

# SAFARI

Supporting All Falsely Accused with Reference Information

\* 7 years old this month \*

## Issue 77 (December 2010)



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NINA CROUCH HAS BEEN GIVEN a six-month prison sentence, suspended for 12 months, as well as 150 hours of unpaid work and ordered to pay costs of £535, after pleading guilty to perverting the course of justice by making a false rape claim. The man she accused was in custody for eight hours before she admitted lying.

SAMANTHA MERRY HAS BEEN JAILED for 18 months after admitting perverting the course of justice by making a false rape allegation. Inconsistent forensic evidence had caused police to question the allegation and Merry had gone on to admit lying, claiming a crack cocaine dealer had told her to make the allegation and she had hoped to clear a £3,000 drug debt.

KATE WOODHEAD HAS BEEN SENTENCED to three years for making a false rape allegation against her ex-boyfriend. Woodhead had falsely claimed that her boyfriend fed her a Pringles sandwich laced with diazepam to make her drowsy before raping her. She also lied to the DVLA, transferring ownership of his Porsche Carrera and BMW motorbike to her name, apparently intending to sell them. She had also transferred to her name their £4,000-a-month rented home.

EMMA WATSON (not of Harry Potter fame!) has been sentenced to a two-year jail term after admitting making a false rape allegation against a man with whom she'd had consensual sex. It had been suggested that she had "regrets and pangs of guilt" about the damage having sex with the man would do to her 6-week-old marriage. Judge Henry Globe QC said: "A false allegation of rape undermines the entire criminal justice system and detracts officers from supporting genuine victims of rape." He then went on to say (mistakenly): "Fortunately, these cases are very rare." We think that copies of the SAFARI newsletter need to be presented to more judges to dispel this myth. We publish stories of proven false allegation cases in every single newsletter and these are only a selection of the cases that have been proved in court ... there are numerous additional ones in which the victim is unable to provide the necessary new evidence to prove their innocence.

PRISONERS GAIN RIGHT TO VOTE. The coalition Government have bowed to pressure from the European Court of Human Rights and agreed to allow prisoners the right to vote. And about time too. It is outrageous that a person's right to vote was removed on imprisonment in the first place. A democratic system must *never* allow a Government to stop people voting against them simply by imprisoning them.

SEX OFFENDER LIFETIME REGISTRATION APPEALS. Scottish judges and the UK Supreme Court have ruled that placing someone on the Sex Offenders' Register for life is incompatible with the European Convention on Human Rights and therefore illegal. A man in Scotland has already mounted a legal challenge and won; The key to his legal claim was that there was no future appeal or way of getting his name removed from the register, even if he could show he no longer posed a threat to the public. He was awarded £1,000 in compensation and many more claims are expected to follow. Remember, though, that in order to be *removed* from the register, someone subject to it needs to be able to prove that they 'no longer pose a threat to the public' – not an easy task if they didn't commit the offence in the first place and therefore can't "reduce their risk".

YOUR LETTERS TO US – KEEP THEM SHORT! Please remember that SAFARI's 'job' is solely to produce a 2-monthly newsletter and communicate with those who have the power to help make changes in the legal system. We can't assist people on a one-to-one basis. It's always great to hear from our readers but please remember that SAFARI is run by only two people (and sometimes only one is available!) so we have little time to read pages and pages of paperwork. Try to stick to a maximum single-sided A4 page and also to ensure that the content of your letter is covering point(s) that you feel might be useful to other readers so we can consider publishing details in a future newsletter. Longer letters have to be put aside until we have spare time allowing us to concentrate on letters from a greater number of readers. It's also nice to hear from people who want to let us know how the newsletter has assisted them ... it helps us keep going when we know we're actually doing some good!

IN THE 1980S, WHILE IN THERAPY, Meredith Maran 'recovered' the memory that her father had sexually abused her. She told her family and cut all ties with him. Then, years later, like many other false memory victims, she realised that it wasn't true. Her book, "My Lie: A True Story of False Memory" by Meredith Maran (ISBN 0470502142) was published on 12 Oct 2010 and is available from bookstores and libraries (prison library's should be able to order it in too). Those wanting to know more about false memories can contact the British False Memory Society on [bfms@bfms.org.uk](mailto:bfms@bfms.org.uk), by letter at BFMS, Bradford on Avon, Wiltshire, BA15 1NF, by phone on 01225 868 682 or on the web at <http://www.bfms.org.uk/>.

