclosure operate in practice and are there any practical barriers to them working effectively? 5) What is the normal practice of Police and the CPS in reviewing and disclosing evidence and what, if any, are the barriers to this working effectively? Are reviews and disclosures carried out at the right level, is training and guidance appropriate, and is there sufficient oversight of decisions? 6) What is the normal practice of the defence in making disclosure requests, and of the courts in dealing with applications for prosecution disclosure and setting timetables, and what (if any) are the barriers to these procedures working effectively? 7) How has Transforming Summary Justice changed disclosure practices in the magistrates' courts and how effectively does this work in practice? 8) How frequent are applications for disclosure of sensitive material, and how are they handled by the prosecution, the defence and the courts in practice? 9) What improvements (if any) are needed to improve disclosure and ensure that fair trial rights are protected? 10) What would be the resource implications of any changes to policies, rules, procedures, or any changes to operational practices? 11) Do the Police and CPS have credible plans to ensure they are able to respond to the changing nature and volume of evidence, including electronic evidence?

Submitting written evidence: The deadline for submitting written evidence via the Committee's website is Wednesday 21st March. Please note that the Committee may not investigate or intervene in individual cases. Submissions may make reference to individual cases for illustrative purposes, provided they are not the subject of legal proceedings currently before UK courts. Written submissions should be made via the web portal. https://is.gd/nEusiZ Please read the guidance on submitting written evidence available here. https://is.gd/k7bDiz Submissions need not address every aspect of the terms of reference and should be no longer than 3,000 words. The Committee values diversity and seeks to ensure this where possible. We encourage members of underrepresented groups to submit written evidence. Committee Website: www.parliament.uk/justicecttee

A Fart in a Tea-Cup

A passenger flight was forced to make an emergency stop after a fight broke out over a man who refused to stop breaking wind. According to reports, the Transavia flight from Dubai to Amsterdam was forced to land in Vienna because an elderly man on board had persisted in polluting the atmosphere despite pleas to stop from nauseated fellow passengers. Two men sitting next to the man allegedly responsible for the olfactory assault are said to have started a fight with him. Once the plane landed, the two men, as well as two women sitting next to them, were removed by armed police. They have not been criminally charged but have been banned from future Transavia flights

CCRC Refers the Conviction of A to the Crown Court

The Criminal Cases Review Commission has referred the malicious communications conviction of A to the Crown Court. Mr A was convicted at magistrates court in 2014 of sending a communication conveying false information with the intent to cause distress, contrary to section 1 (1)(a) of the Malicious Communications Act 1988, ("MCA 1988"). He was sentenced to four months' imprisonment. Mr A appealed against his conviction but lost his appeal and applied to the CCRC. Having considered the case in detail, the CCRC has decided to refer Mr A's case to the Crown Court because it considers that there is a real possibility that his conviction will not be upheld. The referral is based on a new legal argument, not previously raised, that A's action of posting a blog on the internet did not amount to "sending… to another person" as required by section 1 of the Malicious Communications Act 1988. Mr A was not legally represented in his application to the Commission.

Prison Capacity

To ask Her Majesty's Government, further to the reply by Lord Keen of Elie on 8 February, what the "certified capacity of the prison population" refers to; and whether the prison population has exceeded the Certified Normal Accommodation of the prison system at any time over the last 20 years.

Prison capacity is defined using the terms Certified Normal Accommodation (CNA) and Operational Capacity. These terms are defined separately as: • CNA, or uncrowded capacity, is the Prison Service's own measure of accommodation. CNA represents the good, decent standard of accommodation that Her Majesty's Prison and Probation Service aspires to provide all prisoners; and • the Operational Capacity of a prison is the total number of prisoners that an establishment can hold taking into account control, security and the proper operation of the planned regime. It is determined by Prison Group Directors on the basis of operational judgement and experience. The total prison population is in excess of CNA however this total is always below the total operational capacity of the estate.

Victims of Crime do Have the Power to Hold Police to Account

Solicitors specialising in claims against the police have welcomed the decision by the Supreme Court that under the Human Rights Act, police have to effectively investigate serious crimes perpetrated by private individuals reported to them. The case surrounds the 'black cab rapist' John Worboys, who committed a number of sexual offences across the capital. Two of his victims, known as DSD and NBV, brought a claim against the police alleging a violation of their Article 3 rights (prohibition on torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights for the police's failure to conduct an effective investigation into Worboy's crimes. The High Court and Court of Appeal held that a positive obligation to investigate did exist and had been breached in this case. The Commissioner of the Metropolitan Police appealed to the Supreme Court. One argument put forward by the police was that the investigative duty set out in Article 3 could only apply to state agents and not private individuals. The Supreme Court has today unanimously dismissed the appeal and held that Article 3 requires the state to investigate credible allegations of mistreatment even where the alleged mistreatment is perpetrated by a private individual.

Emma Jones, Partner in the Human Rights Department, said: "It has to be right that where a state body has failed to effectively investigate a credible allegation of serious mistreatment that that individual should have a claim against that state body."

Yvonne Kestler, a human rights solicitor in the Actions Against Police Team, said: "This is an important legal development and one that will potentially allow many vulnerable individuals, when making serious allegations, to rightly have recourse to the courts when those allegations have not been effectively investigated. This is also a fantastic result for our clients whose cases raise similar issues as in DSD and were stayed pending its outcome. We can now continue with the cases and hopefully obtain good results on behalf of our clients."

