Written evidence submitted by Inside Justice (PCO0001)

[Note: This evidence has been redacted by the Committee. Text in square brackets has been inserted where text has been redacted.]

Inside Justice was established in 2010 and is a registered charity. Inside Justice has built a wholly unique advisory panel of world-renowned experts who work pro bono to strengthen the criminal justice system. Our vision is to have a fair and transparent criminal justice system for all. Our mission is to empower individuals convicted of a crime they say they did not commit, by working closely with statutory and voluntary partners across the criminal justice system. When our casework identifies systemic failings, we undertake policy work to improve the criminal justice system for all.

1. Our casework has identified repeated failures by police forces across England and Wales to retrieve, retain and store material gathered during the course of police investigations, with integrity, security, and with demonstrable continuity. This problem becomes acute post-conviction. Further research has identified this as a systemic issue that can seriously impact upon the integrity of the criminal process. All police forces have statutory obligations regarding the retrieval, storage, and disclosure of materials, primarily under the Criminal Procedure and Investigations Act 1996. A failure to adhere to such obligations and properly retrieve and store material, denies a prisoner the right to challenge the safety of a conviction, thereby preventing the Court of Appeal (Criminal Division) from performing its function. We include anecdotal evidence of such failures at the end of this submission.

2. There is also an imperative for forces to retain evidence in investigations in which no perpetrator has been detected or convicted, to facilitate cold case reviews. In order to give effect then to an appellate system and enable cold case reviews, evidence needs to be retained and properly stored. If materials are not seized, retained, and stored with integrity, security, and with continuity ensured, then investigations are jeopardised and re-investigations are rendered impossible. Retention is especially critical in respect of physical materials that could be subject to forensic examination. With the progress of science and

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2 “Where the accused is convicted, all material which may be relevant must be retained at least until the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order” CPIA Revised Code of Practice 5.9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf
technology, and the interpretation of results, it is essential that such physical (and now, often digital) materials are retained for future (re)evaluation.

3. The charity has been working collaboratively with key stakeholders such as the National Police Chiefs’ Council and the Criminal Cases Review Commission on addressing these issues. However, there are other bodies, such as the IOPC we believe, that could play an important role in addressing ongoing failings by the police. As currently constituted and operationalised, the IOPC is ineffective in both a) investigating and remedying individual failings by police forces to adhere to their statutory obligations to properly retrieve and store materials during investigations and post-conviction and b) addressing national, systemic problems with policing that pose a significant threat to the integrity of our criminal process. We give examples below to demonstrate why the IOPC is currently ineffective in both these regards.

**Failure to Investigate Complaints about Individual Police Forces**

4. *Inside Justice* complained to the IOPC about the actions of one particular force where there had been wholesale failures to adhere to proper procedures, because, whilst those failures were admitted, it was not apparent that the force had learned lessons and made improvements, such as instigating staff (re)training and improving evidence storage systems, that could minimise the risk of future failings. Our complaint to the IOPC was handed to the force in question for investigation by their own complaints department. They concluded that the complaint would be ‘disapplied’ i.e. not heard because the action we complained of (poor handling of evidence) had occurred more than 12 months before the date of our complaint. This is clearly nonsensical. The actions in question could not have been known about by anybody other than those responsible for the failings so we could not have possibly complained within this time period, as the failing had yet to be discovered.

5. We appealed the IOPC decision, but it was upheld (by the force’s own appeal process). We wrote to the Director General of the IOPC, Michael Lockwood, to request a meeting between with him and a retired member of the judiciary on our Advisory Panel but this was denied by a Customer Contact Advisor from the IOPC. So despite admitted failings, the IOPC’s own rules meant that the force was not required to address them. This also means that no police force will have to address similar failings, because ordinarily, they will all fail to be discovered before this 12-month period (or police forces are motivated to ensure that they are not discovered before this period expires). The rule clearly should not apply in such cases.

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3 [Police force], the investigating force, destroyed, contaminated (by inappropriate storage) and lost the majority of the exhibits in a murder case. The prisoner has consistently and repeatedly protested his innocence but remains serving a life sentence. However, scientific techniques developed sufficiently to allow new scientific tests which, had the exhibits been kept, could objectively test those claims and potentially identify the real killer.
circumstances and everyone loses from the issue being ignored because of a rule that would similarly dismiss all such complaints.

6. The Police Ombudsman for Northern Ireland has a similar 12 month rule. However, RUC (Complaints etc) Regulations 2001, s9 states that the Ombudsman may investigate complaints: “where new evidence has come to light which is not evidence which was reasonably available at the time the matter originally occurred, the Ombudsman believes that a member may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings, and the Ombudsman believes that the matter should be investigated because of the gravity of the matter or the exceptional circumstances.” The IOPC does not. The introduction of a ‘grave and exceptional’ policy would allow the IOPC to consider issues which are of significant consequence to both the individual complainant, and national policing improvement.

