



Justice Committee

Oral evidence: [The Criminal Cases Review Commission](#), HC 850

Friday 6 February 2015

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Written evidence from witnesses:

- Paul May [CCR 03](#)
- Bob Woffinden [CCR 33](#)

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Members present: Sir Alan Beith (Chair); Jeremy Corbyn; John Howell; Mr Elfyn Llwyd; and John McDonnell

Questions 77-102

Witnesses: **Paul May** and **Bob Woffinden** gave evidence.

Q77 Chair: Mr May and Mr Woffinden, welcome. We are very glad to have your help this morning. Both of you have a great deal of experience of looking into and progressing miscarriage of justice cases, either leading campaigns or writing extensively about them. We are grateful to you and believe that we can gain quite a lot for our inquiry from what you can tell us. What were your hopes for what kind of body the CCRC would be? How would you measure how it has been against those hopes?

Bob Woffinden: I am afraid that it has been an almost complete failure, in the sense that what we perceived at the beginning is not what has happened. My perspective historically is that in the '70s you had *The Sunday Times* running campaigns about particular cases. Then there was a change of ownership at *The Sunday Times*, and *The Independent* came along. *The Independent* probably ran something about miscarriages of justice every day for the first eight years in which it was going. *The Guardian* was doing similar things at the same time. You had media reports leading to public engagement, leading to representations to MPs, which in turn led to representations to Parliament. There was a fluid approach and people were engaged.

From the moment that the CCRC started, that engagement was lost, because when people made submissions about particular cases, they went into a black hole and were not heard of for years. The end result of that has been that the public are not as aware and are not as engaged with the process as they used to be. I am fully aware that the CCRC's work has led to the overturning of lots of wrongful convictions, but I believe that the central part of

the way in which justice was within the political process has been lost. As you know, MPs and Ministers will now say, “It is nothing to do with us. It is all to do with the CCRC.”

Q78 Chair: But Members of Parliament will have felt—as we do now when cases like that come to us—that there was a lack of a body that could systematically investigate these cases, which was a capacity that they did not have. The implication of what you are saying is that the public process had a value in itself in securing justice that is not replaced by having a systematic inquiring body to assess whether the cases are well founded.

Bob Woffinden: Yes. To be quite honest, we do not think that it is a particularly good inquiring body. We think that it is referring only a fraction of the cases that it should be referring; that is the problem.

The other area that is particularly important is that it is very likely that, as a result of the existence of the Criminal Cases Review Commission, there are more miscarriages of justice now than there used to be, partly because jurors are perhaps not as committed as they once were. Remember, when the Court of Appeal was set up in 1907, the argument of judges against it was that if you have a Court of Appeal juries will not be as focused on determining guilt or innocence, because they will, in effect, mentally be letting someone else decide it. That argument also applies since the CCRC was set up.

Q79 Chair: Forgive me for pursuing this, but it is an interesting line of argument. Is there any basis for assuming that juries sit in the jury room thinking, “Well, we could convict him, because he can always go to the CCRC if he thinks that he is innocent”?

Bob Woffinden: The obvious answer is that of course there is no basis, because there is no research into juries. As I put it in my submission, there are unknowable areas here. This is an unknowable area. I agree that we just have to theorise about it, but my theory would be that there is a kind of Pascal’s wager about it. They are thinking, “If we let this man off and he commits a string of other offences, it is down to us. On the other hand, if we convict him and he is innocent, there are mechanisms that will allow him to see justice at the end of the day.”

Paul May: Bob and I have worked on cases in the past, but I have to beg to differ here. First, the expectations at the time—back in ’93 or thereabouts—were fairly low. What we wanted was something better than C3 division of the Home Office. It would have been difficult to come up with anything worse. C3 was unresponsive, frequently got its facts wrong and brought massive delay to cases.

From a campaigning perspective, I would agree with Bob that we lost a lot of our bag of tricks in pressurising the Home Secretary—parliamentary questions, early-day motions and Adjournment debates—but it was a constitutional nonsense. It was wrong that, essentially, political pressure could have an influence on whether or not cases were referred. With some of the cases I was involved with before the CCRC, I have no doubt that if we had not been pressurising there would have been no referral. My conscience is clear—these were innocent people who deserved to be released.

One of the disappointments with the commission is that it has continued to accept delay almost as an immutable law of nature. I will not go into the details of the case, but I chair a

support group for Eddie Gilfoyle, who has now been waiting four and a half years for a decision from the CCRC. We say that that is a disgrace.

