

Carolyn Hoyle*

Review of wrongful convictions following police misconduct: A study of the English Criminal Cases Review Commission

Eine Nachprüfung ungerechtfertigter Verurteilungen aufgrund polizeilichen Fehlverhaltens: Eine Studie über die englische Kommission zur Überprüfung von Strafsachen

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Abstract: The Criminal Cases Review Commission (CCRC) reviews possible wrongful convictions in England, Wales, and Northern Ireland, referring back to the Court of Appeal cases where there is a 'real possibility' that the conviction is unsafe. This article presents findings from a four-year empirical study of decision-making within the CCRC. It explores how Commission staff exercise discretionary powers in identifying and investigating possible wrongful convictions, referring just a few back to the Court.¹

It focuses on a sample of cases that turned on police misconduct in pursuit of a socio-legal contribution to our understanding of the response of the state to claims of wrongful conviction. It demonstrates that caseworkers' approaches to investigation and decision-making is shaped by the law and internal policies such that reasonably consistent decision frames emerge.

Keywords: Wrongful conviction, Criminal Cases Review Commission, police misconduct, discretion.

Zusammenfassung: Die Kommission zur Überprüfung von Strafsachen (Criminal Cases Review Commission – CCRC) prüft mögliche Fehlurteile in England, Wales und Nordirland und verweist Fälle an das Berufungsgericht zurück,

¹ Since its inception in April 1997, the CCRC has received almost 29,000 applications and referred 797 back to the Court of Appeal. Of these referrals, the Court has quashed the conviction in 542 cases. In 2019-20, the CCRC received 1,334 applications, and in 2020-21, 1,142.

*Corresponding author: Carolyn Hoyle, University of Oxford, Centre for Criminology, Oxford, England, E-Mail: Carolyn.Hoyle@crim.ox.ac.uk, <https://orcid.org/0000-0002-6352-5790>

bei denen eine »reale Möglichkeit« besteht, dass die Verurteilung »unsicher« ist. In diesem Artikel werden die Ergebnisse einer über vier Jahre laufenden empirischen Studie über die Entscheidungsfindung innerhalb der CCRC vorgestellt. Es wird analysiert, wie die Mitarbeitenden der CCRC ihr Ermessen bei der Ermittlung und Untersuchung möglicher ungerechtfertigter Verurteilungen nutzen. Insgesamt werden nur wenige Fälle an das Gericht zurückverwiesen.

Der Beitrag konzentriert sich auf Fälle, bei denen es um polizeiliches Fehlverhalten ging, um einen rechtsoziologischen Beitrag zu unserem Verständnis der Reaktion des Staates auf Beschwerden wegen unrechtmäßiger Verurteilung zu leisten. Es wird aufgezeigt, dass die Ermittlungs- und Entscheidungsansätze der Sachbearbeiter durch das Gesetz und interne Richtlinien geprägt sind, so dass sich einigermaßen einheitliche Rahmungen der Entscheidungen ergeben.

1 Introduction

On 19 October 1989, the English criminal justice system was rocked by an earthquake. Presiding over the second appeal of the Guildford Four, three men and a woman jailed for life for planting lethal bombs in public houses on behalf of the Irish Republican Army (IRA) on the sole basis of their supposed confessions to detectives, Lord Chief Justice Lane accepted evidence that these had been fabricated. As he quashed their convictions, he uttered five words that seemed to herald a revolution: »The police must have lied« – a possibility he and other judges of his generation had long found difficult to accept (Ashworth, 1998, p. 11).

Over the next three years, successful appeals based on revelations of police misconduct in further high-profile cases followed. In 1991, the Government announced it was setting up a Royal Commission on Criminal Justice – on the very day that the Court quashed the convictions of the Birmingham Six, who had also been jailed for IRA pub bombing murders. Its eventual report made 352 recommendations designed to make the criminal process more accountable, and, it was claimed, both to increase the chances of convicting the guilty and to reduce the risks of wrongfully convicting the factually innocent (Royal Commission on Criminal Justice, 1993). Recommendation no. 331 was to establish a new authority with investigative and decision-making powers to refer possible miscarriages of justice back to the Court of Appeal. It was realised by section 8 of the Criminal Appeal Act 1995, which created the Criminal Cases Review Commission (CCRC; hereafter ‘the Commission’) for England, Wales, and Northern Ireland. It opened for business in 1997.

Much has changed in the political and juridical landscape since that time, but concerns about the reliability of the criminal process remain. For example, fears have been raised about the deterioration of criminal defence work caused by cuts to legal aid for defendants and appellants. For several weeks in 2022, criminal barristers in England and Wales went on strike, demanding fresh increases to restore their income. Meanwhile, successful appeals have demonstrated a continuing tendency by police and prosecutors to fail to disclose exculpatory evidence pre-trial, and doubts raised by flawed scientific evidence. In late 2022, a devastating report on the failures of police disciplinary processes inside the Metropolitan Police (Casey, 2022) revealed that hundreds of officers were continuing to work without sanction despite multiple allegations of serious misconduct against them in the course of their careers.

Similar concerns about flaws in the criminal process exist in most liberal democracies, and institutions designed to review cases that have slipped through the net of procedural protections and appellate processes exist elsewhere. Post-conviction bodies analogous to the English Commission have been established in jurisdictions including Scotland², Norway³ and New Zealand⁴. Other jurisdictions, including

certain states in the U.S. (Schehr & Weathered, 2004) and Australia (Dioso-Villa, 2014, p. 374) have also considered whether to establish statutory post-conviction institutions.

However, the functioning of such bodies has been subjected only to limited empirical enquiry. This article draws on research on the Commission of England, Wales, and Northern Ireland to examine its record in a specific group of cases – those of people who allege they were wrongfully convicted on the basis of evidence tainted by police misconduct. This was, of course, the category that led to the Commission’s establishment, starting with the case of the Guildford Four.

2 The Criminal Cases Review Commission

The Commission reviews possible wrongful convictions, almost always after the exhaustion of first instance appeals⁵. The Court of Appeal (‘the Court’) is obliged to hear any case the Commission refers, but a referral can only be made if the Commission is satisfied there is a real possibility that the Court will allow the appeal and quash the trial verdict. This ‘real possibility test’ was defined by the Criminal Appeal Act 1995, section 13(1)(a). At the Commission, applications are scrutinised and investigated by about 40 caseworkers, 11 commissioners, legal and investigations advisors, and administrative and executive support staff.⁶ Over the 25 years of its existence, the Commission has referred on average 32 cases a year. The Court has quashed the convictions in about 70 % of such cases.⁷

The real possibility test means the Commission must consider how the Court will respond to a referral before deciding whether to refer, so its decision-making is inextricably tied to the test subsequently applied by the Court: whether the conviction is ‘unsafe’. It does not need to be satisfied that the applicant is innocent. However, this definition is a moving target: the Court’s idea about what constitutes an unsafe conviction changes over time, as its jurisprudence evolves.

