

Neutral Citation Number: [2006] EWCA Crim 1353
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LEEDS
His Honour Judge Hoffman (Siddall)
His Honour Judge Charlesworth (Brooke)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 15th June 2006

Before :

LORD JUSTICE LONGMORE
MRS JUSTICE GLOSTER
and
MR JUSTICE OPENSHAW

Between :

REGINA
- and -
JOHN STEPHEN SIDDALL
IAN CHRISTOPHER BROOKE

Respondent

Appellants

Transcript of the Handed Down Judgment of
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for the **Appellant John Siddall**
BRYAN COX Esq
for the **Appellant Ian Brooke**
NICHOLAS CAMPBELL Esq QC and Dr TINA DEMPSTER
for the **Crown**

Hearing dates : 23rd and 24th May 2006

Judgment

Lord Justice Longmore :

1. Introduction

The court has received two references from the Criminal Cases Review Commission (“CCRC”) regarding convictions of John Siddall on 29th July 1999 and Ian Brooke on 4th April 2000 in both cases at Leeds Crown Court in front of His Honour Judge Hoffman and His Honour Judge Charlesworth respectively. The references are dated 8th December 2004 but have only been put before this court on 23rd May 2006. That delay is little short of abysmal. Even when the references were at last heard, the papers were in no order of any kind. We will have to return to this at the end of this judgment.

2. Siddall was convicted on two counts of indecent assault (counts 4-5) on a girl called RW between 10th October 1985 and 13th May 1986 by engaging her in sexual intercourse and two counts (6 and 7) of indecency with a child and indecent assault between 12th December 1987 and 13th February 1988, the child concerned being PW. He was acquitted of 3 counts of indecent assault (counts 1-3) on a girl called JF between 20th June 1985 and 23 January 1986. He received a total sentence of 4 years imprisonment.

3. Brooke was charged with counts of indecent assault, rape and buggery of the same RW. He was acquitted of one charge of indecent assault in the Lake District (count 1) but convicted of two charges of rape between 11th May and 7th December 1986 (counts 2 and 3), one charge of buggery (count 4) between the same dates. He was also convicted on 3 counts of indecent assault (counts 5-7) on a girl called AMS between 16th June and 1st November 1986 and one count of rape (count 11) of the same girl between the same dates. He received a total sentence of 10 years imprisonment.

4. Evidence at Trial: (1) Siddall at Rivendell care home in Dewsbury

Rivendell residential care home in Dewsbury, West Yorkshire, was operated by Kirklees Local Authority and catered for vulnerable and emotionally damaged children. It was comprised of two separate units which were located downstairs and upstairs. The downstairs unit catered for short-term residents and the upstairs unit was for long-term residents whose stays would range from 6-12 months. The two units were kept separate from late evening onwards. During the relevant period the appellant worked at the home as an unqualified full-time care worker. He was required to sleep at the home on 2-3 nights per week and would stay in the staff room which was equipped with a bed in addition to office facilities.

5. JF (who was born on 7th December 1971 and 27 at date of trial) was at Rivendell from June 1985 to January 1986 when she was aged 15. She said that she had stayed on the bottom section on the first night and thereafter stayed on the top section. She admitted that she regularly ran away from the home. She remembered the appellant and described him as “right jolly” and “alright”. She then said “there was summat that wasn’t all right”. She described how the appellant used to look her up and down and would undress her with his eyes. It made her feel dirty and “dirtified”. She described three instances of indecent touching but the judge withdrew the first count from the jury and the jury were unable to agree on counts 2 and 3.

6. RW (who was 28 at date of trial and had first started making disclosures to the police about sex abuse in December 1996) was at Rivendell from October 1985 until May 1986 when aged between 13 and 14. She provided a 40 page statement setting out a catalogue of abuse she had suffered from the age of 7. This statement was dated 19th December 1996 but took a number of weeks to compile starting from that date. In her evidence she said that she had been placed in local authority care after suffering sexual abuse by a member of her family. She knew JF when at Rivendell as their stays coincided by 3-4 months and on occasions they had played truant together. She had not felt able to talk to JF about the abuse and had not done so. Since that time she had not had any further contact with JF. She described the appellant as a fantastic person who was just what she needed at that time. He was warm-hearted and a lovely person and the best adult she had ever had in her life. She could talk to him and he would listen. He would take her to his parents' home and gave her a poster which had been on his own bedroom wall. His mother gave her a perfume bottle.
7. On one occasion she had been naughty and was told to go to the upstairs staff room. The appellant got up from his desk and put his arm around her and kissed and cuddled her. She thought that he "favourited her". He locked the door of the staff room and put a teaspoon in the lock. The next thing she remembered was lying on his bed and having sex with him with him on top of her. This was the subject of count 4, presumably charged as indecent assault rather than rape because the Crown foresaw difficulties about proving the absence of consent. She could not remember the appellant taking off his clothes. She did remember a little orange square with an F on his Farah trousers. She described feeling disgusted and betrayed. She had said nothing as from her childhood this was the way "people who loved and cared for you behaved". She wanted it over and done with as soon as possible but her world had fallen apart and she felt destroyed as she had gone in care to get away from what had happened to her at home and had believed he was a friend. He had not used any protection. She stayed with him for the night and he set the alarm an hour earlier than all the other staff got up. When it went off she got up and went to her room. She had been petrified and did not get any sleep that night. A few days later she had a conversation with him about her stomach ache. He asked her whether it was anything to do with what had happened and she told him that it was period pains. He told her to keep quiet about what had happened. Although he was still a lovely person she hated him after that first time and kept wondering when it would happen again.
8. The second incident of sexual intercourse also took place in the upstairs staff room and, as before, he placed a teaspoon in the lock. She felt horrible and thought the best thing was just to get it over and done with. This was the subject of count 5 of the indictment. In total he had sex with her either 3 or 4 times but she was not sure. The incidents always took place when he stayed over in the staff room bed and probably occurred over a 4-5 week period before she was moved from Rivendell to another home called Westfields for assessment. She was always running away from Rivendell because of what the appellant had done to her. She left and went to stay at Westfields and saw him on one further occasion when he also went there. She did not see him again after that and felt let down because, although he had abused her, he was someone who was always there for her.
9. PW (who was 25 at date of trial) arrived at Rivendell in December 1987 when she was aged 13 years. The two other complainants RW and JF had left by that time and