Another problem with the commission is that it is unduly secretive about even the broadest outlines of its investigation. To give a very quick example, again in Eddie Gilfoyle's case, Lord Hunt of Wirral, who is one of Eddie's more prominent supporters, was advised in writing that the commission had brought in a QC to advise on the case. The commission had not told Mr Gilfoyle's solicitor, let alone Mr Gilfoyle. We say that it could be a lot more open and transparent in the way in which it sets about investigations and, indeed, a lot more collaborative with representatives and supporters.

Bob Woffinden: I knew Tom Sargant quite well in the '80s. The CCRC arose out of Tom Sargant's arguments about having a court of last resort. What he envisaged in the '80s is nothing like what we have ended up with. What he envisaged was that there would be individual, top-of-the-pile cases causing particular concern, as there were in the '60s, '70s and '80s. He thought that they would go to an independent commission, be analysed properly, away from the Home Office, and be cleared up. I do not think that anyone envisaged that you would have a system, as we have now, whereby thousands of cases are being reinvestigated. One of my concerns, as I say in my submission, is that surely we must be concerned more about the efficacy of the trial process itself, rather than loading it all on to the long stop of the CCRC.

Q80 Mr Llwyd: As a practising barrister myself, I do not recognise the jury paralysis you refer to—in other words, that jurors might skip the difficult question and say, “Well, somebody above can look at this again.” I do not quite understand that. I do not mean to play devil's advocate; I just do not recognise that. I have not had an experience of jurors who have obviously ducked the difficult question.

Bob Woffinden: As I said, one is theorising. We simply do not know, because there is no research into juries. We have the situation today that police officers now sit on juries. I would have thought that that changes immensely the way in which juries look at particular cases. Again, we cannot say anything about it, because we have no research.

Mr Llwyd: That is true.

Chair: You can make the comment, as you and quite a few other people have done.

Bob Woffinden: I can make a comment. I do not think that it is a particularly good idea.

Mr Llwyd: I agree.

Q81 Chair: The CCRC's referral rate is much higher than C3's was. Quite clearly, some cases are coming through that system that did not come through the C3 system, which had all of the other defects Mr May has just referred to.

Bob Woffinden: Yes. The CCRC is obviously a good thing from that point of view. It has referred a lot of cases. However, as I said in my submission, we should not get overjoyed about the statistics, because there are an awful lot of cases that simply are not getting any traction in the CCRC, and ought to be. In fact, there are cases that are causing concern that survive from the '90s. In other words, they are pre-CCRC cases that are still causing concern today.

Q82 Chair: There is a whole tranche of cases of institutional historic sex abuse where some who have been convicted protest their innocence and believe that they have been convicted as a result of trawling methods used by the police. Are these the kinds of cases that you would have expected the CCRC to review? Would you not have expected it to review them, as they are not the same as the top-level murder cases that you identified?

Bob Woffinden: I accept what you say about that. Indeed, I gave evidence to a different Select Committee about all of those cases some 10 years ago. Obviously, one is concerned about those, but I happen to regard them as very difficult to consider.

However, there are a lot of murder cases. I referred in my submission to the Karl Watson case. He has been fighting his conviction for 20 years. He managed to get a success in the civil courts, when he won a case against his solicitor for negligence. At the time, the judge was extremely sympathetic. He said, “I want a copy of this judgment made at public expense, because you will want to use it in a different forum”—that is to say, in the criminal courts—and praised his barrister. The suggestion was that the judge there firmly believed that he should be allowed to progress his case, on the basis that, if nothing else, he had not had a fair trial. However, the CCRC has turned down his case on four occasions.

My argument about that—which leads us on to the test—is that there is the real possibility test, which is a different question from whether, when push comes to shove, the Court of Appeal will overturn the conviction. What seems to me to be happening now, after the CCRC has gained 10 or 15 years’ experience of cases, is that it is vaulting over the first question and going straight to the second one of what the Court of Appeal will do. It is therefore usurping the role of the Court of Appeal.

Chair: We will come back to that.

Q83 Mr Llwyd: In your experience, what level of engagement does the CCRC have throughout the investigation with applicants and campaigners?

Paul May: There is a problem of variation with case review managers. I chaired the campaign for and, indeed, represented Sam Hallam, whose conviction was quashed by the Court of Appeal back in 2012. The level of engagement in that case was excellent. The case review manager contacted me regularly and invited submissions as to lines of inquiry that they might pursue. There was a section 19 police inquiry with which we had excellent liaison.

I have had connection with other cases where the case review manager has been reluctant even to say what they are looking at. In earlier evidence, there was a lot of talk of whether the commission goes beyond the bundle, as it was termed. In some cases, it is useful to do that; in others, in my view, it is not. In almost every case, it is not possible to look at every single aspect of the case. There has to be some agreement on what the central issues in the case are, rather than some peripheral matter.

