

**MOJUK: Newsletter 'Inside Out' No 965 (23/08/2023) - Cost £1**

**Raphael Rowe: 'You Can't Repair the Damage if You're Falsely Accused'**

*Tim Stokes, BBC:* In July 2000, Raphael Rowe walked free from a prison system he had first been told he would never leave. "I spent 12 years in prison for a crime I didn't commit. I was destined never to be released," the journalist and presenter says. In December 1988, three men carried out a series of attacks and robberies around the M25 motorway, including the brutal murder of hairdresser Peter Hurburgh who along with his partner was dragged from a car at gunpoint, tied up and beaten. A 20-year-old Mr Rowe was arrested at his home in Sydenham, south-east London, soon after and along with Michael Davis and Randolph Johnson was sentenced to life in prison without the possibility of parole.

At the sentencing in March 1990, the judge told the trio they were all "evil and dangerous men" who had "struck terror into your victims", while the crimes of the so-called M25 Three made newspaper headlines and filled column inches. I was accused of being a monster, I was accused of being a murderer," explains Mr Rowe. I could deal with that because I knew I was innocent, but it was my family and other relatives who had to live with that stigma, had to live with that shame." The case against the three men was considered controversial. Four out of five of the surviving victims of the attacks originally told police at least one of the attackers was white, while all three defendants were black. There was also no direct forensic or identification evidence that linked them to the crimes. Even so a first appeal was turned down in 1993 before the case was looked at again four years later by the Criminal Cases Review Commission and, separately, the European Court of Human Rights ruled the three men had been denied a fair trial.

Mr Rowe then found himself back at the Court of Appeal where his conviction was finally quashed after it was revealed crucial evidence had been withheld from the original trial, in a similar way to the case of Andrew Malkinson, who was recently released from prison after a 20-year battle to prove he was innocent of rape. Yet while the judges had found the trio's convictions unsafe, there was still a sting in their ruling as they added that the judgment was "not a finding of innocence, far from it", and the evidence "against all three appellants was formidable. It's no surprise that when they overturned our convictions, they made this declaration of 'not innocent' or 'formidable evidence'. Well, if that's the case, why am I still not in prison serving a life sentence? Of course we were innocent, but they didn't want to accept that the system could allow three black men to go to prison when the perpetrators consisted of two white and one black."

While he did receive some compensation for what happened to him, the journalist says a comment like that "plants a seed" in people's minds "so it allows the stigma to remain, and it allows people that you're talking to say 'oh, but didn't the judges say that they weren't innocent?'" As a result Mr Rowe, who upon his release worked for BBC Radio 4's Today programme and Panorama before going on to present Netflix's Inside the World's Toughest Prisons, finds that more than two decades on he is still having to explain himself "because the damage has been done". It is the ongoing impact of false accusations like his that Mr Rowe has used as the basis of his new audiobook. You Are Accused sees the presenter speaking to various people who have had serious wrongful accusations made against them. Those featured include Jo Hamilton, who was a victim of the Post Office scandal, Kylie Moore-Gilbert,

an academic who was jailed in Iran for espionage, and Liam Allan, whose rape trial collapsed after detectives failed to disclose vital evidence but who Mr Rowe found to still have "that fear in him that people believed that he was guilty of something he wasn't guilty of. In none of the cases that I've spoken to any of the contributors did those who made that false allegation, false accusation - that ruined that individual's life for a period - get held accountable or accepted responsibility," Mr Rowe says. "That for me was the striking thread that went through a lot of these individuals."

One chapter centres on Amanda Knox, who gained worldwide notoriety when she went on trial for the murder of British student Meredith Kercher in Italy. "Her conviction was deemed unsafe and yet there is still this stigma that 'Foxy Knoxy' Amanda Knox did do what she was imprisoned for because we don't want to accept, do we, that the criminal justice system can falsely accuse people," says Mr Rowe. The pair also discuss the consequences of a wrongful conviction for those around them, such as how Ms Knox will at one point need to explain to her young daughter about how she was "once described as the most hideous woman on Earth". I had that challenge of telling my kids that I'd been wrongly imprisoned and been wrongly convicted, and it's one of the hardest things," explains Mr Rowe.

As such the journalist hopes his audiobook will "give the public a general insight into the long-term consequences for the individual, their family, their relatives and the community" about what happens to people when they are falsely accused, as well as better accountability by the authorities. It's like you've been cut, the wound is there, and the scar will forever remain - it's not external, it's an internal scar - and it doesn't matter how much compensation you get, or how you've been able to use it, to advocate on behalf of other people... you can never ever repair that," Mr Rowe adds. "I just think that we, as a society, need to be a bit more responsible about how we go about these things."