² Established in 1999 by the Crime and Punishment (Scotland) Act 1997, section 24; see Duff 2009.

³ The Norwegian CCRC was established in 2004, following an infamous miscarriage of justice (the *Liland* case). It has the same powers and remit as the (E)CCRC and (S)CCRC, though it enjoys fewer resources than the former, given its much smaller caseload (barely over 100 applications a year, compared to approximately 1400 to the (E)CCRC); see Grøndahl & Stridbeck 2016.

⁴ <https://www.crcr.nz>, see Hoyle 2020.

⁵ In all cases, an appeal should have been determined, or leave to appeal against it refused, before the convicted person applies to the Commission (section 13(1)(c) Criminal Appeal Act 1995), though section 13(2) allows the Commission to review cases before direct appeal, and to make a reference ‘if it appears to the Commission that there are exceptional circumstances which justify making it’. In practice, this happens in a significant minority of cases; see Hoyle & Sato (2019, ch. 6.)

⁶ <https://ccrc.gov.uk/who-we-are/>

⁷ <https://ccrc.gov.uk/facts-figures/>

Moreover, the Court's use of the term ›unsafe‹ has two distinct, if typically overlapping, meanings: either that the case against a convicted person does not meet the criminal standard of proof; or that the pre-trial and/or trial process were so irregular that the trial was unfair. Hence, the test of unsafety is broader and more protective than that of factual innocence, which does not need to be demonstrated. In some cases, opined Lord Bingham LCJ, in *R v CCRC ex parte Pearson*,⁸

›unsafety will be obvious, as (for example) where it appears that someone other than the appellant committed the crime and the appellant did not, or where the appellant has been convicted of an act that was not in law a crime, or where a conviction is shown to be vitiated by serious unfairness in the conduct of the trial or significant legal misdirection.‹

Equally, it can be inferred; in other cases, the lack of safety will be less clear-cut.

The evidence the Court considers must be capable of belief, of forming a ground for allowing the appeal, and it must be ›fresh‹. The definition of freshness has also evolved since it was set out in Criminal Appeal Act 1995, section 13(1)(b)); see, for example *R v Hickey* (1997)⁹. Furthermore, when fresh evidence should have been available to the trial defence, the Court requires there to be a reasonable explanation for the failure to adduce it (section 2d).

Hence, in determining whether or not there is a real possibility that the Court will be convinced by the fresh evidence or argument, the Commission must consider the Court's response to past cases. Indeed, the Administrative Court (*R v Criminal Cases Review Commission ex p Pearson*, 1999¹⁰) and the House of Lords (*R v Pendleton*, 2001¹¹) have stated that the Commission must always be cognisant of the Court's decisions in similar cases. Moreover, the Court, in turn, must consider what doubts the jury might have had if it heard the new evidence or argument at trial. Hence, the process involves two second guesses on the likely influence of fresh evidence; one by the Commission, the other by the Court, which must consider if the new evidence might

have undermined part of the prosecution case sufficiently to alter the guilty verdict.

Therefore, judgments and new legislation are regularly reviewed by the Commission, and are analysed in internal Casework Guidance Notes, in memos on Court judgments, in *Statements of Reasons* prepared for applicants and the Court and in informal communication between Commission personnel. These are the routine ways in which decision-making is shaped in light of evolving interpretations of the law (Hawkins, 2002, p. 50 f).

In deciding whether there are reasons to doubt the safety of the conviction, and what grounds there might be for an appeal, caseworkers and commissioners may consider both the ›construction‹ of the original case for the prosecution, including any procedural irregularities or ignored evidence (McConville, Sanders & Leng, 1991); the case at trial (Baldwin & McConville, 1979; Hunter, Roberts, Young & Dixon, 2016); and any further evidence that has come to light, such as new forensic evidence. It can also commission new forensic tests or call new expert witnesses, follow up new lines of enquiry, and order police investigations.

3 Reviewing Police Misconduct

Locke believed that the use of force was a central element of the social contract between people and their state (see Monson, 1958). For citizens, the state had the right to exercise power and coercive force, but in so doing, had a duty to provide security. For Weber, for the state's authority to be legitimate, force or restrictions must be proportionate, legally rational and non-arbitrary. Furthermore, they must be subject to bureaucratic controls in order to protect citizens (see Gerth & Wright Mills, 1946). More recently, policing scholars have recognised that citizens' trust in the state and in policing is necessary for governments and the law to be considered to be legitimate (Loader & Walker, 2007, p. 5). It has also become clear that disinterested and fair criminal processes can create the trust in state institutions that is essential for a functioning democracy (Loader & Walker, 2007, p. 25).

Contrariwise, mistrust, occasioned by policing practices that are not just, transparent and accountable, harm citizens' opinions about the state's legitimacy, and in turn can reduce compliance with the law (Tyler, 2006, p. 379). Many wrongful convictions result from multiple errors, including eyewitness misidentification, false confessions, perjured testimony, and forensic error. Sometimes these are sequential, building upon each other, and are compounded as the investigation continues. A thorough and transparent police

⁸ [1999] 3 All ER 498; EWHC Admin 452, [2000]; 1 Cr App R 141. This was the first challenge to a decision by the Commission not to refer a conviction to the Court. While Ms. Pearson's application to the Administrative Court for judicial review of the Commission's decision was dismissed, Lord Bingham was aware that the judgment would have an important bearing on the Commission's future response to cases and provided detailed analysis of the Commission and the Court's approach to real possibility, safety, and fresh evidence.

⁹ *R v Hickey* [1997] EWCA Crim. 2028.

¹⁰ [1999] 3 All ER 498; EWHC Admin 452, [2000]; 1 Cr App R 141.

