



## Issue 80 (June 2011)

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THE FIGHT TO WIN YOUR APPEAL against conviction is a hard one, but, contrary to popular opinion, it's not a near-impossible task.

However, it's important to understand how the UK's flawed legal system works and then how to make it work for you. You don't have to *approve* of the rules ... but you do need to follow them. So until a better system comes along, here's what you need to know.

A successful conviction can be achieved simply by having one or more prosecution witnesses who will make false statements at trial; as long as the jury is convinced then the conviction is assured.

It's an unpalatable truth that innocent people have more chance of winning their appeal if instead of concentrating on their innocence, they actually fight it on good legal arguments (e.g. new evidence which, if given at trial, would have been likely to persuade the jury to come to a different verdict). So when considering legal precedent, the guilt or innocence of successful appellants is immaterial.

To demonstrate the fact that appeals are being won all the time, here's just a small selection covering a two-month period (those reported between 15<sup>th</sup> March 2011 through 15<sup>th</sup> May 2011).

R v Bruckland (Joseph Peter Vincent) [2011] EWCA Crim 1183 - Assault occasioning actual bodily harm – Overturned due to jury issues.

R v Fyle (Leon Anthony) [2011] EWCA Crim 1213 - Murder – Overturned due to the inadmissibility of details of previous convictions.

R v Thambithurai (Nimalrajah) & ors [2011] EWCA Crim 946 - Conspiracy to assault, manslaughter, perverting the course of justice, murder - New evidence not available at trial due to non-disclosure by the prosecution.

R v Moore (Samuel George) [2011] EWCA Crim 1100 - Anti-social Behaviour Order - threshold conditions were not fulfilled.

R v Ahmad (Benjamin Neville Daniel) [2011] EWCA Crim 1043 - Inconsistent verdicts (guilty on one count but not guilty on another in an illogical manner)

R v Smith (Troy Nicholas) [2011] EWCA Crim 1098 - attempted robbery - No comment interview on legal advice used against him.

R v GJB [2011] EWCA Crim 867 - buggery and indecency with a child - the cumulative effect of the Judge's directions wrong or insufficient.

R v Martin (Itel Tafari Nathaniel) [2011] EWCA Crim 868 - attempted assault by penetration, rape - improper direction made to the jury by judge of section 34 of the Criminal Justice and Public Order Act 1994.

R v F (T B) [2011] EWCA Crim 726 - (Name replaced by initials for anonymity.) - Historic sexual abuse against step daughter - No good reason for complainant waiting so long as opportunity to complain was presented many years previously.

ON THE SUBJECT OF WINNING APPEALS, remember that SAFARI is here to support all those who are affected by false allegations – even after their convictions have been overturned. So please ensure you keep in touch with us if you win your appeal. Tell us how you won. Let us share your story (anonymously if you prefer). It's by sharing such knowledge that we can all help more innocent people escape the horror of false allegations. If you're about to have your case heard in the Appeal Court, please make sure that we *already* have a non-prison address to which we can write to you should you win it.

AMANDA MOYSE (42) has been sentenced to two years, with one year suspended, after admitting falsely accusing a man of raping her. Police found CCTV footage showing Moyse happily going to and from the victim's flat plus 'affectionate' text and voice messages she sent over the three days.

EMMA CHASTON (21) has been sentenced to nine months in prison after admitting a false rape claim.

DAVID MCGHEE (24) has admitted falsely accusing a friend of having sex with an underage girl. He had dialled 999 twice to make the claim. He said he had "just made it up" and did not know why. Sentence is to be decided soon.

JEREMY CLIFFORD has been awarded £20,000 from Hertfordshire Police for malicious prosecution after he was falsely accused and tried for child pornography offences as part of Operation Ore. At London's High Court, Mr Justice Mackay said that he was satisfied that the arresting officer did not, at the time Mr Clifford was charged, have "any honest belief" that there was any supporting evidence for the possession charges other than the mere presence of "pop-ups" on the computer.

THE EUROPEAN COURT OF HUMAN RIGHTS (UCHR) has given the UK Government a deadline of October 2011 to draw up plans to allow prisoners the right to vote.