there was no contact between them. The first night she was admitted the appellant was kind to her and was always nice to her. She looked upon him as one of the best there. On one occasion he took her to see her grandmother and picked her up. No other member of staff did that.

10. She recalled one occasion when at around 3.00 am she had a really bad headache and went crying to the downstairs staff room to ask for tablets. She sat down opposite the appellant and he made a lewd or rude suggestion and said that she could smoke confiscated cigarettes if she played with his penis. He asked her to get into bed with him and lay on the bed with his trousers and pants down. He asked her to go over and touch him. She did not at first but then felt as though she had to. She touched his erect penis for about ten minutes. This was count 6 of the indictment (indecent with a child). She gave further evidence that, during this incident, the appellant was squeezing her breast through her pyjama top. This was count 7 of the indictment.
11. The appellant was arrested in March 1997 following the allegations made by RW. He answered questions in police interviews and denied all the offences. The appellant gave evidence and denied having committed any of the offences. He said that he could not remember any of the complainants. The only memory he had was of going to the police station with RW following her complaint that she had been raped by, apparently, two taxi-drivers outside Rivendell. He would not have touched JF indecently. The most he would do was to pat a child's head to reassure them. He certainly never touched a child on the bottom and agreed that it would be inappropriate to touch a child's thigh. He was not normally a very tactile person. All three women were lying. He could not think of any reasons why they would want to make up allegations against him.
12. Evidence at Trial: (2) Brooke at Westfields Assessment Centre

RW had made no allegations against Brooke in her original 40 page statement of 1996. It was only in 1999 that she disclosed abuse suffered at Westfields. In her evidence she said that during her childhood she was sexually abused by a member of the family and was placed in local authority care. She lived in a number of homes before being sent to Westfields on 12th May 1986 when she was 14 years old. She described the appellant as very full of himself and bubbly. He smoked Benson and Hedges cigarettes and wore white trainers and a particular kind of shirt. She got on reasonably well with him but he was very sure of himself.
13. She recalled taking some washing down to the laundry room. The appellant went with her and told her how to launder the clothes and sort them into different colours. She said that she was stood in front of the washing machine and the appellant stood behind her. He was showing her how to work the machines and placed his hand on her shoulder. She got a feeling and "I knew there was going to be some sex". He lowered the bottom part of her clothing. She knew it would happen as it had almost become routine by then. He had sex with her from behind. This was count 2 of the indictment. She was dry and it hurt. She did not remember saying anything to him. After it finished he was back to normal. He told her to go back to her room and that if anyone asked about the time they had been in there she was to say that he had been showing her how to do the washing.