¹¹ *R v Pendleton* [2000] EWCA Crim. 45 [2001] UKHL 66 [2002] 1 WLR 72 (HL).

investigation may identify flaws or gaps in the existing evidence and so uncover more reliable information, or even an alternative suspect. Integrity in policing can thus militate against the negative effects of fallible witnesses and imperfect forensic expertise (see Hunter et al., 2016). However, many claims of wrongful conviction argue explicitly that police investigations have not met the requisite standard, either deliberately or inadvertently. Such claims present the Commission with a substantial challenge. It must decide whether the police have indeed erred or perpetrated misconduct, and whether this has undermined the case against the convicted person to the point where there is a real possibility that the Court will find it unsafe.

Malleable as it is, the real possibility test has the potential to ›police‹ adherence to the rules of criminal procedure to ensure the integrity of the criminal process much more effectively than a system requiring proof of factual innocence. In the rest of this article, I present evidence of the Commission's response when claims of police misconduct or breaches of the legal rules that govern them are made. In so doing, I draw on a theoretical framework developed by Keith Hawkins in his study of prosecution decision-making in a regulatory agency (2002).

4 Understanding CCRC decision-making through a socio-legal lens

Sociologists tend to approach their subject through empirical as well as theoretical enquiry (e.g., Lempert, 1992; Pepinsky, 1984; Skolnick, 1966) and this is what is presented here, rather than a ›black letter‹ legal analysis: data gathered during a four-year empirical study of the Commission (Hoyle & Sato, 2019). It seeks to understand the factors that influence the identification of unsafe convictions from among the hundreds of applications received each year. It examines how Commission caseworkers investigate cases and prepare referrals to the Court of Appeal when the applicant claims they have been wrongfully convicted because of police malpractice or misconduct.

In other words, rather than focusing on ›discretion as a quality of rules‹ (Lempert, 1992), I seek to examine the various influences on the Commission's discretionary decision-making (Davis, 1969, p. 233). Hawkins suggests discretion might be regarded as ›the space ... between legal rules where legal actors must exercise choice‹ (Hawkins, 1992, p. 11), and I have tried to follow this template.

Of course, sociological analysis of discretion at the Commission must appreciate the role of the law, but it must also look at the ›many other forces that work upon a legal deci-

sion-maker compelling or constraining action which reside in matters normative, economic, political and organizational‹ (Hawkins, 1992, p. 18). Decision-making takes place within an organizational context that imposes a particular set of objectives, which impose constraints upon those making the decisions (Hawkins, 1992).

In *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency*, Hawkins (2002) suggests that the way to understand the connections between the decision-making environment and decision-making processes is via a three-part heuristic typology. He called its components the ›surround‹, ›field‹, and ›frame‹. Following this typology in examining these cases, I first consider the ›surround‹ of the Commission: the broad setting within which it takes decisions. This shows that developments in the surround require consequent shifts in the ›field‹ – the changing policies and guidelines the Commission sets down for its staff. These in turn influence the ›frame‹: how Commission staff make sense of information; how they interpret, classify, and respond to evidence (Hawkins, 2002, p. 49). To do this, I draw on in-depth analysis of 146 cases, derived from a review of all material in the Commission case files, interviews with staff, and scrutiny of the Commission's many Casework Guidance Notes – the internal guidelines that prescribe how staff should proceed at each stage in different types of cases or situations.¹²

5 The surround

The surround is not static (Hawkins, 2002). It shifts according to legal, social and political changes beyond the control of the Commission, and when it does, the Commission must usually change with it.

As I have shown, the Commission came into being as a result of the high-profile cases involving police misconduct that started in 1989 and led to the Royal Commission on Criminal Justice. All this amounted to a significant change to the surround of the entire criminal process, consisting of a new appreciation that police officers could be guilty of gross misconduct, and that when this took place, unsafe convictions might result. Furthermore, some of the wrongful convictions that came to light in this period – for example, those of Stefan Kiszko (O'Connell, 2017) and Anne Maguire (Maguire, 1994) – demonstrated that procedural irregularity and innocence should not be seen as dichotomous. Both revealed evidence of factual innocence that lay hidden for years because of police irregularity and flaws

¹² See Hoyle & Sato 2019, ch. 2, for full discussion of aims and methods.

in the criminal process. Furthermore, their initial appeals were rejected by a Court that had been highly deferential to jury decisions, and reluctant to accept (to use Lord Lane's phrase) that 'police must have lied'. Yet these cases were also, in a sense, straightforward, because the evidence of innocence was so strong. Kizsko, for example, was convincingly exonerated by a simple test on his semen, which showed he had a zero sperm count – unlike the rapist and murderer for whose crime he was jailed.

Subsequent cases have not always been so clear-cut, and so impose a continuing ethical dilemma: to what extent should evidence that a conviction was secured by improper means require it to be quashed? The Royal Commission considered that the public interest was not served by quashing a conviction even when there had been a serious flaw in process if there was strong evidence of the offender's guilt unrelated to any due process breach (two members offered a dissenting view; Royal Commission on Criminal Justice 1993, chapt. 10, para. 48). However, a few years later the Court took a divergent view in *R v Mullen*¹³ and in *Davis, Johnson and Rowe*¹⁴. These appeals were determined in the period when the English legal system was still adjusting to the earthquake triggered by the Guildford Four, when the desire to eliminate misconduct was at its height, and showed that then, the Court could find a conviction unsafe even when some of the evidence against the appellants otherwise seemed persuasive.

Since then, the surround of cases involving alleged police misconduct has changed, so that the protection of suspects' due process rights is no longer seen as a key objective. For two decades, governments have argued that the Court's ability to quash convictions based on police or prosecution misconduct should be limited. Meanwhile, the Court's jurisprudence has evolved. This now contends that far from the Court being more likely to allow appeals on technical, due process grounds, unrelated to the guilt or innocence of the applicant, 'the trend has been strongly towards applying the safety test *against* appeals based on »material irregularities« or other technicalities.' (Criminal Cases Review Commission 2006b, para. 18; emphasis added). Having reviewed a number of cases to substantiate this assertion, the Commission asserted:

'the weight of authority to support the Commission's view is so overwhelming that this submission would become outweighed with citations if the Commission were to seek to illustrate this point with more than a fraction of recent cases.' (Criminal Cases Review Commission 2006b, para. 18)

The Commission's review of evolving jurisprudence suggests that there has been a fundamental shift, to the point whereby the Court seeks to establish whether procedural failures 'caused any prejudice to any of the parties, such as to make it unjust to proceed further' (*Clark and McDaid* Court judgment cited in Criminal Cases Review Commission 2006b, para. 19).¹⁵ Now, in other words, there has to be a nexus between the due process failure and the safety of the conviction. This change to the surround obviously affects how the Commission reviews applications based on claims of policing without integrity, and referrals now must demonstrate that police misconduct rendered a conviction unsafe.