A NUMBER OF FALSE ALLEGATIONS are made in order to get compensation from the Criminal Injuries Compensation Authority (CICA) and sadly, quite a few are successful. So we got in contact with the CICA to ask a few key questions. The CICA responses included:

*"In all cases where the CCRC request information from us, we will give it to them if we have it." They also said: "Where we have any evidence of fraud or attempted fraud we will report it to the police and co-operate fully with them in investigating the matter. In cases of confirmed fraud we will seek repayment because a fraud against us is a fraud against the taxpayer."*

*"Personal data can be released where it is for a criminal prosecution but not a defence (see section 29 of the Data Protection Act). A solicitor acting for an alleged offender could obtain a court order for us to release the information and we would do so if presented with this."*

*"On your point about allegations made to the police or at court differing from those made in a claim to us I would point out that it is unlikely, since our main source of information about the incident forming the basis of any claim is a report from the police."*

THE TERM 'MISCARRIAGE OF JUSTICE' re-defined. In determining whether or not the Government has to pay compensation to a successful appellant, they look at whether a 'miscarriage of justice' has occurred, but the definition in the past was flawed and required the appellant virtually to prove their innocence – winning the appeal was not enough. Now the Supreme Court have made a major improvement to the definition in relation to compensation claims. While not perfect, it has now been changed to **'when a new or newly discovered fact shows conclusively that the evidence against a defendant has been so undermined that no conviction could possibly be based upon it'**.

Effectively this means that instead of having to prove your innocence to qualify for compensation, you'll now only have to prove that the new or newly discovered fact, had it been known at trial, would have seriously undermined the prosecution case.

ANDREW FRANCE, SAFARI reader, had his wrongful conviction (for raping and sexually assaulting a teenage boy) overturned at the Court of Appeal on 15<sup>th</sup> December 2009. Andrew spent nearly four years in prison for the crimes that he did not commit. After winning the appeal, Andrew said "It is beyond belief that one person can make an allegation, with no evidence, and a jury believes that person by their word." Despite winning his appeal, social workers told him that if he moved back into the family home they would respond by taking his four-year old into care. He spoke to a local newspaper about his dilemma and astonishingly, social services then bullied him into agreeing not to speak with his MP or the papers again, by again threatening to take his youngest child into care if he did. They then issued him with a 'hyper-injunction' to enforce that agreement legally.

Social Services eventually dropped its legal proceedings in 2010 and Mr France was then able to return to his family and speak out. He now gives his full support to John Hemming MP who is now campaigning to crack down on secrecy in the courts and prevent judges from making "anti-democratic" injunctions.

If you have Internet access, you can watch video footage of John Hemming MP speaking on the subject at <http://tinyurl.com/SAFARI-001>.

At the conclusion of the proceedings, the judge made it very clear that Andrew was free to discuss the case as he wished, on the condition that the identity of any children were not divulged. Andrew said: "Social services left me with no illusions that if I spoke publicly about the case they would knock on the door and take our daughter away. I told them that they were gagging me. They replied that if I continued to talk to my MP, or the media, about the case then they would put in for immediate care proceedings and take the child off us. They were going for what's known as a fact-finding hearing, where they re-run your criminal trial in a lower court and make a finding on the balance of probabilities [Ed: as opposed to 'beyond reasonable doubt']. I couldn't believe it. The secrecy in this country is unbelievable."

Andrew's MP, John Hemming, who specialises in addressing miscarriages of justice in the Family Courts, said: "It is very clear that orders such as this undermine the inalienable right of citizens to talk to people in government."

SAFARI contacted John and he was kind enough to provide us with the following article:

"At the end of March I wrote to a number of the national newspapers. I asked for their support on a basic issue of freedom of speech. To me the basic freedom of speech is to be able to speak to your MP about a subject.

I know of five cases where judges and local authorities have used judicial procedures in an attempt to prevent people from talking to MPs.

