

Memorandum to the Home Affairs Select Committee

Re: Criminal Cases Review Commission

Submitted by F.A.C.T. (Falsely Accused Carers and Teachers)

1. F.A.C.T. is a national organisation which campaigns on behalf of falsely accused carers and teachers, and has members throughout the United Kingdom. We are also part of an increasing network of local, national and international organisations who campaign for justice for people who have been wrongly accused of child abuse, including many who are (or have been) convicted of offences but maintain their innocence.
2. In recent years a number of F.A.C.T. members have made applications to the Criminal Cases Review Commission (CCRC) for their cases to be reviewed. Some have been successful, some have not. This year three F.A.C.T. members have been particularly grateful for the Commission's work on their behalf, having had their convictions quashed by the Court of Appeal.
3. What these cases, successful and unsuccessful, demonstrate is that there is a widespread belief among our members of the need for a truly independent body such as the CCRC to challenge:-
 - i. legal assumptions and dated case law
 - ii. Investigative malpractice
 - iii. flawed science and biased expert opinion
 - iv. the evidential value of believing testimony related to historic events
4. It is for the above reasons that F.A.C.T. is campaigning for a Royal Commission to look into child abuse cases where investigative malpractice has been alleged.
5. Given the Select Committee's interest in this matter it is inevitable that individuals will concentrate on the negative aspects of the Commission's work. Whilst F.A.C.T. as an organisation does have its criticisms of the Commission we wish to place on record our appreciation of the increasingly important and difficult work they do - especially in the

current political climate when the pursuit of justice is mostly perceived in terms which favour 'victims' of crime rather than the pursuit of truth.

6. We also want to acknowledge some of the problems which the Commission itself has identified in recent annual reports. These include the impact on service delivery of:-
 - i. reduced budgets and consequent reduction in delegated expenditure limits (DELS)
 - ii. rising referrals and increasing delays which cause further backlog
 - iii. reduced percentage of successful outcomes (in terms of convictions quashed and/or sentences reduced)
 - iv. a marked failure to meet its own performance indicators (especially in relation to their Stage 2 target of cases completed with 15 months). The actual level of performance last year ranged from 38% to 77% each quarter - well short of the 95% target.
 - v. repeated failure to reach its minimum target of 50 Case Review Managers being in post
 - vi. three Commissioners leaving post recently and not being replaced
 - vii. the Commission's abandonment of research and development
7. We very much hope that when the Select Committee meets the Chairman of the CCRC some of these matters will be taken up.

Other Issues

Evidential Threshold

8. The Commission can only operate within its own legal parameters. At present they can only review and investigate possible miscarriages of justice and refer cases to an Appeal Court where there is a real possibility that either the conviction, the finding, verdict, or sentence will not be upheld. This is in contrast to the test applied in the Scottish Courts (which is not an issue for this Committee) which is to review and investigate cases where it is alleged that a miscarriage of justice may have occurred in relation to conviction, sentence or both.
9. In our view many of the criticisms which are levelled at the CCRC and the wider criminal justice system would be alleviated if the CCRC acting in England, Northern

Ireland, and Wales, adopted the ‘miscarriage of justice’ test which operates in Scotland. This would obviously require changes in primary legislation. However, it seems axiomatic to us there should not be two quite different standards, especially as both jurisdictions are required to operate within a single European Court framework.

10. We very much hope the Select Committee will use this opportunity to seek out the Commission’s view as to whether their cause would be strengthened by such a move.
11. In our view the most critical issue faced by the CCRC is how best to get at the truth. We therefore believe there would be some merit if cases referred by the Commission to the Court of Appeal were developed along the lines of an inquisitorial system. Whilst this would improve the situation it would not, however, eliminate miscarriages of justice completely.

Standards of Case Management

12. Our members have concerns that standards of case management have deteriorated in recent years. We believe this has also been noted by the judiciary. As an example we draw attention to remarks made in [2006] EWCA Crim 1353. This concerns a case which the CCRC referred to the Court of Appeal on the 8th December 2004 in respect of the convictions at Leeds Crown Court of John Siddall on 29th July 1999, and Ian Brooke on 4th April 2000, for historical child abuse. They were sentenced to four and ten years respectively. In a judgement handed down by the Appeal Court on the 15th June 2006 Lord Justice Longmore made serious criticisms of the Commission’s presentation of this case. *[See Appendix, especially Para’s 1, and 54 to 59]*

Supplementary note: not part of original text.

The CCRC have written to F.A.C.T to say that although the Judge made criticism of the presentation of the case the comments were not directed at the CCRC itself.

13. Whilst F.A.C.T. has no doubt that this was an untypical case it never the less supports the views of many of our members that the CCRC are finding it difficult to maintain the excellent standards for which they have previously been known. How much this

is a one off case, or a temporary resource issue, or is part of a wider trend, only the Commission can answer.

Issue of Delay

14. We also believe the Select Committee should discuss the issue of delay in taking up applications made to the Commission, particularly as it is persistently failing to meet its own targets. In our view the issue of delay has a disproportionate effect upon prisoners of advancing years. The Commission rightly give priority to applications from serving prisoners. However, in our view, they should especially fast track cases from prisoners who are seventy years or older, or otherwise have limited life expectancy. We believe such a policy would not have any significant budgetary implications.

F.A.C.T. National Secretary
2nd September 2006

PO Box 3074
Cardiff
CF3 3WZ 02920 777 499

Transcript of the Select Committee's consideration of the matter.