6 The decision field

With this change to the surround has come a shift in the Commission's understanding of it, as set out in internal guidance documents: its decision-making field. In reviewing cases, staff engage in a series of routines around the collection and management of information, as well as systematised processes for constructing Statements of Reasons ('SOR's) – the means by which the Commission demonstrates to outside parties that it follows fair, consistent, and legitimate procedures. The Commission's Formal Memoranda and Casework Guidance Notes determine its decision-making routines, telling staff what to search for, what to pay attention to, and what evidence to select as relevant. They reveal its response to the legal framework and legal practice, and its organizational procedures and cultural imperatives.

Internal guidance reminds staff of the necessity to demonstrate how any misconduct by police or prosecutor might impact on the safety of the conviction and spell out that it is not enough to demonstrate misconduct or incompetence. That said, it also makes clear that there are some cases that are beyond the pale: extremely rare cases in which police misconduct is so extreme that it constitutes a denial of due process to the client, even if it cannot be clearly established that the behaviour had an impact on the safety of the conviction.

There is no doubt that the Commission responds to trends in the Court's judgments. One seasoned appeal lawyer told me:

'The Commission has a great reluctance in investigating the police ... [and] the Court of Appeal has got a long track history of being reticent to enter into that territory. The Commission, I think, has reacted to that reticence and adopts the same principles.' (#12)

¹³ [1999] EWCA Crim 278.

¹⁴ [2000] EWCA Crim 109.

¹⁵ [2006] EWCA Crim 1196.

While the Court, and therefore the Commission, may be ›reticent‹, sociological analysis needs to focus on why, to consider what types of evidence the Commission considers the Court may be persuaded by, and therefore what types of cases the Commission may be confident to refer.

I was able to analyse the Casework Guidance Notes that steer reviews, documents that are not publicly available. The Note entitled ›Misconduct by Investigators‹ advises how to respond to cases where the misconduct ›undermines the credibility of an individual officer or officers who gave evidence at trial or whose involvement in the case otherwise makes their credibility relevant‹, and to cases where misconduct ›results in material non-disclosure and potentially undermines the case to such an extent that it amounts to an abuse of process‹ (Criminal Cases Review Commission 2012c, para. 2). It says explicitly that the Court's primary concern will be how evidence of misconduct might have affected the jury's decision to convict the applicant, or the judge's decision in a legal ruling. Police misconduct ›should not be viewed as determinative‹ in itself, but considered in light of the overriding question of how it impacts on the safety of the conviction (Criminal Cases Review Commission 2012c, para. 4).

The starting point for the Commission's analysis of misconduct cases is Lord Lane's rather restrictive judgment in *R v Edwards*.¹⁶ This defined relevant and admissible evidence to include: convictions of relevant officers for a relevant criminal offence; disciplinary charges found proved against the relevant officers; and other cases where the only logical explanation for an acquittal is that the officer's evidence must have been disbelieved (Criminal Cases Review Commission 2012c, para. 10).

The Casework Guidance Note also discusses cases where the Court quashed convictions on the basis of only *suspicion* of misconduct, where the suspicion had been sufficiently serious.¹⁷ It also reports cases where the Court considered if a conviction remained safe when some of the officers involved in the case, or some of the evidence produced, fell within the ambit of suspicion, but where a separate body of evidence remained untainted. The Court saw many such cases resulting from convictions from the 1980s and 1990s following investigations by the West Midlands serious crime squad, the West Midlands drugs squad, and the Metropolitan police flying squad. As the Court put it in 2000, quashing the case of *Martin, Taylor and Brown* (para. 13)¹⁸ referred by the Commission:

›[i]n practice the precise surgical division between impugned and unimpugned evidence is seldom possible once the jury have experienced what advocates have called the ›stench of corruption‹.‹

However, despite such past decisions, the Note goes on:

›in more recent cases the Court has signalled a reluctance to quash convictions on the basis of a ›general taint‹ attributed to all officers within a squad whose practices have been seriously called into question.‹ (Criminal Cases Review Commission 2012c, para. 28)

It adds that the Court is ›more reluctant than it once was to routinely quash convictions on the basis of the involvement of a corrupt officer‹ (Criminal Cases Review Commission 2012c, para. 52).

The Casework Guidance Note on Disclosure by Prosecution and Defence reminds Commission staff of the law on the obligations of disclosure, stating:

›fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied on as part of its formal case against the defendant, should be disclosed to the defence‹ (*R v H and C*¹⁹ cited in Criminal Cases Review Commission 2011e, para. 4).

However, it also points out that the trial process should not be ›overburdened or diverted by erroneous and inappropriate disclosure of unused prosecution material, or by misconceived applications in relation to such material‹ (Criminal Cases Review Commission 2011e, para. 5). Nondisclosure may have the effect of producing new evidence which the Commission can ask the Court to receive. Alternatively, the very fact of non-disclosure and the resulting prejudice to the defendant's ability to mount their defence may be sufficiently serious in its own right to render a conviction unsafe (Criminal Cases Review Commission 2011e, para. 81). This Note advises staff how to determine whether undisclosed evidence may have been material to the issues in the case, and seek to understand its significance in the context of the case as a whole. As one commissioner explained:

›It's not non-disclosure *per se* that makes something meritorious. It's always the sort of back-story as to why it wasn't used before. So, I can see where the Court of Appeal are coming from because it always is based on the significance of the material rather than the mechanics of how or why it didn't come about.‹ (#1)

In summary, the Casework Guidance Notes for police misconduct and for non-disclosure make clear that in most cases the Court, and therefore the Commission, will look for

¹⁶ [1991] 1 WLR 207.

¹⁷ E.g., *R v Whelan* [1997] Crim LR 353.

¹⁸ [2000] EWCA Crim 104 (the appellants were convicted in 1995).

¹⁹ [2004] UKHL 3.

evidence that police officers acting dishonourably had an impact on the safety of the conviction. Evidence of policing without integrity will not, in and of itself, be determinative; the Commission must seek to establish that had police officers investigated thoroughly and behaved with probity, the jury may not have convicted the applicant.