Death Row Prisoner 'Repeatedly Jabbed' By Officials Giving Lethal Injection

Judith Vonberg, Independent: An attempted execution in Alabama was halted after medical personnel repeatedly jabbed the death row inmate in the ankles, lower legs and groin but failed to find a usable vein, according to a court filing by his lawyer. The dramatic night began with a temporary stay of execution at around 6pm local time – lifted by the US Supreme Court just three hours later – and ended in confusion as 61-year-old Doyle Lee Hamm was returned to his cell shortly before midnight on Thursday. Lawyer Bernard Harcourt, who has represented Hamm for 28 years, said he was seeking information about what happened during the attempted execution.

"He's in great pain from yesterday evening, physically, from all of the attempts to access his veins in his lower extremities and in his groin," Mr Harcourt said. He has long argued that his client, who was diagnosed with lymphoma in 2014, should not face lethal injection as his veins were "severely compromised" due to the cancer and treatment, and the procedure would cause severe and unnecessary pain. Two UN human rights experts echoed those concerns earlier this month, warning that "attempts to insert needles into Mr Hamm's veins to carry out the lethal injection would inflict pain and suffering that may amount to torture". Amnesty International has also called for Hamm's sentence to be commuted, arguing that the state of his veins may render lethal injection unconstitutional.

Both organisations have also expressed concern that Hamm may not have received a fair trial for the murder of motel clerk Patrick Cunningham in 1987. Speculating late on Thursday evening that "they probably couldn't find a vein and had been poking him for over two and a half hours", Mr Harcourt described the events as "simply unconscionable". Commissioner Jeff Dunn of the Alabama Department of Corrections, speaking in the early hours of Friday morning, said he had been informed by the medical staff that "they didn't in their judgement think that they could obtain the appropriate veinous access before the warrant would expire" at midnight.

But he then said the sole reason for halting the execution was "the lateness of the hour" and the prospect of the warrant expiring. Asked whether the problem with finding a vein could recur in any future attempt, the Commissioner said: "I wouldn't necessarily characterise what we had tonight as a problem… it was more of a time issue." US District Judge Karon Bowdre has since ordered a medical examination of Hamm and directed the state to obtain material related to the attempted execution. According to Amnesty International, 61 of the 1,468 executions in the USA since the Supreme Court approved new capital laws in 1976 have been carried out in Alabama.

Prisoners Receive £2m for Poor Healthcare Amid 'Unprecedented Pressures' In Prisons

Lizzy Buchan, Independent: Inmates have been paid close to £2m in compensation for poor healthcare behind bars since 2010 amid mounting concern over the scale of the crisis gripping Britain's prisons. New figures show that payouts to prisoners for medical negligence or poor treatment have been on the rise since 2010-11, when inmates received just £26,389 in damages, compared to £360,325 last year. Compensation claims for inmates amounted to £1,984,439 over the past seven years, soaring to a high of £617,468 in 2012-13, analysis of official data showed. It comes after the Government was issued with an unprecedented warning from prison inspectors about the "dramatic decline" in conditions, as prisons grapple with a toxic cocktail of drugs, violence and soaring suicide rates among inmates. Inspectors found conditions at HMP Liverpool were the "worst they had ever seen", with prisoners living among litter, rats and cockroaches. Meanwhile, the prisons watchdog recently warned that inmates at HMP Nottingham were living in "fundamentally unsafe" conditions.

Leading doctors have spoken out in the past over the challenges in delivering healthcare behind bars, as shortages of prison staff and transport can mean medics are forced to cancel or delay treatment for sick prisoners for security reasons, according to the BMA. In its latest annual report, the prisons watchdog said health services "were affected by shortages of prison staff and restrictive regimes" and many prisoners lived in overcrowded and poor cells. However, it found the overall quality of care was reasonable. Shadow health minister Justin Madders, who obtained the figures, said: "These are extremely worrying findings. The substantial increase in compensation for negligent care is a stark indication of the unprecedented pressures being placed on NHS workers treating prisoners, and shockingly the real figures could be higher still. "Seven years of harsh austerity has left patients suffering and care quality has evidently taken a hit." Mark Day, head of policy and communications at the Prison Reform Trust, said prisoners should receive the same standard of healthcare as they would in the community, but this was often not achieved on the ground.

He told The Independent: "People in prison are far more likely to suffer from health problems than the general population. But in understaffed and overcrowded prisons, prisoners can face significant challenges in making and keeping health appointments. "In the secure environment of a prison, they can also face problems getting access to the healthcare and medication they need. At the same time, a rapidly rising population of older prisoners is placing additional pressure on health provision, with prisons a poor environment to provide care for people coming towards the end of their life."

Health minister Jackie Doyle-Price, responding to a written parliamentary question, said: “These figures represent the amount of compensation paid to prisoners arising from negligent care or treatment provided by National Health Service organisations which are members of the NHS Resolution indemnity scheme. NHS Resolution members are not the sole providers of prison healthcare and hence the figures do not represent the total amount of compensation paid to prisoners.” The Department of Health and Social Care declined to comment.

Police Liability For Failures In Criminal Investigations

Elliot Gold UK Police Law Blog: The hits for the police keep on coming. The decision in Commissioner of the Metropolis v (1) DSD (2) NBV [2018] UKSC 11 confirms that the police can be liable in proceedings for a breach of article 3’s prohibition on inhuman and degrading treatment (and possibly article 4’s prohibition on slavery) where they fail to perform an adequate criminal investigation into alleged serious ill-treatment. This decision was less of a surprise than Robinson v Chief Constable of West Yorkshire Police [2018] UKSC 4 – given the strength of the earlier judgments both at first instance and in the Court of Appeal. That said, it is hard to say anything other than that the courts are slowly but surely eroding out of existence the police’s ‘immunity’ from claims arising out of the performance of its core duties. For the majority, Lord Kerr made clear that there was a duty on the police to investigate allegations of ill-treatment regardless as to whether state agents were responsible for the infliction of the harm – and that this was an operational duty [20].

