I’m fed up with you not doing what we want.

Is the Government taking us for a ride over the Human Rights Act?

I’m not going anywhere!
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FACTually Speaking...

This edition of FACTion is dedicated to the excellent presentations enjoyed during this year’s Spring Conference at the Cardiff Law School on Saturday 30th May. This really was a superb event, greatly appreciated by those present, judging from the many positive comments I heard during the day. Of course, our thanks go to the speakers, whose lectures are included in this edition of FACTion, as well as to the members of our panel who presided at the question & answer session in the late afternoon.

The facilities at the Law School are quite marvellous and those who attended were each greeted by Brian, our beaming Secretary, and given a beautiful Law School folder, complete with pen, paper and all documents pertaining to the day. The food was awesome and the young staff serving this and the drinks, friendly and helpful. So a BIG thank you to all our friends in Cardiff.

Praise is also voiced for Dr Ros Burnett, without whom our conferences would not take place. Ros does so much for FACT - attending committee meetings, planning the conferences, Twitter and giving us all of us heaps of encouragement. She really is a good friend!

This edition of FACTion follows the General Election. We no longer have Chris Grayling as Justice Secretary, which is probably a cause of some joy, but it is to be seen whether Michael Gove will bring hope to us when it comes to penal reform and a more even-handed approach to the investigative practices, including the recognition that false allegations occur and that the ‘culture of the victim’ is eroding the notion of innocence until guilt is proven. Something touched upon by some of our contributors.

At this moment in time FACT members have an opportunity to help craft some of the policies adopted by the Opposition Parties. I know some of our members are already active in this area. The post-election period will be one of soul-searching and regeneration. These parties need fresh ideas. Why not encourage them in the concerns of our membership? Both the Labour Party and the Liberal Democrats are asking for the views and ideas of the general public. I am sure other parties are doing the same.

If we fail to do this we are missing a chance to inform politicians of the side of the story that is drowned out by the roar of moral panic. If every FACT member sent their story to each of those standing for leadership (or to the leaders when elected) it could have a tremendous effect on policy. Make copies for the other parties too, not forgetting to let your own MP have a copy. I should be interested in your replies. You may think that one letter will do little to turn back the tide of injustice but in my experience ‘good’ Members of Parliament are very sensitive to issues raised in letters. Our sister organisation, Safari, is undertaking a similar campaign. Their suggested template letter to MPs may be found at: [http://safari.uk.org/newsletters/No104.pdf](http://safari.uk.org/newsletters/No104.pdf)

I am currently nervous of the Government’s plan to scrap the Human Rights Act,1998 and (possibly) to withdraw from the European Convention on Human Rights. It needs repeating that the European Court of Human Rights has nothing to do with the EU, being a totally separate body. Were we to withdraw from the Convention it would, to my mind, give out all the wrong signals to those countries where corruption and injustice is rife.

I often hear people rehearsing the usual tabloid half-truths about the European Convention: referring to ‘foreign courts’ as if the UK had no input. They suggest that the judges in the ECHR are ‘European’ (i.e. not English). Worse still, some of them are French or German. Mention is never made of the valuable part played by British judges and lawyers. I presume critics of the ECHR would accuse such lawyers as having ‘gone native’. It seems that few lawyers support a British withdrawal from the Convention and many see the creation of a British Bill of Rights as a pointless exercise. It is a tad arrogant to suggest we Brits are right all the time, yet this is how it looks. Few British cases actually get to the ECHR. By far the majority that are taken this far see the ECHR agreeing with lower court decisions. We must not be taken in by the screams of the tabloids and politicians who have a vested interest in popularity rather than truth and justice.

Mark Parry faction.editor@gmail.com
From the Chairman

FACT’s Manifesto - Making things happen through lobbying

With the recent General Election in the UK we have probably been more aware of the political scene than usual and politicians and party manifestos have been forefront in our minds. As political parties celebrate or lick their wounds there are opportunities to be had for those who want to influence the business of parliament. And indeed we do! Parliament is a complex animal and not necessarily that easy to understand so FACT recently attended a ‘understanding parliament’ training session in London run by the parliament outreach service to help build it’s expertise.

It is vitally important FACT uses this present opportunity to review and set out its own manifesto of changes it wants to see in the law and in the standards across the police and courts while political parties are more willing to listen. Our recent conference held in Cardiff highlighted a number of issues such as the introduction of a statute of limitation on historic abuse allegations and the compensation culture as reported more fully elsewhere in this edition of FACTion. As mentioned in the Editorial, the organisation SAFARI has recently produced an excellent letter to MP’s setting out their main concerns. See: http://safari.uk.org/newsletters/No104.pdf

These include:

- Return of presumption of innocence.
- Real proof beyond reasonable doubt
- Police corruption and wrongdoing does exist.
- Pre-trial media coverage.
- Anonymity for ALL defendants up to the point of conviction.
- Giving reduced sentences for pleading guilty should be abolished.
- It should become an offence to treat prisoners maintaining innocence any worse than those who are definitely guilty.
- The Police and Criminal Evidence Act (PACE) should be given more ‘teeth’.
- Financial compensation for alleged victims of sexual offences should be replaced with free counselling and other mental help unless there is absolute corroboration.

The list is rather complex and we would welcome your views on what FACT should include in it’s manifesto and where our priorities should lie.

Nicholas Griffin  FACTchairman@outlook.com

Michael Gove MP
Lord Chancellor & Secretary of State for Justice

Why not send a copy of your SAFARI-style letter to Mr Gove?  However, do make sure your spelling and grammar is correct!

Photo: © Matthew Smith, Policy Exchange
Spring Conference
Report by Holly Greenwood, PhD candidate, Law School, Cardiff University.

FACT, which stands for Falsely Accused Carers and Teachers, is a membership-based, voluntary organisation run by a national committee. It seeks to provide support to individuals (and their families) who have been falsely accused of child abuse while acting professionally in a position of trust.

FACT campaigns for justice and lobbies for change; provides advice and support for falsely accused carers and teachers; raises awareness about the reality and risks of false allegations of abuse and encourages and promotes research into the reasons why false allegations happen.

The spring conference was attended by approximately 80 attendees, mostly members of FACT who had either been falsely accused of child abuse or are supporting someone who has. They were joined by academics from Cardiff University and solicitors and barristers with a specialist interest in the area.

The conference opened with a welcoming speech by Nicholas Griffin, chairman of FACT. He spoke about the damage that false accusations can cause those wrongly accused and referred to the current climate, which is unfortunately seeing a rise in accusations of abuse being levied against professionals in such a context.

The conference then broke into small group discussions which provided an opportunity for delegates to discuss their experiences with each other. The discussions were guided by a focus on the effects of false accusations on the accused, their families and partners.

In the afternoon a variety of speakers took to the stage to speak on a number of different topics.

Simon Warr was the first speaker of the day who had himself been the victim of false accusations of child abuse whilst working as a teacher. Simon had worked for 30 years teaching modern and classical languages and had also enjoyed a career in the media working with Radio 2 and Channel 4. Simon gave a powerful talk which explained his experiences and the effects the accusations had on his life. Simon explained that he spent 672 days on bail whilst waiting for his trial, where the jury promptly found him not guilty of all charges. Simon explained how torturous the two years were, waiting for his case to finally be heard, and valuably pointed out that “justice delayed is justice denied.” Simon’s talk illustrated the devastating long term effects that accusations of abuse can have on an individual even when they are found not guilty at trial.

The next speaker was Professor Felicity Goodyear-Smith who is Academic Head of the Department for General Practice and Primary Healthcare in the Faculty of Medical and Health Science at the University of Auckland, New Zealand. Professor Goodyear-Smith’s research specialisms include lifestyle risk factors; domestic violence; sexual assault and mental health. Professor Goodyear-Smith spoke about the causes and motivations which lead individuals to make false accusations of abuse against others and used a number of case examples to illustrate where this has happened. Her discussion included problems caused by the removal of legal safeguards such as the requirement of corroboration for accusations in criminal law and the role of psychological techniques which have led to a rise in false accusations, particularly in the context of recovered memories where suggestive interviewing can lead individuals to “recall” false events.

The final talk of the event was given by Professor Julie Price, Dr Dennis Eady and student Holly Greenwood of Cardiff Law School. All three are involved in the Cardiff Law School Innocence Project. Historical sexual abuse was discussed, in particular accusations levied at a carer at a Children’s Home in a case the project is currently investigating.

The conference ended with a panel discussion which was made up of a number of experts in the field: Chris Saltrese (Solicitor), Susan Cameron-Blackie (legal scholar...
and blogger), Matthew Scott (barrister), Dr Mark Smith (Head of Social Work at Edinburgh University), Barbara Hewson (barrister)

The conference was a lively and well-attended event sparking much discussion and debate while also providing a supportive environment for delegates who have been, or are, victims of false accusations of abuse.

After the event, Conference organiser Dr Ros Burnett said:

“The National Committee of FACT, on behalf of its members, associates and friends, would like to express their gratitude to Cardiff Law School for generously hosting their Conference on 30th May 2015. The venue was wonderful. We much appreciated the student helpers, the signposting and catering. FACT is very grateful to Professor Julie Price, Dr Dennis Eady and Holly Greenwood who gave a great talk at the conference.

“We are getting lots of feedback from people who attended saying how pleased they were that the conference was held at Cardiff Law School and in the interesting city of Cardiff and how much they enjoyed and appreciated the venue. The session about the Cardiff Innocence Project was inspiring and we gained much insight into the perseverance and long hours involved in that work.”

Originally posted on the Cardiff University Law School Website at http://www.law.cf.ac.uk/newsandevents

Other reports of the conference have been written by Barbara Hewson at http://thejusticegap.com/2015/06/the-misery-of-false-allegations/

Simon Warr taught modern and classical languages for over 30 years at the Royal Hospital School in Ipswich. He joined the BBC in 1999, where he has worked on local radio alongside his teaching duties. He has been a regular contributor to the “Jeremy Vine Show” on Radio 2. He was the Headmaster on Channel 4’s TV series “That'll Teach 'Em”. His first novel, “Howson's Choice” was published in 2011 and was selling well until his arrest.

Since the Savile allegations in late 2012, some of them true, some embellished, some, no doubt, fabricated, here in the UK we are in the face of a firestorm of historical child abuse allegations. Active encouragement is being given to adults who claim to remember, from even a half century ago, any inappropriate behaviour which took place by a teacher or carer and, to quote the former DPP, Kier Starmer, ‘these complainants must be believed’. (Only they're sometimes referred to as 'victims'). Initially, barely a week passed without someone in the public eye being arrested, amidst maximum publicity, of course. But it wasn't just the famous who were being targeted, as hundreds of ordinary folk, had their collar felt in the early hours of the morning.

In 1769, William Blackstone wrote in 'Commentaries on the Laws of England': ‘the law holds it that it is better that 10 guilty persons go free than one innocent person suffers’. If only he were standing where I am now, he would hold his head in despair. Of us who have made the trip to Cardiff this weekend, be in no doubt, there are a myriad more in our supposedly democratic society, who have been arrested, charged and imprisoned on the basis of unproven complaints. But, in modern Britain complainants 'must be believed' when it comes to alleged sex abuse. If this is the message from the top of our legal profession, then is it any wonder that more and more innocent individuals are being arrested and, in many cases, unfairly punished? And when innocent people are punished and suffer the wrath of society, it is not only that person who has to suffer but also his or her family and close friends. It is impossible to express fully in words the horrors that one has to endure when accused of child abuse and only those who have experienced it will know fully the pain.

When I stood in the dock and heard the jury utter the words 'Not Guilty', after less than 40 minutes’ deliberation, (indeed, it has been subsequently reported to me that the jury had made their decisions within 15 minutes), it brought to an end a two-year living nightmare.

Accused of minor sexual offences of 30 years previously, I had endured nearly 2 years of hell, which at times had brought me to the cusp of despair. Not only had I suffered the stress of a very public seven day trial, I had also witnessed my life being torn apart before my very eyes.

I lost my job, my biggest passion, as well as my home and community, my reputation and my peace of mind. I was forced to endure the terror of simultaneous dawn raids on both my home in Suffolk and my flat in West London. In the early hours of the 18th of December 2012, I was awoken at my Suffolk house by the arrival of a group of local police officers, one of whom read me my rights as the others ransacked all my possessions. I quickly realised my London flat was being searched at the same time. They took away everything that was personal to me. They proceeded to look at every email I'd ever written, look at every photo I'd ever taken, read every phone message I'd ever sent or received. In short, my life was invaded.

The allegations made related to a former pupil of St George's School, near Stowmarket, where I had taught for 2 years in the early 1980s. After my arrest, precisely 672 days later, a jury decided almost immediately that there was no truth in this person's allegations, nor those of the accuser's close friend, nor an ex-pupil of the school where I have been teaching for the past 30 years. The allegations had ranged from ' checking me inappropriately after a shower' to 'chasing me around a packed day room trying to pinch my bottom'.

I, an ex-teacher of over 30 years and now a BBC reporter, who has appeared on various national television and radio shows, have the task of piecing my life back together - or what is left of it.

Am I angry? I am angry and frustrated that I've had 2 years of my life taken from me. I firmly believe that there should be a maximum limit of 3 months on bail and, if the police want to extend the time, they should have to seek permission from a judge, giving good reasons. But, rather than wallowing in self pity, of more concern to me is I want this and other lessons to be learned. Yes, I was badly affected - I suddenly lost my life as I'd known it: but I
don't want people to feel sorry for me and think it's another sob story. What I believe needs to happen is something good has to come from this: changes need to be made in how these incredibly sensitive matters are handled. Of course, children who have been the victims of abuse need to be able to feel they can come forward and be listened to. No one should automatically be presumed guilty, as I was, and have his or her good name sullied forever just because of some unfounded allegations. Once the police had decided to arrest me, they were going to do anything they could then to prosecute me. As I said, the nightmare ordeal started when police hammered on my door on that fateful day, one week before Christmas, 2012.

In the aftermath of the Savile scandal, a former pupil, who is still covered by anonymity, came forward and claimed that some 30 years earlier I watched him in the showers after PE lessons and went on to touch him, under the guise of checking to see he was dry. The fact is I've never taught PE, never taught the complainant and have no memory of the pupil whatsoever, other than the fact he happened to be a pupil in the school at the same time. From the outset I maintained what he had to say were 'calculated, malicious lies'.

Despite telling the police this, I was still charged and it was brought to court. And took two long, hellish years to do so.

The police were not interested in uncovering the truth, only in securing a conviction.

