

FOR IMMEDIATE RELEASE: 18 June 2014

SUPREME COURT CLARIFIES THE DUTY OF DISCLOSURE POST-CONVICTION

In a judgment given today the Supreme Court considered whether there was an obligation upon the Police and Crown Prosecution Service to provide evidential material not previously seen to convicted persons seeking to demonstrate innocence on appeal or by way of application to the Criminal Cases Review Commission (CCRC). The High Court previously held when hearing this case in 2012, that there was a very narrow set of circumstances where the obligations would apply. Although the Supreme Court dismissed the appeal, it today confirmed that there is a duty. Whilst it is a narrow one in order to preserve the finality of the conviction, it is far clearer, and will be easier to satisfy for those wrongfully convicted.

The Criminal Appeals Lawyers' Association, Innocence Network UK and JUSTICE intervened in the case to highlight the importance of access to material in proving a miscarriage of justice. Our organisations were concerned that the earlier judgment of the High Court would have made it extremely difficult to obtain the evidence necessary to demonstrate innocence and have seen recent examples where applications for material have been refused in reliance upon it.

The Supreme Court has now held that post-conviction disclosure should occur in two ways:

- (1) Where material comes to light that casts doubt upon the safety of the conviction, unless there is a good reason not to; and
- (2) If there exists a real prospect that further enquiry will reveal something that may affect the safety of the conviction.

In particular, the Court said:

The police and prosecutors ought to exercise sensible judgment when representations of this kind are made on behalf of convicted persons. If there appears to be a real prospect that further enquiry will uncover something which may affect the safety of the conviction, then there should be co-operation in making it. It is in nobody's interests to resist all enquiry unless and until the CCRC directs it. [at 41]

The Court also underlined that the CCRC provides the safety net to guard against miscarriages of justice. It does not, and should not make enquiries only when a reasonable prospect of a conviction being quashed is already demonstrated; it should in appropriate cases enquire to see whether such prospect can be shown.

The Interveners said:

The Court has underlined the important work of solicitors and interest groups like ours in conducting enquiries and supporting those maintaining innocence. This judgment makes clear that the police and CPS should continue to assist when requests are made for material that may affect the safety of the conviction. It also recognises the important work of the CCRC, which is the primary post-conviction investigatory body and for which sufficient resources continue to be vital.

For further comment, please contact Jodie Blackstock, Director of Criminal and EU Justice Policy at JUSTICE on 020 7762 6436 (direct line) or jblackstock@justice.org.uk or Michael Naughton, Director of INUK at m.naughton@bristol.ac.uk

Notes to Editors

1. The case concerned Kevin Nunn; convicted of murder in 2006. He continues to protest his innocence and sought access to various items held by the Suffolk Police for forensic analysis.
2. CALA, INUK and JUSTICE intervened in the case as a third party. We were represented *pro bono* by Henry Blaxland QC, and David Emanuel of Garden Court Chambers and White and Case Solicitors LLP.
3. The High Court ruled in 2012 that there was no duty other than that set out in the Attorney General's Guidelines for disclosure, but this test as interpreted by the High Court required the applicant to show something that materially may cast doubt upon the safety of the conviction before the duty of the police and the CPS arises. Although the Appellants and Interveners sought a disclosure test that would operate in the same way as the pre-trial obligation (namely that the person should be provided with material that may undermine the prosecution or assist the defence), the clarifications and wider test provided by the Supreme Court are a significant improvement upon the High Court judgment.
5. The interveners submitted a written case, accompanied by historical and contemporary details of our case investigation work and examples of where enquiries have led to convictions being overturned. We also underlined our concerns that the CCRC is under resourced and narrowly applying its duty to investigate miscarriages of justice. Details are available [here](#)