How the judge reached that decision (and whether it is Lord Kerr or Lord Hughes who best analyses the jurisprudence) is better considered in academic commentary. The judgments are particularly interesting in their treatment (and criticism) of the European Court of Human Rights and the development of its jurisprudence. The principle points that arise from the majority’s position, however, can be summarised as follows. - It is necessary for laws which criminalise conduct breaching article 3 to be "rigorously enforced" and "properly investigated" [24]; - This requires that operational deficiencies in investigations which engage article 3 can themselves give rise to a breach of that article [29]; - Those operational deficiencies need not flow from or be connected to systemic or structural flaws (such as training, inadequate policy etc) [29]; - The investigation must be capable of bringing the offenders to justice. That is a question not of result (i.e. whether the offender is ultimately identified and successfully prosecuted) but of means [39]; - This requires the police to conduct an independent investigation, take all reasonable steps available to them to secure evidence and to act with promptness and reasonable expedition [33], [39].

One can perhaps now understand why the judgment took so long – almost a year – to be released. Lord Kerr (who found the existence of an operational duty) seems to spend much time pugnaciously trying to dismantle the judgment of Lord Hughes (who sought to limit the ambit of positive duties to structural errors). In the event, it is a bit disappointing that such an important decision appeared to have been reached by a potentially 3-2 majority (or 3-1-1), Lord Mance's appearing to have sympathy with Lord Hughes generally but preferring a distinction of simple errors or isolated omissions and more serious failings - with liability arising only for the latter.

The majority, however, buries Hill v Chief Constable of West Yorkshire Police [1989] AC 53 – whose public policy justifications have been inverted. Lord Kerr opined that the potential for liability may result in the police's carrying out their investigations more efficiently and effectively, resulting in the enhancement of standards and saving or resources. He then went further, stating that there was "no reason" to suppose it would do anything other than act as an

incentive to avoid egregious errors and eliminate the making of grievous mistakes [71].

As to what will result in liability, Lord Kerr stated that "only conspicuous or substantial errors in investigation" would result in a breach of the article 3 duty, later saying that such investigative errors would have to be "egregious and significant" [29]. Lord Neuberger similarly stated that courts should "bear clearly in mind" the need to interpret the duty in a way which does not impose an impossible or disproportionate burden on the police. This appears to set the threshold for a breach of article 3 relatively highly and certainly higher than in a common-law negligence action.

Practitioners at the coal-face, however, may appreciate (and perhaps welcome) the observation of Lords Hughes and Mance that this apparent threshold is "more to present than to solve the difficulty". Those same practitioners will also know that whilst Lord Kerr further states that compensation is by no means automatically payable for breach of the article 3 duty, it is not the award of general damages that chief constables will soon fear. It will be awards for consequential losses (special damages) and, more than that, costs, which are generally no less in a human rights claim than a common law action.

And as much as Lord Kerr states that he does not believe it to be a serious prospect that every burglary, car theft or fraud will result in an action under the Human Rights Act 1998, what is certain is that litigation will seek to push as far as possible the now blurred boundaries of when an article 3 claim can be brought. The police will likely consider settlement of cases due to the risk of damages, public embarrassment and high levels of costs, perhaps even where the alleged breaches lie close to the margins.

This blog does not seek to take a political position on the judgment, although it notes the immediate concerns that will arise from a police perspective. We have heard voices start to articulate that there should be a form of no-fault liability or damages and costs capping for clinical negligence claims against the NHS. Now that liability for both human rights and negligence claims against the police have been expanded by the Supreme Court, expect to hear, soon, similar calls from cash-strapped chief constables.

Student’s Conviction for Frying Eggs on War Memorial Did Not Breach Her Freedom Of Expression, but her Detention Pending Trial Was Unlawful

The case Sinkova v. Ukraine (application no. 39496/11) concerned the arrest, detention and conviction of a 19-year-old student for frying eggs on the flame of the Tomb of the Unknown Soldier in Kyiv in 2010. She later posted a video of the scene on the Internet, explaining that she had been protesting against the waste of precious natural gas. She was arrested in 2011 and detained for three months pending criminal proceedings on the charge of desecrating the tomb. She was eventually convicted as charged, and given a suspended sentence.

In Chamber judgment in the case the European Court of Human Rights held, unanimously, that there had been no violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights concerning Ms Sinkova’s arrest, which had been based on a judicial order and had aimed to ensure her attendance at a hearing on her case as, despite the police’s efforts, they had not been able to find her until March 2011; unanimously, that there had been a violation of Article 5 §§ 1, 3 and 5 of the European Convention because Ms Sinkova’s detention from 29 May to 17 June 2011 had not been covered by any judicial decision; the entirety of her detention from 29 March to 30 June 2011 had not been justified; and Ukrainian law had not provided an enforceable right to compensation for that unlawfulness of her detention; and, by four votes to three, that there had been no violation of Article 10 (free-

dom of expression). The Court found in particular that Ms Sinkova's conviction for expressing contempt for the Tomb of the Unknown Soldier had interfered with her freedom of speech, but that it had been a proportionate restriction under domestic law.

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Libyan Couple Tortured by CIA Under Auspices of MI6 Appeal to UK Supreme Court

Irish Legal News:The Supreme Court will hear a landmark challenge to "attempts by the UK government to conceal the role of a top MI6 officer in renditions to Libya". Senior judges have given permission for a "leapfrog" appeal by two victims of rendition and torture directly to the UK's highest court. The case will be heard in just over three weeks, on 22 March. The challenge is being brought by Abdul-Hakim Belhaj and his wife Fatima Boudchar who were kidnapped, rendered to Libya and tortured by the CIA with the knowledge and assistance of MI6 in 2004. The couple are currently involved in legal proceedings challenging the decision of the Director of Public Prosecutions not to charge a senior MI6 officer, Sir Mark Allen, over his involvement in their ordeal.