When it finally came to trial in late October 2014, at Ipswich Crown Court, dozens of character witnesses paid tribute to me, saying, among a host of superlatives, that I was "flamboyant", "inspirational" and "one of the most popular teachers at school". More importantly, it was evident to all that the complainants had been telling lies. But, despite being cleared, I have lost faith in many things: I've lost faith in the notion of being presumed not guilty until proven otherwise; I've lost faith in a system which can keep someone's life on hold for nigh on 2 years, as the powers-that-be trawl for other complainants or any pieces of innuendo they can find; I've lost faith in 'no win, no fee' solicitors, who fuel the sorts of lies and deceit that resulted in me being dragged through the courts. I've lost faith in the adversarial method of police investigation, whereby they take a standpoint from the outset and refuse to budge, deliberately disregarding any evidence which suggests anything contrary to their case. The police were not interested in uncovering the truth, only in securing a conviction. How could a pretty obvious farrago of fabrication ever have ended up in court in the first place? From the outset the police adopted a hostile, one-sided approach, raking through every facet of my life, searching for something, anything, to corroborate the allegations. Instead of approaching the case with open-mindedness, they seemed determined on pursuing a guilty path and nothing would alter their predetermined course. I wish they had looked from the outset at the unlikelihood of these allegations being possible, even on a practical basis, and based their decisions on that. The very first thing I said at interview was that I had never taught P.E. (after which lesson the complainant stated the abuse took place). I was ignored. I even gave them the names of members of staff who did teach within the school's discrete P.E.department. I was wasting my time.

The system seems to be that if the police feel there's not enough evidence to secure a conviction, they go trawling through the accused's life and try to find something/anything to sway the jury. It's all about prejudice. I had every aspect of my personal life raked through. That in itself was a trauma to be endured. Those 2012 dawn raids on my homes were pretty horrific in themselves, especially as I then had to spend the best part of 12 hours locked in a cell for the rest of that day. Imagine the police barging into your home first thing in the morning and ransacking it, with the added shame of having to wash and dress in front of a policeman while this is going on, before being escorted to the police station to be fingerprinted and to have your DNA taken. These particular allegations were made on the shirt tail of a certain Derek Slade, the former Head teacher of St George's, who was jailed in 2010 for physically and sexually abusing pupils. I also believe my media profile made me a target (aside from my TV appearances, I have been a regular contributor to BBC radio for many years, a fact discussed regularly on the internet prior to the allegations being made). This and the fact that I am a wealthy man.

I understand the police have a job to do, and I have respect for that. I also understand that, in the wake of Savile, they are under a huge amount of pressure. They seem to be criticised if they don't pursue certain cases and
criticised if they do others. Since late 2012, they have been caught between a rock and a hard place. Of course, transgressors must be brought to justice and this is the police's difficult job. But this can't disguise the fact they consider educated, professional people as easy targets because we will cooperate in any way possible...be respectful, answer politely and fully all their questions. I can tell you this didn't assist me one iota. It would have served me better to have said nothing. The more information I gave them, the more they tried to use it to enhance their own case.

In order to improve the present system, investigations must be carried out in a balanced manner, with an open-minded willingness to investigate claims from both parties. In my case, I was effectively hung out to dry for nigh on two years. Yes, of course, we must protect children and encourage people who have been abused to come forward and then to listen to what they have to say sympathetically, but, at the same time, we must appreciate we are creating a climate in which those who have not been abused can claim that they have. The scales of justice seem to have been tipped whereby complainants are believed almost automatically. Successive governments have driven through law after law with a purpose of increasing convictions. Are we prepared to convict innocent people just so we can show the public there are more and more guilty verdicts in our courts? And how can an allegation, totally unfounded, be put forward as evidence?

My main complainant, now in his forties, originally approached the police, after consulting 'no win-no fee' solicitors, with an allegation against me early in 2012, (despite the fact that when he was interviewed about other matters to do with the school in 2011, my name wasn't mentioned with regard to any abuse). He was told that the police would not be taking the matter further.

He then returned months later, and, once again, embellished his statement. This further embellishment led to my arrest.

The compensation culture is largely to blame for false allegations. When you have anonymity, coupled with no win no fee solicitors and a potential pay-out, liars have nothing to lose and a lot to gain. Besides which, the very idea of giving people compensation for historical abuse claims such as these is beyond me. What is the connection between having been supposedly abused 30 odd years ago and financial compensation now? Had I been guilty, all they should have wanted was my name to be published, me to have been punished, and justice would surely have been done. The only rider I would put to financial compensation is if a victim has had to pay privately for psychiatric support. Then it is incumbent that those fees should be paid by the abuser directly to the doctor; no money should be paid to a complainant. Anyone who has been abused will not be concerned with financial compensation, but by his or her abuser being punished.

I also believe that people who have been accused of a crime should be protected by anonymity until they are found guilty.

Despite being cleared, I am aware my life will never be the same as it once was. Making friends was nigh on impossible during my 2 years of hell: whether you’re innocent or not, as soon as you’re arrested, your name goes out publicly. Whilst the people who wrongly and maliciously accused me of these acts can hide behind anonymity, my name was published on TV, radio and the internet immediately (illegally, under the Education Act 2011), and in newspapers as soon as I was charged. Even though we proved there was not a scintilla of truth in these charges, even now, if I met someone and gave them my name or my personal card and they subsequently looked me up on the internet, (as people always do nowadays), the first thing they would read is: ‘This person has been cleared of child abuse. I’ve been cleared, yes, but there’s still that smell of it; it will remain there for the rest of my life; I’ll never be rid of it. It will remain on Google, and I don’t think it should. If someone is found not guilty, as I was, then all records should be deleted from search engines. Each case should be treated on its own merits. I have lost a number of job opportunities since my trial because, as soon as anyone puts my name into Google, that person reads a list of articles appertaining to my arrest and court case. If you are being introduced to someone for the first time and you read that they have appeared in court accused of child abuse, even though that person has been found not guilty, the automatic, human reaction is to stay clear; you certainly wouldn't offer that person a job.
Then we come to the trolls. I had been described online as "very dangerous". I had a former pupil of St. George's saying I should be castrated, although his language wasn't quite as polite. Indeed, I had to face a barrage of abuse through email, texts, Facebook and via internet trolls, the vast majority of whom I'd never met. On one website a former pupil had written, 'Did you know my old tutor is a paedophile?'. It's heartbreaking. Shortly after my arrest, some troll wrote that if I killed myself it would be ‘the best Christmas prezzie ever’. Imagine reading that about yourself, and realising that some people are at their happiest when they are being their most cruel. It beggars belief that someone could be so heartless.

The case took two years to come to trial and for much of that time I spent my days hunting down my own witnesses and endeavouring, almost single-handedly, to prove my own innocence. My Union solicitor was busy with a multitude of cases, such is their modern-day prevalence, so it was down to me alone to do battle with the police incident room team, who were trying tirelessly to find anyone who'd be prepared to back up the allegations against me. Someone who has been accused of a crime dating back more than 30 years ago has a devil of a job to prove that he or she is not guilty, especially with only limited resources. It was down to me; I had to – on my own – go and find my own character witnesses. I'm afraid I didn't have an incident room team to help my research! During this exhausting process I admit I visited some proverbial dark places. My naturally bubbly, open personality became more and more introverted; my natural self-confidence gradually evaporated. I could fully understand why the teacher from St. George's who had been arrested before me had committed suicide.

There was even a moment when I felt suicidal. During that awful period of 672 days on police bail, when I was feeling at the lowest ebb a human could possibly endure, both the Disclosure and Barring Service and then the National College of Teaching and Leadership came wading in to inform me that they would be waiting in the wings to decide what action I should face once the trial had concluded, regardless of its outcome. I felt like I was prostrate on the floor being repeatedly kicked. Sure enough, both started their own investigation after the court case, repeating by letter to me the offences of which I had been cleared.

I am now seriously considering legal action against my 2 St. George's accusers, whatever the cost, although I am frustrated that the authorities have not arrested them and seem to have no intention to do so. I can understand the police being loath to arrest someone who has made a complaint and a verdict of not guilty is ultimately returned. This does not necessarily mean that the complainant was telling lies. A subsequent arrest in each case would put off real abused people coming forward. But, as in my case, when it is clear that what has been alleged could not possibly have taken place, and the accusers are palpably lying, then, surely, there is a moral duty to arrest the accusers.

But one thing I know for certain is that I will not return to the classroom, after, if I say so myself, 35 glorious years. Being a teacher was my biggest passion and I like to think that of the thousands of pupils whom I have taught, the vast majority are appreciative that, while I can be quite a fiery character on occasions, I enriched their young lives by my expertise in the classroom, my total commitment to school life after hours, and my endless supply of jokes. A few unscrupulous individuals cannot erase all that I have achieved.

Society, listen, so we lessen the chances of innocent people's lives being destroyed unnecessarily:- the length of bail must surely have a strict time limit and, most importantly, our police force must cease their current adversarial approach to investigations. Surely, in any fair, just democratic society we have a fundamental right to impartial, balanced police investigations. The police have to run their investigations totally independent of the Crown Prosecution Service. They must not take sides from the outset and must weigh up ALL the evidence they uncover.

If the present modus operandi continues, the number of falsely accused victims will inexorably increase. What would have William Blackstone made of our current plight?

Simon Warr
WHY AND HOW FALSE ALLEGATIONS OF ABUSE OCCUR

This article is based on a chapter under the title of 'Understanding Why and How False Allegations of Abuse Occur' in the book 'Vilified: Wrongful Allegations of Sexual and Child Abuse'. Edited by Ros Burnett. OUP, 2015

Abuse and false accusations of abuse both happen and both can do considerable harm. There are various causes, motivations and cognitive biases that can lead to erroneous allegations and prosecution. These can be categorised under the broad categories of external and individual factors (Figure 1), although many cases there is considerable overlap and interplay of influences. This taxonomy should be seen as illustrative but not prescriptive.

External factors include changes in cultural beliefs and investigative procedures and policies that influence decisions, while individual factors include characteristics of accusers and objectives of investigators. Cutting across these dimensions, and drawing on known cases of false allegations of child abuse and sexual assault, a number of causal and motivational patterns can be discerned. Blame or responsibility for untrue allegations cannot simply be attributed to those who make them.
They may be, on some level, jointly constructed – by psychologists, police, victim support workers who are on the lookout for signs of abuse, who recognise symptoms and jump to conclusions – in the context of vigilance and awareness of widespread incidence of child abuse and sexual exploitation, and belief that many behavioural problems and mental illness are attributable to abuse in the person’s childhood.

External factors

Construction of the concept of child abuse

‘Child abuse’ is a modern social construct and became a serious public concern after the publication of a seminal paper on the “battered child syndrome” in 1962. Once child abuse was ‘discovered’, it was defined, brought to public attention and became the subject of state intervention. There was a shift from seeing child-rearing as an individual moral duty to being a national responsibility. Social services and legislative changes were instigated in the 1970s to address the problem, which was soon recognised as reaching ‘epidemic’ proportions, with identified cases considered only ‘the tip of the iceberg’.

The incidence of both physical and sexual reported abuse escalated. The more widespread a problem, the more it attracts attention and resources, and the rhetoric in making these claims helped to shape policy. By the 1980s, the claim that at least one in four girls are sexually abused became accepted fact.

There was an increasing dichotomisation into sexual assault victims (usually women and children) and offenders (usually men), with a ‘punish the offender, treat the victim’ paradigm, along with a movement to demonise all perpetrators as equally evil and incorrigible.

Figure SEQ Figure \* ARABIC1: Taxonomy of false abuse accusations

The belief that sexual abuse of children and women is extremely prevalent, whereas false allegations rarely if ever occur, provides the context for increased suspicion that sexual assault is taking place in a wide variety of circumstances. False allegations will occur more often when abuse is believed to be endemic, and where psychological distress or dysfunctional behaviour is assumed to have resulted from past undisclosed sexual assault.
Ideological agendas

The ‘Women’s Liberation’ movement of the 1960s focused on equal opportunities and political, social, economic and other rights of women to those of men. These ideals were replaced in the feminism of the 1980-1990s with the aim to disempower men rather than stand alongside them. Women were seen as superior to men. The thesis that all sex is rape and all men are potential rapists was frequently cited as mainstream feminism. Male oppression was the cause of all social woes, and women considered to be powerless victims of the patriarchy. Rape definition expanded to include wolf whistles, women and children were said to rarely if ever lie and must be believed when alleging sexual assault. All blame was attributed to men. Victim or gender feminism has had a profound effect on the generation of false allegations.

Judicial and legislative changes

There have been legislative developments in the United Kingdom (UK) and the United States (US) and other countries which have contributed to false allegations. By the 1990s in New Zealand (NZ), the police, prosecutors, judges and others dealing with alleged victims were instructed that every sexual allegation must be treated as genuine. NZ police are trained to believe the victim, to avoid re-victimisation should they approach a case with scepticism and critically examine the testimony. From the outset complainants are called victims, provided with victim advocates to prepare them for court and support them at hearings, and the accused are labelled perpetrators. This undermines the hallmark of justice in Western society of ‘innocent until proven guilty’. Validating and supporting complainants at the expense of defendants compromises the impartiality of a system in which the principle of neutrality requires that a complainant is neither disbelieved nor uncritically believed, that a fair and objective investigation into the facts is conducted, and both accuser and accused afforded equal consideration and respect in accordance with the law of natural justice.

In 1986 the NZ Evidence Act was amended so that corroboration in cases involving allegations of sexual offences was no longer required. Removal of the legal safeguard of corroborative evidence means that conviction now may lie solely on the testimony of one person’s word against another. Similarly, in England and Wales, the requirement for corroboration in order to convict was removed.

A raft of other legislative changes have been introduced to support complainants in NZ. There is provision for them to give evidence by closed-circuit television or by video link, or to be screened from the defendant, whereby the latter loses the right to confront a witness giving testimony against him face-to-face. It is not permitted to question complainants about sexual experience with anyone other than the defendant. In the case of a serial accuser, this precludes juries learning that a complainant has made similar claims against other men who have been found not guilty. Anonymity of complainants is frequently maintained after an acquittal, while the accused may have been named publicly.

The justice system in England and Wales has followed a similar path. For example, the ‘Report on review of ways to reduce distress of victims in trials of sexual violence’ aims to reduce distress to victims during cross-examination. What is most notable about this document is the presumption of guilt. The word ‘victim’ not ‘complainant’ is used throughout. While all would agree that aggressive and other forms of brutal and traumatic questioning should be avoided where possible, the same courtesies should be extended to the defendant. At the outset of a trial he is presumed innocent until proven guilty, and, should he take the stand, as a fellow human being he is entitled to the same care and respect afforded to his accuser.

Moral Crusades

The collective belief in the innocence of childhood renders it beyond debate, and any suggestion of child molestation engenders horror and panic. The moral crusades that can occur to root out cases of sexual abuse and the ‘duty to believe’ a complainant means there is always a presumption of guilt, and the accused can never be absolved from
suspicion even when shown to be innocent. In the 1980s, moral panic about paedophile rings and satanic cults, believed to be responsible for inter-generational ritual abuse, led to a wave of false allegations in North America, the UK and Europe, especially against pre-school workers. A US investigation of over 12,000 accusations of satanic ritual abuse reported by psychologists and psychotherapists concluded that not one case was substantiated, and a similar UK study also showed that all such allegations were unfounded. However the belief in organised paedophile rings persists. In the 1990s conviction that widespread child abuse had occurred in residential care homes in Wales and England resulted in massive police trawling investigations. Police sought out former residents and conducted unsolicited interviews. Accusations mounted against hundreds of innocent care workers.

