

Nightmare on Disclosure Street

The Director of Public Prosecution's disclosure nightmare seems to be getting worse by the week. Jon Robins reviews the evidence

A recent BBC survey revealed that 97% of criminal defence lawyers had encountered disclosure failures in the last 12 months. Since the botched prosecution of Liam Allan collapsed before Christmas, the Director of Public Prosecution's disclosure nightmare seems to be getting worse by the week. The case against the 22-year-old criminology student was dropped three days into the trial at Croydon Crown Court when police were forced to disclose a wealth of digital evidence comprising some 40,000 messages which revealed, amongst other things, that the alleged victim had pestered the young man for 'casual sex'.

Speaking to the BBC Radio 4's Today programme, Alison Saunders was asked if it was a possibility that there were people in prison today as a result of disclosure problems. 'I don't think so', she replied, 'because what these cases show is that when we take a case through to trial there are various safeguards in place, not least of which the defence indicating what their defence is going to be'.

The response to her assurance was, to put it mildly, sceptical. The Tory peer and *The Times* newspaper columnist Lord Danny Finkelstein reckoned that the DPP had 'comically missed the point' by suggesting that anyone who felt that they had been wrongly convicted should speak out. They were hardly likely to know if there was any evidence in their favour if they hadn't been told about it in the first place. The Criminal Cases Review Commission pointed that failure to disclose was 'the single most frequent cause' of miscarriages of justice. It was ever thus.

Judith Ward served 17 years after being wrongly convicted for the M62 coach bomb. An IRA bomb hidden in the luggage locker blew up a coach carrying off-duty soldiers and their families killing 12 people in 1973. She was sentenced to 30 years' imprisonment for that and two other bombings.

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Ward was highly vulnerable and 'spilled confessions and admissions like beans', according to her barrister Michael Mansfield QC. 'They were all over the place, in every sense of the phrase – bizarre and random'. At the time she was alleged to have planted the bomb, she had been more than a hundred miles away at the Blue Boar pub in Chipping Norton having a drink with a dozen other people. However, serial confessions were backed up by overwhelming scientific evidence – or so the court was told. The Home Office forensic scientist Dr Frank Skuse, whose reputation was to be destroyed in the Birmingham Six travesty, found traces of nitroglycerine on her hands and on her duffle-bag.

Her conviction was overturned in 1992. It transpired that West Yorkshire police had sent to the DPP just 225 of the 1,700 statements it had acquired and of 63 interviews, only 34 were disclosed. Among the wealth of information that the Crown failed to disclose were three reviews of the case in 1985, 1987 and 1989. Each one found that something had gone seriously wrong. Eminent scientists were also found to have suppressed evidence that showed that boot polish could test positive for nitroglycerine (as did playing cards in the Birmingham Six case).

'Our law does not tolerate a conviction to be secured by ambush', said Lord Justice Glidewell. His court held that the Crown's disclosure duty was not limited to material

it believed might help the defence but that it should have the right to examine everything that the prosecution had.

That ruling was supposed to herald a new age of openness. Last year the CPS Inspectorate and Her Majesty's Inspector of Constabulary, in a joint report, found the quality of handling of disclosure by the police was 'poor' in more than four out of ten of cases (42%) and, in relation to the CPS handling, poor in one in three cases.

The watchdogs' findings were published on the same day as a major report into another notorious miscarriage case: the Cardiff Three.

Lynette White had been brutally murdered in a flat in Cardiff in 1988. Five men were prosecuted and, two years later, three of the men (Stephen Miller, Tony Paris and Yusef Abdullahi) were convicted of her murder and sentenced to life imprisonment. In 1992 the Court of Appeal quashed their convictions. It would take another ten years when, as a result of advances in DNA techniques, Jeffrey Gafoor was arrested. He later pleaded guilty.

Richard Horwell QC described the case as 'one of the worst miscarriages of justice' in the history of our justice system. His report was prefaced with the prophetic words of the senior investigating officer tasked with getting to the bottom of the debacle: 'The only way this case will fail is through disclosure.'

So, as Horwell put it, how could five men have been prosecuted for a murder that they had nothing to do with? How could witnesses have put them at the scene? In 2009, three police officers and two members of the public were charged with conspiracy to pervert the course of justice and perjury.

The trial of the first eight defendants collapsed when the prosecuting counsel 'lost confidence in the disclosure process'. There were fears that key documents had been destroyed. Weeks after the Crown withdrew its case, the 'destroyed' documents were discovered at the police headquarters.

'Concerns of "establishment cover up" and "conspiracy" naturally followed', Horwell noted. The barrister went on to reflect on how disclosure problems had 'blighted' our criminal justice system for too long. He noted that the public must be 'utterly bemused' as to how the justice system was incapable of coping with a principle that was 'long established and central to the tenets of fairness and justice'. But, as he put it, the pendulum has swung both ways. The era of openness in the wake of the Judith Ward case has long gone. **NLJ**

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