The Commission's ›decision field‹ (Hawkins, 2002) is also, inevitably, influenced by its experiences of reviewing applications. While a few egregious cases of wrongdoing by public servants still come to the attention of the Commission, typical applications do not present compelling evidence of gross violations of pre-trial procedures as was seen in Mullen, which demonstrated clear abuse of executive power. Most are now much less clear cut; what Elks (2008, p. 33 ff.) has categorized as ›second order‹ irregularities. Another interviewee put it thus: ›certainly ... [in] none of the recent cases I dealt with ... there was any mass police corruption or [attempts] to frame somebody or cover up‹ (#40).

That said, recently the Commission has referred a slew of cases involving a single corrupt police officer, DS Derek Ridgewell, once an officer in the British Transport Police ›anti-mugging‹ unit. It has made strenuous efforts to locate former defendants and the Court has quashed numerous convictions simply because Ridgewell gave critical evidence at trial. However, it must be pointed out that these cases date from the 1970s, and are far from typical of either contemporary police practice or the Commission's response to it.

6.1 The decision frame

Applicants raised the issue of police acting without integrity in about a third of my sample cases, of which further details can be found in the book I co-authored with Mai Sato (Hoyle & Sato, 2019). I have used the book's numbering system for identifying cases here. The Commission discussed allegations of police misconduct without presenting it as a ground for referral in just under half of those cases I examined, but in only two cases was police misconduct a main referral ground. It seems the Commission was deliberately choosing not to include weak or questionable evidence of police misconduct as a ground for referral when they had other, stronger grounds. This demonstrates an instrumental decision frame at work: the Commission did not consider including such evidence would improve the chances of a case crossing the ›real possibility‹ threshold.

Also operative was an organizational frame: the need to keep a check on the Commission's limited resources, rather than expend on investigating claims of police misconduct

when the applicant had provided no persuasive evidence of it. There was also evidence of a moral decision frame: cases of egregious police or prosecutorial misconduct where commissioners appeared to be partly motivated by a desire to hold those responsible to account, and indeed, my sample includes a few cases with breaches of due process so severe that they justified a referral on their own. Hawkins (2002, p. 333) argues that the ›personal feeling which is most prominent and pervasive in legal decision-making is a desire to blame‹, with prosecution being not only a legal, but a social process. Arguably, this also applies to reviewing possible wrongful convictions. When the Commission makes a referral on grounds of the failure of the police to act with integrity, it sends a message to the Court – and, through media reporting, to the general public – that the police must bear some responsibility for a wrongful conviction. In this, it is fulfilling a moral function. However, the most influential decision frame was legal, and this dominated most of my sample cases, including the two where police misconduct was cited as a main referral ground.

6.1.1 Referring cases of police misconduct

Research has shown that suspects with certain mental vulnerabilities and disorders are at high risk from coercive police interrogation tactics, and that these may lead to them making false confessions (Gudjonsson, 2003). Two of my cases, EE39 and EE41, were egregious examples of police officers behaving without integrity and so intensifying this risk.

The applicant in case EE41 was convicted of an attempted rape and a burglary with intent to rape in 1993 solely on his false confession, although there was no positive identification from either victim and no forensic evidence linking him either to the scenes of the crimes or the victims. Moreover, there was an alternative suspect. Following an application to the Commission in 2000, it commissioned a forensic psychologist, who concluded that he was ›highly suggestible‹, which cast doubt upon the veracity of the confession (EE41, Case Record). The Commission referred the case to the Court with this fresh expert evidence, and on the further ground that the police had acted without integrity. The SOR pointed out that the police had done very little investigation, while the jury had been given an abridged version of the interview transcripts, which would have been misleading. Furthermore, the applicant had not been provided with a lawyer (EE41, Statement of Reasons). The Court quashed the conviction on the basis of the expert witness' ›serious reservations about the reliability of the self-incriminating admissions [the applicant] made to the

police» (EE41, Court judgment), despite the initial guilty plea. It made no comments on the police.

The second case (EE39) was referred to the Court in 1999.²⁰ The convictions were for the murders of two women in 1982, with the trial taking place in August 1984, before new Codes of Practice arising from the Police and Criminal Evidence Act 1984 (PACE) came into force. The convictions were based on admissions made in the course of a number of police interviews, with no legal representative present, and the applicant quickly retracted his confession.

According to Elks, most of the pre-PACE cases referred by the Commission and quashed by the Court were substantially or wholly based on confessions evidence, which were then often made after intensive police questioning, sometimes lasting for days, without solicitors or appropriate adults present, even though most of the convicted persons were young or otherwise vulnerable (Elks, 2008, p. 137 f.).

At the start of the trial in case EE39, an application was made to exclude the evidence of the interviews, but the judge ruled that the Crown had established that the admissions were voluntary, even though he accepted that the applicant had deliberately been refused access to a solicitor and that if he had been represented, he would probably have been advised not to make a statement at all. The main grounds for the Commission's referral concerned material non-disclosure (primarily about another possible suspect) and psychological evidence of the vulnerability of the applicant. However, the Commission included criticism of police conduct in the »other grounds« for a referral; providing details of »oppressive« interviewing and other behaviour suggestive of misconduct in the period between the applicant being arrested and charged (EE39, Statement of Reasons).

In deciding very old »historic« cases, the Commission is obliged to consider not only if modern post-PACE standards of fairness were breached, but also whether the standards *at the time of the conviction* had been breached. In EE39, the Court determined that with the benefit of the new expert evidence on the vulnerability of the suspect, there would have been strong grounds for seeking the exclusion of the confession evidence under sections 76 and 78 of PACE. But it added that even in the context of a pre-PACE investigation, the police had dealt unfairly with a vulnerable suspect. The Court did »not think it right to make findings of »oppression« in the sense of misconduct by the police, or of »tricks«, insofar as that imputes bad faith on the police who conducted these interviews«, nor did it consider that there was

any evidence that the police in some way »misconducted the enquiries« (EE39, Court judgment). However, the decision not to allow the suspect to have access to a solicitor (when he had requested legal assistance on numerous occasions) was thought by the Court to be reprehensible: »they allowed their quest for a conviction to override their responsibilities to an accused, and particularly to a vulnerable accused« (EE39, Court judgment).²¹

On the other hand, while the Court saw some merit in the claim of non-disclosure, it paid little attention to it, as it already had sufficient evidence to find the convictions to be unsafe (EE39, Court judgment). In this sense, the Court can be pragmatic. With sufficient grounds to quash a conviction, it will not often dwell on other failings in the criminal process even though in this case it seems clear that there were breaches of the Attorney General's guidelines (1982) on disclosure in place at the time of the investigation.