**Suggestive interviewing**
Children, especially pre-schoolers, are prone to developing false memories from suggestive influences. This may result from interviewer bias when an investigator or counsellor who believes abuse has occurred uses suggestive, forced choice or repeated questioning. Reinforcing the expected response (such as saying ‘You are really brave for telling’), inviting children to first pretend or imagine a certain event and then visualise it, and use of aids such as anatomically correct dolls can all generate false claims. Once such false recollections have been created and reinforced by repeated telling, they can become ingrained as enduring false memories. Allegations result from problematic questioning by interviewers convinced that the children have been abused.

**Misinterpretation of real events**
An over-zealous sense of surety that abuse has occurred or that a particular individual is guilty may result in the evidence presented being selectively withheld or distorted. In the US there has been 329 exonerations of wrongfully convicted individuals, including 18 awaiting execution, mostly from DNA testing. While many involved violence additional to, or rather than, a sexual element, and were replete with physical evidence of a crime, these cases are valuable in indicating likely mistakes that occur more widely in prosecutions and convictions for sexual and child abuse where there is no DNA to bring them to light.

The causes of these false convictions were eye witness misidentification, a known relationship or acquaintanceship between the victim and the defendant, invalid or improper forensic science, misconduct by police and prosecutors, and false confessions. In most of these exonerations a crime was committed, but the wrong person was convicted. However situations also arise where individuals are accused but no sexual assault ever actually occurred. A caregiver or professional may decide that a child or vulnerable adult has been abused in the absence of complaint from the alleged victim, for example where the perceived victim is an infant, has a disability which prevents communication, or even is deceased. Professionals’ acceptance, rejection, and interpretation of objective scientific and medical data may be coloured by this belief.

For an extraordinary example of how misinterpretation of medical findings by health professionals led to a shared fixed and false belief (idée fixe) that a 10 year old girl had been raped and murdered rather than died from natural causes, with ensuing criminal proceedings continuing for five years at huge legal and social cost (see FA Goodyear-Smith, *Murder that Wasn’t: the Case of George Gwaze. Otago*)

**Miscommunications regarding sexual consent**
What constitutes consent is a vexed issue. Legally consent can only be given by those deemed capable of doing so. Being under the legal age of consent, affected by alcohol or other drugs, asleep or unconscious, or affected by an intellectual, mental, or physical impairment, renders a person unable to consent. Consent can only be granted in the absence of threat or force. A report in the UK identifies that young people ‘understand what is meant by giving consent to sex, but have a very limited sense of what getting consent might involve’ - consent is not for an event but is ‘a process that begins with sexual initiation and is ongoing throughout the sexual activity’. However in most sexual encounters verbal consent is not explicit, and nuances of both verbal and non-verbal behaviour, in the absence of active resistance, are generally perceived as willingness to proceed. In most circumstances when there has been an initial enthusiastic ‘yes’, it is unlikely that consent is repeatedly sought and given throughout sexual activity.

Even if legally consent may not be given when someone is intoxicated, in reality sexual activity, especially between young people, often takes place after both parties have been drinking. Alcohol can further cloud a situation both by lowering sexual inhibitions and by causing some memory impairment. Subsequent recall may lead to an honest distortion of memory or misperception of the other’s intent. Both parties may give honest but false testimony.
Cognitive biases

Many cases of false allegations arise from the cognitive biases of the investigators. Once the decision has been made that abuse of a child or an adult has occurred, the professional may have tunnel vision. Confirmatory biases may operate whereby only evidence supporting the allegation is sought, and contradictory evidence is suppressed or misinterpreted. Sometimes this will occur in the absence of any claim by the alleged victim. Once a stand has been made, beliefs become entrenched. It becomes increasingly difficult for people to see that they are mistaken. Being confronted by conflicting information may cause mental distress and cognitive dissonance, leading to self-justification and increasing conviction of being ‘right’. In the 1980s and 1990s, thousands of women ‘recovered’ false memories of incest and rape through misguided psychotherapy, which caused irreparable harm to them and to their families. Almost no psychotherapists have ever admitted they were wrong in this belief and practice. Cognitive dissonance also makes it difficult for a complainant to retract an initial lie or mistake.

From the standpoint of victims of sexual abuse, who believe that others like them are telling the truth, any questioning of the veracity of abuse allegations is adding insult to injury, and any inquiry into the motivations and causes of false allegations may seem morally repugnant and unethical – especially when ‘false’ is taken in its narrower sense to mean deliberately untrue. It is held that children and women rarely lie about such matters and therefore false reports are a myth. Increasingly, however, allegations of child abuse are made retrospectively by adults referring back to their childhood; and often the initial suspicion or reporting of abuse is by someone other than the identified victim. More pertinently, deliberate falsehoods are only one category among several others where false claims are made in good faith. Looked at more broadly, a wide range of variables, singly or in combination, can be drawn on to account for the incidence of wrongful allegations. Another barrier to inquiry about causation is the stark division between true and false allegations (echoing the bifurcation between guilty and not guilty pleas), not allowing for allegations that may be partly false and partly true. Once we move away from narrowly defining false allegations as intentions to deceive made for ulterior motives, and from a simple ‘true’ or ‘false’ dichotomy, then the value of differentiating causal patterns becomes more evident.

Individual motives and drivers

Self-serving false narratives of abuse

Many people give truthful and accurate accounts of being sexually assaulted. However all people - adults, adolescents and children - may lie on occasion. Some allegations are deliberate fabrication, or they may include deliberate exaggerations or distortions of what occurred which criminalise otherwise legitimate interactions or improprieties. This is usually motivated by some form of personal gain.

It may provide an alibi - to account for an unexplained absence or to explain infidelity to a partner, including unexpected pregnancy or a sexually transmitted infection. It may be as retribution against a boy-friend, ex-spouse, teacher or employer, to get rid of a current partner, or in response to unrequited romantic interest. Teachers are particularly vulnerable to false abuse claims made by disturbed students, resulting from unrequited ‘crushes’, wanting reprisal when reprimanded or given poor grades, or seeking attention because of problems at school or at home.

The attention and sympathy afforded to a rape complainant may fuel false allegations, with secondary gain from victim status. People knowingly making deliberate false complaints have an increased likelihood of having an antisocial, histrionic or borderline personality disorder. When an authority figure or celebrity is accused, the resulting official support, concern and consideration may engender a sense of power and importance, leading to more and more stories of past abuse being fabricated. In the case of people previously disenfranchised from society, such as the past residents of care homes who may feel insignificant, powerless and who have ended up on the wrong side of the law, making an allegation, supported and encouraged by police and social workers, can give great psychological satisfaction. The gains may be many: as well as getting attention from the authorities, the media and their peers, they may be admired for their courage, befriended by other ‘survivors’, and gain status and recognition from belonging to a victim advocacy group. Money also may be a powerful motivator, where substantial financial compensation is offered to victims of abuse.

Sincerely believed false allegations

There are numerous ways that allegations may arise which claimants sincerely but falsely believe are true. New information from any source can become incorporated into memory. People may persuade themselves that an
incident they have imagined, heard, read about or seen on video of film actually happened to them. Introduction of post event misinformation can cause people to create false memories.

In the late 1980s and 1990s, fed by the erroneous belief that one in three girls are sexually abused, mostly by their fathers, it was thought that many women had ‘repressed’ memories of childhood sexual abuse leading to a myriad of adult problems including eating disorders, depression, relationship difficulties and psychosis. There was widespread use of ‘memory recovery techniques’ by counsellors and psychotherapists. Such approaches included guided imagery, age regression or frank hypnosis, dream analysis, ‘journal-keeping’ exercises, use of self-help workshop books and group sharing. The common features of these techniques are the use of relaxation, dissociation, suggestion and absorption. These hypnosis-like methods create an uncritical, explorative state of mind which can lead to the generation of false memories along with an increased confidence that these were real events.

Allegations made on the basis of memories recovered during therapy include recall of highly improbable events such as recalling of abuse as an infant, of full penetrative intercourse and sodomy as a pre-schooler which went undetected by care-givers, and of abuse within satanic cults including ritualised murders, cannibalism and abortions. There is substantial and robust research on the propensity of memory recovery to create sincerely believed-in pseudomemories.

The veracity of a memory cannot be determined by the amount of visual, auditory, tactile or olfactory details described. There is no correlation between the emotional intensity nor the confidence with which an alleged event is recalled and its reliability. Neither is the apparent sincerity of a witness a means to judge the accuracy of his or her claim. Similarly, the time between an alleged event and an allegation is neutral with respect to whether or not the event genuinely occurred - both immediate and delayed disclosures may be either true or false. However the more historical the allegation, the less likely there will be corroborative evidence, and the greater the likelihood that people’s recollections will have faded or become contaminated by other sources of information and by their imagination.

Partly true allegations

Some elements of an allegation may be true, while others may be deliberately embellished, or incorrect aspects may result from honest mistakes. Eye-witness testimony can be persuasive, but there is a solid body of evidence that demonstrates it is often unreliable. In cases where there has been police-trawling, convictions may depend on the volume of allegations from multiple complainants, despite contradictions between them and evidence that some of the events could not have occurred. The fact that a few of the many people accused are actually guilty can wrongly lend credence to the belief that all allegations resulting from police trawling exercises, fuelled by compensation payments, must be true.

What may start as a deliberate exaggeration or distort of an event into an allegation of abuse may become incorporated into memory over time, with the complainant coming to sincerely believe in their own fabrication. As complainants retell their stories to their peers, counsellors, the media, police, prosecutors and litigation lawyers, their reconstructed ‘memories’ may become their reality.

Parental alienation syndrome and custody disputes

A sexual abuse allegation is a powerful weapon which may facilitate a woman and her children to have no further contact with a hated spouse. Allegations arising in the context of acrimonious custody disputes may have been contaminated by suggestive interviewing. Misinformation that taints children’s testimony may result from informal questioning by a parent, social worker or teacher, or rumours and overheard conversations, prior to any formal interviewing, and can appear as credible as a true disclosure. Normal childcare practices of bathing, toileting or dressing, or affectionate contact between a parent and a child such as kissing and hugging may be misinterpreted as abuse.
Factitious disorder and Münchausen by Proxy

Uncommonly, a false allegation may arise in the context of a factitious disorder in which signs or symptoms of illness are deliberating falsified by a patient. However factitious sexual allegations are more likely to be Munchausen by Proxy, whereby a caregiver (usually a mother) invents a story of abuse which she reports to authorities such as police, social services, doctors and teachers. The mothers may train them to disclose realistic accounts, even using a tape-recording to help their children rehearse the story.

False confessions

In cases of false confession of guilt, a conviction becomes likely even when contradictory evidence is available that supports the person’s innocence. Most false confessions are police-induced. Such compliant false confessions may arise under circumstances where confessing appears more beneficial to the accused than continuing to maintain their innocence. Influencing factors may include an overly-long interrogation, exhaustion or a belief that confession will lead to their release. There may be coercive components such as threats of physical harm, or that they will definitely be convicted but will receive a more lenient sentence if they confess. The suspect knowingly admits guilt and typically recants soon after the interview is over. False confessions may also be voluntary, occurring without police questioning. The person may be suffering from a psychological disorder with the confession motivated by a desire for fame, a sense of guilt about real or imagined events or a need for self-punishment, or a wish to protect the real perpetrator. Police tend to be more sceptical about voluntary than compliant confessions, and more likely to discount them. Less frequently, a persuaded false confession may occur, whereby someone becomes influenced by police interrogation to believe that he is guilty even though he has no memory of committing the crime.

Conclusion

There is a range of societal and the individual motives factors that singly or in combination contribute to allegations of abuse being made or abuse being perceived, reported and sometimes prosecuted when no crime has been committed; or where small transgressions and ambiguous actions are interpreted as heinous crimes. The belief that sexual abuse is extremely prevalent and that most goes undetected contributes to the cognitive bias. This is confounded by the belief that both denial and retraction that abuse has occurred is a normal part of the disclosure process, that women and children almost never fabricate stories of sexual assault, and that challenging their accounts will re-victimise them.

Policy shifts and legislation have made it too easy for untrue allegations to be taken as evidence or as self-verifying. Legislation in some countries has enabled juries to find defendants guilty without the need for corroboration. Given the various mechanisms and incentives which may contribute to the generation of false allegations, the door is wide open for serious miscarriages of justice to occur. While requiring corroboration may allow some guilty to go free, the burden of proof should rest on the prosecution. Presumption of innocence is a basic tenet of justice.

Put your time and skills to use for FACT

Every year 100s of people face the horrors of being falsely accused of abuse often losing everything as a result and suffering for the rest of their life. These people are unrecognised victims who are often left isolated in society and feeling absolutely helpless. FACT is a UK charity founded 16 years ago caring for and campaigning for change in the law on behalf of those who have been falsely accused of abuse while they were working in a position of trust. It is based in the UK but also recognises the growing problems faced by those working internationally. We rely wholly on unpaid volunteers to run FACT and we need your help!

By volunteering to help FACT you could be using your time and skills to help support people who are really suffering and to make a lasting difference to the quality of life in British society. There are many ways those with skills can help: from administration to answering helpline calls, researching and writing articles to washing-up at a conference. This year we are also recruiting volunteers to help build a strong lobbying group, to develop our website and communications and to write grant funding applications. If you or a friend or family member would like to do something worthwhile that will make a huge difference please contact Nicholas Griffin to discuss the opportunities.
Professor Julie Price
Head of Pro Bono Unit, Cardiff Law School

With a keen interest in Clinical Legal Education, Julie heads the Cardiff Law School Pro Bono “Law in the Real World” schemes, and is jointly responsible (with Dr Dennis Eady) for Cardiff Law School Innocence Project, an educational venture teaming law students with local criminal law practitioners to look at cases involving possible miscarriages of justice. She is responsible for the law school’s Engagement and Employability activities, and is the driving force behind the Welsh Rugby Union/Cardiff University Legal Advice Scheme. This is the partnership launched in November 2012 between the WRU and the law school’s students to deliver free legal advice to WRU-member rugby clubs throughout Wales, supported by practising lawyers in Cardiff. Julie was a Director of Riverside Advice, Cardiff’s largest independent advice agency (2005-2012), a member of the Advisory Board for the Personal Support Unit in Cardiff (2010-2012), is a founding trustee of Reaching Justice Wales, the Welsh Access to Justice Foundation trust (www.reachingjusticewales.org.uk), and is on the advisory group of the Centre for Criminal Appeals.

Introduction to joint session at FACT conference at Cardiff Law School

This introduction gives a brief context to the work of Cardiff Law School’s Innocence Project, and to the UK university miscarriages of justice casework landscape more widely.