14. She and the appellant had been in the office of Mr Kay who was the head of one of the departments at Westfields. It was evening time and as they left his office the appellant took her to the laundry room. She knew why he was taking her there. "I can say this now without belittling myself but I knew it was for sex and again it was up against the washer, again I was dry. I can only remember thinking 'hurry up, hurry up' in my mind. I wanted it over and done with so I could be a little girl again." She said that she did not want to have sex with him but just knew that she had to. "It had become routine, this is what happens to you, you blank it off, there was no feeling, as far as I was concerned. I was just a piece of flesh." This was count 3.
15. She described how she used to share a bedroom with another girl but later had a single bedroom of her own. One night she had gone to bed but was not asleep. The appellant came into her room, closed the door and sat on her bed. She was facing the wall as he sat down and said something to her, although she could not remember what. "He put his hand underneath the quilt on my bum. I rolled over because I thought he had got the wrong place. He told me to roll back, then he got on top of me and started having sex with my bum. The pain was indescribable." She told him that it hurt and screamed but he put his hand over her mouth. She already had her head in the pillows and was not able to scream further or say anything. He then got off and went out of the room. She lay on the bed and wondered why she was being treated in this way. "I could not understand it and I still don't." This was count 4.
16. In 1999 a new officer (DC Wadsworth) had been assigned to the case and asked her if anything had happened at Westfields that she wanted to speak about. The officer mentioned the appellant's name and said that one of the girls who had been in care at the same time thought she might have seen something happening between them. She had not mentioned the appellant to anyone before DC Wadsworth questioned her about him. She would have done but could only deal with one case at a time. Before she gave her 1999 statement disclosing what the appellant had done to her, she kept going off the rails as it was her way of coping. She had kept out of the way a lot of the time; it was always there but it had not been the right time for her to come out with it.
17. A statement was read from DC Wadsworth who confirmed that in February 1999 she had gone to see RW to see whether she had any disclosures to make about her time at Westfields, in particular with the appellant. They spoke at length and R became highly emotional but did make disclosures of a sexual nature regarding the appellant. No note was taken at the time but arrangements were made to meet again. Her statement was taken on 19th April. The taking of the statement had to be suspended for a time because R was too distressed. It was completed on 21st April 1999.
18. AME (27 at date of trial) gave evidence about a number of incidents of sexual abuse. The appellant was convicted in respect of some only of her allegations. The Crown does not now seek to support those convictions and it is unnecessary to set out the details of them.
19. The appellant was arrested in August 1997 after AME had made her statement. He fell backwards in his chair and said "Oh God". He was interviewed and said that he remembered AME but that he did not have a great deal to do with her at all. She was rarely there as she was always running away and staying with older men and things like that. He did not remember much about why she was in care but believed there

were problems with her father. He said that he had absolutely not been in a room alone with her and would never go into a girl's room unaccompanied. He remembered RW and said that he got on okay with her and there were no problems at all. She also ran away a lot and there were some concerns about her being abducted by taxi drivers. The allegations made by AME were a total fabrication. He accepted that he would have had reason to visit the laundry room but it would have been rare for him to do so. He admitted that he had smoked for part of his time at Westfields. He was released without charge at that stage.

20. He was re-arrested in May 1999 following the statement made by RW. He said that the rape in the laundry room just did not happen. He would never have been alone in the laundry room with a female resident. A female member of staff would have been present if a girl wanted to do laundry at the week-end. He did not recall ever visiting the laundry room with RW. The buggery incident did not happen and was just lies. He was shocked by the allegations and had never heard such nonsense in all his life.
21. The appellant (aged 42 at the time of trial) gave evidence and said that he had no previous convictions. He worked at Westfields from February 1985 to January 1987. He recalled both RW and AME being there in 1986 and did not have any problems with either of them. Generally speaking RW was not a management problem with her behaviour at the building but she did frequently abscond, sometimes alone and sometimes with others. AME was not a problem on the unit although she was hardly ever there. She disappeared so often that it was not possible to develop any rapport or relationship with her. He may have occasionally brought her back if she was in the grounds. He described the lay-out at Westfields and its different sections. The Girl's Assessment unit took up to ten girls in four single and three double bedrooms. It was like a goldfish bowl with lots of windows and noise travelled easily through the doors and walls. The laundry was done by domestic staff during the week but at week-ends the children were occasionally allowed to do their own. They would have to be accompanied by a member of staff as the laundry rooms were kept locked if not being used. He could not remember doing laundry with a child but said that it was possible. He could not remember telling RW how to separate colours. All the allegations made against him were untrue. He called a number of witnesses on his own behalf.

22. The References

On 8th December 2004 the CCRC referred Siddall's convictions to the Court of Appeal on the grounds that, as a result of new material referred to in the reference, there was a real possibility that the Court of Appeal would consider the convictions to be unsafe. That new material can be placed under various headings:-

- (A) Allegations of rape made by RW but not disclosed by RW in the course of her disclosures to officers responsible for Operation Clyde (the relevant police investigation into incidents at Rivendell and Westfields) and Operation Care (another investigation in relation to a care home on Merseyside to which RW was subsequently sent). These allegations derived from information contained in contemporaneous records recovered by the CCRC (1) from Nugent Care Society files relating to RW's time at Clarence House

in Merseyside which themselves contained information about RW's time at Westfields and (2) from Social Services files compiled in and around 1998 in connection with care proceedings relating to RW's children;

- (B) Other information contained in these files;
- (C) Information contained in applications to the Criminal Injuries Compensation Authority ("CICA") in relation both to Siddall and another person, this time at Clarence House, Wilfred Jollie who was tried in Liverpool in May 2001 but against whom the Crown decided to proceed no further as a result of RW's cross-examination;
- (D) Allegations made, subsequent to trial, by JF of penetrative sex by Siddall, no such allegations having been made by JF during the trial of the counts of indecent assault of which Siddall was in any event acquitted.