Without going into the case details, I represent Colin Norris, whose case is with the commission at the moment. I have found the case review manager highly receptive to new lines of inquiry. However, I think it is unsatisfactory that we are not working to a protocol. To some extent, it depends on how well you as the representative get on with the case

review manager. I know that the commission is sometimes criticised for not visiting crime scenes, for instance. In some cases, that is useful, but in others it is not. In Colin's case, for instance, we say that there was no crime scene, so there is nowhere to visit. I would like to see the commission issue more procedural guidance on the level of engagement—for instance, how frequently—

Q84 Mr Llwyd: Is it a bit random at the moment?

Paul May: It is random in the sense that it seems to be left too much to the individual CRM. There ought to be some form of protocol, for instance, for meetings. I have had the experience of asking for meetings and getting no response, in some cases. In others, the CRMs have been much more proactive.

I would add one final point. Case review managers are sometimes criticised for not being proactive. The representative also has a duty to be proactive. In too many cases, some solicitors look at the case as if they are just a postbox. They do not themselves do very much active engagement with the commission.

Q85 John McDonnell: We have received evidence that there is a difference between cases that are legally represented and supported in that way and those that are not. We think that those that are represented are significantly more successful than those that are not. Is there an issue to do with the support that there is for an applicant?

Paul May: I think that there is an issue to do with the Court of Appeal. No matter how knowledgeable or educated a prisoner may be, the commission looks at these cases in a particular way. A representative is likely to put the submission in a particular way. Is the evidence credible? Is there a reasonable explanation for the failure to adduce at trial? Is the evidence admissible? These are not issues that most prisoners are able, or even know, to address. Inevitably, those with some knowledge of the system, representing clients, will have a slight advantage. It has to be borne in mind that it is generally accepted that the majority of applications are without merit.

Q86 Chair: Are you saying that the presence of a legal representative or someone with a good legal background enables the applicant more readily to persuade the CCRC that they have the basis to go to the Court of Appeal—as opposed to the benefits of having representation in the Court of Appeal itself?

Paul May: The two are separate. There is a benefit in putting the submission in a form that the Commission can recognise. There is a second benefit. Again, I refer to Colin Norris's case. Colin is a highly thoughtful individual, who comes up with a suggestion roughly once a week. Mostly I have to say, "I am sorry, Colin. That would not be admissible."

Q87 Chair: Shouldn't the CCRC itself be giving at least some guidance to the applicant as to the kinds of issues that would be relevant to submission to the Court of Appeal?

Paul May: The commission issues a limited amount of guidance. However, as the lawyers here will testify, deciding what is and is not admissible quite often eludes Queen's Counsel, let alone a prisoner sitting in HMP Frankland or wherever. These are difficult issues. Part of the commission's problem is the confused signals that often come out of the Court of Appeal on what it will and will not admit.

Bob Woffinden: There are three categories, more or less, on the basis of what you have said. There are entirely unrepresented people, and there are people represented legally by solicitors, who may be engaged or disengaged. Frankly, I know a number of people who are making representations to the CCRC whose solicitors are not doing very much for them. In fairness, that is because they have an awful lot else to do, they are not being paid and so on, but there are probably those three categories.

One of the problems, as I see it, with the CCRC itself is that people think it is going to provide them with an opportunity to overturn their conviction, but all too often it ends very quickly in nothing at all. I have just written a book about Charles Ingram—the “Who Wants To Be A Millionaire?” case—on the basis that this was a case in which the media conned the nation. The point about that is that Charles Ingram, who is a highly intelligent person, sends in a submission to the CCRC anticipating that something will happen, because that is what he has been told. Of course, nothing at all happens. Basically, there is no inquiry.

Q88 John McDonnell: Maybe I am not being clear. The point that I am trying to make is, what is your view of the range of support that is available for applicants themselves? We are told that if they are legally represented they stand a better chance, but there are other forms of support as well, aren’t there—from yourselves, for example?

Bob Woffinden: Yes.

John McDonnell: The issue of access to support for the applicant is one thing. Then, of course, there is the issue of what the CCRC does with the case.

Paul May: I am not a qualified solicitor, nor do I want to be. I do have a law degree and a background going back 30 years. I do not recall a time when it has been more difficult to get a solicitor to take on a case. Although this is outside the remit of the present discussion, the legal aid changes have had a devastating effect on pro bono work with solicitors. I may have been too critical of solicitors not doing much; as Bob pointed out, many of them are overwhelmed with what you might call their paying work.