The first innocence project in the UK was set up at Bristol University in 2005 by Dr Michael Naughton who also co-founded (with Dr Carole McCartney) the Innocence Network UK (INUUK), which acted as an umbrella organisation for most universities doing casework for some ten years until 2014.

An innocence project is essentially a voluntary project that sees students (mainly law, but sometimes journalism) working on real cases where someone is maintaining innocence, under supervision. Their aim is to consider claims of innocence and where possible to try to find new evidence or argument and (usually) aim to make an application to the Criminal Cases Review Commission (CCRC) for review.

UK projects differ hugely from those in the USA, where the idea started. Our USA counterparts are generally well-resourced, with many working solely on cases where DNA is central to a case, and they are generally run as law firms. In the USA there is no equivalent of the CCRC, and they arguably tend not to have the same problems in accessing evidence that we do.

Over the last decade, the UK “innocence movement” saw some 36 projects existing at various times, with varying degrees of activity. To date, the only case overturned by a university innocence project was the Cardiff case of Dwaine George in December 2014. However, many thousands of UK law students have had direct practical exposure to the difficulties faced by people maintaining innocence of serious criminal convictions, inspired by Michael Naughton’s vision.

The INUK is no longer active, and some university projects have closed, perhaps because the work is too difficult, with insurmountable hurdles in the form of a criminal justice system that needs reform.

Other projects have changed name, for example to “criminal appeals unit” or similar. One reason for this is that the name “innocence project” is trademarked by The Innocence Project in New York. Some of us in the UK are currently in discussion with our New York colleagues about how the name might be retained by those who wish to still operate as innocence projects in the UK. One of the issues that is understandably exercising those owning the “brand” is the degree to which quality might be assured. It is currently uncertain how many UK projects will continue to operate under the name, but it seems likely that it will be only a few, although others will continue with the work under different names. It is probably fair to say that numbers of projects reached their peak some years ago, and this is unlikely to increase again given the difficulties of this type of pro bono activity compared to other “law clinic” work. Ironically, all of this is, of course, at a time when miscarriages of justice are likely to increase significantly with the slashing of legal aid.

Fuelled by the popularity of the USA podcast Serial, media interest in miscarriages of justice revived at the end of 2014, coinciding unfortunately with the end of INUK and resulting uncertainty over the future of some university
projects. Last winter saw a flurry of interest from UK production companies in creating a UK version of Serial and it remains to be seen how the appetite for this podcast will translate this side of the Atlantic. It is hoped that the end product will be wider than “entertainment” and will address pressing UK issues, including false allegations of abuse, although approaches we received were generally for a “suitable” murder case to feature!

The project at Cardiff remains strong after a decade of difficult and frustrating work, thanks to the investment of our law school and to the dedication of my colleagues Dr Dennis Eady and Holly Greenwood. I hope that this note has briefly introduced the landscape of innocence project casework in the UK, and sets the context in which Dennis and Holly will now explain issues arising from particular cases that we are working on, that will be of direct relevance to the FACT audience.

Conference articles continue on page 20

JOHN RAYFIELD
1922 – 2015

It is with great sadness that I inform the readers of FACTion and those who support FACT of the passing of one of our stalwarts. John passed away in his sleep on June 11th following a short period of heart troubles. Born in Ealing, London, in 1922 he leaves Pat, his wife of 70 years, who is at present in a nursing home, and was unable to attend his funeral at the Pentrebychan Crematorium on Monday June 29th followed by a service of thanksgiving at the Wrexham Methodist Church where John served as a lay preacher.

John worked on a voluntary basis at Bryn Estyn, the former Approved School in Wrexham in the early 1970s. In 1978 having completed a CETSW course at Stockport College, he and Pat became full-time members of the school staff, running one of the units and remained at Bryn Estyn until the school was closed in 1984, when they retired.

John was a tower of strength in his support of those who were the subject of serious allegations and sought some possible answers at the British False Memories Society (BFMS) and received an invitation to attend the AGM of that society in London. He attended, along with Pat and with Gwen Hurst who was also vitally interested in the events in North Wales having taught at Bryn Estyn. He was allowed to briefly address the meeting and raised the problems of the school. They met with Richard Webster, an investigative journalist, who became interested in what John had to say. Richard spend the next nine years of his all too short life researching and writing about the North Wales travesty of justice, (as he saw it) in ‘The Secrets of Bryn Estyn’.

John was a true Christian gentleman of some renown and always had the ability to see the good in people, he will be sorely missed and I for one have lost a true and fine friend.

George Jensen.
Holly Greenwood

Holly Greenwood is a 3rd year PhD student based in the Law School in Cardiff. Her research is funded by the ESRC and is exploring the role of innocence projects across the UK in investigating alleged miscarriages of justice. Holly has also worked on the Cardiff Law School Innocence Project for almost 6 years and has been involved in working on 7 cases. During this time she has also helped to write a number of applications to the CCRC on behalf of these individuals. Holly also attends South Wales Against Wrongful Conviction meetings to help support victims of miscarriages of justice.

THE CARDIFF INNOCENCE PROJECT

Cardiff Law School innocence project has been investigating a case involving accusations of historical sexual abuse against a carer at a Children’s Home in the 1980’s. The student team spent two years investigating the alleged claims, before an application was drafted to the Criminal Cases Review Commission (hereafter CCRC) in the summer of 2014, with the aim of obtaining a referral to the Court of Appeal.

The application has not yet been submitted as Cardiff Law School innocence project remains concerned that the grounds put forward will not find favour with the CCRC, and want to ensure that the application is presented with the sharpest edge possible. The main concern with the application is that it has largely taken a ‘lurking doubt’ approach. The lurking doubt principle was first espoused in R v. Cooper [1969] 1 QB 267 where the Court of Appeal conceded that in certain cases they may overturn the conviction where there is “some lurking doubt in our minds which makes us wonder whether an injustice has been done.”¹ However, in recent years, such as in the case of R v. Pope [2012] EWCA Crim 2241 the Court of Appeal suggested that it was not open to the Court to set the conviction aside on a “judicial hunch,” but lurking doubt may only succeed in the most exceptional of cases, where a reasoned analysis of the evidence leads to the inexorable conclusion the conviction is unsafe. Therefore, many commentators consider that the lurking doubt doctrine is particularly resisted by the Court of Appeal due to the subjectivity of its terms.

However, Cardiff Law School innocence project considers that the lurking doubt approach ought to be adopted by the Court of Appeal in certain cases where a holistic examination of all the evidence renders the conviction unsafe. This is especially significant in the context of historical sexual abuse cases where there is little chance of finding any evidence to disprove the claims of complainants. In the majority of cases, the passage of time between the alleged abuse and the bringing of the prosecution, means that there is usually no corroborating evidence but simply a case of one word against the other. The assessment of witness credibility is generally considered a jury issue, as the jury are privy to seeing the witness before them during cross-examination at trial (provided special measures are not used to remove the witness from the Court). The Court of Appeal is inherently reluctant to overturn convictions based on what they term matters for the jury, such as the reliability of witnesses. However, in historical sexual abuse cases, often the only issue to challenge is witness reliability and it can be difficult to find fresh evidence in respect of that. Therefore in looking at the safety of historical sexual abuse cases, it is arguable that the Appeal Court ought to be open to looking at all the evidence in the case, including that at trial, to assess whether they think the conviction can justifiably be considered safe.

Therefore, in the application drafted by Cardiff Law School innocence project, we have sought to examine all of the evidence in the case. In this case, the accused had worked at a number of Children’s Homes, but eventually a number of children from three homes made accusations of sexual abuse dating back to the 1980’s. The prosecution was not brought until 1998 and the trial did not occur until 2000, meaning there was a substantial gap between the alleged abuse of the complainants and when the case reached the Court. The case involved accusations of sexual abuse from 11 complainants across three different homes. Our client was only convicted in respect of counts against three of these complainants; the specific charges he was convicted for were three counts of sexual abuse against each complainant, and a further three counts of buggery against one of the complainants.

The charges in respect of the other 8 complainants were either thrown out by the trial judge; had a submission of no case to answer accepted; the jury found our client not guilty; or they were unable to reach a decision leading to an acquittal. In drafting the application we have at times referred to the other complainants who our client was not convicted of, despite knowing that the CCRC will be reluctant to consider any evidence in respect of them. However, we argue that this is necessary as in such a case inevitably the number of complaints is often deemed verification.

¹ R v. Cooper [1969] 1 QB 267 p.271
for the truthfulness of the complaints. Furthermore, the reliability of the other complaints, even if not believed, provides an important insight into the validity of the police investigation.

When the case arrived with Cardiff Law school innocence project it had already had one appeal which was refused by the Court in 2001 and one failed CCRC application where a referral was rejected in 2004. Therefore, the task facing the project was a difficult one in terms of finding grounds of appeal that had not already been put before the CCRC or the Court of Appeal. At times, we have revisited grounds that had been used before, but sought to demonstrate some new angle or argument based on more recent case law; this is our attempt to meet the standard of fresh evidence or argument required in the appeal grounds.

It will now briefly be set out what grounds have been submitted in the CCRC application to suggest the case should be referred to the Court of Appeal.

1. **Parallel grounds of appeal as in R v. Williams-Rigby and Lawson [2003] EWCA Crim 693.**
   
   In this case, the convictions against the two appellants in respect of historical sexual abuse allegations were overturned by the Court of Appeal as unsafe. We have sought to show that there are significant similarities between the case of Williams-Rigby and that of our client.

   In Williams-Rigby the conviction was found to be unsafe on the basis that two new witnesses had come forward who were residents at the Children’s Home. The two new witnesses testified to the effect that refuted the accounts of a number of complainants. They said that the complainants could not have been removed from their dormitories at night, or sexually abused in them, without them being aware of it. The Court also took into account evidence from these complainants that they had been treated perfectly by the appellant and took note that despite the accused being in contact with hundreds of children throughout his career, there were only a small number of complaints.

   Similarly, in our case, complainant A, of which our client was convicted, had claimed that he was touched in the dormitory by our client whilst the other boys were present. At trial, this complainant claimed to have shared a dormitory with one boy. The judge read out a statement from this boy who said he had a wonderful time at the home and was never aware of anything untoward happening. However, the judge did not make the connection between this statement and complainant A’s claim to have shared a dormitory with this boy. The defence have since spoken to the boy in question who said he did not believe the complaints for one microsecond, but he did believe that complainant A was capable of telling lies.

   We have sought to trace this boy ourselves in order to put further questions to him to clarify whether he remembers sharing the dorm with complainant A and whether he thought it was possible for this abuse to have occurred, but we were unsuccessful.

   We therefore submit to the CCRC that they ought to seek to trace this boy, and others who complainant A said he shared with, to ask whether they think this account was possible. We also refer the CCRC in an appendix to a vast number of statements which make good character references concerning our client or put forward no complaints.

2. **Missing documents**

   The Court of Appeal has found that in historical sexual abuse cases missing documents which may have been determinative in assessing the complainants account can be deemed to render a conviction unsafe.

   This was originally considered in R v. Sheikh [2006] EWCA Crim 2625, but was later confirmed and clarified in R v. Joynson (Frank) [2008] EWCA Crim 3049 where the Court stated:

   "If it is shown that too many of the crucial documents which would either corroborate or show the evidence of the complainants as false are missing, then the convictions may be unsafe’.”

   However, in the more recent case of R v. Dent (John) [2014] EWCA Crim 457, the Court was clear that in order to succeed on this ground then it must be demonstrated that the missing documents were “capable of having been determinative.”

   In R v. Dent [2014] the appellant sought to argue that missing staff rotas would have aided him in disproving the alleged accounts, but the Court did not think this was enough to render the conviction unsafe.
In *R v. Sheikh [2006]* the Court was persuaded by missing documents because the alleged abuse by the complainant could only have occurred in a two day time frame, and therefore they accepted that documentation showing whether the appellant was working was capable of being determinative of whether there was a possibility for the abuse to occur.

We have sought to show in our case that missing documentation did have the potential to be determinative. One example is that complainant B, of which our client was convicted, said he was abused whilst our client worked night duty, but our client disputes that he worked nights at the home. We have witness statements and a diary from his daughter which support his account that he did not work night duty and only stayed overnight at the home once. Therefore, we argue that staff rotas may have been determinative in showing whether or not he did work night duty and whether any of the accusations from complainant B could be possible.

We have also sought to argue that there are statements missing which could have been important in assessing the reliability of complaints. For example, complainant B alleges that he was abused during the daytime in the office, but our client claims he shared an office with a receptionist. Therefore a statement from her could have potentially disproved the possibility of this abuse occurring.

3. **Evidence of Trawling**

The CCRC considered a submission of trawling from our clients’ legal team in 2004 and concluded that the police had not trawled for evidence but simply exercised dip sampling.

Active trawling is considered to raise concerns about the police investigation. In *R v. Maybery [2003]* EWCA Crim 782 Latham LJ stated that:

“If there is a pro-active trawling then it suggests to those who are being sent the letter that those sending it are expecting a certain answer from them.”

We dispute that in our case the police only conducted dip sampling and have argued that there is evidence of proactive trawling.

Three individuals who gave statements expressed concerns over police practice and felt they were pressured to make a complaint. One of these had made a complaint but then retracted it saying he was drunk and felt pressured by the police into giving a statement: he asks the police not to contact him again and is adamant he was never sexually abused by our client.

Another individual says he was approached 12 times by the police in one month.

We also have specific concerns over complainant A, of whom our client was convicted, because he was originally approached by the police whilst in prison in 1991 and made no complaints. In 1992 there is a letter from his solicitors which requests that the police to stop harassing him and that he has no complaints to make. However in 1997 he makes a statement with complaints of sexual abuse against another individual, which were found to be false at trial as the accused never worked at the home whilst the complainant was there. It is only in 1998 that this complainant makes another statement where he alleges sexual abuse by our client.

There are a number of other examples of the police consistently re-approaching witnesses. We submit to the CCRC that this contradicts a dip sampling approach, as they would not need to return to witnesses who had made no complaints.

4. **Updated checks as per CCRC formal memorandum**

We have asked the CCRC to perform updated checks on the credibility of complainants by conducting enquiries as per their formal memorandum for sexual abuse cases. The CCRC ought to check the complainant’s social services file; they ought to check for compensation claims with the Criminal Injuries Compensation Authority and for any civil actions; and also to check the police national computer and database for any records of false claims by complainants.
5. Potential for accounts being demonstrably false

We submit that a number of the complainants’ accounts could be considered demonstrably false. As explained, complainant A (of whom our client was convicted) was known to have made another demonstrably false complaint and we have a statement from a boy he shared with who suggests these complaints are false. There were also vast discrepancies in his account where he changed significant details, such as saying he was touched over his pyjamas before changing that at trial to being touched underneath; he also changed the frequency of abuse from occurring 4-5 times during his residency to 2-3 times a week.