The Foreign Secretary, Boris Johnson, as the minister responsible for the foreign intelligence service, has applied to hold proceedings in secret under powers in the Justice and Security Act 2013. Mr Belhaj and Ms Boudchar, their lawyers, journalists and the public are all banned from attending these hearings. These powers were granted by Parliament for use in non-criminal proceedings and the Supreme Court will be asked to rule that they cannot be used in a legal action relating to a potential prosecution of an MI6 officer.

Cori Crider, attorney for Mr Belhaj and Ms Boudchar at Reprieve, said: "Abdul-Hakim and Fatima have already had to beat the government once in the Supreme Court, and they'll go back as many times as it takes for open justice. "Ministers hope to whisper in the judge's ear about the real reason one of their top MI6 officers was let off the hook for his role in the rendition of a pregnant woman. But criminal matters were explicitly carved out of the Justice and Security Act, and rightly so. With something this serious we, the British public, have a right to know what was done in our name."

News From SAFARI

Due To Attend a police interview following a false allegation against you? If so, remember this: Under section 11.6 of the Police and Criminal Evidence Act (PACE) it states (we've left out sections to make it clearer to understand) "The interview ... of a person about an offence ... must cease when ... the officer in charge of the investigation ... or the custody officer ... reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence." In short, this means if you're innocent and the Police are going to interview you, they are not permitted to do so if they already have enough evidence to provide that realistic prospect.

In this case, we suggest (but do please clarify with your solicitor) you state at the outset of the interview something like this: "I understand that under PACE you are not allowed to interview me if you have enough evidence already to provide a realistic prospect of conviction. As I believe I am innocent of committing a crime and I do not trust the Legal System to be fair, I won't answer any questions until the end of the interview when I intend to give a written statement addressing the questions asked." By providing written answers at the end of the interview, the jury at any trial should not be allowed to hold your refusal to answer questions verbally against you.

Danny Kay Conviction Quashed has had his conviction for rape quashed after his sister in law was able to locate archived copies of Facebook messages sent between his accuser and himself. These messages proved that the sex had been consensual. Danny had spent two years in prison before his successful appeal. The prosecution had originally only accepted cherry picked sections of part of those messages, provided by the accuser, in an effort to try and 'prove' his guilt. It was only because a fellow prisoner explained to him how it was possible to recover archived Facebook messages that he was able to pass this information to his sister in law; it then took her only a minute to access the proof of his innocence. When handing the new evidence to the police, they apparently said:

"How did you know how to find the messages and we didn't?" In prison, Danny was also made to see a psychiatrist because he was incorrectly judged to be 'in denial' (i.e. guilty but unable to accept the fact) because of his protestations of innocence. In one of the Facebook messages after the alleged rape, his accuser said 'im still here for ya!' and in a separate message, after the pair had split up, she said: 'I thought u woulda at least tried to get me back.' When the new messages were shown to the Appeal Court, the judges ruled that the exchange undermined the woman's account and supported Danny's version.

As An Innocent Person In Prison, it can be difficult to progress by improving your category, your chance of parole, your status (such as Standard to Enhanced) etc. This is because you are considered (wrongly) to be 'in denial' (factually guilty but unable to accept that fact). So what can you do? One of the most important steps you can take is to accept that the prison has to work on the assumption that you were really guilty, and calmly explain to staff that despite being innocent, you are prepared to do any course required of you for which you qualify. Refusing to take a course (rather than just being ineligible for it) will definitely adversely affect your progress. This is how the system works, and we have to work within that.

CCRC (Disclosure on Non-Disclosure) has kindly provided SAFARI with the following article on non-disclosure of evidence that might have assisted the defence pre-trial. As more and more of these cases are coming to light, this article may help many appellants to have their convictions overturned if non¬disclosure of evidence which could have cleared them, or could have undermined the prosecution's case, was an issue. "Non-disclosure in criminal cases has been all over the news in recent weeks thanks to a number of cases where trials were abandoned

or prosecutions stopped before the trials began. In light of that here is a brief overview of the issue and an idea of how the CCRC approaches possible non-disclosure in the cases that we see. The basic principle of disclosure is simple in theory. It is that the defence should have access to anything that could either a} help the defence case or b) weaken the prosecution case. There are some situations in which normal disclosure rules do not apply, such as where police intelligence or the involvement of informants are in play, but that is the basic starting point.

The problem of non-disclosure happens when the rules are not followed properly (for example by the police not telling the CPS what they have got, or the CPS not sharing what they should with the defence) and the defendant is denied knowledge of, or access to, something which could have helped them. For example, imagine the police are investigating a robbery and find a picture on someone's phone of the defendant in a pub at the time the prosecution claim they were miles away robbing a shop. That photo could obviously be used by the defence to argue that the defendant had an alibi and didn't rob the shop. If the defence are not told about the photo, the disclosure rules are broken because they can't use something which could have helped their case and/or weakened the prosecution.

The CCRC has been saying for some time that there are serious problems in this area and pointing out that disclosure issues are the single biggest cause of us sending cases back to the appeal courts. Just before Christmas, we referred one sexual offence case because of non-disclosure. We're waiting to hear when the appeal will be. The most recent CCRC case where a conviction was overturned because we found non-disclosure was that of James Dunn. His murder conviction was quashed in September 2016 because, at the time of his first appeal, the prosecution failed to share information casting doubt on the credibility of a key prosecution witness.