The nature of campaigning has changed. Back in the days of the Guildford Four and the Birmingham Six, it was predominantly politicised campaigning, because we were pressurising a politician, but it is still important in terms of support for the prisoner to have a support group. It is very often evidentially important. If we had not had a support group in Sam Hallam’s case, a lot of the evidence that eventually ended up in the Court of Appeal would never have come our way or emerged. Thirdly, that support helps to educate the world at large. Bob referred to the fact that there has been a tailing-off, to put it mildly, of public interest in wrongful convictions.

More guidance and support from the CCRC itself would be welcome. To go back to Sam’s case, his family did not know what to do. It was quite accidental that his family ran into a member of Mr Corbyn’s staff, who, in turn, knew me. I do not wish to blow any of our trumpets, but I do not like to think what would have happened to Sam if those coincidences had not occurred.

Q89 Jeremy Corbyn: Apologies for being late—there was a mess-up on the trains this morning. On the last point that you were making, Paul, the coincidence of campaigning is

something that is very obvious to me in all of these campaigns about injustice. There is coincidence almost of good fortune, where somebody meets somebody who knows somebody who can get somebody involved, and somewhere along the line a campaign gets going.

I am sure that both of you get large numbers of letters and calls from prisoners. How do you decide which campaign you will support and which one you do not think has any real possibility of success? Is there any kind of informal network that supports prisoners who are individual and isolated, with no support network outside and nothing political or publicly impressive about the case, but where, nevertheless, an injustice may have been done?

Bob Woffinden: First, despite what I may have said originally, one of the great benefits of the CCRC is that it has rectified cases that have had no attention paid to them whatsoever and that nobody knows about.

Jeremy Corbyn: Such cases would never have got a campaign going.

Bob Woffinden: Indeed. They would never have got a campaign going for them. At the moment, it is particularly engaged with asylum seekers and refugees; it has a number of those cases going through. There are a number of cases like that. I would praise the CCRC for having got to the bottom of some of those.

With regard to the other point, speaking for myself, one is just overloaded at the moment, because there are so many cases coming through where people are saying, “I have been wrongly convicted.” They have authentic arguments, as far as I can see, but very little is being done about them. There is virtually nothing that you can do about that at the moment. The number of ways in which one can draw public attention to these cases has shrivelled immensely.

Paul May: I would back what Bob has to say. There are the obvious no-hopers. Recently, I had a prisoner write to me who seemed to think that a minor mistake on his previous convictions was enough to invalidate his entire trial. When I looked into the case of another prisoner who approached me, it appeared that he had possibly been involved in two other murders he had never been convicted of. He received a polite letter back.

As Bob said, properly taking on a case is very hard work. I have a shed in my back garden with 45 boxes of case material on Colin Norris’s case. All of those pieces of paper need to be read. There are prisoners stuck away in the system with no family or community. In Sam Hallam’s case, for instance, the people on the estate in Hoxton were hugely important. I went to a meeting expecting to advise four or five relatives and wandered into a community hall with 250 people, who had turned out by word of mouth. That impressed me. I could not imagine that those people would be there if they thought that he was guilty.

In the end, I set myself a fairly prosaic target. I do not ask whether the person is innocent, which is a nonsense. I cannot look at somebody and say, “Yes, they definitely did not do it.” I ask myself, “In the light of what we now know or can find out, can it still be said that the Crown proved its case beyond reasonable doubt?” For me, that is enough to keep going. There are groups such as the Innocence Project and dedicated organisations such as the Centre for Criminal Appeals. However, in the end, there is not enough support for

people claiming innocence. There are cases the Court of Appeal is obdurate on, that of Tony Stock being one.

Q90 Mr Llwyd: Mr May, you have said that the CCRC should meet more applicants, yet Professor Zander told us that, in his reckoning, 90% of applicants to the CCRC have little or no hope. Considering that, how early in the process and with what proportion of the applicants should the CCRC be meeting?

Paul May: I agree with Professor Zander on the point that I would not see much value in that at stage 1 screening. In fact, it would overwhelm the commission. It is dealing with 1,500 applications a year. I am due up at HMP Frankland next week. I live in York, which is not very far away, but it will still take all of my day to be there and back.

Once a case has passed stage 1 screening and is at stage 2 for investigation, in my view—I have expressed this repeatedly with case review managers—they should meet the applicants. My experience is that case review managers tend to be very reluctant to do that. For instance, the case review manager for Colin Norris has had the case for two years and has only recently agreed to visit him. The royal commission itself reported that one of the major concerns that prisoners had was that they did not get to see the people dealing with their cases. For the 10% who get to stage 2, it should be built into the procedure. With stage 2 applications, they should visit the prisoner.