Similarly, complainant B of whom our client was convicted is considered to have given accounts that may be seen to be demonstrably false. For example, he firstly claimed the abuse occurred for 7-8 months but changed this to 1-2 months at trial after his previous suggestion was shown to be impossible. He claims he was abused in the office during the day, but another staff member said this was ridiculous as the office window looked out onto the main thoroughfare. He also makes unusual and striking claims such as that he was buggered over a gravestone during the daytime.

5. Similar Fact evidence

We have submitted that a similar fact direction incorrectly given by the judge should be considered to potentially render the conviction unsafe. The Judge wrongly told the jury that complainant A and B, who were from different homes, both claimed to have been touched under their bedclothes in the dormitory at night. Only complainant A made any such complaint, the substance of complainant B’s claims were completely different. The judge told the jury:

“If you came to the conclusion that you are sure about their evidence, no collusion, cannot be explained by coincidence, then you could, when considering one, find support in the other. That is the best example.”

We consider this particularly problematic as the jury would be unlikely to think they colluded as they were from different homes. We are also concerned about the potential impact of this direction on the jury who did not believe a number of the complainants, but our client was convicted on counts against both complainant A and B.

This ground has already been considered by the Court of Appeal in the first appeal who said they considered this with “anxiety” but decided the convictions were safe. We submit that this issue should be reconsidered in light of the decision in R v. Cowie [2003] EWCA Crim 3522 where they decided a similar fact direction was wrongly given and stated:

“First, and significantly, we think that a direction of this nature will inevitably colour a jury's approach to the evidence as a whole. Indeed, as the cases to which we have made reference make clear, it should only be given where it has strong probative force. That is the very justification for giving a direction of this nature. In those circumstances, it seems to us very difficult to say that one can, with confidence, be sure that the convictions would have been the same in any event.”

Conclusion

We have argued that in light of this decision, the Court ought to reconsider the potential prejudicial effect this misdirection could have had on the jury.

In conclusion, Cardiff Law School Innocence Project has significant concerns about the safety of this conviction. It has sought to put together an application which reflects these concerns and invites the CCRC to revisit the reliability of all the complaints against our client. Although we have concerns that our approach to this application may not be favoured by the CCRC or Court of Appeal, we do think that in a case such as this, taking a holistic view of the evidence and looking at potential “lurking doubt” is the only way to challenge such a conviction.
I want just to put this into a slightly historical context as well but what I’m talking about is the problem that miscarriages of justice very often are not brought to correction and that – as in the case that Holly just talked about – there is great difficulty with establishing, absolutely clear appeal points, nice neat appeal points rather than a holistic set of concerns about the evidence. And it is a few, or even a single, clear appeal points that constitute strong new evidence that the Court of Appeal and the CCRC actually want from us.

Now there’s a great difficulty in doing that. So, as Holly was demonstrating, we tried to do that as far as we can with that case, and we’ll see what comes out of that.

But we’ve also, I think – like FACT really when faced with all the horrific situations that you’re faced with – you have to become a campaigning organisation and so even innocence projects are becoming a little bit more campaigning these days because of the situation we’re facing.

And I will just talk about one – primarily about that one aspect, I might digress a bit at times but basically it’s this aspect of ‘lurking doubt’ and the kind of efforts that are being made to change the approach, to change the Criminal Cases Review Commission test – ‘the real possibility test’ – towards allowing much more of a holistic approach to reviewing cases upon appeal.

The Court of Appeal was established in 1907 against its will. The judges didn’t want a Court of Appeal because they really thought there was no need for it because they thought the criminal justice system, even at that time, was pretty immaculate. So ever since then they’ve wanted to preserve jury decisions, what I tend to term ‘jury sanctity’: the belief that the jury decision is essentially infallible.

So the only thing that might override the jury decision is something completely new that they’ve not heard before, even evidence that was available but unused is often not accepted as grounds for appeal. If it was available at the time then, assuming you had a good lawyer, it is asserted, then they would have brought it forward if it was relevant. A rather good analogy there I think is this: it’s a bit like if in the health service you have an operation and it doesn’t go quite right, now you would normally go back to the surgeon and say “Sorry, it hasn’t gone quite right”, “OK, well we’ll have to correct it, we’ll have to do it again or do another operation”. Now the legal system parallel is like saying to somebody, “Well, I’m sorry but you’ve had your operation, you had a competent surgeon, you could have advised him differently if you thought he was doing it wrong, so I’m afraid you’re just going to have to put up with it now. We can’t just re-run the whole thing again.” That’s what the Court of Appeal philosophy is about, that’s the way they operate.

Now in 1991 society was seen to be by many in a state of justice in crisis. I’m going to argue that we’re in an even bigger justice in crisis situation now in 2015. In 1991 this was brought about of course by the famous Guildford Four and Birmingham Six cases and on the day the Birmingham Six were released the Home Secretary ordered a Royal Commission into Criminal Justice, the Runciman Commission. The Runciman Commission was really concerned with the whole criminal justice system, so it wasn’t just about policing and investigation, it was also about the judicial problem, about the Court of Appeal.
And, as I say, the Court of Appeal has always had this thing about “You must have new evidence”, it has always been a very restrictive practice. The Guildford Four and Birmingham Six in total had five appeals plus a civil action and the civil action was about by their brutal treatment by the police and that’s where Lord Denning came out with his famous ‘appalling vista’ remark. Would you like to hear that?

The Birmingham Six had been brutally attacked by the police in custody and they took out a civil action having lost their first appeal. Lord Denning’s conclusion on the matter was this:

If the six men win it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were improperly admitted in evidence and that the convictions were erroneous. That would mean the Home Secretary would either have to recommend they were pardoned or would have to remit the case to the Court of Appeal. That is such an appalling vista that every sensible person in the land would say ‘It cannot be right that these actions should go any further’.

(Lord Denning, 1980 during an appeal by the Birmingham Six)

So that’s what we’re dealing with in the Court of Appeal. It hasn’t changed that much, some people argue it’s actually got worse.

So the Runciman Commission, the Royal Commission, actually recognised the problem of the emphasis on new evidence and they made it clear that “the Court of Appeal should quash a conviction notwithstanding that the jury reached their verdict having heard all the relevant evidence without any error of law or material irregularity having occurred, if after reviewing the case the Court concluded that the verdict is or may be unsafe”. So in other words, they were saying that the Court of Appeal should look at miscarriages of justice holistically and if they felt, for whatever reason, whether it’s new or not, that that conviction was wrongful, then it should quash the conviction.

Now logically, the creation of the Criminal Cases Review Commission (CCRC), which came about as a result of the Royal Commission, should have followed that principle. Unfortunately, it didn’t. The Criminal Appeal Act of 1995 which set up the CCRC created the so-called real possibility test which essentially means that the CCRC should only refer if there’s significant new evidence or a major legal technicality of some kind. There is the ‘exceptional circumstances clause’ which I’ll mention a bit later but that’s only once been used for the purpose of lurking doubt.

So why continue with this myth of jury infallibility? I mean, nobody seriously believes that juries are infallible, I don’t think. I don’t think even the Court of Appeal believe that, or do they? It’s rather like George Orwell’s concept of double-think from the novel “Nineteen –Eighty Four”. We have to believe that the jury’s infallible because that’s the system, therefore unless we have something new we can’t possibly overturn the conviction. Yet at the same time we must surely know that that’s not the case. Nonetheless the system needs us to believe it.
A few other slightly better definitions of a jury which I’ve come across recently. One’s a journalist called Robert Frost who suggested that “the jury was a system where twelve people decide who’s got the best lawyer”. Mark Twain had an even better one: “the most ingenious and infallible agency for defeating justice that human wisdom could contrive”. I think that’s probably true in some respects.

So the CCRC’s written submission to the Justice Committee Review of the CCRC in 2014 is, again, rather tragic because the problem with the CCRC is, it can be sympathetic, but they are stuck with this statutory straitjacket I think: the real possibility test. But the problem is they don’t seem to mind that, in fact it seems to help them. It makes it the easiest thing in the world to say, ‘This isn’t new, this isn’t a point of appeal’. It gives them the perfect way out to knock cases on the head.

And this was part of their written submission in 2014:

To overturn a jury’s decision, taken after they have heard all the evidence tested forensically in a court of law, we need something more than “all thinking men (sic) agree” to go on.

(CCRC Written Submission to Justice Committee 2014, p.9)

Now there are two things wrong with that statement. Firstly, the jury don’t hear all the evidence. What the jury hear is a carefully choreographed and edited version, of two versions of the same argument by the defence and prosecution. That’s the first problem.

Secondly, ‘all thinking men agree’: well, when you get these cases of lurking doubt you’ve often got journalists, you’ve got lawyers, sometimes you have an innocence project, you’ve got campaigners, all of whom have studied the case in great detail, they’ve spent years and years, much longer than any jury has ever spent on it, without all the confusion that occurs from the courtroom process. So it shouldn’t be dismissed so lightly as that.

So we’re in a situation where we believe two different things at once. We think, if we accept the Court of Appeal’s position, its right that we can’t query a jury decision but we know of course that jurors are going to make a mistake sometimes. So we need to sort it out because its “doublethink”; as Orwell wrote in “Nineteen-Eighty –Four”, describing a concept he called ‘Crimestop’ (aimed at preventing anti-establishment thoughts occurring), it requires “an athleticism of the mind and ability at one moment to make the most delicate use of logic and the next be unconscious of the crudest of possible errors. Stupidity [is] as necessary as intelligence and as difficult to attain.”

Now, we were in a meeting the other day with the barrister, with our client, talking things through and he was quite rightly preparing our client for the difficulties of the Court of Appeal if he gets there. And he said, “Well you know, you’re dealing here with some of the most intelligent people in the country.” We spent the rest of the meeting trying to get through to our client the logic of how his case may be dismissed on the basis of an incredibly stupid decision that they might make. So with these intelligent people you nonetheless have to be prepared for almost incomprehensible stupidity – that is doublethink is it not?

So, here we are now in 2015. I’m not going to dwell on this slide because I think Felicity covered quite a few things that seem very similar in New Zealand. It’s pretty much parallel in this country: the loss of the corroboration rule, sexual behaviour no longer being considered as an element of defence, a whole raft of things in the 2003 Criminal Justice Act and various other issues – the CCRC backtracking, the Court of Appeal backtracking on Pendleton which was a helpful judgment in 2001, the reductions in legal aid and this one-dimensional victimology – and I really felt that today sitting in on one of the groups this morning. About victims: Kier Starmer spoke in this room last year and he talked about victims one-dimensionally. And of course, if you believe the victim, logically it implies you’re not going to believe the defendant, you’ve already made that decision.
So the evidential requirement is minimal. It is an erosion of the standard of proof, the standard of proof being almost abandoned, particularly in historical abuse cases. So time lapse is no obstacle, dementia is no obstacle, or they wouldn’t want to put an 86-year-old man with Alzheimer’s on trial. You know, how’s that going to work? How is the right to a fair trial going to take place there? I will be fascinated to see. The CPS made a sensible decision and then had to reconsider it because of the media pressure. And of course death is no obstacle – death is ideal in fact because, take the Jimmy Saville situation, who knows what he did and didn’t do but the media of course had an absolute field day believing everything and I suspect inventing a great deal.

So the situation: trial by media, moral panic. You have no defence unless you happen to be on the cast of Coronation Street – some juries seem to be particularly sympathetic to the cast of Coronation Street. Apart from that it’s very, very difficult to mount a defence. There’s no compassion and no reconciliation in this whole issue. What I would like to see in my little dream world is a truth and reconciliation on this whole historical sexual abuse thing. Whether people did it or not, let’s try and get the truth, let’s have reconciliation. Is there really any point in putting men in their 80s and 90s in prison now? In a humane society, in 2015, does that make any sense? Are we replacing child abuse with elder abuse? Are we in a situation where David Cameron is a friend of Mr Coulson and Rebecca Brooks who are a friend of the police and all colluding together? You know, the jury is an infallible institution. It convicted Susan May, it acquitted Rebecca Brooks. An infallible institution? I think not.

So we have this distorted reasoning and again I’m going back to Nineteen-Eighty-Four, George Orwell. I don’t know if you’ve read the book, if you haven’t it might not make much sense, but loyalty to The Party is expressed through the process of ‘two minutes of hate’ where everybody sits in front of a screen and screams at Emmanuel Goldstein, the enemy of the people. Think, Jimmy Saville. It seems to be a bit like that at the moment except it’s not two minutes, it’s more like two decades for us. Orwell wrote “The horrible thing about the two minutes of hate is not that one was obliged to act the part but that it was almost impossible not to join in”; and I think that’s what’s happening in society at the moment.

So there are two problems. One is avoiding wrongful convictions and re-convictions in the first place and trying to contain this witch hunt; and, as Felicity was saying earlier, restoring the burden of proof. That is something that an organisation like FACT has got to really work hard on I think, as all of us should. It’s very difficult, and arguably what we’re saying today is said to the wrong audience because it’s really preaching to the converted here I’m sure. But if that message that we’ve heard earlier today can get across somehow that would be very positive. The second problem and the one I am focusing on here is the need to make the appeal system work better - confronting this notion of jury infallibility, breaking the traditional statutory straitjacket that the Court of Appeal and the CCRC operate within.

So we’ve been campaigning for lurking doubt in one way or another. In fairness to Michael Naughton, he put that on the map really when he set up innocence projects. He wrote a lot of articles; and the very first time I met Michael Naughton in fact was at a FACT conference in Dinas Powys and he was pushing this point even then about
In terms of the Cardiff Law School Innocence Project campaigning on this issue: Most of our case applications to the CCRC have urged the CCRC, to look at lurking doubt, to look at policing, fair trials and so on, we have written numerous articles on this issue, responded to government consultations on relevant legislation and review proposals and also we’ve got a number of universities and others to sign documents to go to the recent review of the Criminal Cases Review Commission by the Justice Select Committee. We also provided both written and oral evidence to the Justice Committee’s review of the CCRC. There is a little glimmer of hope in this today that the conclusions of the Justice Committee, which heard from people like me and Mark Newby who is here today, Michael Naughton and Glyn Maddocks amongst others. The Justice Committee recommended that the CCRC be less cautious in its approach to the real possibility test and importantly they are basically saying, here in 2015, what the Royal Commission was saying in 1993: that they should encourage the Court of Appeal to quash a conviction where it has serious doubt about the verdict even without fresh evidence or fresh legal argument.

Any such changes will require reform of the CCRC and the real possibility test and the Court of Appeal – a tall order but at least the debate has begun in earnest. So, a little bit of success there, a bit of something positive. A long way to go, I’m not sure the Justice Committee’s referral of consideration of the appropriateness of the ‘real possibility test’ to the Law Commission is going to be that great for progressing things quickly but at least they’ve listened and they’ve thought about that and a number of other issues in relation to the CCRC and the Court of Appeal because effectively the two are pretty much part of the same operation.