In fact, we estimate that in the last ten years, around one in five CCRC referrals where convictions were quashed were based on grounds of "material" non-disclosure. The word "material" is important as it means "significant" and "relevant" to the case. This means that non-disclosure can only help an appeal, or lead to a CCRC referral if the thing that was not disclosed was potentially significant enough in the context of the case that it might have changed the outcome of the trial or appeal.

As always with this type of thing, every case is fact specific so general rules are impossible to pin down. What may be important and relevant in one case, may not be in another. For example, undisclosed friendly text messages between two people could be highly relevant in one case where it was one person's word against another's, but completely irrelevant in another where there was eye witness evidence and CCTV of a violent assault.

So, what does all this mean for how the CCRC looks at disclosure and what we are likely to do when someone says to us they think there were failings of the disclosure process in their case? First, it is worth saying that the CCRC has the legal powers to make the police, the CPS and anyone else give us whatever we need to investigate a case. This means we can see all the material in a case whether it was disclosed or not. Also, you should be aware that we won't go digging around on the off chance in every case where someone says the words "non-disclosure". However, we will investigate, and we already investigate, if an applicant can point to a sensible reason for thinking there may have been non-disclosure in their case. We will also investigate, as we already do, in cases where we can see for ourselves some sensible reason to suspect a disclosure problem. After all, one of the problems with non¬disclosure is that the defence sometimes simply have no way of knowing about the existence of missing material.

So, when the CCRC thinks about disclosure issues in a particular case, we tend to ask ourselves questions like: "Is there something missing from the case that we would expect to

find?", like evidence of mobile phone contact between two people in a case where you would normally expect it; Also, "Can we rely on the disclosures schedules in the case?"; "How strong was the prosecution case? Would something new make any difference" and "How might it be relevant (i.e. material) to the case and could it be a ground of appeal?". We will also think about questions like: "Was it really not disclosed, or has it simply gone unnoticed?"; "Was it available all along from some source other than the police or CPS?"; "Did the defence raise questions at the time about possible missing material?" and "Was potentially important and relevant material disclosed too late for the defence to consider it properly?" (that can make a difference too).

As always, with CCRC cases, for something to be of any use in helping us to refer a case, it must be new. That is, not known about at trial or at a first appeal. Or, if it was known about, there needs to be a really good reason why it wasn't used at the time." (End)

SAFARI are very grateful to the CCRC for their article. It is always helpful to understand better how the CCRC make their decisions, as it helps applicants to provide them with the information most likely to assist them. We have asked that they produce a further article for us to publish in a future newsletter, to clarify what kind of new evidence they need to increase the chances of a case being referred to the Court of Appeal. Watch this space!

Valentin Krzyzyk (27) Has Been Acquitted following another blunder by prosecutors, who failed to hand over crucial evidence that could have exonerated him. Mr Krzyzyk had been accused of lifting a woman's skirt and groping her while at a London nightclub in December 2016. The accuser tearfully gave evidence stating she had been hysterical after the incident, which she claimed took place at the Cirque Le Soir nightclub. But CCTV cast doubt on the woman's claims after it revealed that, far from being hysterical, she appeared to carry on drinking and nonchalantly flicking her hair after the alleged assault. The video, however, was not shared with Mr Krzyzyk's defence team, despite repeated demands by them to see it. The footage was only seen by Mr Krzyzyk's barrister after the trial had begun at Southwark Crown Court. The judge, Mr Recorder Michael Bromley¬Martin QC, demanded to know why the CCTV footage had not been served on the defence as it ought to have been. As is so usual in cases like this, Mr Krzyzyk's name was released to the public, and the person who made the false allegation had her name anonymised. Mr Krzyzyk denied making any contact with her and insisted he had merely shooed her away after she took a drink from his table. On the first day of his trial, a mistake by the police and CPS meant no witnesses were called to give evidence. Jurors took three-and-a-half hours to acquit Mr Krzyzyk of a single count of sexual assault. Both the CPS and Metropolitan Police attended court, and Mr Krzyzyk was awarded £4,800 in costs. The judge said there were "serious omissions" by the officer in the case and the prosecutor to check the "very important and significant" CCTV evidence, let alone serve it on the defence. After his acquittal, Mr Krzyzyk spoke of his relief - and his anger at prosecution failures, saying, "It is also very stressful to face trial for such serious allegations and to know that the police is keeping information from you that would show your innocence straight away." The first time Mr Krzyzyk saw the CCTV footage was when it was shown in court; his accuser broke down in tears when it was played, saying she had not seen it before either.

This is an unusual case because the defendant had not been allowed to see the CCTV evidence in the first place, even though the prosecution sought to use that same CCTV evidence, part of which showed the complainant pointing Mr Krzyzyk out to a bouncer, to try and suggest his guilt. In the footage, the view is blocked for a short 'vital moment' when someone walks in front of the camera for five seconds when the complainant claimed the assault had occurred. Most non¬disclosure cases result from unused evidence, helpful to the defence, not having been disclosed; in this case, the prosecution failed in their duty to serve the evidence, on which they intended to rely, on the defence before trial.

Police Trawling and Trickery - Other Types Of Police Misconduct And Malpractice

The following is a blog from Simon Warr reproduced with his kind permission. Simon was himself the victim of false allegations of child abuse and his horrific experience is described in his book Presumed Guilty. Although there is mounting public concern about disclosure failures by police and prosecutors – especially when allegations of a sexual nature have been made – there is also a danger that a range of other types of police misconduct and malpractice may be being overlooked. It is obvious that any comprehensive review of how the embattled Crown Prosecution Service (CPS) reached its current state of crisis must certainly examine the much wider institutional flaws which are undermining our justice system.