Q91 Mr Llwyd: There is a further point on this. You referred earlier—and have done so again now—to the engagement of the case review managers. In your experience, how experienced are they in actual fact?

Paul May: On the whole, they are pretty experienced. In some senses, it worries me that there is random allocation of cases, because that does not necessarily play to the strengths of case review managers, although it can be made up for by the commissioner who is appointed. For example, Colin Norris's case involves the frontiers of human knowledge, basically, when it comes to endocrinology—not necessarily something that a lawyer would understand. Fortunately, we have a commissioner overseeing the case who is a barrister, a medical doctor and an ex-NHS trust chair.

The experience of the case review managers is adequate, on the whole, but it depends on the case. In Sam Hallam's case, for instance, it would not have done to have had a scientist, because there was no science in the case. I was very pleased that the case review manager there was an experienced lawyer who understood some of the legal issues involved in Sam's case.

One problem that we often encounter is case review managers not necessarily thinking that a particular piece of evidence is worth while. I had the devil's own job persuading Sam Hallam's case review manager that obtaining his mobile phone was the most important part of the case. As soon as Thames Valley police took over, the very first thing that the senior investigation officer said to me was, "We'll get that mobile phone." As was well known at the time, that mobile phone was the most crucial piece of evidence in the case.

Q92 Mr Llwyd: I get the impression that, in some ways, the manager should specialise in certain types of cases. If a person is scientifically qualified as well and a case involving a lot of science comes in, clearly that is a case for him or her, isn't it?

Paul May: It would mean having a different method of allocating cases.

Bob Woffinden: Entirely. The stumbling block, surely, is the Court of Appeal and all this business about expert evidence in court. The Court of Appeal's doctrine is that you cannot simply supplant one expert by another. At the moment I am dealing with the case of Jong Rhee—he is Korean—who was convicted of murdering his wife through arson in 1997. The person who gave evidence as an expert at trial we can probably describe as a charlatan; he is dead now, so there are no legal problems with that. Since then, one of the major fire experts in this country, Professor Roger Berrett, has described the original fire expert as “dangerous” in the criminal courts, yet Jong Rhee is still in prison, 18 years later, on the basis of ridiculous evidence.

Chair: I am anxious that we are able to get to the Court of Appeal issue, which is the next topic after Mr Llwyd has finished.

Q93 Mr Llwyd: I have two further questions, if I may. I do not want to hog the session, but I would like you to respond to them. Research has shown that the CCRC goes beyond the bundle in its investigations—you referred to that earlier—in just over a third of cases. How proactive do you expect it to be in investigating applications, both at the screening stage and throughout the investigation? How does that match up with the reality of what you have seen? Is the CCRC unduly insistent on fresh evidence?

Bob Woffinden: In my experience, we are often presenting fresh evidence that it tries to debunk in some way and in which it does not show a great deal of interest. I would argue that it feels restricted by what it knows the Court of Appeal will allow at the end of the day. Should it be more proactive? Yes, it should, in lots of cases.

Paul May: This is a difficult area. The assumption in some quarters is that the CCRC should always go beyond the bundle. I have referred to Eddie Gilfoyle's case; 300 pages of evidence were put in by Mr Gilfoyle's lawyers. We would not attempt to dissuade the commission from looking beyond the issues raised—and there are many—but it is not absolutely necessary.

Conversely, I knew that the evidence that we were able to put forward in Sam Hallam's case was not enough on its own, but we did not have access to the police national computer, let alone to police property or some of the various witnesses. There should be more of a dialogue between applicants' representatives and the commission on the extent to which it is felt that matters not raised with the commission should be looked into.

It is potentially a problem that recently the commission has taken a much firmer line on late submissions, as it terms them. I had some difficulty persuading the commission to accept a late submission in the case of Colin Norris when I took over as his representative. I can understand why the commission is saying that, but, in the course of a case, new information will come in all the time.

Mr Llwyd: In the interests of justice, it should be allowed in, shouldn't it?

Paul May: I would—

Chair: Did you succeed in persuading it in the end?

Paul May: Yes. As I said, I had some difficulty. It took only 36 hours, but I had to make additional representations on why it should accept the representations. As you say, in the interests of justice, it should always do that, unless it is a patently ridiculous submission. Bob referred to the fact that we have the Court of Appeal's rather arcane rules to look at as well.

Chair: Let us get on to that. Mr Howell?

Q94 John Howell: Can I take you back to the issue of the Court of Appeal? Is much of the criticism levelled at the CCRC not better directed at the Court of Appeal? Can you expand on some of the issues that you have mentioned regarding the Court of Appeal?