- 23. At one time it appeared to be important that, whereas RW both in her witness statement and in her evidence at trial had alleged that only 3 or 4 acts of sexual intercourse had occurred with Siddall, she had subsequently alleged frequent sexual intercourse, almost as a matter of routine, in her application to CICA. The Crown has, however, been able to show that RW's initial CICA application was in similar terms to those of the contents of an interview conducted with RW on 13th December 1996 in the presence of a social worker June Bailey, WPC Annette Holliday and RW's then partner Roland Day. In this interview RW said that she could not remember how sex began with Siddall at Rivendell but that it went on until she went to Westfields. "It was like a routine." "It always happened in the bed used for staff to sleep in." This was part of the unused material to which, said the Crown, the defence would have had access, although the section 9 witness statement, used for the purposes of the trial, merely referred to sexual intercourse occurring 3 or 4 times at most. The Crown cannot positively say (since the relevant documentation is now lost) that it was actually sent to the appellant's then solicitors.
- 24. The appellant's new defence team accept that the previous defence team (or, at any rate, Siddall personally) had access to the contents of this interview of 13th December so far as it related to Siddall since, when Siddall's employment was terminated by the local authority, he brought proceedings for unfair dismissal before a Leeds Industrial Tribunal in which the relevant parts of the interview were disclosed and he made a written response to the allegations contained in it. In these circumstances Mr Vincent Coughlin QC who appeared for Siddall on this appeal, was prepared to accept that the contents of the interview of 13th December, insofar as they related to Siddall, were known to the defence team and could have been, if defence counsel had thought it wise, used in RW's cross-examination. Defence counsel, then appearing for Siddall, has been asked about this; he cannot now remember whether he saw this material and took any decision about it, but has made the pertinent comment that cross-examining

a complainant on the basis that she has previously made complaints of more frequent or more serious abuse is a dangerous course to take.

25. In these circumstances it is not surprising that the appeal was primarily presented to us on the basis that it was the other material discovered by the CCRC that should cause the court to have concerns about the safety of the conviction. It is, therefore, that material to which we now turn. Important dates are that RW was born on 7th December 1971, She was in care at Rivendell between 11th October 1985 and 12th May 1986 and at Westfields between 12th May 1986 and about 24th October 1986, when she went to Clarence House in Merseyside.

26. The New Material

(1) Rape by 12 taxi-drivers

A report in the Nugent files by Jeanette Hassall of 4th July 1986 contains numerous observations on RW based on information obtained after RW's arrival at Westfields at the age of 14. Under the heading "Relationships with Adults" Ms Hassall had this to say:-

"RW is attention-seeking with adults. She likes to be in favour and is ingratiating in order to maintain one's favour, especially if she feels that she has done anything to warrant one's displeasure.

She loves to talk to adults on a one-to-one basis, whenever possible, as she likes undivided attention. She can be very demanding and expects instant gratification over any traumas that she may approach one about.

RW's whole existence appears to revolve around the dramatic aspects of life. She thrives on exaggerating events to their most theatrical extremes.

She employs shock tactics in an attempt to convince adults that her problems are more severe and serious than anyone else's.

On first coming to Westfields each member of staff was treated to a secret revelation that twelve Asian taxi drivers had raped her, followed by an urgent plea for us to ring the CID so that she could give them some more information about it.

When this story became uninteresting we would then have dramatic stories relayed to us whenever she received calls from her mother, ie 'My uncle in Ireland is really, really ill. I swear to God! My mother says he's only got a few hours to live and he's only twenty-five. They're all going to visit tomorrow' . . ."

This information was not available to the defence at trial. The Crown was able to point to Siddall's interview in which when asked if he could remember JF, RW or PW he said that all he could remember about RW was once going with her to the police station in relation to a complaint that she had been abused by two taxi-drivers. To the

extent that this point was made so as to lay the foundation for an argument that the defence had sufficient information about allegations against taxi-drivers to neutralise the effect of this new material, we would observe that one allegation made to Siddall at Rivendell about 2 taxi-drivers is rather different from a widely-spread allegation to “each member of staff” at Westfields in relation to 12 taxi-drivers. To a limited extent, moreover, the new information might be thought to give some support to the truth of what Siddall was saying in interview.

27. (2) Rape in Salford

On 1st November 1986 RW absconded from Clarence House with a friend. When she returned she said she had been forced to take drugs and had been raped by two men who had picked the two girls up on the M62 and driven them to a flat in Salford, in which the incidents occurred. The police were called to Clarence House after RW had returned on 5th November and told staff what had happened. They interviewed RW on 7th November; a medical examination confirmed RW had had sex but there were no marks to show signs of any struggle. At that stage the police concluded that any crime committed was likely to be unlawful sexual intercourse rather than rape. RW agreed to show the police the place where the incident occurred and on 13th November went to Salford with the police and Clarence House staff. She had identified flat 121 and described an indentation in the front door but neither flat 121 nor any other flat in the block had any such indentation. The police felt confirmed in their view that no rape had taken place. Later Clarence House records described the incident as “a complete fabrication”. This was not a matter known to the defence at trial.