There’s been quite a debate particularly on the Justice Gap website since the Committee’s Report. Professor Michael Zander who gave evidence to the Report has been fluctuating a bit. When he spoke to the Committee he said the test, the real possibility test, was the right one despite expressing some very real concerns about the Court of Appeal. In the Justice Gap article on the 29th January 2015 he came out with a different approach which is: “The CCRC should be given the power to refer a case where it considers a conviction is against the weight of the evidence known by the jury...” – which is basically a lurking doubt test. This was good news because it broadly reflected what many of us have been saying for the last 20 plus years. But unfortunately, by the next month he had changed his mind again and he was saying that the exceptional circumstances clause in the 1995 Criminal Appeal Act was the one that Parliament intended to cover this problem and that was adequate. Well, it clearly isn’t adequate because the CCRC don’t use it for that. Unless you change something properly then it’s not going to work.

Laurie Elks who is an ex-Commissioner of the CCRC also wrote about this on the Justice Gap website 27th April 2015, and he came up with this interesting idea. He believed that: “the CCRC would never exclude – as a matter of principle – any lurking doubt referral even if no point of law or new evidence can be identified”. Well, he’s obviously never made an application to the CCRC, because he was a Commissioner. He continued: “However, I believe in practice that it is almost inconceivable that the CCRC would not have the resourcefulness to identify and develop some new issue going beyond the matters canvassed at trial”. Suffice to say that in my experience of making many CCRC applications I cannot share his confidence that this happens that often but in any event you can’t agree that a statutory situation is the right one on the basis that, well, “you’ll usually get round the rules anyway”. That’s no basis for law in my opinion. So we have to do something and changing the test is what we’ve primarily focused on.

The former Lord Chief Justice, Lord Judge, then came to the discussion. Having consulted with the Current Lord Chief Justice Lord Thomas he wrote to the Justice Committee as follows:

“I see no reason why within the current structural arrangements, the CCRC is not in fact entitled to refer a case to the CACD on the basis that there is a “real possibility” that the verdict of the jury is against the weight of the evidence. That maintains the "real possibility" test and does not disturb the constitutional arrangements. I think I understood Mr Foster to say (and I have not had a chance to look at the transcript) that where there were such cases, generally speaking, the investigations revealed something more or additional which would add to the justification for the reference. If the CCRC were to refer the case on
simply the "real possibility" basis, the CACD could not fail to discharge its statutory obligation. It would examine the whole of the evidence, with argument on both sides. It would not regard the task as: "too burdensome. At the end of the hearing, of course, while accepting that the reference was well made it might not agree that the verdict is unsafe”

What he seems to be saying there essentially is that the real possibility test allows for lurking doubt cases and that if the CCRC refer lurking doubt cases on the real possibility test the Court of Appeal would have no problem or objection to examining the full case holistically. So, essentially, I mean if he’s saying that, then that’s all good. End of story, there is no problem that’s pretty much what we want. There’s only one problem with it really – in practice it’s just not true. This is what Lord Judge really thinks:

‘As a matter of principle, in the administration of justice when there is trial by jury, the constitutional primacy and public responsibility for the verdict rests not with the judge, nor indeed with this court, but with the jury. If, therefore, there is a case to answer and, after proper directions, the jury has convicted, it is not open to the court to set aside the verdict on the basis of some collective, subjective judicial hunch that the conviction is or may be unsafe. Where it arises for consideration at all, the application of the “lurking doubt” concept requires reasoned analysis of the evidence or the trial process, or both, which leads to the inexorable conclusion that the conviction is unsafe. It can therefore only be in the most exceptional circumstances that a conviction will be quashed on this ground alone, and even more exceptional if the attention of the court is confined to a re-examination of the material before the jury.’

(Lord Judge R v Pope (2012) EWCA Crim 2241)

So that’s the judgment in Pope in contrast to Lord Judge’s comment to the Justice Committee. The Justice Committee, not without an appropriate degree of irony I suspect, did say: ‘We are having some difficulty being able to reconcile those two approaches in the short time available’. Particularly note the comment “If .. after proper directions, the jury has convicted, it is not open to the court to set aside the verdict on the basis of some collective, subjective judicial hunch that the conviction is or may be unsafe”. As I say, it’s not a subjective judicial hunch. It’s a lot of work put in by a lot of people. You saw Holly’s presentation. That’s two years’ work and that’s a lot of work. And in these cases you’ve got journalists often working, lawyers, innocence projects, all sorts of people moving heaven and earth to try and overturn a miscarriage of justice. Lurking Doubt is not just a hunch.

Given all the clauses and caveats which Lord Judge makes about the application of the lurking doubt concept in the judgement in Pope (“inexorable conclusion”, “exceptional circumstance”, “even more exceptional”), trying to get a lurking doubt case through is trying to get through an exception built upon an exception.

So my problem with the CCRC is that they accept all this. They go along with it all.

And this is what the CCRC say to innocence projects when they come and speak at conferences:

“You may disagree with the Court of Appeal’s focus on safety and its rules on the admissibility of evidence, but how you feel about these things does not matter when it comes to dealing with potential applicants to the Commission...an application to the CCRC is not a theoretical academic exercise – it is the start of a practical rule-governed process. You will be doing your applicant no favours if you blur the distinction between the two...throwing the kitchen sink at it is not the answer”

(CCRC speech to INUK Nov 2013)

They go on to say there are only two issues: Is the evidence new? Is it significant? Sometimes with the CCRC, I have to say, even when you’ve got the new significant evidence it still doesn’t make any difference. They’re a very difficult body to get round, but that’s the position that we’re faced with, so they’re not really respecting lurking doubt, they require a few clear significant and specific appeal points in line with the Court of Appeal’s approach. The Justice Committee has urged them to be less restrictive in their approach in future.

What we were trying to do with the Justice Select Committee is a number of things really. Of course there are a whole range of concerns about the CCRC but, I think, for us, for me anyway, the most important one was the problem that arises in the appeal process: the irrational belief in the infallibility of the jury,
the demand for new evidence. What the Court of Appeal wants is to hear nice, neat, precise, compelling appeal points so they can deal with those. So you have a dilemma. Do you put everything in or do you hold back? Do you try to focus on the bigger picture as Holly has shown in discussing the specific case earlier or try to focus in on some things and give some newness to it? Of course we try to do the latter if we can but sometimes those things aren’t there, while a serious lurking doubt is, when you look at the case as a whole.

The problem with the current approach to appeals is that miscarriages of justice generally aren’t really like that and particularly of course the type you’re dealing with: historical sexual abuse cases. How do you get a nice, neat appeal point from something that happened thirty years ago, something that happened ten years ago, something where there are just accusations and no other evidence? Unless something’s going to change, you’re not going to get anything new, are you? Unless you’re very fortunate and you can show that something was materially wrong or some evidence emerges which disproves the case; but that’s very much the exception rather than the rule.

Miscarriages of justice aren’t like that and this is the problem. It’s all very well for the CCRC to say to innocence projects ‘Don’t throw the kitchen sink at it, be nice and concise’. But at the same time they’re saying to us: ‘Send us your referrals. You’re doing all this work and we’re not getting many referrals. Send us your referrals’. Well, referrals don’t have much chance if we can’t meet their restrictive criteria, so they’re indulging in double-think again. So innocence projects do reveal this unpalatable truth and the system’s denial of it: that the appeal system is designed in many ways to prevent successful appeals rather than encourage them.

And, you know, I think, just going back to the position of the CCRC which is that: “how you feel about these things does not matter”. To be fair to the CCRC comment I am taking this slightly out of context but in wider terms, as far as our students are concerned, it does matter. It matters perhaps most of all how they feel about these things. That’s the value of innocence projects, that they should help students believe that what they feel does matter when it comes to justice, fairness and humanity. To understand that a system that keeps innocence people convicted is not acceptable. It is a massive educational thing even if it is not very successful in overturning cases.

So changing the test from the real possibility test along the guidelines suggested by the organisation Justice back in 1993 (“an arguable case that there has been a wrongful conviction”) will send both a practical and symbolic message to the CCRC and Court of Appeal that things must change. I’m not suggesting that it’s the panacea for everything; it’s not going to solve all the problems but it’s a beginning. It means at least the door is unlocked even if the door is still closed. At least you have a chance of opening it with an appeal.

So, what I would suggest and what we’re going to do and what I hope FACT and other organisations will do, is to lobby the new Justice Select Committee, to lobby the Justice Minister, to lobby your MPs, urge them to implement the Justice Committee’s recommendations as a minimum because they made some good recommendations overall. And perhaps that’ll be a slight step forward in confronting the problems we face.
Reducing False Allegations, Reducing their Harms

OPENING SPEECHES BY PANEL MEMBERS

Panel: Chris Saltrese (Solicitor), Susanne Cameron-Blackie (Legal Scholar and Blogger); Matthew Scott (Barrister); Dr Mark Smith (Head of Social Work at Edinburgh University), Barbara Hewson (Barrister)

Chris Saltrese is a criminal defence solicitor who specialises in sexual offence cases nationwide. Chris was a lead solicitor in the Waterhouse Tribunal of Inquiry representing teachers and care workers at the Bryn Estyn community home and represented clients at trial and on appeal in a wide range of historic 'trawls'. In 2002 he gave evidence to the House of Commons Select Committee inquiry on historic investigations into children’s home allegations. The report recommended significant statutory reforms to avoid miscarriages of justice that were not acted on by the Government. His practice extends to all types of sexual and other offences including forensic matters such as DNA, internet and computer evidence and the psychological reliability of testimony. He has written legal articles for Inside Time and is regularly consulted by the media for commentary on controversial issues.

http://www.chrissaltrese.co.uk/mail.html

I’ve been involved with this work for almost 20 years. I came to the first FACT meeting about 15 years ago. I’m afraid to report that things have not improved and they’ve got much, much worse. When I first started this work my impression was that there were a few dozen people being investigated for alleged historic sex offences. That figure increased to perhaps a few hundred at the turn of the century and now it’s my view that several thousand people have been wrongly convicted of these offences and it’s extremely surprising that there are only a hundred or so people in the room to hear this.

I’ll deal with a few of the reasons why I think this has been allowed to happen. Obviously Felicity’s dealt with many of the motives for people making false allegations but the fact is that the changes to the law have allowed these allegations to be admitted as evidence in court. And in parallel with the erosions of the traditional safeguards for defendants there’s been the growth of a huge personal injury industry of which historical abuse is a big part; and that’s one of the motors which is driving the whole business.

Also I think it’s important to note that since 1995 recorded crime has reduced by 50% and in the same period there’s actually been an increase in the number of police officers so you’ve got an awful lot of police with time on their hands so it’s very attractive to prosecute these types of cases. And it’s something which the police forces can control. They can decide when to set up an investigation into a particular individual or institution and also it’s very easy for them to go back to government and say “We want more money for this”. And it’s very difficult for the government to refuse.

So they are some of the reasons why we’re in the state we are in and I’m not sure I agree with what Dennis was saying about the Court of Appeal. The Court of Appeal is in a very difficult position. In this country we have a system of trial by jury and what the jury decides is final in the absence of either new evidence or showing that something went seriously wrong in the trial process. But we’re in a situation now where we have thousands of people wrongly convicted and it’s not something we can expect the Court of Appeal to deal with because as far as the Court of Appeal is concerned the criminal process is operating exactly as it should.

So the remedies are at the lower court in terms of the admissibility of evidence, whether it be bad character, multiple complainants in the same trial, hearsay evidence – these are the matters that need to be addressed if there’s to be any improvement. But my suggestion is slightly more radical than that and I would suggest that there should be a statute of limitation in these cases and I’d suggest 3 years after the alleged offence or 3 years from the age of majority which could be dis-applied in cases where corroboration comes to light. I think it’s simply unfair to expect people to answer to offences that are alleged to have happened 20, 30, 40 or 50 years ago because the evidential trail is simply cold by that time and there is no prospect of a fair trial at all. And that would be my suggestion.

I know it’s going to be a very, very difficult road and the forces ranged against you are enormous but I would say that you have one tremendous ally on your side and that’s the truth and I hope that it will out eventually.
I disagree slightly with Chris. I wouldn’t argue in favour of a statute of limitations per se because it does seem unfair in some cases to say that because for a variety of reasons somebody hasn’t come forward before that there shouldn’t be a prosecution but I would make a statute of limitations on any criminal compensation claim so that justice, if what you mean by justice is the perpetrator being sent to prison is one thing; justice, if what you mean is that you’re now middle-aged and you’d like £100,000 from somebody’s estate or from the organisation which employed them, I see as two separate issues and I’d like to see a firm division.

And I’d also like to see a firm division in the categorisation of sexual crimes because part of what’s happening at the moment is that, fair enough, the age of consent is 16. If you haven’t consented therefore you’ve been raped is giving the general public who form the juries, when somebody comes before a jury, the wrong idea of what is actually being charged. And we seem quite happy to have a difference between murder and manslaughter and we’re all quite sure that, OK the end result is the same: somebody’s dead, but there are differing degrees of how it came about. And I think that is the question that should be opened on sexual offences so that the people do understand whether somebody is being charged with fooling around with a 15 year old groupie who was throwing herself at you and actually attacking a 6 year old girl from the bushes. It does – what is happening at the moment is perverting the general public’s view of what a sexual offence is and I think if you pervert the general public’s view you are actually perverting the jury’s view.
jury and let the jury make of it what they will even if documents have been lost, witnesses have died and the evidence really isn’t there. And I think that’s been one of the main problems which has led to this climate.

In addition to that, there have been changes which Chris has alluded to, changes in the law which have made prosecution of these offences much more common, much more widespread than was so in the past.

The doctrine of corroboration whereby in the past you needed, at least as a matter of good practice, you needed to have some corroborative evidence to back up a sexual complaint. It wasn’t a very good law, it required the judge to direct the jury in rather foolish and stupid terms but it did have the effect that weak cases were not brought to court and if they were brought to court they were much more likely to fail. That went some years ago. At the same time, or more or less the same time, the criteria for admission of similar fact evidence became much weaker and that together has led, together with the weakening of the abuse of process doctrine, that has led to a real flood of often very weak and unfair cases being brought to court, leading to the sort of suffering that you all know about much more than I do.

So, if there is one thing that I would want to change, it would be to restore to trial judges the real ability to strike out cases which are weak and where the evidence is simply equivocal because of passage of time and there’s no real chance of corroboration for either side. It may not happen, but that’s one change which I think I would like to see.

One more small thing, and it’s a bit of a bee in my own bonnet, and it’s not to deal with the main problem, but when people do get to court why on earth do defendants, whether they are priests or teachers or for that matter gangland thugs, why on earth do they have to sit in a glass cage during the trial? It’s utterly ridiculous, it’s terribly prejudicial, it doesn’t happen in large parts of the common law jurisdiction, it doesn’t happen for example in the United States, almost at all. It’s a small point, it’s a bee in my bonnet but if more people would take it up then I think in fact we might have, on this at least, a sympathetic Lord Chief Justice.

I’ve just realised I’m the only non-lawyer on the panel and so my perspective is slightly different. I’m going to struggle to come up with too much that is positive in the immediate term. I think that if we’re going to change things here we’re in it for the long haul.