Bob Woffinden: We would certainly agree with that. There are probably four areas, in particular. One, which has just been mentioned, is expert evidence, when the expert evidence at trial may not have been that expert at all.

The second very important area is competence of counsel, which is extraordinary. We have good and bad architects and good and bad journalists, but it seems that all barristers are supposed to be absolutely perfect. One of the criticisms of the CCRC is that if this issue arises it actually compounds the problems, because the CCRC always goes back to the original trial lawyers and asks for their views on a case. We know of instances where the original counsel are simply lying to protect their own positions, rather than seeking to advance the interests of their erstwhile clients. There are a couple of cases where we suspect that that has happened.

In fairness to the barristers, they themselves are in a very difficult position, because we know of the stigma that attaches to professional incompetence in a particular case. I referred in my submission to the Reith lectures this year, which were about mistakes made in medicine. No one worries about them; everyone just says, "Let's make sure that we get it better." However, we still have a system in criminal law where, if barristers get it wrong at trial, that is it—it is the wrongly convicted appellant who pays the price of that difficulty.

The other areas with appeal are that we need to take into account the whole of the case. For example, there are very sound grounds for saying that Jeremy Bamber's case should be referred to appeal, on the grounds that the case as it stands now is not in any way the case as it was when he was originally convicted. The problem with that is that, from my perspective, Bamber is obviously guilty. I think that the CCRC has taken that into account. From that point of view, it has examined the whole of the case and said, "He is guilty. We are not going to entertain his submission." That does not seem to apply on the other side. If someone is innocent, it may find particular reasons to disregard pieces of evidence, instead of taking a view on the whole of the case and how it coheres.

Paul May: If I had to pick up one area with the Court of Appeal, it would be the issue of new evidence. I think it is within the gift of Parliament to change that, by amending section 23 of the Criminal Appeal Act 1968.

In recent years, we have been moving backwards on what evidence the Court of Appeal will accept as new. The previous Lord Chief Justice, Lord Judge, developed the so-called

one-trial principle—namely, that if the evidence in question was capable of being adduced at trial but was not, that is it; it is inadmissible. I am currently arguing with the commission on that very point in Colin Norris’s case. Very often, you will have a piece of evidence that at the time of trial made no sense, because you could not link it with other pieces of evidence. Increasingly, the Court is saying that, if it was available to the defence at trial, that is your lot.

There was a good example in Sam Hallam’s case. We had a witness who at the time of trial said that he had seen Sam Hallam outside the pub where it turned out that he was. However, until years later a mobile photograph showed that he had been at that pub and had been mistaken about his whereabouts, the witness’s statement made no sense, so at the time the defence did not enter it in evidence. At the Court of Appeal years later, the Court said, “No, you could have put this forward at trial, so we are not deeming it admissible now.” In my view, the Court should focus on the fact that the evidence was not presented, not on the reasons why it may not have been presented. Basically, it is unjust to have evidence that has never been considered by a court ruled out of order.

I agree with everything that Bob has had to say, but my particular hobby-horse is section 23 of the Criminal Procedure and Investigations Act, which deals with the duty on the police to pursue reasonable lines of inquiry. These days, on the whole—we hope—suspects are not beaten to within an inch of their lives, like the Birmingham Six. However, so many miscarriages are about tunnel vision and conclusion-driven inquiries—in other words, police officers not following their statutory duty to pursue all reasonable lines of inquiry. I had something of a run-in with one of them—

Chair: We are getting away a little from the question that you were asked, which you answered very clearly a moment ago. I would rather we stuck with that.

Paul May: I was thinking more that the Court of Appeal should be upholding that right. It is not doing that.

Q95 John Howell: Can we go on to the real possibility test? What changes are required to that to nudge the CCRC into being less cautious or less deferential?

Bob Woffinden: As I have already mentioned, the CCRC seems to have vaulted over this test and gone to the second test—is the Court of Appeal going to overturn the conviction? In my view, that is not what it should be doing. It should just be saying, “Is there evidence here that, in a way, undermines what happened at the trial, so that it should be considered again at the Court of Appeal?”

In my opinion, the test that the CCRC should be asked to answer is, “If you were constituted as a jury, in view of all the evidence that you have seen, would you have found this particular person guilty?” It seems to me that if the answer is no that is enough, and the case does not satisfy what we need it to satisfy within the criminal justice system, as there are obviously flaws and doubts. That is a logical and natural test for it. As it happens, there are slightly more than 12 commissioners, but they are almost constituted as a jury anyway. This would not be taking over from the jury test, because it would be a hypothetical test, not the actual test, but it is a natural and logical test for them to perform. If they cannot answer it in the affirmative—if they cannot say, “We would have found this person guilty”—the case cannot satisfy the demands that it should satisfy.