I am referring particularly to the practice of police 'trawling' for complainants. What the police are unable to secure via 'quality evidence' (i.e. unearthing actual facts which help to prove what the truth is), they often attempt to make up with 'quantity evidence'. That's to say, if the complaints they are dealing with seem weak and ostensibly difficult to prove (sometimes because they could well be blatant lies or fantasies), the police know that if they can find others willing to make a similar complaint, they then have a much better chance of securing ultimate 'success' in court.

The police use this similar allegation 'evidence' to sway the jury into thinking the accused is a pretty unseemly human being or to use the vernacular, 'a dirty old man'. They know that if they can muster even a ragbag of fantasists and liars to support the original allegation, they have a much better chance of persuading twelve members of a jury to convict the accused, thereby ensuring the often vast amount of taxpayers' money that has already been spent in the so-called investigation is never going to be a source of subsequent embarrassment. This is why investigative teams are hell bent on securing convictions at all costs once a suspect has been arrested. And, of course, successful prosecutions will certainly not damage any CPS lawyers' or police careers. *There is no place for this crude practice of police trawling in any fair, just democracy.*

To exacerbate matters, the police sometimes use individuals who operate outside their force to advertise on their behalf, as happened in their 'investigation' of the complaints made against me, in 2012, by two greedy, unscrupulous liars. Our parliamentarians need urgently to investigate and deal with the fact that certain police forces choose to enlist this active support of private individuals – totally unregulated and completely unaccountable – in order to 'trawl' for further allegations of sexual misconduct (often, although not exclusively, historical in nature). The fact that these trawling operations have taken place is then often concealed from the defence, the judge and the jury.

In my case, they used the services of a Newbury businessman, a man seemingly obsessed with the entire ghastly topic of child abuse, who proclaimed on his website, within hours of the official announcement of the postponement of my trial in April 2014, that he had been asked by the investigating force to advertise on his website the fact the police were still eager for others to come forward to make complaints against me. He also stated that he would be ready to receive allegations to pass on. How utterly crude is this and some might well argue how utterly corrupt. I can only speculate how this sort of online trawling is permitted in any decent, lawful society and what the self-appointed 'agent' acting on behalf of the police gains in involving himself in such a case. It is difficult to fathom. Is he simply an obsessive injustice collector (specialist subject: child abuse) or is there a much more sinister reason?

The dangers of police officers getting involved with such characters must be obvious: making use of an unaccountable, often covert, third party who has nothing to do with the actual investigation violates all professional standards of modern police practice. How much of this dangerous activity has already been going in the background on for years?

One of the major concerns about these unofficial trawling activities is that of cross-contamination of evidence. In some cases there is blatant collusion between individuals who are now claiming as adults that they were sexually abused years earlier when they were children. Those planning to make complaints may have got together face-to-face or else may have communicated with each other online or by phone. Is it possible to ascertain the extent of the sharing of bogus stories between subsequent complainants in order to 'get things straight' before they even approach the police? Others read about the original complaints against the defendant online or in the press and exploit the information to their advantage, often financial.

Then there is the malignant role being played by certain firms of personal injury lawyers who thrive on the historical sexual allegation industry. Apart from the myriad which appear online at a few touches of the keyboard, there is well-documented evidence of advertisements being placed in prison newspapers for those who wish to make allegations of a sexual nature to contact one or other of these firms, with the promise of sizeable sums of compensation.

It isn't difficult to understand why someone who is short of a few bob, or a prisoner who earns a miserable £10 a week, might be inspired to spin a profitable yarn to an obliging lawyer in the hope of getting a generous tax-free payout. And since the risk nowadays of being prosecuted for lying to the police, or for perjury in court, is absolutely minimal, any fantastic pack of old lies will do. There is nothing to lose and perhaps a lot to gain.

I found it unsurprising to learn that the individual who actively advertised – unsuccessfully as it turned out – for further false allegations against me actually includes hyperlinks from his own website to a particular firm of personal injury solicitors who specialise in cases of alleged historical sexual abuse, including directing messages to a named lawyer at the firm. Was he hoping for commission, I wonder?

So why would police officers ally themselves to individuals who are so shamelessly and openly touting for compensation business? Might it be because detectives who work in this field are only too aware that the potential prospect of an undeserved financial payout of thousands of pounds can be a powerful motivating factor for some insidious individuals who come forward to make bogus complaints?

And I have recently discovered that the activities of this Berkshire-based 'injustice collector' are far from being unique. In certain instances, some self-proclaimed 'activists' have particularly dubious backgrounds of their own, including those who are themselves convicted criminals. Some have stood in the dock convicted of fraud, others of a range of drug offences; even some who have records for the vile and violent abuse of women and/or children, including members of their own family.

Many of these obsessive characters would be unable to pass any positive vetting or criminal records check required to be allowed to join the police, not to mention employment as teachers or carers, yet they are seemingly regarded by some detectives as being appropriate persons to gather sensitive intelligence that may be used in prosecutions (even if the actual source of the trawling remains concealed). How can that possibly be interpreted as justice in any form?

The time is long overdue for a major reform of our justice system. It has become far too easy – indeed, virtually risk free – for fraudsters, fantasists, revenge seekers and attention-seeking liars (as well as their enablers) to make false allegations, especially of a sexual kind against innocent victims. But this will doubtlessly continue until police officers investigate all allegations impartially and dispassionately, refraining from usurping the role of the jury in deciding whether the particular allegations being made are "credible and true."

In addition, all police contacts with those who are engaged in trawling for complainants on their behalf must be fully documented and disclosed to the defence well in advance of any trial. Police forces urgently need to ensure that they never make use of dubious, unaccountable trawlers, who are subsequently hidden and protected. In cases where personal injury solicitors have already been consulted by complainants, juries should be told the details if and when a case eventually goes to trial.