I think that one of the things that has driven this, which people have alluded to, is the Savile case. I didn’t know what Susanne was going to say on it but I will mention, just by way of backdrop, there was a case in the Scottish papers this morning: a former Chair of the Children’s Panel who was gaoled for 12 years for abusing boys who came in front of him at the Panel. And what struck me was that one of the guys said it was when the Savile case came up all the memories came flooding back. And so it does seem that there is this ‘Savilisation effect’ which Susanne, Ros and I have started to write on. And I just wanted to let people know about our Savile project. Basically Susanne got in touch with me a couple of years ago now saying that she had all this alternative story on this Savile case that she was starting to blog about and that she wanted to give it over to a good home. So Ros, myself and a couple of my colleagues at Edinburgh actually managed to get some money from the Economic and Social Research Council to collate Susanne’s information.

What that’s allowed us to do is to digitally archive her blogs but also all the links from her blogs so all the comments that people are making on the blogs and links to other bloggers such as Moor Larkin, who’s another interesting character and a blogger on the Savile case. So we’ve gathered and safeguarded all this information. We’ve supplemented it with interviews with former staff members and pupils at Duncroft where the initial allegations about Savile actually emanated from. And I think once you start to critically evaluate some of those initial
allegations against other information that has been ignored then you can start to destabilise the whole narrative about endemic institutional child abuse which has built up around the Savile case.

It’s not going to happen overnight. We’re starting to write articles on it. I’ve got a sabbatical period coming up in a year or so’s time and I would hope to write a book about it at that point but it’s not going to be overnight.

If I wanted to be wee bit positive, I went to a criminology lecture by David Garland who’s one of the world’s foremost criminologists who was speaking in Edinburgh during the week and he said a couple of things which made me think that in the longer term that we can turn things round. A lot of this is driven by fear: by fear of what the popular – or the press will say. And I think judges are driven by that fear, lawyers are often driven by that fear and politicians are driven by that fear.

What Garland was saying is actually when you look behind it and people are confronted with real cases then they’re not really as punitive as tabloid editors imagine them to be and when they’re confronted with cases of people that they know then they start to take a very different perspective. And we’re going to get to a stage where everybody is confronted with knowing somebody who’s been convicted of historic abuse and perhaps that might start to shift the perspective on it.

The other thing that Garland was saying, because he’s an Edinburgh graduate but teaching in New York, is that actually the era of mass incarceration, it’s called mass incarceration in the States, is starting to turn round because it just implodes and cannot be sustained. That at some point we need to say there’s got to be better ways of dealing with some of these complex social issues other than gaoling people. So, as I say, none of this is going to happen overnight but hopefully there are some straws in the wind of some change.

Barbara Hewson is a Senior Barrister at 1 Gray’s Inn Square Called to the Bars of England & Wales (1985), Ireland (1991) and Northern Ireland (2000), Barbara is a civil practitioner, whose cases include regulatory defence work, judicial review, Court of Protection and human rights. She was the first recipient of ‘The Lawyer’s Barrister of the Year Award’, 1998, for her work supporting the rights of pregnant women to refuse medical treatment. She is passionate about due process. She was a founder member, former Chair and Press Officer of the Association of Women Barristers. She is well known for her writing and broadcast interviews on topical legal issues. She is noted for her tenacity and forensic rigour, and for her courage in standing up for the legal principle that for every defendant there should be a ‘presumption of innocent until proven guilty’.

I’m going to just touch on three things. First of all, the statute of limitations, I absolutely agree that we need one. We’ve had statutes of limitations in the US and that’s actually played a useful role in preventing the kind of outbreak of criminal prosecutions for very, very stale claims that we see here. And to me it’s extraordinary that in this country we have prosecutions of 96-year-olds with dementia and that we have prosecutions going back to 1947. This is insane. No civilised justice system should be doing this and I think it’s high time that the legal profession and judges too started pointing out that this is taking things to a ridiculous extreme.

My favoured limitation, because I’m always asked ‘Well, what would you have?’ and I’ve always said ‘well I’m in favour of what the 5th century Athenians thought was a good statute of limitation’, which is that you have 5 years in which to bring your complaint, your criminal complaint. I would of course allow the 5 years to run from the age of majority so if you are a child and you are abused you then get 5 years from age 18 to bring your criminal complaint forward. But the Athenians had two exceptions. One was for murder for the fairly obvious reason that the victim of murder or homicide cannot complain but also for crimes against the State which I supposed we’d call treason or something like that. And I’m rather less committed on the idea of an open-ended limitation for crimes against the State but that’s something you could have a useful discussion about.

So that’s my take on statutes of limitation for criminal charges and they would apply generally, they wouldn’t just apply to historic sex abuse cases.

The second thing I want to say is that Dennis’s phrase “one dimensional victimology” really resonated with me. I think that both popular discourse and policy discourse have been entirely hijacked by this and I think we need a much more critical look at the way in which victimology is being used, sometimes quite cynically, in order to enable either people like Keir Starmer who are campaigning for a particular type of approach to crime but also people like
Theresa May who it seems to me are quite cynically exploiting the mood of anxiety and concern about sex crime and slavery and various other issues and are just saying, you know, ‘Let’s take this as far as we possibly can’.

I think that’s irresponsible. I don’t think it’s healthy for people to regard themselves as victims. I think the current model of victimhood is where you seem to be a perpetual victim and even professional victims are appearing on television and you can see them on Twitter. They never get beyond this, they never talk of anything else and I think this is deeply unhealthy. And it sends out a very nasty message to people who have been the victims of assault which is, ‘You never get over it, your life is ruined’ and that’s a very destructive message to give people and I think it’s part of why we have this very destructive cycle that’s going on at the moment with people campaigning for statutory inquiries. These people are very angry, they’ve been in care, they feel – they’ve been told their lives are ruined. They look back at their lives in middle age, they say: ‘Yes, it’s all somebody else’s fault’ and they are told by all the experts and the charities ‘Yes, you are right, you know. It is somebody else’s fault and you should be angry, you should be frustrated and you will never get closure until you have yet another inquiry or yet another court case or whatever it is’. It’s like anti-abortion politicians and protesters and campaigners. They are never satisfied – no matter what you give them, they will always want something else. So it becomes very, very obsessive and I think we really need to change this culture and say yes, of course you feel compassionate to victims of sexual abuse. That does not mean that they can have everything the way that they think they want it.

Now finally I want to say something about the science of memory. I’ve written about this – my article is in FACTion.¹

There’s a very, very important judgment by a civil judge called Mr Justice Leggett in the commercial court and it’s interesting that the commercial judges take a totally different view of memory. If you’re bringing a claim to the commercial court about a transaction that happened 4 years ago, the commercial court thinks your eye-witness testimony isn’t worth a lot at all. And I think that if you actually got one of these commercial judges and sat them down in a criminal court listening to these historic cases where people are talking about what happened to me when I was 6, 50 years later, they would be baffled and they would say, ‘How can this possibly be?’

So I do think that we need to educate our courts, and juries too, much more about the science of memory. The criminal courts have not been very good about allowing expert testimony about memory science into the criminal sphere and I think that’s partially responsible for the miscarriages of justice that Chris has been referring to because juries don’t realise just how unreliable memory is and that’s not a criticism of anybody. Your memory is unreliable and it doesn’t matter what you are reporting. If you’re going back 50 years, sorry, it just is not reliable. It’s not your fault, but what you are going to be telling a jury is not necessarily what happened at all and juries really need to understand that. And at the moment I don’t think they do. I think they think that memory’s like a videotape, that you press replay. So, when people come along and say ‘Well this happened to me when I was 6, that’s 50 years ago. Savile came along and I decided to tell’, they don’t realise just how flaky this is. I mean, deadly flaky and again it wouldn’t matter for the context. People do not generally report burglaries, frauds, driving without due care and attention, people don’t bring those sorts of cases forward 50 years later and if they did people would be saying, ‘Well, hang on a minute, how reliable is this?’ So I really do think we need to get people to look more critically at the reliance on these historic memories. You know, with the best will in the world I do not think these memories are reliable and that’s why I’m very opposed to these historic prosecutions because I think it’s simply unfair, it’s unfair to everybody.
New FACT Logo & Website

You may recall that in Nicholas’s report at last year’s AGM he spoke of the need to grow our membership and of how this was one area in which we have a lot of work to do including how we present ourselves. One thing we needed to do was have a clearly identifiable logo.

It can be difficult choosing a new logo as there are many opinions and views to consider and there is no perfect solution. It has been fantastic to receive lots of feedback following our recent email survey of members with some suggested and illustrations. FACT’s committee has had a very hard job choosing the final logo.

From the 14 short-listed there was one in particular which received the majority of ‘likes’ from both members and the advisory group and that was also a favourite with the committee and was indeed chosen. So we are pleased to announce that this is FACT’s new logo

![FACT Logo](image)

Now the logo is decided this will help determine the colour scheme used in the re-design of the website which is currently going on in the background. We will be starting with a new hosting service on 1st July but the existing site will remain in place until we are ready to switch over. We are always on the lookout for voluntary help and if you know anyone who has experience and knowledge in this area who may be able to help with this please do put them in touch and this will help us move things forward a bit quicker.

Mark is also in need of help with FACTION. He is especially in need of someone who will act as a business manager - selling magazine space for appropriate advertisers, chasing up payment and helping with advertisement designs. He would also like someone to keep an eye on legal news, writing a summary in each edition - no more than four times-a-year, He is available at faction.editor@gmail.com

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**Chris Saltrese Solicitors**

mail@chrissaltrese.co.uk www.chrissaltrese.co.uk/

Chris Saltrese Solicitors is a law firm providing a premium service in representing clients accused of sexual offences and domestic violence, in criminal proceedings.

We have unrivalled expertise in these areas, both regionally and nationally. Many of our clients face allegations as a result of domestic or relationship disputes, contact disputes, mental health problems, financial incentives and have no prior experience of the criminal justice system.

Often these allegations involve uncorroborated, historic allegations. In this complex area specialist legal advice and representation is vital especially as recent changes in the law, designed to convict genuine offenders also put the innocent at greater risk of injustice.

We particularly welcome carers, teachers and health care professionals who have been accused of abuse and are likely to be subject to a criminal investigation.

Where allegations have been made we would be happy to advise, whether or not criminal investigations are underway.

For further information please contact

**Christ Saltrese Solicitors**

13 Scarisbrick New Road

Southport PR8 6PU
The NCTL –
The ‘Balance of Probabilities’ and why no teacher is safe by Stephen Bowers

The following article is taken from my research project ‘Inconsistencies in the National College of Teaching & Learning’s conduct panel hearing process.’

In September 2014 I became the 260th teacher in England to face the judgment of a misconduct panel of the National College for Teaching & Leadership. Like the overwhelming majority of teachers who are asked to attend hearings by NCTL misconduct panels, I was found guilty of misconduct using the very low standard of proof that is ‘the balance of probabilities’. I was barred from teaching and informed I would not be permitted to have my eligibility to teach restored, on other words a lifetime ban.

The two years prior to this period were hell for me and my family. In early 2012 I was the victim of a horrendous false allegation of abuse by a former pupil who had always been unhealthily obsessed with me. Suspended from my job, I was arrested at 4am in front of my wife and two small children, questioned by the police, bailed twice and then questioned again. I was eventually charged in December 2012 following a farcical police investigation and six months later cleared of all charges by a unanimous jury verdict on their first vote.

Social Services were involved from the outset and until the conclusion of my trial I was not able to spend any unsupervised time with my two children. My case also attracted local, national and international press coverage making it impossible for me to return to my previous post. I took an offer of redundancy from my employer at the end of 2013. The NCTL – or the Teaching Agency as they were initially known – contacted me during the early stages of the police investigation to inform me that they had put an Interim Prohibition Order in place temporarily barring me from teaching.

Upon the conclusion of the case the IPO remained in place and I was told I would face an NCTL misconduct panel hearing. The NCTL’s written and oral communication during this period was appalling in terms of both the quality of the content and its irregularity. On one occasion I received a letter where the word ‘you’ was written as ‘u’ and a reference was made to ‘the Judges summing up’ at my trial, the lack of an apostrophe implying my case was overseen by not one but many judges. The letter in question was written and signed by a Higher Executive Legal Officer of the NCTL.

I was later asked to fill in an availability calendar to inform the NCTL of any dates when I or any of my witnesses would be unavailable – at this stage, the NCTL had not even finalised what I had been accused of or sent me a scrap of evidence that I was expected to refute. I did not know, therefore, what witnesses I would need to call but was politely informed that the NCTL ‘would not view it favourably’ if I were to later discover that any of my witnesses were unavailable, which I thought outrageous.

Whilst somewhat concerned that such an organisation oversaw standards in teaching despite their own poor standards in communication, I was comforted by the fact that the panel I would face consisted of two fellow teachers and a lay panellist from another industry. Today I laugh at my naivety and that of people still in teaching who assume that the two ‘teacher’ panellists are ordinary teachers from typical UK schools. I was -stupidly- quietly confident that fellow members of the profession would at the very least listen to my account in a reasoned and unbiased manner.

During my court case in 2013, the claimant could not name dates, describe my house, describe me naked and at one stage called her own therapist a liar when it transpired that the version of events she had told him differed to the one she had told the police. She laughed nonchalantly and at times hysterically in court whilst recounting apparently horrific events and even accused members of my family of being complicit in the ‘abuse’. The police came under heavy criticism from the judge for the arrest procedure and he threw out much of their ‘evidence’ as ‘nothing more than salacious gossip’.
Nonetheless, I remained terrified at all times. The prospect of facing years in jail away from my family and then being branded a sex offender for life was unbearable. Moreover, I believe I am as close as it is emotionally possible for a father to be to his children and the irreparable damage that could be done to our relationship following a guilty verdict was too much to contemplate. I cried a lot in 2013 and was genuinely suicidal. Even after the not guilty verdict I saw a high-intensity therapist and was put on a course of anti-depressants.

If I was ever worried during the NCTL panel’s judgment, those worries gradually dissipated over the course of the two day hearing. The claimant changed her story for a third time and went on to embellish it heavily over the course of her cross-examination. This time she called her own best friend a liar after it transpired that she, like the therapist before, claimed that the version of events she had been told differed to the version given to the police. Furthermore, whilst my barrister in court was excellent, my barrister at the NCTL hearing was incredible. She tore the claimant to shreds, putting every single detail under a microscope to explain clearly why the allegations against me were unfounded, unrealistic and at times unbelievable.

However, I did not allow myself to become smug or arrogant about how the hearing had gone – it was, after all, another long and protracted process that meant certain wounds could not yet be closed. I remained simply secure in the knowledge that the case was won. Most importantly, I had decided after being found not guilty in court that I would rather die than ever return to teaching after all I had suffered, and all that my family had suffered, so in many ways I had nothing to lose – but I was determined to leave the profession with my head held high, cleared by both a jury of my peers and a panel comprised primarily of fellow teachers.