Q96 John Howell: You have argued for the repeal of section 315 of the Criminal Justice Act. Would you like to expand on that?

Bob Woffinden: It was extraordinary. As I remember, this particular section was pushed through by a couple of Law Lords late at night and was hardly ever debated by Parliament. Most lawyers will tell you that it is they who are representing their clients, not anybody else, and therefore it is up to them to determine the grounds on which the case will be heard on appeal. Those may not be the grounds that have been determined by the CCRC. In one particular case called Attwooll/Roden, a south Wales case, the barrister—as I recall, it was Henry Blaxland—could argue only on the two grounds put forward by the CCRC. When he asked whether he could stray outside those areas, the judges said, “Well, if you can fit them into those areas, we will hear your arguments.” Barristers or QCs should be allowed a free hand, once the case has been referred to appeal.

Paul May: That was a problem that we had in Sam Hallam’s appeal. There were two important pieces of evidence that were not in the commission’s statement of reasons and for which specific leave of the Court had to be obtained. One of those loomed quite large in the Court’s eventual judgment among its reasons for quashing the conviction. I agree with Bob that the legislation should be repealed. It was never really that clear why Parliament passed it. It had always been the case that the clock was turned back to zero. Once you had a referral, you could put forward any admissible grounds of appeal. I do not see why you cannot now.

Q97 John McDonnell: Looking at the resources of the CCRC, what level of additional funding and resources do you think are required for the CCRC to fulfil its duties, as you see them?

Paul May: We could go back to 2002, when the commission had 50 case review managers. It has 34 now, but its work load has doubled. That is absurd. One major concern is that increasingly it is appointing case review managers on fixed-term contracts. Part of the reason for the delay in Eddie Gilfoyle’s case was that, 18 months into his case, the case review manager was promoted and we ended up back at square one, with a new case review manager. Why they could not have made some arrangement internally, I do not know.

Recently, I have been speaking to a case review manager who says that her work load has tripled in the last 12 months. We can criticise the commission all we like for not looking at cases thoroughly but, if it is dealing with that kind of unreasonable work load increase, it should be properly funded. I would say that you should take 2002 as the start point and provide enough funding for 50 case review managers.

Bob Woffinden: I agree with all of that. In my submission, I made the point that I believe there is a danger of our focusing on the wrong thing here. The idea that we should create this system that we see stretching off for years to come seems to me absurd. Why can’t we get it right first time? Why can’t we focus on making sure that the trial process does that? Instead of that, I have to say, there have been loads of legal changes in recent years—this century—that have encouraged wrongful convictions, to do with hearsay evidence, anonymous evidence and so on. We have mentioned police officers sitting on juries.

We are going the wrong way, from my perspective. We need to make sure that the system functions properly first time, because it is costing the country millions of pounds and is creating awful distress for families, both the wrongly imprisoned and the victims and bereaved. I believe that more attention should be put on getting it right first time. I accept that there is a lot that the Criminal Cases Review Commission is doing well, but it should have some sort of time limit and be told, “Let’s clear up the system in five or 10 years,” or whatever it is. We should not perpetuate this thing for ever.

Q98 Jeremy Corbyn: Would it be practical to put a time limit on the CCRC in response to queries, so that it would have to make an initial decision on the possibility of a review and have to reply within a certain time? It seems to me that there is a bigger and bigger backlog developing in the CCRC. We will end up with some kind of CCRC-plus to look at the CCRC backlog. There is a kind of eternal growth of the backlog.

Bob Woffinden: Yes. It is the old argument, isn’t it? Once these things are started, they grow like Topsy. There is the point about resources again. However, as far as we can see, they seem to have no conception of how this is affecting the person in prison, his family, his relatives and so on. People are dying while they are in prison. The case of Gordon Park—the “lady in the lake” case—was one I dealt with. When Gordon Park’s appeal failed, he was in such despair that he committed suicide.

Q99 Jeremy Corbyn: But there are cases where clearly there is no real merit in reference anywhere; there is no new evidence and no basis for it. It seems to take as long to tell those people that their case has no basis as it does to deal with those people whose case clearly does have a basis. Is there a case for an initial observation to come very quickly from the CCRC? Is that possible?

Paul May: It tends to happen with stage 1 screening, if there is no merit.

Bob Woffinden: It should happen.