ON 23<sup>RD</sup> NOVEMBER 2010, Nick Gibb MP (Minister of State (Schools), Education) said: "We will also give teachers the strongest possible protection from false accusations" and referred to his earlier statement of 7<sup>th</sup> July 2010 in which it was said: "The coalition agreement sets out this Government's intention to give heads and teachers the powers they need to ensure discipline in the classroom and promote good behaviour. It also sets out the Government's intention to give anonymity to teachers accused by pupils and to take other measures to protect against false accusations. Teachers should feel confident in exercising their authority, and pupils should not have to suffer disruption to their education caused by the poor behaviour of others."

HOW TO SELECT A GOOD SOLICITOR. First, remember that while a bad solicitor will often do a bad job, a *good* solicitor can still only do a good job if they are provided with (or can find for themselves) the right tools (new evidence, errors in the Judge's summing up at trial, etc.) A solicitor's job is to (a) consider your case based on information supplied, (b) give their professional advice on the best options for moving forward and (c) then to *act on your instructions*. Many solicitors tend to lose sight of this last part. As long as your instructions are lawful, the solicitor should either do as you ask, or help you switch to a new solicitor (by forwarding papers quickly, etc.) who will. That said, do remember that a solicitor's advice is based on a great deal of experience so don't dismiss it lightly! Finally, if a solicitor *ever* asks you to lie (by, for example, 'admitting guilt' when you didn't actually commit the offence 'to get a smaller sentence'), switch solicitors immediately. It's not only morally wrong to lie, but it will make any future appeal difficult to win.

YOUR TASK THIS TIME: If you've been falsely accused, wrongfully convicted, and not yet had your conviction quashed at appeal, write to Kenneth Clarke QC MP (Lord Chancellor and Secretary of State for Justice), Ministry of Justice, 102 Petty France, London, SW1H 9AJ to let him know. You don't need to go into great detail about your case and you can even state that you're not asking for his help directly in your case. Instead, you're asking that he, and the Government in general, recognise that the numbers of falsely accused and wrongly convicted people in the UK is much higher than the Government thought and ask that they do anything they can to address this issue. As always, please send copies of any replies to SAFARI. Thank you.

THE CCRC WRITES FOR SAFARI. Justin Hawkins, Head of Communication at the Criminal Cases Review Commission (CCRC) kindly agreed to write an article for SAFARI on the workings of the organization. He said:

*"The Criminal Cases Review Commission has been in the business of investigating miscarriages of justice since 1997. So far it has referred almost 500 cases back to the appeal courts and seen more than two thirds of those referrals result in quashed convictions or reduced sentences.*

*Of the thousands of cases the Commission deals with, from multiple murders to minor traffic offences, cases involving convictions for sexual offences are among the most difficult. Inevitably, given their sexual nature, virtually all the incidents giving rise to these cases happen in private. The most important evidence will often be from the complainant and the defendant. If the complainant is convincing, and the defendant can do no more than deny the allegations, the jury will often have little more to go on than their competing versions of events.*

*In historic sexual abuse cases, the passage of time adds its own particular problems. Such cases involve complainants in their 30s and 40s, telling the court about abuse that allegedly happened during childhood. The difficulty for defendants, in their 60s or 70s and retired, often after a career devoted to looking after children, is that there is usually little evidence they can rely on to show that the complainants are wrong; sometimes they can't even remember the child in question, colleagues who might have been able to assist have died and work rotas and other records of the home have been long since destroyed.*

*To complicate matters further, complainants who were in care, and had by definition a poor start to their lives, often have previous convictions for offences involving dishonesty, but the jury convicted despite knowing about their potential unreliability. This makes it harder to find compelling evidence about reliability of the kind which can often raise doubts about the safety of convictions in other types of sexual offence cases.*

*It is not all doom and gloom, however. The CCRC is equipped with special legal powers beyond those of virtually any other body to get important papers such as police, CPS and social services files relating to complainants. We can get information about applications for compensation from the Criminal Injuries Compensation Authority or the local authority and check criminal records and details of previous or subsequent complaints.*

*These powers are a vital part of our armoury and have helped identify evidence leading to referral to the appeal courts in numerous cases. In other cases we have found evidence that, whether by mistake or by design, the defence was denied access to something that ought to have been disclosed by the prosecution because it might have assisted the defence or undermined the prosecution.*