You can imagine, therefore, my shock when the panel went on to find every allegation against me proven, including the allegation that I had had sex with the claimant when she was under the age of 16. I had spent fifteen months fighting this allegation and proving my innocence in court to a jury of my peers – for a panel of three individuals who represent teachers to then turn around and inform the public that ‘it probably happened after all’ was a massive kick in the teeth.

But, it was their reasoning behind reaching this verdict that I was most appalled by. I was aware that the standard of proof in civil cases was lower, notably ‘the balance of probabilities’ rather than ‘beyond reasonable doubt’, but I still assumed that the former approach required evidence to meet a certain standard. In hindsight I still do not believe that this assumption was in any way misguided. But it was incorrect.

The following passage is something that I have taken great relish in highlighting when referring the panel’s findings to others in proving the utterly irrational reasoning of the NCTL:

‘Mr Bowers, despite the possible date being narrowed down to a few days, did not try to provide the Panel with reasons why the incident could not have occurred. The Panel took into account the passage of time which might make exact recollection difficult but the date would have been around or during the half term week in October 2004 which would have made it more memorable for a teacher and easier to check’.

I have had to re-read this passage on many occasions to verify the lunacy of the content. The panel stated that because I could not remember exactly what I was doing ten years ago in the last week of October it is therefore possible I was having sex with a former student. In other words, because I could not prove that the events described by the claimant were impossible they became somehow probable.

If I knew when I began my teaching career that this was the actual burden of proof required to prove an allegation against a teacher and end their career, I would never have entered the profession. But I was not the first to go through this process.

I invite you to scroll through the NCTL’s misconduct hearing outcomes which can be found here: https://www.gov.uk/government/publications?keywords=&publication_filter_option=decisions&topics%5B%5D=schools&departments%5B%5D=national-college-for-teaching-and-leadership&official_document_status=all&world_locations%5B%5D=all

Whilst I respect the fact that the burden of proof is lower in civil cases, the NCTL has on several occasions relied on evidence that is highly questionable and often seems very quick to believe the accounts of witnesses speaking out against the teacher. Pupil witnesses are rarely labelled anything other than ‘credible’ or ‘truthful’ whilst the teacher
under investigation is left with the unenviable task of trying to disprove their guilt rather than prove their innocence. Furthermore, the number of teachers given a judgment of ‘No Order Made’ consists largely of teachers who admitted the allegations against them, suggesting that the NCTL has little patience or tolerance for teachers having the audacity to plead their innocence – and those found guilty of misconduct are further criticised for having ‘shown no insight or remorse into their behaviour’, an impossible expectation for an individual who maintains their innocence.

As of the 30th of December 2014, 300 teachers had faced NCTL misconduct panel hearings. More than 80% of these teachers -243 in total- were handed prohibition orders, many of them told that they would never be permitted to appeal to have their eligibility to teach restored. In just two years the NCTL has barred more teaching staff than its predecessor, the General Teaching Council, did in twelve years – the GTC barred just 228 teachers. Dividing the number of teachers barred by the number of years each respective body has been or was in office, one can see already that the figure is six times higher under the NCTL.

If the NCTL is to provide a valuable service in regulating the profession it must employ panellists who are fully aware of the current demands of an ever-changing industry and who have recent, relevant firsthand experience of the pressures that teaching staff are under. Evidence must meet a higher threshold and the main findings must demonstrate convincing justification rather than a casual reliance on the accounts of witnesses who may or may not be telling the truth. Currently, the NCTL hearings team demonstrate contempt for Crown Court judgments by trying a teacher for the same allegation using a lower burden of proof – and for that matter, randomly picking and choosing when to do so.

Already, members of the teaching profession are threatened by unrealistic targets, ongoing pressure from the public and unnecessary Ofsted inspections and unfair Ofsted judgments. It is hardly surprising that almost half of all new teachers quit in the first five years and the teacher recruitment shortage in the UK is reaching ‘crisis levels’ with some schools having to look abroad for teaching staff. I sincerely hope that in ten years’ time the NCTL has either adapted or been replaced completely, and that it has not gathered the momentum and power I fear it may do, casting an ever-present shadow of demoralisation over the profession.

Please sign SAFARI’S online petition now...

Our sister organisation, SAFARI is campaigning for changes in our legal system to protect the falsely accused.

As one part of that campaign, we’ve started an online petition which you will find at:

https://you.38degrees.org.uk/petitions/introduce-legislation-to-protect-victims-of-false-allegations

Please read and sign it if you feel able.

You may also like to pass this on to friends via Twitter and Facebook.

Thank you.
Reflections on Denial,
Parole & the Community SOTP
By ‘NIVEK’

This article should be of particular interest to prisoners and their supporters who are wrongly convicted of historical sexual abuse and who have sentences requiring them to serve two-thirds before they reach their non-parole release dates (NPRD). These prisoners will have Parole Eligibility Dates (PED) at the halfway point. Thus, for example, a successful application halfway through a 9-year sentence could lead to parole after 4.5 years rather than licence after 6 years. “If your time to you / Is worth saving...” please read on.

Everyone in the Prison Service tells prisoners who maintain innocence that parole is impossible whilst they are “in denial”. [1] Many Probation Officers will say the same. Their statement is not true but prison-based assessors are, as a matter of policy, not allowed by their managers to recommend parole for anyone who maintains that his/her convictions are wrong. I know of only a single case of a ‘home’ Probation Officer supporting parole for a ‘categorical denier’: one who denies that he committed any of the alleged offences. Even if the prisoner’s actuarial [2] assessed risk of recidivism is as low as it can possibly be, categorical denial will ensure that parole is officially opposed. The official rationale is this:

- Unless you do an SOTP course we cannot properly assess your risk
- Doing an SOTP course requires you, in a group, to explain how you committed your offences
- Therefore, if you deny committing offences you cannot be admitted to a SOTP course

Less explicitly, this position will rest on the traditional belief that an unrepentant sinner is likely to sin again! A categorical denier must be assumed to be unrepentant because the outcome of a “fair trial” must be held to be true, otherwise the whole edifice of our supposedly world-beating system of criminal justice will be threatened by loss of public confidence in our blessed system. [3]

Thus prison assessors often believe that their task is to coerce the denier to consent to his/her criminal status. Secretary of State Chris Grayling introduced, in 11/2013, a revised IEP system calculated, inter alia, to impose upon deniers, a coercive IEP regime. This is being determinedly introduced as I write, for pre-existing as well as for new, prisoners and in blatant contravention of HRA Article 7, which outlaws retroactive legislation. [4]

However, “Times are a-changing...” just a little! The following considerations offer a break in the clouds for the wrongly-convicted prisoner:

1. The Parole Board’s task is solely to decide whether the Applicant’s risk of harm is manageable ‘in the community’, rather than in custody. If so, the Board can disregard doctrinaire contrary recommendations and direct that the prisoner be released provided (s)he accepts a programme of supervision and assessment by the local probation service.

2. The Parole Board, unlike the Prison and Probation services is, increasingly, receptive to the now compelling evidence that categorical deniers of sexual convictions show a near-zero rate of post-release conviction for any offence. [5] [6] This is counter-intuitive for true-believers in the unrepentant sinner theory. [7]

3. Community-based SOTP courses (CSOTP), run by local Probation Services, will now admit and adapt to, categorical deniers. This enables the categorical denier who applies for parole, to offer a structured means by which probation officers can assess his/her risk of future offending. Enlightened Parole Board members perceive that this is safer than obliging the prisoner to remain in prison until his/her NPRD, after which (s)he might have little incentive to expose him/herself to any such assessment.

It is possible some FACT members and supporters will see this as selling out on one’s assertions of wrongful conviction. If so, they are wrong, though I do caution that: “To sup with the Devil, you need a long spoon”! [8]
In this instance, the ‘long spoon’ consists in being very clear in your own mind and speech that, whilst you know you are innocent, the Parole Board members do not. Moreover, they are obliged by law to assume that you are guilty as convicted and will not, must not, be persuaded by arguments to the contrary.

Therefore your application, and your conduct if you are granted an Oral Hearing, must respect the Board’s limitations even as you categorically assert your innocence: **assert this but don’t waste time arguing it.**

Instead you must focus your application upon the improbability that you will commit offences after release. What factors of personality or social circumstance can the Board weigh as affirming that probability and checking its reality? These include:

- Your beliefs about the general problem of abuse of vulnerable people and what makes them vulnerable
- Your beliefs about real perpetrators of such abuse, their motivations and how they should be controlled
- Your willingness to allow Probation to fairly assess you
- Your familial and social attachments and activities, (whose richness is known, generally, to inhibit recidivism)

Remember, it is not the Parole Board’s fault that you have been falsely accused and wrongly convicted.

In order to be able to offer, without loss of integrity or with ‘too short a spoon’, to take part in the CSOTP, here is what you need to know:

CSOTP courses begin with an intensive two-week induction in a group of about eight or ten members most of whom will have admitted to offences, though with varying degrees of self-justification.

Assessments during the induction will lead Probation Officers to allocate participants either to further intensive work to challenge and change identified pro-offending attitudes and beliefs or to a “Better Lives” programme consisting of 19 weekly 2.5 hour sessions. The latter is the more likely direction for categorical deniers whilst the former is more likely for participants who demonstrate ‘pro-offending’ beliefs. [8]

A core activity of the Induction Course is what I call the **confessional round**, when participants tell the group what their offences were and how they managed to groom the victim(s) and overcome protective factors. Obviously, categorical deniers cannot do precisely this. Instead, they are enabled to demonstrate, “at one remove”, insight into real offending by describing how persons actually committing offences, comparable to those of which you are convicted, might overcome internal and external inhibitors.

This is not easy: even getting your grammar right, saying “...would have...”, rather than “...did...”, is hard mental work, but the results may convince assessors that, whatever happened in the past, you are unlikely be an offender in the future. Short of success in the Court of Appeal, that is the best hope for the falsely accused, wrongly convicted, person.

Such outcomes will vindicate the Parole Board’s release decision and strengthen its readiness to consider subsequent applications from other wrongly-convicted categorical deniers. It will, also, make for more relaxed supervision conditions for the innocent participant.

So, if you are a wrongly-convicted prisoner and have exhausted appeal processes, you should apply for parole as soon as you are eligible to do so, a few months prior to your PED.

If you can afford professional assistance for either independent assessment or for legal advice and representation then I’d advise you to obtain one or both but you are allowed, if you choose, to ask to represent yourself to the Board.

You should request an Oral Hearing and, whether represented or representing yourself, keep focused upon proving your future minimal risk rather than getting upset about the injustice you have suffered.
If the Board asks about your case or trial then you must answer but the Board will not, in any sense, seek to retry the case. Its members will respect your boundary and you must respect theirs. The substantive issue is assessing future risk. That is all.

Remember, if you have been falsely accused and wrongly convicted then you have nothing of which to be ashamed. It is those who dogmatically support our haphazard judicial system who ought to be embarrassed and ashamed, not you.

If you are granted parole, be mindful that the trail is still being forged and defined. By your subsequent actions, you must aim to vindicate the Board’s decision and make the trail a little smoother for those who may come after.

**Post Script**

I am now enrolled in the second phase of the CNOMIS, called *Better Lives*. In due course I’ll report on this on the FACT website.

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### Notes and References

[1] “In denial” is a technical psychological term. It means avoiding the truth by the mental mechanism of *hysterical dissociation*. Prison officials are NOT qualified to diagnose the condition and, if it is applied to you by anyone other than a qualified forensic psychologist, who provides the evidence, you should make a formal complaint and require amendment of records.

[2] “Actuarial” refers to a statistical points system and averaged probabilities.

[3] The late Lord Justice Denning, Master of the Rolls, asserted, several times, that preservation of public confidence in the justice system was more important than individual fairness: specifically that: “...a few innocent men should remain in prison (so that) the English legal system should not be impugned”.

[4] Parliament has never revoked *Prison Service Instruction* (PSI) 11/2011 but its replacement PSI, 30/2013, is currently being imposed upon prisoners who were in prison prior to parliamentary approval of 30/2013. This violates Article 7 of the *Human Rights Act 1999*, which outlaws retrospective legislation.


[7] This is a cliché of theological argument and it is a common theme wherever religion has been used as an instrument of political or social control.

[8] For example, the belief that, say, a 10-year-old child is sufficiently mature to consent to sex would be ‘pro-offending belief’.

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### Charity Registration

This year we were delighted and most grateful to receive a Trust Fund donation towards research work and membership recruitment. As a result we have become aware that our financial turnover has crossed the threshold set by the Charity Commissioners of £5000 at which organisations must apply to become a registered charity. The national committee has sought legal advice on this and it has been confirmed that applying for registration is a mandatory requirement over which we have no choice.

Following committee discussions we feel that as FACT already conforms to the high standards set by the Charity Commission if the application is successful this will be a very positive step forward for FACT and our cause. In particular being able to refer to ourselves as a ‘registered charity’ and opening the doors to grant funding. As a small charity the requirements on us in addition to what we already do will be small.

We are currently preparing the necessary documentation for submission to the Charity Commissioners on which they will base their decision of if we meet the definition of having charitable purpose – which clearly we do.

We’ll keep you updated with our progress.

Nicholas Griffin
FACTion is published roughly four times a year and is freely available to online readers. Paper copies are available to order for which we suggest a donation towards printing & postage of around £12.00 per annum. Copies are available free-of-charge to serving and former falsely accused prisoners. Please contact the Secretary to order a copy.

We welcome enquiries from any member of the public interested in and supportive of FACT’s work, including academics, lawyers, politicians, journalists, students and any involved in the care of children and vulnerable adults, in either a professional or voluntary capacity.

We invite articles, poetry, cartoons, photos, letters, obituaries, &c. for publication. Items must be copyright-free or have the owner’s written permission to publish. Submissions are included at the sole discretion of the Editor. Copyright remains the property of the author(s). Contact details must be provided but names may be changed upon request. Articles published in FACTion do not necessarily reflect the views or policy of the Editor or of FACT as an organisation.

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0843 289 2016

Whilst we are unable to give legal advice we do offer support to professionals in positions of trust facing false allegations, charges and/or convictions, or those found innocent but suffering problems resulting from any associated public hysteria & rumour. We also offer support to family members and friends. Calls cost around 5p per minute from a BT landline but may vary on other networks and could be much higher from a mobile phone.

Postal Address
FACT, 83 Ducie Street, Manchester M1 2JQ

Website: www.factuk.org
Twitter: @factukorg https://twitter.com/FACTukorg
Articles for Publication in FACTion: faction@post.com

Other Contact Addresses
Chairman: Nicholas Griffin at FACTchairman@outlook.com
Secretary: Brian at sec@factuk.org
Treasurer: Anne at akalibry@btinternet.com
Conferences: Dr Ros Burnett at ros.burnett@crim.ox.ac.uk
Press & Helpline Co-ordinator: Hotatio Goodden at horatiogoodden@btinternet.com

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