28. (3) Sexual abuse by father

By April 1998 RW had had a child who was attending Moldgreen Junior and Infants School. A question arose whether that child should be taken into care. In the course of the care proceedings the Deputy Head Teacher of the school, Mrs Pamela Murphy, made a statement which included the information that RW had told her that she had been sexually abused by her father at home as a child. By contrast, when RW had arrived at Westfields, she described her father as a good character “deep down” about whom she cared a lot and whom she thought cared for her. Moreover the psychiatrist to whom RW was referred in June 1995, Dr Helen Sayer, recorded in her report of 10th July that RW described her father as “sound” in temperament and recalled a positive relationship with him during her childhood. On 12th November 1998 the child psychologist, reporting on RW’s children for their guardian ad litem, Ms Sue Mercer, described RW as saying in October 1998 not only that she had been physically abused by both her mother and father without making any reference to any sexual abuse by her father, but as saying also that her father was a “fantastic person” who would never have hurt her if her mother had not insisted.. None of this was known to the defence team.

29. (4) Abuse by husband James (or Jimmy) Wood

RW had a child by her first long-term relationship, when she was 16, with Tariq Satar. That relationship ended when RW was 5 months pregnant and she then began a relationship with Jimmy Wood, the father of a friend of hers. She subsequently married him in or about 1987 although he was 31 years older than she. This marriage

broke up before RW made her section 9 statement to the police. In that statement she described two occasions of sexual intercourse with him while she was at Westfields aged 15. The defence thus knew that she had made these allegations against the man who was to become her husband. What the defence now say they did not know was that, in the interview of 13th December which occurred before the section 9 statement was taken, RW had alleged further abuse by Jimmy Wood five or six times downstairs in his living room when she was aged between 12 and 14. This was because that part of the interview was not part of the material which came to Siddall in the course of his industrial tribunal proceedings. As we have said the record of the whole interview was part of the unused material but there is no way of knowing whether it was in the materials included in defence counsel's brief. It may not have been. Ms Mercer's report of November 1998, attached to the CCRC reference but not known to the defence at trial, confirms RW's account of abuse by Jimmy Wood.

30. (5) Abuse by subsequent partner Rowland Day

Sometime in 1995 RW met Rowland Day at a night club where he was working as a bouncer. She had a child by him in August 1996. The relationship had terminated before RW saw Ms Mercer in October 1998. At that time RW told Ms Mercer that Day not only physically abused her by beating her and locking her up but also that he had raped her while she was screaming and crying. This had been put even more strongly to a social worker who, on 10th July 1998, recorded RW as saying that Day had:-

“abused her much more than she had been abused before. He ‘was like an animal’, demanded sex and raped her if she was unwilling”.

Neither of these allegations was known to the defence at the time of trial.

31. In relation to these 5 matters we have rehearsed, Mr Campbell QC for the Crown submitted that the first two allegations were made when RW was only 15, could be described as desirous of attention and prone to exaggeration especially if she was having to explain why she had absconded from Clarence House. The allegations were, moreover, so patently false that, if the jury had heard about them, it could have made no difference to their assessment of RW's allegations made at trial as an adult woman. He also submitted that the new allegations were all of a kind with the allegations of which the defence team were well aware. We have already mentioned RW's inconsistencies in her account of the appellant's own abuse and the two taxi-driver incident referred to by the appellant in his interview. Mr Campbell also relied on allegations made by RW against three of her mother's brothers in her witness statement which were inconsistent with earlier allegations in 1991 and 1995, the inconsistency between the account of Jimmy Wood's abuse in her witness statement and a 1995 description of him as caring and protective, an admission by RW that she had fabricated a rape allegation against Jimmy Wood's son Graham and inconsistencies between an earlier allegation of abuse against Tariq Satar of whom she nevertheless spoke approvingly in her witness statement. All these matters were known to the defence and most of them had been considered by the psychiatrist instructed by the defence, a Dr Rix, for the purpose of the trial. The defence, said Mr Campbell, chose not to expose these inconsistencies.

32. We do not accept that the first two new matters to which we have referred can be dismissed as childish aberrations, especially since they are of a piece with the later 3 allegations all made when RW was a mature woman. If all 5 items of new evidence had been known to the defence, they could have been deployed with considerable force before the jury. We consider that if the defence team had known about them, they would probably have been deployed before the jury not least because RW's view of her time at Rivendell was reported, after she arrived at Westfields as "brilliant" in Jeanette Hassall's report of 4th July 1986 since she was able to talk to the staff there. A plausible picture could have been built up of RW becoming disappointed with people or terminating her relationships with them and then accusing them of abuse. It may well be that any one of the items of new material would not raise legitimate concerns about the verdict but their cumulative effect does have an impact. There is a yet further matter

33. (6) The Trial of Wilfred Jollie

The sixth matter which is raised by way of fresh evidence concerns allegations made by RW against Wilfrid Jollie (or Jolley, the spelling is unclear), a Care Worker at Clarence House, on Merseyside, where RW lived after she left Westfields. These allegations gave rise to Mr Jollie's trial at Liverpool Crown Court on 1st and 2nd May 2001. This was, of course, sometime after the trials of Siddall and Brooke.

34. RW in her witness statement had alleged against Mr Jollie two separate incidents of indecency: one of kissing and one of full intercourse. The prosecution was based upon these two incidents. The indictment was drawn to charge these two incidents. In her evidence in chief at the trial she duly gave evidence of these two incidents and only of these two incidents.