**Jury Finds "Clear and Direct Causal Connection" Between Police Failings and Murder**

*Doughty Street Chambers:* Nashon Esbrand was a North London actor, and carer for his mother, who was 27 years old when he was murdered by four associates of a gang on 24 August 2017. He had just left his nine day old daughter and his partner when his assailants spotted him, chased him along the Essex Road, and fatally stabbed him. Despite treatment from members of the public, police, the London Ambulance Service, and Royal London Hospital, he died the next morning. The jury concluded that the stabbing had caused "a catastrophic amount of blood loss within seconds". Four individuals had previously been convicted of Nashon's murder, at two trials at Old Bailey, in 2018 and 2019. The inquest into his death resumed after the conclusion of the criminal proceedings. Senior Coroner Mary Hassell, and the jury, heard evidence in relation to police engagement with Nashon, his desire to move from the North London area where he lived, and the emergency response on the day of the attack.

The jury heard evidence that Nashon had made multiple reports to police of attacks over a period of about two years. These included incidents where Nashon had been threatened by individuals carrying weapons such as knives, and what he believed to be firearms. Ultimately, the jury heard, Nashon was said to have lost faith in the police. The jury concluded that Nashon's death was an "unlawful killing" – a conclusion which the Coroner directed them to arrive at in light of the evidence before them. However, the Coroner also directed the jury to include a narrative, after consideration of any other acts or omissions that materially caused or contributed to Nashon's death. The jury's narrative concluded: We the jury find the below failings had a clear

and direct causal connection to Nashon's death: 1. Inadequate investigation into the individual cases reported by Nashon, which led to: (a) inadequate safeguarding measures; (b) inadequate deterrence of suspects; (c) no escalation to other specialist teams, including the Gangs Unit and Safeguarding Unit; 2. Due to the inadequacies noted above, there was insufficient information to assess the overall risk to Nashon. No effort was made to investigate the connections between cases or form an accurate picture of the position Nashon was in.

Princess Barton, Nashon's mother, said: "Nashon's killers didn't just take my son's life, they took my whole family's life. Now, at last, the jury have given us justice. Nashon reported many incidents to the police but they didn't do enough to investigate them – or to protect Nashon. My family is grateful to the jury for seeing the truth."

Felix Couchman of TV Edwards solicitors said: "Because of the criminal cases, and the pandemic, Nashon's family have had to wait years to have a jury to consider how Nashon was failed during his lifetime. Their careful attention to complex evidence has made clear what the family have always known: better protection of Nashon could have prevented his death".

### **Vinod Aithal: Why I Decided to Become a Courtwatcher**

I'm lucky enough never to have been in trouble with the law. I've never been stopped and searched, or even fined for speeding. If you asked me what would happen if I was ever to be arrested, I'd have to tell you I have absolutely no idea. This might be reassuring for some, but I've recently come to realise that it's a terrifying thought that there's a system of courts in this country which processes thousands of people a year, has the power to change everything about someone's life in an instant, and yet works in a way that's almost hidden in plain sight. If I read the local news or even go onto my local Facebook group, I see reports of crimes and arrests. But then no more. There is very little coverage of crimes dealt with in the magistrates' courts, so you never know what happens next. Did the courts deliver a sentence that will prevent more crime happening? Was the arrested person found not guilty? Was there something else about the case that never made it to the press or social media? The more you think about it, the stranger it becomes that we accept this gap in our knowledge as something that is OK.

Last year I began studying law and volunteering for Citizens Advice. I've started to learn about how the legal system works and to see how it doesn't always deliver justice. This summer I started looking for opportunities to watch some trials, but I soon discovered that the courts don't make it easy for people to pay them a visit. I found it hard to find listings and the rules for what I could and couldn't do when watching a trial. So, I was immediately interested when I came across a Twitter post from Transform Justice asking for people to register as volunteer courtwatchers. I signed up straight away.

What I learned in the excellent CourtWatch London training sessions is that even if the courts are working perfectly, the lack of transparency in their decision-making is a real problem. Although little hard data has been collected to prove or disprove it, there are serious concerns that racial and class bias are built into the system, which calls into question whether it's working in everyone's best interests. If it's not, then we're all in danger, whether it's being the victim of crime or receiving a harsher sentence than we deserve. Bringing greater transparency to the magistrates' courts will, I hope, start the ball rolling on wider public engagement with the courts and the justice system. People's knowledge about such an important part of our lives should go beyond what they see on TV courtroom dramas. I'll be going to watch my first hearings at Highbury Corner Magistrates' Court next month. We all have a right to go to the magistrates' court and if there were more people in there observing what's going on, we might have a lot more faith in the system.