**Failure to Address Systemic Policing Problems**

7. The failure of the IOPC to investigate individual force failings, then compounds the problem nationally. If no force is required to address such failures, then there is no motivation for any police force to prevent similar failures. We provided evidence to the IOPC of the data we have gathered from all 43 forces of England and Wales in relation to their evidence storage provision. We have uncovered a worrying picture of inconsistency, with confusion over what should be retained, and how. As explained, justice demands the proper retrieval retention and storage of materials. Doing so is fundamental to the fair and effective operation of our criminal justice system, and ensures that the Court of Appeal can fulfil its remit in addressing wrongful convictions and forces can pursue justice in cold cases. High-profile miscarriages of justice have often only been remedied when there has been defence access to materials post-conviction (which had often not been disclosed pre-trial). Without significant intervention and reform, miscarriages of justice will continue uncorrected and the appellate system will become inconsequential. Offenders will remain undetected.

8. The IOPC could play a vital role in ensuring that both individual forces are required to address their failings, and nationally, lessons could be learned and steps taken to ensure that failings do not occur in other forces. The IOPC intends to make national improvements through their research and ‘learning’ competencies. However, because the IOPC are not investigating these failings, there can be no ‘lessons learned’ nationally and no police force is pre-empting failings by taking preventative action. If the IOPC were undertaking proper

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investigations of failures with regard to evidence retrieval, retention and storage, then problems could be addressed nationally and reforms could be instigated. Thus, preventing failures and improving policing in a far more effective manner.

Reforming the IOPC

9. A ‘grave and exceptional’ policy as outlined above, would have allowed the IOPC to properly consider our complaint and our research, which we believe makes clear that the IOPC needs to take seriously the issue of the integrity, security and continuity of evidence seizure, storage and retention. Unless police forces keep material securely and correctly investigations can be jeopardised, and convictions lost. Post-conviction, wrongful convictions cannot be challenged. Finally, unless forces keep material in unsolved cases, cold case reviews cannot access that evidence. All of these scenarios threaten the integrity of, and public confidence in, the criminal justice system.

10. We would be delighted to help the Home Affairs Committee further with their inquiry, and welcome any questions about our project. We have already told HMICFRS that they should be including this in their inspection regime. We can provide all copies of publications detailing this research upon request.

August 2020
Appendix: Anecdotal Evidence

“The effect for [name] is stark: he has been denied the right to a fair appeal. Here is a man who has always protested his innocence and always called for every forensic test to be done that could identify the murderer. [Police force] has destroyed [his] chance to clear his name. In some States of America that would be an automatic ground of appeal. Not so here. There is no legal recourse open to [him] on this point alone. That cannot be right.” University Innocence Project

“[Person A] was a [teenager] in [the early 1980s], who’d left home in [city A] after a row with his parents and was living rough in [city B]. He was living under some cardboard boxes in a flat he shared with [Person B], when others came into the flat and killed [Person B]. They then threw [Person A] out of the window. All the material that was collected at that time - blood-stained clothing, shoes - has never been found and never seen the light of day since. It was in various Police Stations in [city B], which were then closed. It might then have been transferred to the Forensic Archive but has never been catalogued so it would be like looking for a needle in a haystack. If the material could have been DNA-tested, it would have been very helpful.” Solicitor

“In [name] case, the CCRC were asked to review the HOLMES material and the reply from [police force] was ‘we don’t know where it is, we don’t know where all the material is, we know there’s probably a lot of it and it’s impractical for us to search every police premises within the [police force] area for these documents. It’s a very large surface area, we don’t know where they are. Sorry.’ “ Solicitor

“The gun and the bullets from a [1990s] shooting disappeared in the process of redecorating [police force] store room. A year later, the gun reappeared but the bullets didn’t. The CCRC rejected [names] case after seven years but the barrister has not given up. Forensic investigation of the bullets would probably have resulted in their exoneration.” University Innocence Project

“[Name] was an attempted rape case. His legal team wanted to test exhibits. In the end, they tracked them down to the back of [location] Police Station. They weren’t where they should have been held but they were still in existence and the lawyers were then able to have them tested and the findings were that the exhibits never had been tested – they were still in their original bags, never been opened, although police officers seemed to indicate at trial that they had been – and the DNA was shown to belong to an unknown male and not to [name], and his conviction was quashed.

“The exhibits should have been appropriately catalogued in a safe storage place – it was only pure luck that the bags hadn’t been damaged and that the integrity of the DNA evidence hadn’t been destroyed. If they had been, then [name] would still be in prison.” Solicitor Advocate