6.1.2 Referring cases of non-disclosure

One of my interviewees told me:

»Very often, we find there is non-disclosure of stuff that should have been disclosed, and that's your starting point – if you can find that, that's one step. But the next step is the crucial one, which is whether ... okay, it wasn't disclosed, but would it have made any difference? That is the crucial step ... in which case, we would second-guess the Court of Appeal, which is what we're doing all the time, that the Court of Appeal would say, »Sorry, this was an overwhelmingly strong case, and of course these things should have been disclosed, but what we're saying is that, even if they were, it wouldn't have made a blind bit of difference.« The Court of Appeal are quite good at saying that.« (#2)

The Commission's internal guidance makes clear that to refer a case back to the Court over breaches of disclosure rules, they must either be egregious, or the Commission must demonstrate that had the material been disclosed to the defence, it would have made a difference to the outcome. My analysis of references to the Court where non-disclosure is a ground for referral suggest a clear legal decision frame in action.

²¹ While the Commission had not been confident in its referral, with records making clear »their decision was finely balanced«, unusually, the Court pronounced that the appellant was innocent:

»... the longer we listened to the medical evidence and the longer we reviewed the interviews, the clearer we became that the appellant was entitled to more than a conclusion simply that this verdict is unsafe ... we believe *he was innocent of these terrible murders*, and he should be entitled to have us say so.« (EE39, Court judgment; emphasis added)

²⁰ The applicant had failed in his application for direct appeal and in an application to the Home Office in 1991.

Non-disclosure by the prosecution of exculpatory evidence that might have assisted the defence was a ground for referral in five of my cases: three contemporary sexual offence cases, one historical institutional abuse case, and case EE39, discussed above. In the sexual offence cases where non-disclosure was a ground for referral, the undisclosed information concerned the reliability or honesty of the complainant. For example, case CS7 was referred on complainant credibility and non-disclosure, with the SOR suggesting that 'the complainant's medical records, had they been available at the time of trial, would have been seen by the defence as an important piece of evidence' (CS7, Statement of Reasons).

In case CS5, the prosecution had failed to disclose information about prior similar allegations made by the complainant to the police about sexual assault: allegations that were later withdrawn and, importantly, concluded by the police to be false. The SOR implies that the Commission thought the non-disclosure was not accidental but, given its probative value, intent was not the issue; the impact on the safety of the conviction was the overriding concern:

'It is particularly disquieting that the defence received a document containing only half of the information provided to the CPS, especially as it was the significant half that was missing. ... However, it is the Commission's position that given the impact of the non-disclosure in this case, it is unnecessary to decide whether or not it arose out of bad faith or otherwise. It is sufficient, for the purposes of determining the safety of the conviction, that the material was not given to the defence. The effect of the non-disclosure was that the defence were prevented from [presenting their case] in the most effective way.' (CS5, Statement of Reasons)

However, although the non-disclosure in this case had always seemed egregious, the Commission case record suggests that prior to the meeting when the referral decision was made, the caseworker was worried that the Court may not accept non-disclosure as a referral point. He sought advice from the legal adviser. But in the event, not only did the Court accept the evidence and quash the conviction, it was also unequivocal about the importance to the safe operation of criminal justice of relevant material being disclosed:

'there was a regrettable non-disclosure by the Crown ... the Crown concedes that there was a breakdown in communications within the relevant police force for a reason which cannot be discovered. [and] very properly, expressed substantial regret at what has happened to [the appellant] as a result, and the Court joins in that expression of regret ... This case demonstrates ... the importance of prosecuting authorities adhering fully to the obligations on them, so far as disclosure of relevant material to the defence is concerned. (CS5, Court judgment)

Not all cases are similarly received. The Court did not express regret at the equally improper failure to disclose relevant information in case CS2, in which the applicant had been convicted of a serious sexual offence in 1999 and imprisoned for five years (he served just over three), for an 'offence' that, it is now clear, never took place. Presuming that it had, the defence case at trial had been one of mistaken identity. If the relevant materials had been disclosed, the applicant could have argued that there was no case to answer. This application came to the Commission in late 2002 and was screened and allocated to a caseworker within a year. However, the caseworker had been reviewing the case for another ten months before a Commission-directed police investigation discovered that the prosecution had failed to disclose significant evidence that the complainant was a fantasist, a liar, and suffered serious mental health problems including Munchausen's Syndrome. Until then, the Commission had assumed the offence had taken place, but that the applicant may not have committed it. Having uncovered the non-disclosure of the evidence suggesting the complainant had fabricated the whole case, the Commission made a referral in 2006. The Court quashed the conviction later the same year, but the defendant had spent seven years wrongfully convicted on the evidence of a woman the police had known was a liar and had made earlier false allegations, sometimes for pecuniary gain.

A subsequent IPCC²² report on the case, published in 2010, found that the police had failed to disclose material which undermined the prosecution case and would have assisted the defence case at trial; had failed to disclose vital further facts that had come to light during the appeal processes that spoke directly to the credibility of the complainant; had deliberately provided false and misleading information to officers from another police force investigating another allegation by the complainant; and had failed to conduct an unbiased and objective investigation, thereby preventing the applicant from having a fair trial. Given this indictment, which instigated an apology by the police to the appellant, the Court's quashing of this conviction could be described as rather mealy-mouthed: 'We allow this appeal and his conviction is quashed. That is an end of the criminal proceedings as far as he is concerned' (CS2, Court judgment).

One of the commissioners involved in the case, appalled by the flagrant non-disclosure, wrote to the then Director of Public Prosecutions to insist that lessons must be learned from the case, but was disappointed by the response:

²² The Independent Police Complaints Commission, now the Independent Office for Police Conduct, investigates serious incidents and complaints involving the police; see <https://www.policeconduct.gov.uk/>.

›It reached someone at the high level and they ... deflected me. They evaded the issue. But, you know, I thought it was utterly appalling. The Court of Appeal fudged the issue and the ... and the CPS [Crown Prosecution Service] evaded the issue.‹ (#7)

If the Commission judged success of its referrals only in terms of its legal decision frame, it would have been satisfied with this outcome: the case had been quashed, the defendant was free. However, a moral decision frame may overlap with, or operate alongside the legal frame. In this case the moral mandate was frustrated by a Court apparently reluctant to criticize the police and a prosecution service not inclined towards reflection.

