

## **Andrew Malkinson, the CCRC, the Henley Report and public funding**

[Paul Taylor KC](#)

General Editor of [Taylor on Criminal Appeals](#) and Head of the [5KBW Criminal Appeals Unit](#)



***“The test of a country’s justice is not the blunders which are sometimes made, but the zeal with which they are put right.”<sup>1</sup>***

It not hard to find examples of the devastating effects of miscarriages of justice - from the wrongful convictions and executions of Mohammed Matan and Derek Bentley to the more recent Post Office Horizon scandal. Mr. Andrew Malkinson has now been added to this list.

On 26th July 2023 the Court of Appeal quashed Mr. Malkinson’s convictions for two offences of rape, and one offence of attempting to choke with intent to commit an indictable offence, namely rape. He had been sentenced to life imprisonment with a minimum term of 7 years, but spent 17 years in prison before he was released, always maintaining his innocence. “It had taken 20 years to put this appalling miscarriage of justice right.”<sup>2</sup>

---

<sup>1</sup> Cyril Connolly, Sunday Times, 15<sup>th</sup> January 1961. Quoted in *Miscarriages of Justice* by Bob Woffinden.

<sup>2</sup> Page 2, Henley Report

Today the Criminal Cases Review Commission (CCRC) published the report by Chris Henley KC into the organisation's handling of Mr. Malkinson's case.

<https://ccrc.gov.uk/news/criminal-cases-review-commission-ccrc-publishes-report-on-its-handling-of-the-andrew-malkinson-case/>

This thorough report identifies significant failings in the investigation of the three applications that were made to the CCRC before the matter was fully investigated and referred back to the CACD. The recommendations make compelling reading.

There is no doubt that change in several areas is urgently required, but I would argue that the debate about the way forward should start from two propositions that are uncontentious:

Firstly, the reality is that anyone can be the victim of a miscarriages of justice, no matter what the offence or sentence, and that the consequences on that person's life and of those close to them can be devastating. As Chris Henley KC put it "Miscarriages of justice disfigure the lives of all connected to the case and make the public generally less safe."<sup>3</sup>

Secondly – and this follows on from the Cyril Connolly quote at the top of this article – a civilised society requires a system that can investigate, identify, and, so far as possible, seek to rectify the wrong that was done when justice miscarries. Chris Henley KC states: "*An effective CCRC is fundamental both to collective public confidence in our Criminal Justice System's ability to identify and overturn wrongful convictions but, perhaps at least as importantly it is essential that there is a vigorous, rigorous, well-resourced, organisation that the wrongly convicted can turn to and have full confidence in.*"<sup>4</sup>

Nelson Mandela said "...no one truly knows a nation until one has been inside its jails." The same can be said of a country's criminal appeal system and how it treats the poorest and most vulnerable members of society. The fact is that an ineffective system taints the society within it dysfunctions.

One of the factors that the Henley Report addresses is the lack of proper resources allocated to the CCRC.

*"...the CCRC is hugely underfunded. This will inevitably impact on the time that can be given to cases and capacity generally...The resources the CCRC has available is bound to impact on its capacity, and the quality of the work being undertaken ..."*<sup>5</sup>

*"The CCRC should be provided with more resources by Government. It faces formidable challenges. Its caseload has grown dramatically over recent years. In the period to 2011/12 the average number of applications submitted annually to the CCRC was 955. Since 2012/13 the average number of applications received each year has increased to 1407. In the current year the number of cases is on course to exceed 1600, an increase of almost 70% on the figures for the period to 2012. The resources provided to the CCRC have not kept pace with the increase in cases numbers it is now dealing*

---

<sup>3</sup> Page 113, Henley report

<sup>4</sup> Page 10 Henley Report

<sup>5</sup> Paragraph 101 Henley Report

*with. The CCRC's annual budget for the current year, in real terms, is 17% less than the amount it had previously received on average since 1997....There is a growing awareness of the importance of the CCRC's work, but also the complexity of the evidence increasing numbers of the cases involve. It is unreasonable to require the CCRC to improve the perception and reality of its performance without providing it with the commensurate level of resources it needs to achieve this. This is an urgent issue and needs to be addressed as soon as possible."*<sup>6</sup>

All of those involved in the criminal justice system are aware that we are now in the midst of a perfect storm – trial and appellate proceedings have become increasingly complex, public funding has been decimated, the Criminal Bar has had enough of propping up a crumbling system, and the CCRC is dealing with increasing numbers of applications, whilst its own funding and that available for legal representation has been slashed.

The limited resources made available to date to investigate and correct potential miscarriages of justice worryingly indicates a decreasing sensitivity to those who are marginalised in society.

There is an opportunity for change. A new government, new law officers and (hopefully) a new set of priorities. The time is way overdue to fund the criminal justice system properly. The alternative is to face an increasing list of miscarriages of justice – some (at least) of which could be avoided with effective resources.



[Paul Taylor KC](#) specialises in criminal appeals and has developed a particular expertise in cases involving fresh expert forensic evidence (including GSR/CDR, DNA, CCTV), homicide, and offenders with mental disorders. Paul has represented appellants before the CACD, Northern Ireland Court of Appeal, Privy Council, Eastern Caribbean Supreme Court, and the Court of Appeal of Trinidad and Tobago. He is frequently instructed to draft submissions to the Criminal Cases Review Commission. Paul is head of the 5KBW Criminal Appeals Unit and editor of *Taylor on Criminal Appeals*. Chambers and Partners described him as “One of the foremost appeals lawyers...”

For further details of the 5KBW Criminal Appeals Unit please contact our senior clerk, Lee Hughes-Gage: [lee@5kbw.co.uk](mailto:lee@5kbw.co.uk)

For 5KBW appeal news and updates follow us on [@5KBW\\_CrimAppeals](#)