### **Prison Officer Who Had Phone Sex With Inmate During Six-Month Affair Jailed**

*Adam Dutton, Independent:* A female prison officer who had phone sex with an inmate after they formed a relationship at the jail where she worked has been jailed for 12 months. Katie Loxton, 27, was a serving prison custody officer at HMP Oakwood in Staffordshire when she first came into contact with inmate Adam Higgs, 32. A court heard Loxton would spend a large portion of her time on the block where Higgs was housed, raising the suspicions of a number of officers. Further checks revealed the pair had bypassed the prison's security system and were communicating through a fake contact on Higgs' telephone in his cell. Higgs made a total of 3,451 calls to the number and spoke with Loxton for more than 380 hours, costing him £798 between July 7, 2021 and January 13, 2022. He also managed to hide a mobile phone which he used to communicate with Loxton through social media.

A court was told the pair would often "perform sexual acts to each other over" the phone. Officers arrested Loxton and searched her home on January 27 last year where three handwritten letters from Higgs were found inside. Higgs, of Grantham, was interviewed about the findings in prison in March 2022 and the pair later admitted their offences at Wolverhampton Crown Court. Loxton, of Sandwell, was jailed for 12 months for misconduct in a public office. She also admitted transmitting or causing the transmission of an image/sound by electronic means from within a prison. Higgs was handed an eight-month sentence for possessing inside a prison a device capable of transmitting or receiving images, sounds or information by electronic communications. He also admitted without authority transmitting or causing the transmission of an image/sound by electronic means from within a prison.

Detective Constable Adam McHugh, of Staffordshire Police, said: "Loxton and Higgs were able to manipulate the security measures of the prison telephony system to hide their relationship from officers and inmates. We are committed to upholding the values and conduct the public expected of Public Office workers. I'm happy that Loxton recognised her conduct had fallen short of the expected standard."

### **Appealing a Conviction or Sentence to the Court of Appeal – Help for Applicants**

*Appealing against a conviction:* You can only appeal your conviction to the Court of Appeal if you were convicted at a Crown Court. You might have pleaded guilty or been convicted after a trial by a jury. You can only appeal once. If you were convicted in the Magistrates' Court you should speak to them about how you appeal.

*Appealing against a sentence:* If you were sentenced at the Crown Court, you can appeal against your sentence to the Court of Appeal. You can only appeal once. You can also appeal against a confiscation order imposed in the Crown Court. A confiscation order has its own right of appeal as a confiscation order usually comes after you have been sentenced.

*What should I do if I think I might want to appeal?*

Can you get legal advice? If you had a barrister or solicitor representing you, they must give you advice (in writing if you ask for it) about whether you have good reasons for an appeal against a conviction or sentence. If they think you have an arguable (good) case they will lodge (send) an application for you. If you paid privately for your barrister or solicitor you need to speak to them about whether they would be willing to do this. If you have already had advice from your barrister or solicitor saying there are no grounds for appeal, you cannot normally get public funding to ask a different barrister or solicitor. In some rare circumstances (such as where new evidence has come to light), it may be possible for new legal representatives to be given public funding from the Legal Aid Agency (LAA) to give you advice.

The new solicitor you approach has to hold a criminal legal aid franchise. This means they are allowed to do criminal legal aid work (not all solicitors can). For help finding a new solicitor the Law Society has a 'find a solicitor' facility on its website ([www.lawsociety.org.uk](http://www.lawsociety.org.uk)) or if you do not have access to the internet you can call them on 020 7320 5650. They can give the telephone numbers of up to three sets of solicitors. If you are not in custody, you could also speak to Citizens Advice. Find your local office on their website [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) You can pay privately to get advice from another firm of solicitors or another barrister. Some barristers work under 'direct access' which means you can use them without a solicitor. For more information on this you can visit the Bar Council website at [www.barcouncil.org.uk](http://www.barcouncil.org.uk)

*If you do not want legal advice or your representatives have told you there are no grounds of appeal but you still want to appeal, you can apply yourself. Do not delay making an application because you are representing yourself and you are worried about how to do it. Many applications to the Court of Appeal are made by Litigants in Person (people representing themselves). How do I lodge an application myself and what should it look like?*