7 When evidence of improper policing is not enough

The Commission refused to make concerns about police misconduct a referral point in other cases that were being referred for other reasons derived from a legal decision frame. In its view, the evidence of misconduct or non-disclosure was not fresh, the defence had failed to adduce it at trial, or the evidence was not determinative. In these cases, the evidence of policing without integrity was not enough to persuade the Commission to present it to the Court as a ground for referral.

Sometimes, (e.g., cases CS1, HIA4 and HIA7) the rationale was insufficiently robust evidence of non-disclosure. The applicant in case EE42 made several claims that potentially significant material was not disclosed to the defence and about the late disclosure of material (EE42, Application), but the Commission found:

›no reason whatsoever to conclude that any material of relevance to this trial, which might have been of assistance to the applicant, was left undisclosed. [These arguments] produce nothing which could sustain the submission that the conviction is unsafe.‹ (EE42, Statement of Reasons)

In other cases, there was some evidence of misconduct, but it did not satisfy the legal tests.

In some cases involving forensic and expert evidence that were not referred to the Court, the applicant claimed that the police did not investigate the case thoroughly, or behaved improperly; and there were claims that alternative suspects were not pursued. However, in most cases, these claims had already been dealt with at trial, and were therefore not fresh. For example, the applicant in case EE23 claimed that his confession to murder had been induced by oppressive interview techniques which breached PACE

Codes of Practice, but this had already been raised at trial and the judge had ruled that the confession was admissible. The Commission SOR explains:

›The assertion that [the applicant] had been subject to police oppression was left to the jury ... The trial judge directed the jury that it was ... for them to decide if [his] confession was true and that if they concluded it was not, then they must not use the confession as evidence of [his] guilt. The Commission can find no error of law in the judge's direction.‹ (EE23, Statement of Reasons)

Notwithstanding, the Commission had asked the police service for any disciplinary records on the officer concerned but there were none, and thus no fresh evidence to suggest police misconduct.

Similar examples can be found in cases that were referred. The Court at direct appeal, in case EE12, had heard evidence of ›material breaches of PACE and exceptional evidential difficulties‹ that – together with other weaknesses in the police investigation – could have substantiated the defence's argument that there was no case to answer. However, the Single Judge dismissed these grounds. In the absence of new evidence about police misconduct, the Commission focused on fresh medical evidence, although it did state clearly in the SOR that flawed interviews created additional reasons to doubt the safety of the conviction:

›Had the judge had before her the [fresh evidence], then there is ... a real possibility she would have concluded that the jury could not properly convict [the applicant] – *especially in a case where the police interviewing techniques were accepted as flawed* – and that the submission of no case to answer would have been successful.‹ (EE12, Statement of Reasons; emphasis added)

Here the Commission was alerting the Court to breaches of due process though they could not stand alone as a ground for referral – a decision led by a legal frame but influenced by a moral one.

Other cases were not referred because the defence had failed to adduce evidence of improper policing at trial (e.g., EE24). There were also referrals (e.g., EE33) in cases where police misconduct was discussed in the SOR but not included as a ground for referral because the relevant information had been disclosed to the defence, which failed to adduce it at trial. While such applicants must be frustrated by the legal catch 22 they find themselves in, the Commission is acting within its statutory framework. In another case, the applicant had claimed that the police video interview with the complainant had been highly suggestive and involved inappropriate questioning. However, the Commission was clear that the defence had had an opportunity to present this at trial, but failed to do so: ›To the extent that the police interview was considered inappropriate, it was open to the

defence to challenge it at trial and/or make points to the jury about it. In relation to the applicant's broader complaint about the adequacy of the police investigation, the SOR concludes 'it was open to the defence to point to the lack of corroboration (or indeed allegations) from the siblings, and/or indeed seek to call them as witnesses, at trial' (EE17, Statement of Reasons).

One of three cases that mentioned non-disclosure but did not use it as a ground for referral²³ provides something of a counter-case to those discussed above. The applicant in case EE38 and the following reapplications (EE38b and EE38c) claimed that non-disclosure of information about a possible alternative suspect had harmed the defence. However, Commission investigations into the question of non-disclosure over the many years from the first application in 1998 to the referral of the case to the Court in 2011, following the third application, concluded:

'it is not possible to attribute the failure to produce [material on the potential alternative suspect] either to non-disclosure by the police or to inadequate defence preparation. However, whatever investigations the police might have pursued had they considered [the alternative suspect's] possible involvement and whatever questions the defence might, in hindsight, have been expected to ask on the material which was disclosed to them, this is not a case in which the defendant made a decision not to use information which was otherwise available. Rather, so far as the Commission can ascertain, [the applicant] was wholly unaware of the information regarding [the alternative suspect] until made aware of that information by the Commission. In the circumstances, the Commission takes the view that there is a real possibility that the Court of Appeal would conclude that there is a good reason for [the applicant] not having raised the material at his trial or in connection with his first appeal.' (EE38c, Statement of Reasons)

The Commission thus accepted that some evidence had not been disclosed but pre-empted the objection that the defence could have adduced evidence at trial but failed to do so. In the event, the Court seemed unconcerned about that matter but concluded that in spite of the new, previously undisclosed evidence, the conviction was safe, as other evidence remained intact:

'In our view, whilst clearly the evidence in relation to [the alternative suspect] would have been useful information and material that the defence could have deployed at trial, it in no way leads us to have any doubts as to the safety of this conviction.' (EE38c, Court judgment)

²³ All referrals were on grounds relating to fresh forensic or expert evidence.