Q47 Mr Winnick: Professor Zellick, you will be familiar with the criticism that Lord Justice Longmore made about a case which went from the Commission to the Court of Appeal. You smile, but the criticism was very severe. Lord Justice Longmore said he deplored the way in which the documents were presented to the court. The documents were supplied to the court, he said, in two large and unwieldy loose bundles, they were not numbered, or punch-holed, nor were there dividers between the various sections. In many cases it was impossible, at first sight, to work out what the documents were, and he said he wasted a great deal of the hearing; indeed some documents had not been supplied to the court and had to be copied during the course of the hearing. It was clear that none of the three teams of counsel were working from the same bundles or references as the court or even each other. He then went on to say: "But the problem went further than simply wasting time....Because of the wholly unsatisfactory way in which the documents were presented to the court, it was often difficult to ascertain what materials had been available at trial and what had emerged subsequently. That confusion could have resulted in an adverse effect on the appellants' chances of successful on appeal." One has to say (and presumably Lord Justice Longmore knew what he was saying), a very sloppy, incompetent manner for a professional body headed by distinguished people,

distinguished lawyers, to have taken place. What happened? Has any disciplinary action been taken?

Professor Zellick: *If it were true it would, indeed, be a serious matter. Let me make a number of points. First of all, this is the first time in 10 years that any such comment has ever been made. If it were true, however, that would still make it a serious indictment that we would respond to very fully and very firmly. The fact is it was not our fault and it is not true. Most of the exasperation experienced by the court in this case, as the passage from which you were quoting makes plain, was the result of the sloppiness of the lawyers presenting the appeal. It was only the introductory paragraph there where he referred to the Commission's submission, but in fact the Commission's papers were submitted to the Court of Appeal in perfectly proper order. The moment they reach the Court of Appeal we no longer have a role to play. We are not present in the Court of Appeal, we are not a party to the appeal and how the papers reach the judges is not something over which we have any control. The simple fact is the papers were submitted in proper order, they were then disembodied by officials and the lawyers in the Criminal Appeal Office. It was their responsibility how they were submitted to the court and they were obviously submitted to the court in an entirely unsatisfactory way, and so, in short, the criticism was unfortunately misdirected. The judgment, however, is an important one for two reasons, quite apart from those criticisms of the procedure. First, these were serious miscarriages of justice and the convictions were quashed, and certainly nothing to do with technical grounds, they were serious miscarriages of justice and our work led to their being quashed. The other even more significant aspect of the judgment is that Lord Justice Longmore was most critical of the delay the case had suffered since we had referred it, and this case is now an authority for a new procedure for bringing our references on before the court within six months. For the first time the Court has laid down a detailed timetable for the lawyers on both sides to ensure that the case comes on for hearing within six months, which has not hitherto been the case. In the very last paragraph of his judgment, Lord Justice Longmore says, "CCRC references must be treated with the respect they deserve."*

Q48 Mr Winnick: *You forgot the last sentence, "We regretfully record that these references were not." You missed that out. We cannot judge, Professor Zellick, on the comments that you make. I accept what you say, and there is no reason, of course, why I should not do so as a member of the Committee. Obviously, if that was not the position, you would not be telling a select committee in the House of Commons. Inevitably, I must ask myself the question: if indeed the Commission was not in any way responsible for the sloppy way of handling documents—and it is not in question; presumably it was sloppy but, as you said, it was not the Commission's fault—was Lord Justice Longmore told this at the time or later?*

Professor Zellick: *I have not the faintest idea.*

Q49 Mr Winnick: *Why have you not the slightest idea? If this Committee had been accused, rightly or wrongly, of such behaviour, I would imagine that we would try and*

make sure that if we were not responsible those who made the criticism against us would be told the facts of life.

Professor Zellick: *That is indeed what will happen. The director of case work has it on her list of topics to discuss with Master Venn, the registrar of criminal appeals, when she next meets him. I will almost certainly raise it in correspondence with Sir Andrew Longmore in the near future. The fact of the matter is it was an unfortunate criticism. I can sympathise with the difficulties that the court was in. The fact is that over the nine or 10 year life of the Commission we could cite you, with notice, umpteen Court of Appeal judgments which pay tribute to the help we have given the court in the statements of reasons that we have provided. There is not a Lord Chief Justice in recent years who has not said that in judgments and who has not said it to me personally.*

Q50 Mr Winnick: *In order to get the matter clear and on the record, as a Committee we have the highest admiration for the work which your organisation is involved in. What I have said should not be taken as a condemnation of your whole work. It would be totally disproportionate for it to be taken as such but we took this to be a very serious criticism of the Commission and hence the reason that it has been raised. Arising from what was said, which you say the Commission is in no way responsible for, the organisation FACT, Falsely Accused Carers and Teachers, say they take that criticism made by Lord Justice Longmore and say: "...the CCRC are finding it difficulty to maintain the excellent standards for which they have previously been known." Clearly, there are those like the organisation I have mentioned who consider that the criticism is such that they criticise.*

Professor Zellick: *They were right to take the view that if they read in a Court of Appeal judgment that the presiding judge had occasion to criticise the papers provided by the Commission his Lordship was correct in making the observations that he did. I have the advantage of knowing that he was not and I have to point that out to you. Once we have submitted the papers to the Criminal Appeal Office we have no further role in the matter. It is most unfortunate that what happened in this case happened. I am pretty sure it will not happen again.[3]*

For full report see

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/1635/6101001.htm>