What forms do I need to use and how do I get the right form? You need a Form NG. There is a different Form NG for each type of application and you should complete the form for the application you want to make. See the section 'What application should I make?' If you are in custody, you can get the right form from a prison officer (ask them to download the form for you). For more help in getting the right form, you can also contact us directly: Customer Service Officer Criminal Appeal Office Royal Courts of Justice Strand London WC2A 2LL Phone: 020 7947 6011 Email: [criminalappealoffice.generaloffice@hmcts.x.gsi.gov.uk](mailto:criminalappealoffice.generaloffice@hmcts.x.gsi.gov.uk)

*How do I complete the form properly if I am in prison?*

We understand that the form looks a bit complicated and applicants in custody don't usually have computers, legal books or anything to help them. Complete the form as best you can and write clearly. If there are some parts of the form you cannot fill in leave them blank. It is important that you sign and date the form. This must be your signature and another person cannot sign for you (unless they are your legal representative). What are the declarations on the form and what is a loss of time order? If an applicant applies to the Court of Appeal, and the court thinks that the applicant has wasted their time, it can order the applicant to pay costs or make an order that time spent in custody as an applicant does not count. That means that an applicant might have to serve longer in prison. The court does this so that it has more time for appeals that do have a good chance of succeeding. In order to decide which cases are the ones which have a good chance of succeeding, a judge will look at the application to see if it is arguable and make a decision (the Section 31 stage). You will get a copy of the decision and if the judge says your case has no merit, you may be at risk of a costs order or a loss of time order if you then renew that application to the court (see stages of an appeal later on in this booklet). You are asked to sign the declarations on Form NG to show that you know about these orders.

*Which application should I make? Conviction* You should make a conviction application if you want to challenge your conviction because you think it is unsafe. That could be for many reasons. Below are some examples: • something went wrong at your trial • the trial judge made a mistake about the law in a ruling • the trial judge made a mistake in directing the jury at the end of the case (the summing-up) • because you have fresh (new) evidence that was not

known by the jury. These are just examples to help you. The reasons why you think your conviction is unsafe are called your grounds of appeal against conviction. To help you, an effective ground of appeal against conviction could look a bit like this: "The judge wrongly let the prosecution tell the jury about my previous convictions. These were very old and I think it was very unfair because I was a different person back then."

The Court of Appeal will not re-try your case or start investigating it. The court only looks at your grounds of appeal and so these are very important. You must be clear what your grounds are. You cannot just say "I am innocent" or "the witnesses lied". You should try and number your grounds and try and put these as simply as you can. You can include them in the Form NG or attach them in a separate document (call them 'Grounds of appeal against conviction') but they should not be too long (1-2 pages is about right). Make sure you write clearly and not too small. Sign and date your grounds at the end.

*Can a complaint about my lawyers be a ground of appeal against conviction?*

Yes, it can. But you should think very carefully about this. If you make a complaint about your lawyers it will mean the complaint will need to be investigated in a way that you might not like and it might not help your case generally (see the section on 'Complaints made about your lawyers').

*Sentence:* You should make a sentence application if you think your sentence was too long or the wrong sort of sentence was imposed (for example a prison sentence instead of a community sentence). You should not make a sentence application because you think you have been wrongly convicted. Reasons why a sentence could be too long could include:

- the judge not giving you enough credit for pleading guilty, or your personal mitigation (such as your poor health or the fact that you are caring for someone)
- the judge wrongly applied the Sentencing Guidelines
- the judge sentenced you for more than one offence and overall your total sentence was too long (totality). The reasons why your sentence is wrong or too long are called your grounds of appeal against sentence. You should try and number your grounds and put these as simply as you can. You can include them in the Form NG or attach them as a separate document (call them 'Grounds of appeal against sentence') but they should not be too long (1-2 pages is about right). Make sure you write clearly and not too small. Sign and date your grounds at the end.

*Do I need an extension of time?* You have 28 days to appeal to the Court of Appeal. In conviction cases, time starts to run from the date you were convicted. In sentence cases, time starts to run from the date you were sentenced. If you need more than the 28 days allowed, you need to ask for an extension of time. There is a box on Form NG to do this which you should tick if your application is late. You then need to attach your reasons why your application is late. You can call these 'Extension of time reasons'. These do not need to be very long. If you think it is not your fault that your application is late, it is important that you tell the court why that is. Some applications fail because there is no good reason to give an extension of time.

*Legal aid:* If you want to apply for legal aid for a lawyer to represent you at the appeal hearing (if the judge gives you permission to appeal), you should tick the Representation Order box on Form NG.