These range from an attempt to jail someone for speaking at a meeting in Parliament, through threats to take a child into care if a parent complains, to a case where claims about toxic substances contaminating drinking water on passenger ships were being covered up.

There are a number of kinds of injunction I am concerned about.

Super-injunctions are those whose existence is secret. Without an article 6 compliant judgment these are unlawful.

Hyper-injunctions are those whereby there is an attempt (in my view unlawful) to prevent people talking to MPs.

Quaero-injunctions are those where investigation is prevented. I think these should also be unlawful.

Article 6 of the European Convention on Human Rights requires that (inter alia) "Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." I will emphasise the first part "Judgment shall be pronounced publicly ..."

The hyper-injunction requires a number of unusual things.

First, the existence of the case cannot be mentioned.

Second, it cannot be mentioned to a no-win-no-fee lawyer, you have to have paid the lawyer first.

Third, you cannot talk to an MP about the case. I believe that the third item makes the judgment a contempt of Parliament.

I am worried about increasing court secrecy. What the courts are developing is an environment in which people cannot be criticised for what they do in private. People do not always behave well when their behaviour is kept secret.

An obvious example was what happened over MPs' expenses. When the truth was revealed in the press, many changes occurred. There is a good argument that not everything should be open to being printed on the front pages of our newspapers. There needs to be a sensible limit, for example, on the reporting of disputes between parents about children and some basic right to privacy about discussions with doctors and the like, but those limits should not prevent people from complaining when things go wrong.

Parliament needs to act by bringing in legislative changes to rein in the activities of the judges.

Members of Parliament are normally the last resort for people who have problems with the system failing. Courts which interfere with this right are behaving in an unconstitutional manner.

There is a growing tendency by authorities to try to stop citizens from complaining to their MPs. Members of Parliament have a special legal position in that they can reveal secrets in Parliament — and then the newspapers can report what happens in Parliament.

I did this recently in revealing that Fred Goodwin, the former bank chief, had taken out a super-injunction. This is the fundamental right to freedom of speech in a democracy.

The attempt to prevent Parliament being told about issues is what has been called a "hyper-injunction". Parliament used to stand up for people's rights and it should stand up again.

On March 29 I chaired a meeting about Family Court transparency at which a pregnant mother named the local authority she was dealing with.

On April 13 the authority went to court in an attempt to jail her for this effrontery.

I am pleased to say she was not jailed, but it has cost her about £10,000 in legal fees.

Parliament should not tolerate this challenge to the freedom to speak to MPs.

Britain's basic constitutional law is the Bill of Rights from 1688. This makes clear that people have a right to complain to their MPs and cannot be jailed for this.

I have been working with other MPs such as Richard Bacon and Jim Dobbin to ensure that the British people's right to complain to their MP is protected. Parliament needs to act by bringing in legislative changes to rein in the activities of judges. Gossiping should not be subject to claims for damages.

The right of a free press to inform society of the activities of the rich and powerful is one of the essential checks and balances in a democratic society. There do need to be some basic rights to privacy, however, the interpretation of Article 8 of ECHR seems to have gone completely overboard. With the judges acting to reduce freedom of speech it becomes even more important to protect freedom of speech in Parliament.

The most basic freedom of speech is that of the right to talk to an MP about your "grievances". Parliament should act to protect this."

SAFARI would like to take this opportunity to thank Andrew France and John Hemming MP for their assistance and agreement for us to publish the above information.

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SAFARI ADVISORY PANEL. SAFARI now seeks to set up an advisory panel consisting of solicitors, MPs, social workers, the police, CCRC and other groups, whose sole purpose would be to advise SAFARI on (mostly legal) matters relating to our fight for the falsely accused. While we will be making initial contact with some groups ourselves, if you know of anyone who might be interested in joining the panel (perhaps you have a great solicitor or have a good relationship with a supportive MP), please give us their contact details and explain why you feel they would be an asset to the group. All panel members would need to be able to offer their advice on a voluntary basis.

THERE ARE NUMEROUS other groups directly or indirectly supporting the falsely accused. If you know of a good one, please let us have their name and contact details; we hope to include details in our next newsletter.