Paul May: They have targets for that. One slight reservation that I have about setting time limits is that, on occasion, I have found myself in the position of arguing with the commission, “Please do not make a decision yet. We are getting more evidence together.” On Colin Norris, they indicated that they were going into the decision-making phase. I begged them not to, while we got the fresh evidence in to them.

Jeremy Corbyn: That is entirely reasonable. If a credible person says, “I have evidence that I believe is going to come forward,” that is perfectly reasonable as a basis for not making a decision.

Paul May: For the cases that are entirely without merit, they do have some targets. One of the many problems is the waiting time, once it has been decided that there is something to look at, before you get a case review manager. It was seven months in Sam Hallam’s case. I think that it is now longer for persons in custody. That is a very frustrating time, particularly in cases where time itself is a factor. A lot of Sam Hallam’s case was about witnesses. Witnesses’ memories fade. It was very frustrating month after month, knowing that his submission was sitting in a tray somewhere. There is a case for some external setting of targets to the commission. At the same time, it needs the resources to keep to those targets.

Chair: We have Justice questions on the Floor of the House very shortly, so we are down to our last few minutes.

Q100 John McDonnell: Paul, you mentioned in your written evidence issues with public bodies complying with section 17 requests for disclosure. How well does the CCRC chase up these matters? What further measures are needed?

Paul May: As I indicated, and I am surprised that this has not received more attention, there are no sanctions for any public official or public body failing or even refusing outright to supply information. I mentioned in my written submission a health trust that for two years refused point blank to supply information to the commission. In Sam Hallam's case, the senior investigating officer in the original murder inquiry—the same officer who was involved in the Gareth Williams “spy in the bag” case—refused point blank to be interviewed by his fellow officers. There were no sanctions. In the end, the commission is forced to cajole.

I mentioned earlier that the commissioner overseeing Colin Norris's case is herself a former NHS chief executive. I understand that that is how it was resolved—on a chief-executive-to-chief-executive basis. That is completely unsatisfactory. There should be some sanctions on public bodies that refuse to comply. Indeed, as I think we all advocate, Parliament should extend the same sanctions to private bodies. At the moment, the section 17 duty is toothless.

Bob Woffinden: The other pressure is the public bodies that are becoming private bodies, in forensic science and everything else.

Jeremy Corbyn: We took evidence on that last week.

Q101 John McDonnell: On the issue of resources, should trivial and sentence-only cases be removed from the CCRC's remit? That would allow it to focus on more serious cases.

Bob Woffinden: Well, those people want justice, too, don't they? It is difficult. On the whole, I would say no. POCA cases should be brought within the remit of the CCRC, because that is an area in which people feel great injustice. Lots of middle-class families are suffering a lot at the moment under what appear to be spurious claims made by the authorities after particular convictions. That seems to be a growing area of injustice that might well be tacked on to the CCRC's remit. There are problems. Despite what I have said, I feel that it should consider those cases.

Paul May: Very early on, in the case of Graham, the Court of Appeal largely took away the CCRC's powers in relation to sentencing—in complete defiance of Parliament's intentions, I would argue. If the CCRC is not able to refer sentencing cases, who is going to do it?

Q102 John McDonnell: Finally, the royal commission did not envisage this, but is there merit in the CCRC playing a more campaigning role, in terms of being more vocal about the causes of miscarriages of justice and the need to reform the criminal justice system overall? To a certain extent, it touches on some of the issues that you have raised, Bob.

Bob Woffinden: I am astonished that it has not been more proactive in those areas. It seems to me that there are lots of instances where the CCRC should have been more

publicly involved—originally, perhaps, with the Sally Clark case, because there were other cases like that. There are various areas like that going right down to today, with the “fake sheikh” cases. When the judge says, “We can’t believe a word he says,” the CCRC seems to do nothing. The CPS says, “Maybe we will look at these cases,” but the CCRC should have stepped in and said, “We will have a look at these convictions, in the light of what this judge has said.” It could deal with such cases in clusters. Paul mentioned the Colin Norris case. I have been involved with the Dee Winzar case, which is an exactly parallel case. It should be doing those together, rather than separately all the time.

John McDonnell: By drawing general conclusions about miscarriages—

Bob Woffinden: And, I believe, drawing general conclusions—as we have discussed this morning—about ways in which the judicial system can be improved.

Paul May: Certainly. I touched on the issue of police inquiries and pursuing reasonable lines of inquiry. There are common themes that emerge from these cases. The commission is rather poor, even in its annual report, at drawing conclusions. In that limited sense, it should have a campaigning role, drawing attention to particular areas of concern.

Chair: Thank you very much. We are very grateful to you both for giving us the benefit of your experience.

Bob Woffinden: Thank you for giving us the opportunity.