We, the British public, deserve better from our police forces in these 'investigations' and there is a need for real consequences for fraudsters and perjurers who seek to destroy the lives of innocent people and their families. Making false allegations of any kind is never a victimless crime and where police or judges suspect that a complainant is lying, prosecution should always be seriously considered (to be honest, I'm not holding my breath on that). Otherwise, our legal system will never address the current crisis, in which innocent victims of miscarriages of justice continue to be sent to prison, their lives destroyed, while those of us who were falsely accused and then acquitted will forever live under the shadow of monstrous lies.

Sally Challen, Can Chalenge Murder Conviction

Julie Bindel, Independent: Despite years of psychological torture, the absence of physical evidence meant that in the eyes of the law Challen was not a victim of domestic violence Misogyny has to no small extent been enshrined in law – now there is hope women who have been abused can come out of the shadows.

I worried that justice would never come for Sally Challen, a woman convicted in 2011 of murdering her abusive, controlling husband. But today in Court 7 at the Royal Courts of Justice, with the public gallery packed with dozens of feminist supporters, and a full press bench, permission was granted for Sally to appeal her murder conviction. The judge has allowed the admission of fresh evidence that was not available at the time of her trial in 2011.

Why did this mild-mannered, conventional, mother of two kill the man she had been married to for 31 years? What made her bludgeon him to death with a hammer? Sally was a victim of what is now enshrined in law to describe the abusive tactics that some men use to keep female intimate partners under their thumb: coercive control.

Sally met Richard Challen when she was 15 years old and he was 22. I have spoken to various members of Sally's family, all of whom tell me that she was under his control from the beginning of their relationship. Richard tortured Sally mentally and psychologically throughout their relationship. The absence of a bloody nose and black eyes meant that, in the eyes of the world, she was not a victim of domestic violence. But it was only sometime after her arrest that Sally disclosed Richard had anally raped her as punishment for being kissed by one of his friends. This brutal act of sexual violence and humiliation was merely one incident in a campaign of abuse handed out by Richard to Sally on a daily basis.

Richard had numerous affairs, but forbade Sally to question him about any of his actions. One Christmas he sent out cards to various friends and family members made from a photograph of himself straddling his Ferrari, with topless, bikini-clad women on either side of him. Sally had discovered that Richard was going into a brothel close to her place of work, and had seen a report about how police had raided the establishment and discovered trafficked women. Richard would speak to Sally as though she was dirt, and dictate her every move. He would constantly humiliate her about her weight and general appearance. Sally was ground down by his abuse, and moulded into the shape that Richard wanted. She was a good and loving mother, and both sons vehemently support her, despite the fact that she killed their father. Her youngest son David

has spoken to me at length about how his father had "no moral compass", and would laugh with friends and family members about Sally, and isolate her from potential support.

When Sally was convicted of Richard's murder and given a 22-year sentence, family members wept in the public gallery and no-one from either Sally or Richard's side of the family spoke out against her. At that time, coercive control was not a criminal offence. It was introduced in 2015 following decades of campaigning by those working on the frontline, and in research and advocacy around domestic violence.

In 2012 Sally contacted Justice for Women (JfW), an organisation I co-founded in 1990, asking for help. Sally knew that she had suffered a miscarriage of justice. Since the 1980s, I have campaigned on behalf of women convicted of murder who have killed their abusers. Often the courts do not understand the effects on women living with an abuser. Some judges have more sympathy with men who kill women, despite having not endured life-threatening violence.

The leniency given in some cases to men who have killed female partners who use the "nagging and shagging" defence tells us all we need to know about societal attitudes to domestic abuse. These men, almost always with a history of violence towards the women they kill, would claim that they had been "pushed to the edge" as a result of being either "nagged", or discovering that their partner had been having an affair. In a number of cases, men have been given light or non-custodial sentences, and some go on to kill subsequent female partners. Why should the courts, or anyone for that matter, consider being "nagged" or cheated on to be more of a mitigating factor in a murder trial than horrendous abuse and humiliation? It is misogyny enshrined in law.

The Sally Challen case is symbolic for a number of reasons. It shows that much of the abuse women endure in intimate relationships with men is hidden. It also tells us that the type of coercive control that Sally suffered is commonly used to keep women in their place, by the men who fear being arrested for violent offences. If Sally is successful in her appeal and walks out of court free from the burden of a murder conviction, it will symbolise not just her freedom, but the potential liberation the thousands of women suffering exactly what Sally endured throughout her marriage.

Surveillance of Janet Alder Unlawful but 'No Case To Answer' For Officers Involved

A gross misconduct hearing into intrusive surveillance by Humberside police of a bereaved family during an inquest has concluded, finding 'no case to answer' for two (then junior) officers involved, as the source of the verbal orders they received could not be identified and were not recorded. The hearing found that the surveillance of Janet Alder and her lawyer during the inquest of her brother, Christopher Alder, was not lawful or appropriate and could not be justified. However, the chair concluded that the officers on the ground could not be blamed for following instructions.

Between 3 July and 24 August 2000, an inquest took place into Christopher Alder's death in Humberside police custody. A team of police were deployed to follow Christopher's sister Janet, and her legal representative. This came to light in 2013 and was investigated by the then Independent Police Complaints Commission (IPCC), who found evidence of a case to answer for gross misconduct for four officers, two of whom (the most senior officers) had already retired.