8 Police misconduct or non-disclosure that is not determinative

In most cases, police misconduct identified by the Commission was not thought to meet the threshold whereby it could be said to impact on the safety of the conviction. As the SOR in case HIA4 put it, an application cannot be referred simply on the basis that the investigation fell short of the requisite standards, but the Commission 'would have to be satisfied that if there was any inadequacy and/or misconduct in the investigation its effect impacted upon the safety of the conviction' (HIA4, Statement of Reasons). Similarly, in case EE33b, the applicant's claims of police incompetence were insufficient to justify another attempt to persuade the Court, following an earlier unsuccessful referral:

'Investigative failures would not be sufficient in themselves to cause the Court of Appeal to quash the conviction ... there would need to be specific matters arising from such failures that affected the trial process to a degree that rendered it unsafe.' (EE33b, Statement of Reasons)²⁴

This was also true of cases that were referred on other grounds. One of the applicants who impugned police integrity in a contemporary sexual offence case submitted numerous claims about an inadequate and biased police investigation, including:

'They failed to gather forensic evidence; they failed to interview significant witnesses or waited too long to do so; and they showed bias against [the applicant].' (Applicant quoted in CS12, Statement of Reasons)

While the case was referred on complainant credibility, the SOR deals with each of these points, making clear that none are determinative in themselves:

'The Commission does not consider there is a real possibility the Court of Appeal would conclude on the material available that there was police bias against [the applicant] and therefore concludes that the Court would not consider any failure in the police investigation sufficient to render the conviction unsafe.' (CS12, Statement of Reasons)

In relation to some claims, the SOR pointed out that the police had in fact tried to gather certain types of evidence but were unable to do so. While acknowledging that 'It is not apparent why this was', the SOR states that 'the Com-

²⁴ They go on to note that 'the same would be true of any defence failings' (EE32b, Statement of Reasons).

mission does not believe [this issue] by itself, caused any unfairness to [the applicant]» (CS12, Statement of Reasons).

In another case where police misconduct was mentioned in the SOR but did not constitute grounds for referral (EE32), the applicant had already unsuccessfully applied to the Home Office for a review of his conviction on a number of occasions. Initially, the Commission declined to refer his case, but following judicial review proceedings, agreed to undertake a fresh review. It then investigated thoroughly all of the claims made by the applicant, conducting further forensic tests and examining police files, but found no evidence of police misconduct sufficiently robust for a referral. Instead, it referred the conviction back to the Court on the sole ground of fresh expert testimony. The Court was unpersuaded by the fresh evidence and upheld the conviction, leading to a further three unsuccessful applications, two of which focused on claims of police misconduct.

As part of its further investigations, the Commission obtained from the investigating police force the complaints and discipline records to see if there was any evidence that the officer in charge of the enquiry had exhibited behaviour during his service which could substantiate the claims made in the application. However, there were no disciplinary records in relation to this officer. The Commission sought evidence about another two officers in the case but, as they had retired more than ten years ago, their records had been destroyed. In the absence of substantiation regarding the claims of perjury and other misconduct, the Commission concluded that it was »satisfied that it has no grounds for questioning the integrity of any these officers, based on their disciplinary records« (EE32b, Statement of Reasons).

The Court agreed and on all claims of non-disclosure recorded that »we do not consider that prejudice in any material respect was occasioned to the appellant as a result of such non-disclosure« (EE32, Court judgment).

9 Conclusion: Fresh concerns over wrongful convictions

Recent years have seen media outrage over collapsed prosecutions, particularly for rape, following last minute revelations that the prosecution failed to disclose material to the defence that cast doubt on the prosecution case, often on the credibility of the victim's account. MPs launched an inquiry into the disclosure of evidence in criminal cases (Commons Select Committee, 2018), and the Attorney General, who criticized police and the Crown Prosecution Service for not carrying out »basic« procedure, ordered prosecutors and defence lawyers to review training, develop special-

ist disclosure experts in every police force, and provide all multimedia evidence to the defence digitally to tackle »deep-rooted and systemic« disclosure issues (News, BBC 2018). All of a sudden, after something of a hiatus following the earthquake that began with the Guildford Four and the establishment of the Commission, concerns about wrongful convictions were once again high on the public agenda.

Adding to the furore, the former Lord Chief Justice, Lord Judge, said he was concerned that widespread non-disclosure »may reduce the prospects of conviction even when the allegation is genuine« (Lord Judge cited in Gibbs, 2018). It was suggested that the number of prosecutions that collapsed due to disclosure failures may have increased by 70 % over the previous two years (Gibbs, 2018). Nevertheless, the then-Director of Public Prosecutions, Alison Saunders, affirmed her confidence that no innocent person had been jailed as a result of error (Finkelstein, 2018). Putting aside the obvious fact that innocent people will have been arrested, sometimes detained, had their lives subject to close scrutiny for many months and their reputations ruined, even if they had not been convicted (Burnett et al., 2017), it is difficult to see how she could have had any basis for her confidence (Finkelstein, 2018).

If there have been wrongful convictions of this type, it is likely that at some point in the future, they will be reviewed by the Commission and referred back to the court. Others are likely to have arisen through austerity measures in the public sector, which have created the conditions whereby stretched police and prosecutors have less time to sift carefully through all the evidence. However, miscarriages of justice in recent sexual offence cases are not only a resource issue: they also reflect a failure by institutions to adapt to the changing »surround« (Hawkins, 2002) – in this case, the burgeoning growth of electronic data. Recent disclosure errors have often arisen in cases where such data have emerged, and this is the likely reason why sexual offence prosecutions have been such a focus for concern. Given that most such cases rest on consent, electronic or social media evidence of a romantic relationship before or after the alleged crime may speak to this very issue.

In late 2022, another source of concern emerged with the publication of a report by Dame Louise Casey into the institutionalised failings of disciplinary processes within Britain's largest police force, the Metropolitan Police. Following the 2020 murder of Sarah Everard by serving officer Wayne Couzens, and the subsequent disclosures of rampant sexism by some serving officers on social media, the former commissioner Dame Cressida Dick promised that the force treated these and other forms of misconduct with »zero tolerance«. However, Dame Louise found that many officers had long records of serious allegations against them – the

record was 19 – without ever having suffered the least disciplinary sanction (Casey, 2022). According to her report, only 5 % of disciplinary cases led to dismissal. She said one officer had stayed in post despite six allegations of oppressive conduct and harassment, neglect of duty and both racial and religious discrimination; another, with seven separate claims in his record of corrupt practice, sexual assault and domestic abuse, had also kept his job. Of the 1,809 officers who had faced more than one misconduct case, only 13 were dismissed – less than 1 %. The Metropolitan Police Commissioner, Sir Mark Rowley, responded by saying that only 30 to 50 officers were dismissed each year, but ›hundreds‹ should be ejected.

No doubt future Commission decisions will have to consider the impact of failing to meet these new, emerging issues. As before, legal and moral debates will continue over whether misconduct or negligence is enough to overturn a conviction, while the Court's jurisprudence evolves. But while the technical issues in question may change, I suggest that the essence of Commission decision making will not. As before, staff will consider the surround and the consequent Commission field, and exercise their powers utilising legal, moral, instrumental and organisational frames.

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