*Bail:* If you want to ask for bail before your appeal is heard, you need to tick the box on Form NG and fill in Form B and attach it to your application. If you decide to apply for bail after you have sent off your Form NG, you can send it directly to the Criminal Appeal Office later. It is difficult to get bail in the Court of Appeal unless your sentence is very short or there is a very strong chance that your appeal will succeed.

*Calling a witness:* If you have new evidence that needs a witness to appear in court for your

appeal because they can give new evidence about something which the jury or judge did not hear about, you need to tick the Witness box on Form NG and fill in Form W. You should send this with your Form NG if you can.

*What should I do with my application now?* If you are in custody Give your completed Form NG, your grounds of appeal and any other forms, to a prison officer. The prison officer will do the rest for you. If you are not in custody You should send your completed Form NG, your grounds of appeal and any other forms directly to the Court of Appeal. You can email them to: criminalappealoffice.applications@hmcts.x.gsi.gov.uk If you do not have access to an email account, then you should send your application by post to:

The Registrar Criminal Appeal Office Royal Courts of Justice Strand London WC2A 2LL

*What happens next? The appeal process:* The application is received in the Criminal Appeal Office (which supports the court) and staff then prepare your case for a judge. A judge looks at all the papers and decides whether the grounds of appeal are arguable – the Permission Stage (also called the Section 31 stage). If a judge gives permission to appeal (sometimes called leave to appeal) the judge will normally approve funding for lawyers to prepare the appeal. A summary of the case will be written by staff in the Criminal Appeal Office and the case will be prepared for a hearing. If a judge refuses the application, you have two options: 1. accept the decision (an end to the case, also called 'lapsing') or 2. 'Renew the application' (ask the court to look at the decision again). You send Form SJ and renew the application to the court – the Renewal Hearing. A renewal summary will be written and then 2 or 3 judges will decide the case. An applicant in custody is not entitled to attend. The court can refuse the application and can also make a loss of time order or costs order. This is the end of the case (also called a final determination).

Full court (2 or 3 judges) allows the application and funding for lawyers to present the appeal. Full court hearing (2 or 3 judges) to decide the appeal – the Appeal Hearing. The applicant will now be called an appellant and is entitled to attend the appeal hearing (usually by video- link). The appellant will be represented by a barrister or a solicitor advocate. The Prosecution will also normally be represented in all conviction cases and in some sentence cases (such as where the offence involved a fatality).

*How does the Criminal Appeal Office work?*

We have to act within a framework of legislation and rules (the Criminal Procedure Rules). We must follow the law and these rules when dealing with your case. The Registrar is a judge who is in charge of the office and it is their job to make sure that these rules and the law are followed properly by the staff in the office.

*What stages does my appeal have to go through?*

*We receive the form at the Criminal Appeal Office*

We will send you written confirmation that we have received your application. We will also give your case a reference number which might look something like this: 201709022C1. When dealing with the Criminal Appeal Office you should always quote this reference number, as it will help us to identify your case quickly. The file then goes to one of our casework sections. We will assign a case officer to make sure that someone is responsible for managing and progressing your case. In conviction cases the case officer will normally be a qualified lawyer if you are a Litigant in Person (representing yourself). The office has a team of lawyers and administrative staff who all help the Registrar to manage cases properly. Our case-officers can also help to explain things to you, but they cannot advise you on the merits of your case, as their main job is to help the court. Sometimes the case-officer will write to you (or a case worker on their behalf), if there is something else you

need to do. It is important that you follow the instructions given to you, particularly if the Registrar directs you to do something. These instructions are given to help you to present your case properly, to make sure the rules are complied with and to help the court.

*Transcripts:* Transcripts are a typed-up record of what happened at the relevant time at the Crown Court. In conviction cases which are not privately funded, transcripts of the trial judge's summing up are obtained by the Registrar as matter of course. In sentence cases, transcripts of the prosecution opening of facts on a guilty plea and the judge's observations on passing sentence are normally obtained. If the Registrar thinks any further transcripts are needed to assist the judge, they will also be obtained by the case-officer. The casework section prepares the papers to send to a judge The casework section will make sure they have all the papers the judge will need to make a decision whether or not to give permission to appeal. This may take some time. They may need to get further papers from the Crown Court or your solicitors or barrister. If the appeal is against a conviction, they may have to send a copy of the transcript to your barrister (if you have one) for them to 'perfect' the grounds of appeal by referring to the transcript.

