

insideinformation – fact sheet

Miscarriages of Justice

Information courtesy of David Wells of Wells Burcombe Solicitors St Albans

The conviction of an innocent person is something which sadly is a common feature of our criminal justice system. The term 'Miscarriages of Justice' identifies an unfortunate category of innocent convicted, and often includes people who have received lengthy prison sentences. They are to be regarded as 'victims.' Certainly the case of Sally Clarke highlights this fact. Sally, aged 42, was released in 2003 having been wrongfully imprisoned for more than 3 years, falsely accused of the murder of her two sons. Sadly, she never fully recovered from the effects of this appalling miscarriage of justice and died not long after her release.

The term 'Miscarriage of Justice' is often distinguished from those regarded as 'wrongly convicted,' whose convictions are often quite properly overturned on issues of a technical nature rather than some compelling fresh evidence. In either category, we are fortunate enough to have in our justice system an appeal process which enables such cases to be identified and where appropriate convictions quashed.

Identifying a Miscarriages of Justice or a wrongful conviction is, of course, far easier than proving one. Such cases occur in a variety of contexts including, but not restricted to:

- The deliberate fabrication of evidence by a witness
- Human error/ mistake - both police and lay witnesses may prove to be unreliable when attempting to identify an offender
- Unreliable scientific evidence. This can occur because of incompetent scientists or genuine error. Expert evidence may not have been properly researched or there may have been a deliberate attempt to undermine the system by giving false evidence
- Unreliable confessions, as a result of police pressure or mental instability
- Non-disclosure of relevant evidence to the defence
- The conduct of the trial, particularly the judges summing up, mis-directions and non-directions on the law and inappropriate comments by the judge
- Rejection of no case to answer
- Jury irregularities

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The starting point in reversing a conviction in case of wrongful conviction or a miscarriage of justice is to lodge an appeal. In exceptional circumstances, where an appeal has not been lodged, an application can be made to the Criminal Cases Review Commission (CCRC). In appeals to the Court of Appeal from the Crown Court, the test is the 'safety' of the conviction. The CCRC will refer a case to the Court of Appeal if there is a 'real possibility' that the Court of Appeal would conclude that the conviction is unsafe.

A vast majority of miscarriages of justice and wrongful convictions cases are identified by virtue of some 'fresh evidence' not previously introduced at trial. Fresh evidence is governed by Section 23 of the Criminal Appeal Act 1968. Fresh evidence can include evidence contained in any document, exhibit or other thing connected with the proceedings. It is not restricted to evidence materialising subsequent to the trial and can include matters which existed prior to the trial but which were not introduced, although there will be a duty to explain why it was not introduced. The fresh evidence must be admissible and be capable of belief also.

The well documented miscarriage cases of Barry George and Sally Clarke highlight that things do go wrong within the trial process. They also illustrate that such cases are not just swept away and forgotten and that such convictions are overturned. Cases like Barry George also show that some cases take time to reach a successful outcome.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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