*Whether these were facts about the complainant, the conduct of the police investigation, or whatever, important non-disclosure has led to many Commission referrals and in turn to the quashing of many convictions.*

*It is difficult to generalise about what might lead to a referral. Each case is considered on its own merits. It is not necessarily the case that, because we referred one case on particular grounds, we will do so in another with ostensibly similar circumstances. In each case we always assess how much weight was borne by the evidence now in doubt, or how some new information stacks up against the rest of the evidence heard at trial – overall confidence in the safety of a conviction will seldom be dented by casting doubt on a relatively trivial point when it stands alongside a raft of evidence which remains solid.*

*To decide whether to refer a case we apply the "real possibility test" set out for us by the Criminal Appeal Act 1995. It means that, to refer a case, the Commission must believe there is a real possibility that the appeal court will quash the conviction or vary the sentence if a referral is made.*

*Lord Bingham, then the Lord Chief Justice, provided the most quoted explanation of what "real possibility" means when he said that the prospects for success of a case must be: "more than an outside chance or a bare possibility but...[.]...less than a probability, or a likelihood, or a racing certainty."*

*The real possibility test clearly involves the Commission predicting what the appeal court will make of a given case. Since the appeal courts concern themselves with the safety of convictions, the Commission must do likewise - it would be absurd to do anything else.*

*If this focus on "safety" initially seems to offer little hope to those claiming innocence, consider this: compelling evidence of innocence, such as an unassailable alibi, is very rare. If it existed, presumably there would have been no conviction in the first place. Certainly if it could now be found, we would refer the case instantly. The fact is there is a far better chance of finding evidence that some mistake or misdeed led to an unsafe conviction than there is of finding evidence of actual innocence.*

*So, what makes a good application to the Commission? Perhaps the most important thing is to focus on what is new. The law means that, before a conviction can be overturned, the appeal courts require in all but the most exceptional cases, new evidence or argument that was not considered at trial or on appeal - so it's no use submitting appeal grounds to us all over again. To make progress, we need to be able to identify something new that supports your version of events or undermines the version that persuaded the jury to convict. You don't need to hand us the evidence on a plate, but we need you to tell us what went wrong, and why, so that we have something to investigate.*

*Try to concentrate on the important points that may yield something new – a scatter-gun approach covering every issue regardless of its substance can be counterproductive.*

*If you have a genuine claim to have been wrongly convicted, or incorrectly sentenced, apply to us and we'll take an independent, impartial look at your case. It doesn't cost anything to apply and you don't need to be legally represented, but a good lawyer can help.*

*To find out more, visit [www.ccrc.gov.uk](http://www.ccrc.gov.uk), write to us at CCRC, Alpha Tower, Suffolk Street, Queensway, Birmingham, B1 1TT or call 0121 633 1800."*

SAFARI is extremely grateful to Justin for providing our readers with this insight into the way the CCRC functions. We are also grateful that he has agreed to answer questions not already answered here in a future SAFARI newsletter. To have your own questions (and the response) considered for inclusion, here's what you need to do:

1. Keep questions short and to the point.
2. Ensure that the questions are about the CCRC's work in general and not case-specific. (eg. 'If it can be proved that a witness lied in some of their trial evidence how likely is it that the rest of their evidence will be considered unsafe?' might be ok but 'Why did you refuse to refer my case to the Court of Appeal when you referred another similar case?' is not.
3. Send your question to SAFARI (not the CCRC) via eMail or post (address details are shown on the front page of this newsletter.)
4. Remember that the purpose of this exercise is to discover how the CCRC may be able to assist those falsely accused, so please keep away from complaints and stick to constructive questions!
5. Send your question(s) to us before 31<sup>st</sup> December 2010.

We will collate all questions and ask the CCRC to respond. We will then aim to publish the questions and responses in the February 2011 issue.

Meanwhile, we've already received a question from one reader who asked whether he *had* to go through the CCRC for his second appeal as he was planning on doing it all himself. Our understanding is that if you have already had an appeal heard by the full court (three judges) then the CCRC is your only way forward. If not, and it's over 28 days since conviction, you can take it forward yourself by applying for an "extension of time" and explain what the delay was; an extension can be refused if the reason is not good enough. Beware, though; if your request for an extension is refused, the CCRC can no longer get involved unless *further* new evidence becomes available.

SAFARI would like to take this opportunity to send you all best wishes for the upcoming holidays; we hope 2011 will be a better year.