*Complaints made about your lawyers:* If your grounds of appeal include a complaint about the way you were represented at trial by your barrister or solicitors, the Registrar may ask you to 'waive privilege' (that means you agree to give up your right to confidentiality between you and your legal representatives at the Crown Court) so that your complaints may be investigated. You should think very carefully about whether you want to make complaints about your lawyers and waive privilege because your previous lawyer can then comment about anything in your case. An example of where a complaint might succeed in a conviction case would be where you pleaded guilty because your lawyer told you something that was wrong in law. If you do waive privilege, we will ask your legal representatives at trial to comment on your complaints. If they do make these comments, we will send these to you and you can respond. All this correspondence will be included with the papers sent to the judge. If you do not waive privilege, the judge may conclude that you do not want the complaint to be investigated or you can ask that the complaint be withdrawn (that means you no-longer want to rely on that ground of appeal).

*The Prosecution:* Occasionally, it will be necessary to ask the CPS (or the prosecutor if it was not the CPS) or their barrister to comment on your grounds of appeal before they are sent to a judge. This is called a Respondent's Notice. If there is one in your case, a copy will be sent to you. The permission stage (also called the Section 31 stage) We will send you a letter telling you when your case is ready to be sent to a judge. We will also send the papers to our List Office, which deals with allocating all papers to judges. The judge may or may not give you the right to appeal. Sometimes the judge might refer a case to the Full Court of Appeal without having decided either way. A referral is usually prepared for the court in the same way as if permission had been granted.

*If permission to appeal is granted or referred* If the judge gives you permission to appeal or the case is being referred to the Full Court of Appeal, a representation order is usually granted by either the judge or the Registrar. This will give you public funding for a barrister to represent you while you continue with the appeal (unless you are paying privately). We will send a copy of the decision to you and we will supply a copy of all of the relevant case papers to your barrister. A summary will then be written by the Criminal Appeal Office to help the judges at the full hearing of the appeal. If your case is very complicated it can take some time to complete the summary. The summary provides an overview of the facts of the case and the evidence that is relevant to your grounds of appeal. We will send a copy of the summary to your barrister or to you if you don't have a barrister acting for you. Once the summary has been written and the papers prepared for the court, the List Office will set a hearing date and they will send you a letter telling you when your hearing is.

*What happens once I have sent the renewal form back?* You do not have a right to public fund-

ing for a barrister to represent you if your application is being renewed. You may be able to find a barrister who will represent you for free (pro bono) or you may be able to pay a barrister privately to represent you. If you think this could be an option for you, start looking into this straight away and tell the court immediately if you have a barrister that is willing to act for you. If you do not have a barrister, you can still renew and the court will still consider your case by looking at all the papers and then making a decision, which they will announce in open court (see below). Before the case is listed, a summary will be written by the Criminal Appeal Office, which sets out an overview of your case (this will be copied to you if you do not have a barrister) and the papers will be copied for the judges before we send the case details to our List Office for them to set a hearing date.

*Setting a hearing date:* The List Office will contact your barrister if you are being represented at the hearing. They will try to set a hearing date as quickly as possible. It can take longer to list cases if they are very complex and if witnesses are required to attend (that would be very unusual though). We will send you a letter telling you the date which has been set.

*The hearing:* This will usually be at the Royal Courts of Justice in London in open Court – in other words a courtroom open to the public. There will usually be three judges to decide an appeal against conviction, but an appeal against sentence or an application for permission to appeal may be heard by two or three judges. If you have been given permission to appeal and you are in custody you have a right to attend the hearing of the appeal (but not any other proceedings such as a Directions Hearing). If you do not want to attend, you should write to the Criminal Appeal Office to say so. Usually the court will arrange your attendance through a video-link. If permission to appeal has not been granted and the court is considering your renewed application for permission, you do not have a right to attend but this is still a public hearing.

*The decision of the court:* If permission to appeal has been given, the court will either allow or dismiss the appeal. This decision is final. If permission to appeal has not been granted by a judge, the court will either grant permission to appeal (see below) or refuse it, in which case the decision is final. If the judge refused permission to appeal but the court gives permission, they will usually allow you public funding for a barrister to represent you and will ask for another hearing date to be set. Occasionally, the court may decide your case there and then if your appeal is against your sentence and the judges feel that your sentence should be reduced. If you are represented at the hearing, your representative will be asked to agree that the court should proceed immediately to hear the appeal and the court's decision on the appeal is final even though you did not attend the hearing. If you were not represented, you will be sent a copy of the court's decision (the Court Order) and told what your options are.