35. However in her claim to the CICA, submitted before the trial, she had claimed that Mr Jollie had had sexual intercourse on fully four or five occasions. This might be thought to be a significant discrepancy in her account. Even if this was only an exaggeration made with the intention of deliberately inflating her eventual award, this could well have damaged her credibility before the jury.

36. We have already observed that there are obvious dangers in cross-examining a complainant on the basis that she has on a previous occasion made complaints of even more frequent or more serious abuse. Counsel defending Mr Jollie boldly took that risk and put the inconsistency to her. Although the exchanges cover many pages of transcript, the fact is that RW was caught out in telling lies to the CICA; she reacted badly and refused to continue with her evidence. In consequence, the prosecution offered no further evidence and Mr Jollie was acquitted on those counts.

37. Now Mr Campbell seeks to explain this away. He says that the cross-examination was unfair and 'hectoring', that RW was a vulnerable witness and that it is not surprising that she refused to continue. However, neither the experienced judge at that trial (His Honour Judge Phipps) nor the experienced prosecution counsel (Mr Aubrey, later Queen's Counsel; and now a Circuit Judge himself) thought it necessary to intervene to protect RW, which they would have done if the cross-examination had been unfair or over-bearing; indeed Mr Aubrey went so far as to describe the cross-examination as 'quite legitimate and proper' (see the transcript for 2nd May 2001 at page 5). We reject the criticisms which Mr Campbell makes of these proceedings.

38. In our judgment, the fact that RW told a lie in relation to the proceedings against Mr Jollie and refused to continue her evidence when confronted with this lie is a further matter which might well have troubled a jury trying other allegations made by RW against other men with whom she had had dealings. Again, it is not on its own decisive, it is just another matter which, considered cumulatively with the other matters to which we have adverted, causes us concern as to the safety of the convictions based upon her evidence.

39. The Delay Direction

We turn then to another point made by Mr Coughlin; he argues that the judge's direction in the summing up on the issue of delay was inadequate; he bases this on paragraphs 6.23 to 6.37 of the Commission's Statement of Reasons.

40. Before examining the short passage to which he refers, we should consider the pre-trial application made before His Honour Judge Coles QC (on 11th September 1998) to stay the proceedings on the ground that after such a length of time, a fair trial of these matters was not possible. It will be remembered that it was once common to make such an application in nearly all cases where historic sex abuse was alleged. Judge Coles very properly refused that application and ruled that the trial process itself would provide the necessary protection to the defendant by regulating the admissibility of evidence and by the judge giving careful directions indicating the difficulties which the defence may suffer through delay.

41. During the trial it was the appellant's case that apart from one specific occasion, when he accompanied RW to the police station, he had no recollection of any of these three girls at all. Mr Campbell for the prosecution argued before us – and indeed before the jury – that this was just not credible. However, if the appellant is right, and if nothing untoward occurred between him and these girls, we have serious doubts whether someone in the appellant's position would remember every child with whom he had dealings. We think, therefore, that a clear warning should have been given of the difficulties which the passage of time caused to the appellant in defending this case, particularly when his defence was a complete denial.

42. We have examined the standard directions suggested by the Judicial Studies Board at the time. The direction on delay (dated July 1997) was then in these terms:

“You should make allowances for the fact that with the passage of time memories fade. Witnesses, whoever they may be, cannot be expected to remember with crystal clarity events which happened many years ago. As we all know, sometimes the passage of time may even play tricks on memories. You should also make allowances for the fact that from the defendant's point of view, the longer the time since an alleged incident, the more difficult it may be for him to answer it.”

Although later cases gave the judge a wide measure of discretion as to the particular form that the direction should take, the case of Percival (Times, July 20th 1998) established the need for a clear warning in these cases. Later, the JSB directions were strengthened; today they are still more detailed and emphatic.

43. We now set out Judge Hoffman's direction on the point in full (it is at the transcript for 28th July, 3G – 4B):

“Now the next matter is this: the defendant of course has been criticised by the prosecution for his apparent inability to sum up any significant recollection about any of these women when they were girls. In deciding whether that is a valid criticism you will have to bear in mind the many children who have passed through his hands and the fact that this case was a long time ago, that is the point that Mr Lodge makes on his behalf, and it is something you should bear in mind.”

This may have, to some extent, deflected the particular criticism made by the prosecution, but in our judgment, Judge Hoffman's brief direction did not identify, still less stress, the prejudice which a defendant may face, when challenging allegations made many years after the event.

44. We note that his counsel did not consider at the time that this direction was inadequate; nor did he advise an appeal. Furthermore, convictions are not rendered unsafe, simply because there have been developments in the way judges sum cases up to juries. Mr Coughlin concedes that this point does not lie at the heart of the appeal; standing alone, the inadequacy of this direction would not render the convictions unsafe but it is one of those many points which, taken cumulatively, cause us concern about the safety of these convictions.

45. Conclusion on RW counts

In these circumstances we have decided that it is impossible for us to be certain that, if the full picture had been before the jury with a proper and careful direction, they would have convicted the appellant. On the basis of R v Pendleton [2002] 1 WLR 72 we have no option but to quash the convictions on counts 4 and 5 which relate to RW.