Humberside police declined to bring proceedings, but were then directed to do so in respect of the two officers still serving. The officers were given anonymity during the hearing. They said that they believed they were carrying out lawful orders, given from higher up in the command chain. Evidence was given by a number of former senior officers at Humberside police who denied ordering the operation, and the hearing was unable to establish the source of its authorisation. Evidence was also given that surveillance officers could be told to follow individu-

als but without being told why. Janet Alder was an 'interested party' at the hearing, however she and her lawyer were disregarded and will be making a formal complaint about their treatment.

Ruth Bundey, solicitor for Janet said: "This entire process marginalised and disrespected Janet. The Appropriate Authority (Humberside) ignored her rights as an interested party and declined to communicate with us. Those in attendance seemed obsessed that she might be potentially disruptive, when nothing was further from the truth. Surveillance all over again."

Janet Alder, Christopher Alder's sister, said: "I am not surprised nothing came out of this. Humberside had no real commitment to bringing the case. I still don't know why I was followed. And those who authorised the surveillance have evaded responsibility."

Deborah Coles, Director of INQUEST said: "This hearing amounts to a shocking lack of accountability, as senior officers who authorised this inappropriate and unlawful surveillance evade identification and no one is held responsible. This reprehensible spying was a clear attempt to intimidate and undermine Janet's attempts to get to the truth about the brutal reality of the unlawful killing of her brother by police. Decades on Janet is still being treated with contempt, as she was ignored and forgotten in this process. The weak and inconclusive results of this hearing are of great concern, as the wider issue of undercover policing begins to be explored. An unlawful killing and unlawful surveillance with no accountability shows that the rule of law does not apply to police officers at an individual and senior management level."

Rodrigo Duterte Tells Police Not to Cooperate in Drug War Investigation

President Rodrigo Duterte has ordered the Philippines' police and soldiers not to cooperate in any investigation into his bloody war on drugs, amid international calls for an external probe. Western countries and rights groups have expressed alarm over the killing by police of more than 4,000 Filipinos since Duterte took office in June 2016, plus hundreds more killings of drug users by unknown gunmen. "When it comes to human rights, or whoever rapporteur it is, my order to you: do not answer. Do not bother," Duterte said in a speech before elite armed police units in his home city of Davao on Thursday. "And who are you to interfere in the way I would run my country? You know very well that we are being swallowed by drugs," Duterte added. The Philippines had welcomed a United Nations investigation into Duterte's signature anti-narcotics campaign, but not if it is conducted by the current UN special rapporteur on extrajudicial killings, Agnes Callamard, whom Manila has accused of bias and of not being qualified. An international criminal court prosecutor has opened a preliminary examination into a complaint accusing Duterte and top officials of crimes against humanity. Duterte says he welcomes that and is willing to "rot in jail" to protect Filipinos. Human rights advocates have said many of the police killings in the drugs war have amounted to executions. Police deny the allegations, saying they had to use deadly force because the suspects were armed and had resisted arrest. Despite criticism of the Philippine leader's bloody anti-narcotics campaign, Duterte remains popular and is the country's most trusted public official, according to opinion polls.

Longer Jail Terms Likely for Knife and Acid Possession

Adults convicted of possessing a knife or acid for use as an offensive weapon in public are likely to face longer prison terms when new sentencing guidelines for judges in England and Wales are introduced.Recommendations by the Sentencing Council published on Thursday state that the starting point for a judge assessing punishment for anyone over 18 caught with a "bladed article" in a public place should be six months in jail. For young people, the starting point is four months.

Former Prostitutes Should Not be Forced to Reveal Convictions

Three female former sex workers who said they were "groomed, pimped and trafficked" argued that the law currently discriminates against women and breaches their right to a private life. The trio said they were forced into sex work as teenagers and each have multiple convictions for soliciting or loitering under the Street Offences Act. Two senior judges have now ruled the law forcing them to reveal their past convictions is unlawful and "not necessary in a democratic society". Mr Justice Holroyde, sitting with Mrs Justice Nicola Davies, found that the disclosure of their convictions for soliciting was disproportionate and a significant violation of their right to private life. "We accept that the claimants have all suffered a handicap in the labour market, and have suffered embarrassment and humiliation, because of the operation of the multiple conviction rule," the judges said in their ruling. In our view, it should be and is possible for Parliament to devise a scheme which more fairly balances the public interest with the rights of an individual applicant for employment in relevant areas of work."

The ruling should result in the women being able to have their Discolsure and Barring Service records filtered to remove the soliciting offences, although the mechanism for this is not yet clear. Fiona Broadfoot, one of the claimants, who waived her anonymity in this case, said she had been fighting for 20 years for a change in the law. "Finally, I feel like a weight has been lifted off my shoulders – it's a vindication," she said. "I have carried these convictions around – eight pages of them – all my life and it's a disgrace. Not one of those men who bought and used and abused me – even the ones who knew fine well I was a child when first put on the streets – has ever had to face the consequences of his actions. It has been a long fight but worth it."

The women's lawyer, Harriet Wistrich, added: "This is an important judgment, although there were only three claimants in this case, the judgment will benefit all women in these circumstances and has the potential to bring about real change for sex trade survivors who should never have been criminalised in the first place. "Unfortunately, the court were not persuaded by our argument that the practice discriminates against women or is in breach of duties with regard to trafficked women. We will be seeking permission to appeal in relation to those broader points. It is not easy for women with a history of prostitution to come forward and advocate for themselves and others – so much stigma attends them – so the courage and determination of these women is to be applauded." Karen Ingala Smith, CEO for nia, a women's charity that is supporting the women, said: "We feel strongly that these women should never have been convicted in the first place. Prostitution is symptomatic of women's continued inequality and discrimination and a form of violence against women. "These women were exploited and coerced and yet it is their lives, not those of their buyers and pimps, that were blighted with convictions.

Hostages: Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.