*After the hearing:* Whether or not you were at the hearing, a copy of the Court Order will be sent to you. If the court has dismissed your appeal or refused permission to appeal, your appeal is at an end (a final determination). If you have matters which you did not raise at your appeal, you can apply to the Criminal Cases Review Commission (CCRC), asking for your case to be referred back to the Court of Appeal. The CCRC's address is: 5 St Philip's Place Birmingham B3 2PW Their phone number is 0121 233 1473. You can also find information on their website at [www.ccrcc.gov.uk](http://www.ccrcc.gov.uk)

If you had an appeal and it was dismissed (you must have been granted permission to appeal to have had an appeal), you can ask the Court of Appeal to confirm that a point of law of general public importance was involved in the decision and ask for permission to appeal to the Supreme Court. You cannot appeal to the Supreme Court unless the Court of Appeal confirms that there is a point of law of general public importance involved – that is, a point that the Supreme Court needs to consider because it would affect lots of cases, not just your case. If you want to appeal to the Supreme

Court, you need to use Form SC which you can get from us.

*How long will my appeal take?* In conviction applications, we aim to deal with your case: • if permission to appeal was granted by a judge, within 10 months • if permission to appeal was refused by a judge, within 13 months. We aim, on average, to process straightforward sentence cases (in other words, from receiving the form in the Criminal Appeal Office to the final court hearing) within five months.

*What can affect how long my appeal takes?* Length of sentence – we will try to get your case heard in court before your release date but this is not always possible. For appeals against a sentence, we generally deal with cases with a shorter sentence more quickly than cases with a longer sentence. Complexity – if a case is very complicated, it will usually take longer. Co-appellants – if your appeal is linked to someone else's, it may take longer. For example, if there are some issues in their case file which are not proceeding as quickly as would be expected. Your personal characteristics – we will take these into account if appropriate, for example, if you are very young or old or suffering from a serious illness.

*I want to abandon my appeal. How do I do this?* If you decide at any stage that you do not want to continue with your appeal or want to give up on part of your appeal, you must confirm this by filling in and sending us Form A. It is not enough just to send a letter or speak to someone on the phone. You should think carefully before doing this as completing Form A will end your case in the same way as a decision by the court dismissing your case.

*How do I complain?* You can phone us and ask for a copy of our complaints procedure. Speak to one of our customer service officers on 020 7947 6011 or write to: Customer Service Officer Criminal Appeal Office Royal Courts of Justice Strand London WC2A 2LL

### **Risks/Consequences From Non-Disclosure Agreements Routinely Underestimated**

*Neil Rose, Legal Futures:* The risks and consequences arising from non-disclosure agreements (NDAs) are routinely underestimated and rarely explored by solicitors, a major review has found. But the Solicitors Regulation Authority's (SRA) thematic review found "no direct evidence" of solicitors drafting NDAs with the deliberate intention of preventing reporting of inappropriate behaviour. At the same time there, there were "a number of common trends or practices which inadvertently might contribute to this happening". Following the warning notice on the use of NDAs issued by the SRA in March 2018 and updated in November 2020, the SRA surveyed 150 law firms of different sizes that provided employment services and then conducted in-depth interviews, onsite visits and file reviews with 25 of those firms most active in this area. Most NDAs complied with the warning notice, although only 64% of fee-earners told the SRA they were aware of it, and knowledge on the issues it covered was "fairly low"; there was little evidence of ongoing NDA-specific training within the firms visited.

Only a quarter of the firms visited had ever questioned a client on whether inclusion of an NDA was appropriate. "Overall we found a fundamental imbalance of power in how NDAs are drafted. Employers will generally dictate the terms of any agreement, sometimes before or without an employee engaging legal advice of their own. Firms also tend to use their own standard templates, which often do not take account of the individual circumstances of a given case. While we did not see any evidence of clauses intentionally suppressing reports of wrongdoing, in a minority of cases we identified issues that could result in inhibiting or deterring disclosure of information."

The SRA found agreements/templates which expressly omitted permitted disclosures, restrictive non-derogatory clauses and inappropriate clawback or penalty clauses. Relying on templates could leave "a knowledge gap in terms of issues not covered within standard forms and guidance and a level of complacency about the risks", the SRA said. "Our evidence

suggests that the risks posed by NDAs are routinely underestimated and rarely explored. Firms (and clients) instead focus far more on the nature and extent of any possible financial settlement, rather than the specific clauses within any agreement.” Employers generally set short time limits, typically seven days, for an employee to sign an agreement and that there was “a general sense of urgency permeating the negotiation process”. With employees were unable or unwilling to pay for legal advice and employers often making a “minimal” financial contribution towards it, in most cases NDAs were rarely amended and/or negotiated by the employee. Only a few firms provided training for fee-earners on vulnerability.