46. Convictions on other counts

There remain the convictions on counts 6 and 7 relating to PW. No new material has emerged which would itself justify quashing the conviction but the Crown not unnaturally submitted to the jury that there was no evidence of collusion between JF, RW and PW and it would be surprising if three independent witnesses all gave evidence of a similar nature which was untrue. This was echoed by the judge in the summing-up who described the similarities in the evidence and then said:-

“What may follow from that? Well if you are satisfied first of all that there is no question of putting heads together, and in this connection you will bear in mind that [PW] came on the scene into this Home after the other two girls had left and you will bear in mind the further evidence from [RW] that although there was a period of time when she and [JF] were there together nonetheless that she did not feel able to talk to her about it, so if you were satisfied that there is no question of putting heads together or for that matter of one person having in some way heard of the complaint of another and thereby

being influenced, and there is no evidential basis for this at all, then you must ask yourselves is it reasonably possible that three persons independently making allegations set in similar circumstances could all be lying? If the answer is that this is not reasonably possible then when you are considering the evidence of any one of these women the fact that other women have made allegations independently may assist you to decide whether that individual's evidence is true and this approach would apply to whichever woman's evidence, whichever count you were considering at the time, in other words when considering any woman's account, whether it is JF, RW or PW, you are entitled to consider at the same time not just her account but the evidence of the other two complainants and obviously, members of the jury, the more similar they are or the circumstances in which they are set are, then the greater the likelihood that witnesses who are independent of each other but are giving similar accounts are speaking the truth because otherwise would it not be a remarkable coincidence if quite independently of each other they gave similar accounts? On the other hand, of course, the less similarity there is between accounts the less weight you would give to this evidence."

In the light of the jury's inability to reach a verdict in relation to JF and the quashing of the verdict in relation to RW, we cannot think that the convictions relating to PW alone are safe and they will have to be quashed also.

47. Brooke

Many of the same considerations apply to Brooke's appeal. RW did not disclose that she had been abused by Brooke at Westfields until 1999. Her reason for withholding that disclosure at the time when she was disclosing abuse by Siddall was that Brooke's abuse was much worse and, indeed, the worst she had experienced. Brooke's defence team did not know that RW had in July 1998 used almost the same words to describe the abuse she had suffered at the hands of Rowland Day.

48. As far as the allegations of rape by twelve taxi-drivers is concerned, Brooke (who was at Westfields at the time) did have some recollection of the matter but neither side at trial had the document written by Jeanette Hassall recording the allegation. It was mentioned by Brooke in his oral evidence but, in the absence of any written record, Mr Campbell in his closing speech to the jury not only commented on the fact that the allegation had not been put to RW during her evidence but also suggested that Brooke was attempting to blacken RW's character. This only goes to show how important proper disclosure is. If Ms Hassall's report of the matter in 1986 had been disclosed both counsel for the Crown and for the defence could have taken appropriate decisions about how to deal with it. As it is, it is impossible not to feel that the jury was given a false picture about this matter overall. As it happens Ms Hassall (who had by the time of trial become Mrs Porritt) was in fact called by Brooke in order to deal with the first count of the indictment of indecent assault in the Lake District, on which he was, in the event, acquitted. Mrs Porritt may, therefore, have impressed the jury. Nobody thought to ask about the contents of her July 1986 document because

nobody knew it existed. It is hardly surprising that 14 years later she herself volunteered no information about it.

49. So, although in one sense the allegation could be said to be known to Brooke's defence team, their knowledge of it was so inadequate and incomplete that the position is little different from the position in which Siddall's defence team found themselves.
50. The other matters of new evidence relied on by Siddall apply equally to Brooke. It is fair to say that RW did not change her account of Brooke's abuse when she made her application to CICA but the result of the Jollie trial was still in the future when Brooke was tried. It is further right to say that no criticism has been (or could be) made of His Honour Judge Charlesworth's directions to the jury about the potential effect of delay in Brooke's case. That element of Siddall's case is, therefore, missing.
51. There is however, a further matter in Brooke's case. He was convicted on 3 counts of indecently assaulting and one count of raping AMS. In the light of AMS's subsequent account of the events underlying these convictions to a forensic psychologist Paul Cousins whose reports are annexed to the CCRC reference in the case of Brooke, the Crown now accepts that Brooke's appeal cannot be contested in relation to the AMS counts. This court has read Mr Cousin's reports and agrees that the Crown is correct in not seeking to support these convictions.
52. The question, therefore, is whether that conclusion of itself is to have any impact on the convictions in relation to the RW counts. As in Siddall's case, the Crown in its final speech emphasised the unlikelihood of both women making up the complaints and, unsurprisingly the judge directed the jury that, if they were satisfied that there was no collusion, they could regard the evidence of the 2 complainants as being mutually supportive. It is true, as the Crown point out, that in spite of that direction, the jury acquitted on some counts. But the direction would have had its impact on those counts on which the jury convicted.
53. We are once again driven to the conclusion, in the light of the cumulative effect of all these matters which we have set out, that the conviction of Brooke on the counts relating to RW is also unsafe and that his appeal will also have to be allowed.
54. Presentation of this appeal

Finally it is necessary to say something about the lamentable way in which the documents and other case materials were presented to the court on this reference. The CCRC referred these convictions as long ago as 8th December 2004. The respective Statements of Reasons of the same date, in support of their decision on each conviction, contained references to numerous documents. These documents were supplied to this court in two large and unwieldy loose bundles, called "Index of Disclosure Documents", each affixed merely with a Treasury tag. Neither bundle was paginated, nor hole-punched, nor were there dividers between the various sections. In many cases it was impossible on first sight to work out what the document was. It was not easy when reading the Statements of Reasons to work out which document (if any) the CCRC was referring to from the disclosure bundles. It would be helpful if, in future, CCRC references could identify documents referred to by a page number.