The SRA said it was not its role to stipulate the level of discretionary costs that employers should contribute for others to seek legal advice. “However, what is clear is that solicitors acting for employees need to be explicit with clients about the extent of the advice they can provide where the budget is limited, and be satisfied that they are able to carry out their role to a competent standard in the time provided. Overall, a combination of the employer’s standard agreements with ‘blanket’ NDAs, minimal contributions to costs and employee referrals to preferred firms all risk strategically favouring the interests of employers over employees. It also poses ethical risks for firms if commercial interests mean employees are not afforded the time needed for tailored agreements and advice as a result.”

The wider survey found that 14 of the 150 firms had raised concerns with another firm about an unethical or unenforceable clause in an NDA, and only three reported them on to the SRA. The regulator looked too at how firms used NDAs themselves. Fourteen (all larger firms) of the 25 visited had between them received 112 complaints which stemmed from allegations of inappropriate behaviour in the workplace. Of these, 18 complaints had been fully or in part upheld – of which 10 were then reported to the SRA – three resulted in disciplinary action and 47 led to settlement agreements that contained NDAs. Seven firms said they would never enter into an NDA with an employee “because they felt it would have an impact on their culture”. The review concluded: “NDAs were generally viewed by firms as low risk and fairly straightforward activity. This can lead to some complacency about the scope and relevance of NDAs and the need to tailor templates. “This is potentially concerning in the context of bargaining power differences within the workplace. While confidentiality clauses may seem standard, often the individual circumstances are not.”

The SRA advised law firms on both sides of an NDA to take “active steps to support clients and help them make informed decisions” and be aware that the circumstances behind many NDAs can often mean clients and third parties involved are vulnerable. We are also concerned at the number of firms who admit to concerns about the behaviours of another firm in drawing up an NDA but have not gone on to report their concerns – including to us. We would remind firms and solicitors that their obligations in this area are not just to protect the specific client they are dealing with at the time, but also to report to us in order that we are able to action in the wider public interest.” The SRA said it would now look to review the warning notice and “reinforce those areas where we have identified gaps in knowledge, and deliver webinars and publications to increase the level of knowledge amongst the profession”. It is also proposing a “co-ordinated programme of public education across the legal regulators”.

#### **Kevan Thakrar Has Been Moved From Belmarsh CSC to Manchester CSC**

Do not as yet know why he has been moved, has been on Belmarsh CSC for the last ten years. Do take time to write to him and let him know you know he has been moved. Settling into a new prison can be frustrating, you do not know what to expect from the staff.

A4907AE HMP Manchester, 1 Southall Street, Manchester, M60 9ST

#### **I Won't Be In to Work Today**

Dear Sir, I write this note to you to tell you of me plight  
And at the time of writing, I am not a pretty sight;  
Me body is all black and blue, me face a deathly gray  
And I write this note to say why Paddy's not at work today.

While working on the fourteenth floor some bricks I had to clear;  
Now, to throw them down from such a height was not a good idea.  
The foreman wasn't very pleased, he beeing an awkward sod  
He said I'd have to cart them down the ladders in me hod.

Now, clearing all these bricks by hand it was so very slow,  
So I hoisted up a barrel and secured the rope below.  
But in me haste to do the job I was to blind to see  
That a barrellful of building bricks was heavier than me.

So when I untied the rope the barrel fell like lead  
And clinging tightly to the rope I started up instead.  
Well, I shot up like a rocket till to my dismay I found  
That halfway up I met the bloody barrel coming down.

Well, the barrel broke me shoulder as to the ground it sped,  
And when I reached the top I banged the pully with my head.  
Well, I clung on tight through numbed shock from this almighty blow  
And the barrel spilled out half the bricks fourteen floors below.

Now, when these bricks had fallen from the barrel to the floor  
I then outweighed the barrel and so started down once more;  
Still clinging tightly to the rope, I sped towards the ground,  
And I landed on the brocken bricks that were all scattered round.

Well, I lay there groaning on the ground, I thought I'd passed the worst,  
When the barrel hit the pully-wheel and then the bottom burst.  
Well, a shower of bricks rained down on me, I hadn't got a hope  
As I lay there moaning on the ground, I let go of the bloody rope.

The barrel then being heavier, it started down once more  
And landed right across me, as I lay upon the floor  
Well, it broke three ribs and my left arm and I can only say  
That I hope you'll understand why Paddy's not at work today