55. The position was then made much much worse by the plethora of further documents that were subsequently, and on a piecemeal basis, supplied to the court, in support of successive skeleton arguments and addenda to skeleton arguments provided by respective counsel for the appellants and for the respondent. These included further contemporaneous documents, psychiatric reports, transcripts and statements. With one exception (relating to a small clip of documents attached to a supplemental skeleton of the respondent), none of these documents were put into paginated bundles with dividers, let alone presented in ring-binders. Indeed one thick supplemental bundle of documents was simply presented with an elastic band round the papers. No attempt was made to ensure that duplication of documents was avoided or that there was one common and logical set of numbered and paginated bundles from which members of the court and all counsel could work. As a result, none of the lengthy skeleton arguments adequately identified the relevant documents by reference to a volume number or page number. Despite the fact that there was delay in retaining new leading counsel for Siddall and new junior counsel for Brooke (which must have created genuine difficulties for both those counsel and to whom the Court is most grateful for their efforts in undoubtedly difficult circumstances), there was overall no excuse for the fact that revised skeleton arguments for the appellants, dated 17th May and 19th May 2006, which addressed the actual issues arising on the appeals, as they had developed over time, were not lodged until very shortly before the hearing. That was in circumstances where, as we have said, the CCRC referred the appeals on 8th December 2004.
56. The result of all this was that considerable time was wasted not only at the hearing, but also during the court's pre-hearing preparation and post-hearing judgment writing time, in locating and identifying documents. Indeed some important documents, such as RW's original 40 page witness statement, had not even been supplied to the court and had to be copied during the course of the hearing. It was clear that none of the three teams of counsel were working from the same bundles or references as the court, or, indeed, as each other. But the problem went further than merely wasting time. One of the critical issues in the case was what documents had been available, whether by way of disclosure, or otherwise, to defence counsel at the trial and whether the contents of such documents could correctly be characterised as new material or evidence for the purposes of the appeals. Because of the wholly unsatisfactory way in which the documents were presented to the court, it was often difficult to ascertain what materials had been available at trial and what had emerged subsequently. That confusion could have resulted in an adverse effect on the appellants' chances of success on appeal.
57. The overriding objective, as set out in the Criminal Procedure Rules 2005 (SI 2005 No 384) ("the Rules") Part 1 Rule 1.1(2)(e), requires all criminal cases to be dealt with "efficiently and expeditiously". This equally applies to criminal appeals; see Part 2, Rule 2.1(1)(b). All participants in criminal proceedings must prepare and conduct the case in accordance with the overriding objective; see Part 1, Rule 1.2 (1)(a). There was a clear breach of the Rules in this respect for which both solicitors and counsel must accept some responsibility. Dealing with the case "efficiently and expeditiously" in a complex and serious case of this kind (where there were numerous documents, late disclosure, and changing issues on the appeals) obviously required counsel and solicitors for all parties to co-operate in producing to the court an agreed, composite series of numbered bundles, put together in a logical order, properly

labelled, indexed and paginated, with dividers where necessary. It was essential not only to ensure that each member of the court had the bundles in the same form as counsel but also that the skeleton arguments sufficiently and accurately identified any relevant document by reference to the appropriate bundle, tab and page number. That should have been done and bundles and skeletons lodged with the Criminal Appeal Office in good time, so as to have enabled satisfactory pre-hearing preparation to have taken place. Consideration should also have been given as to whether a core bundle would have assisted the court.

58. It is quite wrong that any reference should be placed before the court more than six months after the date of its referral without good reason sanctioned by the court. To this end consideration must be given to complying with some such time-table as we now suggest:-

- (1) Within 6 weeks of the date of referral, the appellant's solicitors must cause all relevant papers to be bundled into files and paginated; counsel must lodge a skeleton argument referring to the documents as paginated and apply to the Criminal Appeal Office for a date (giving estimated length of hearing) and any other directions considered necessary;
- (2) Within 4 weeks thereafter, the Crown must propose the inclusion of any further documentation which it requires;
- (3) Within 2 further weeks, the Crown must lodge its skeleton with any suggested change to the estimate it deems to be necessary;
- (4) Any response skeleton to be lodged within 2 further weeks thereafter;
- (5) Consideration be given to the question whether a core bundle should be provided for the hearing.

59. Any material breach of these requirements will run the risk of the appeal being stood out from the list at the risk of a wasted costs order being made. CCRC references must be treated with the respect they deserve. We regretfully record that these references were not.