

**The time in between a case of 'wrongful' and 'rightful' conviction in the UK:  
Miscarriages of justice and the contribution of psychology to reforming the police investigative  
process**

**Dr. Sam Poyser and Professor Rebecca Milne**

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## Introduction

*'...it's absolutely ruined my life...'* (Noel Jones in Williams, 2017a: n.p).

These are the words of Noel Jones, a victim of a recently over-turned wrongful conviction in North Wales (UK). Following a flawed police investigation in 1976, Jones falsely confessed to killing a girl called Janet Commins, who, years later it transpired, had been murdered by a man named Stephen Hough (see below). Jones' words give an insight into the enduring harm that miscarriages of justice cause for those who suffer them directly. Furthermore, these harms radiate from the exoneree to their family, friends and communities where they can erode confidence and trust in the Criminal Justice System (CJS), particularly the police, whom the public come into contact with most frequently (Poyser and Milne, 2018). This in turn undermines the hard work of the police service more broadly. When a conviction is quashed, it also brings pain to the family of the victim of the original crime, who experience the 'reopening of wounds' in being returned to the position of 'not knowing' who harmed their relative. Some have argued that the pain caused by such aberrations of justice must be matched by our zeal to learn from them (Poyser and Milne, 2018).

Several lessons can be learnt from miscarriages like that of Noel Jones. One of them is that, whilst miscarriages are rarely caused by a single factor, they are unlikely to occur without some failing in policing, specifically, in relation to the police investigative process (Poyser and Grieve, 2018). The nucleus of this process is the police interview - the 'site' at which much of what went wrong in the Jones case, occurred. In the UK, investigative and interview processes have, over time, been improved and professionalised. This has occurred alongside changes to legislation (Griffiths and Milne, 2018). The springboard for such reform has been increased media and public focus on miscarriages (Poyser and Milne, 2018) and the findings of impactful psychological research. This research is ongoing and remains of crucial importance, as the unhappy marriage between policing and miscarriages has not been completely dissolved.

This paper will begin by briefly discussing what a miscarriage of justice is, before considering research relating to the causes of miscarriages and highlighting why the police investigative process, particularly the interview process, might be viewed as the nucleus around which most of these causes cluster. What follows from therein is not, it must be stressed, a case study of Jones' wrongful conviction in the 1970s and Hough's rightful conviction in the second decade of the 21<sup>st</sup> century. Rather, we take these as rough 'start' and 'end' points in our critical discussion of the 'time in between' and the 'journey' to reform the police investigative and particularly the interview process in the UK - reform made partly, in response to psychological research conducted during this period. The paper concludes by calling for further psychological research, so that we can continue to learn about, and from, the circumstances that produce miscarriages of justice.

### What is a miscarriage of justice?

Miscarriages of justice are dreadful side-effects of the operation of all criminal justice systems, in part because they reflect the fallibility of the humans who operate them. Miscarriages are also arguably far more common than *'...those who operate [those systems] dare to believe'* (Yant, 1991:7). However, interestingly there is much disagreement on what actually constitutes a miscarriage. From a legal standpoint, a miscarriage of justice only occurs when a conviction is quashed by a jurisdiction's appellate machinery. However, others argue that this definition is too narrow and ignores the thousands of cases wherein there has been official failure to acknowledge such injustice (Eady, 2009). Where this happens, a conviction stands. However, rather than being a sign that the system did not fail in the first place; it can be an indication that the system in place to

recognise and correct miscarriages is *also* fallible in design and/or execution. Aside from this, there are often long delays involved in waiting for such recognition, making miscarriages disputed concepts, at least for a period of time (Eady, 2009: 12).

Forst (2004) categorises miscarriages of justice as 'errors of due process' (involving unjustified conviction of the innocent) and 'errors of impunity' (involving lapses of justice which permit criminals to escape)<sup>1</sup>. He argues that the former causes the latter - so if an innocent person is imprisoned for a crime; the culprit remains free to continue offending – as occurred in the Commins case. Certainly, miscarriages are as much about flawed processes as they are about inaccurate outcomes. These processes happen every day on, for example, the streets when individuals are stopped and searched and in police station corridors. In these and other settings, Walker (1999: 31) argues that 'justice' is achieved when individuals who encounter State agents are accorded fair treatment, thereby respecting their rights equally.

Clearly, there are different interpretations of the term 'miscarriage of justice'. In this paper however, we use the term to refer to wrongful conviction of an innocent individual, regardless of whether this has been formally recognised (Eady, 2009) and we focus, in particular, on process - the investigative and interview process. Firstly however, we briefly examine research on the causes of miscarriages.

### **Research on the causes of miscarriages of justice**

Academic research relating to miscarriages of justice was, in the not too distant past, a relative rarity (Radelet, 2013). Despite the first significant study of the causes of miscarriages (in 65 cases) being undertaken by Borchard in 1932, very few projects followed. Of those that did, most were conducted in the U.S (see Frank and Frank, 1957; Radin 1964) and a minority in the UK (see Brandon and Davies, 1973). The 1980s and 90s saw the beginnings of an escalation in causes research, with studies of large numbers of wrongful convictions (see Bedau and Radelet, 1987; Connors et al, 1996). By the 2000s, in the U.S these focussed on the causes in cases of individuals exonerated by DNA testing (Scheck et al, 2000) and in the UK, on those in cases of individuals exonerated following scrutiny by the newly formed Criminal Cases Review Commission (CCRC, 2000). The last 20 years however, has seen more research activity on causes than ever before, including interdisciplinary studies embracing differing perspectives on the phenomenon (see Loeffler et al, 2019). The most significant advancement has been the growth in causes research outside the U.S - we now have substantial data on factors contributing to causing miscarriages in countries such as China (Jiang, 2016), Japan (Johnson, 2019) and Germany (Leuschner et al, 2019).

Taken together, this body of research indicates that the causes of miscarriages are numerous (see Leo, 2005) and include in-built features of justice systems and processes which serve to incentivise guilty pleas<sup>2</sup> and therefore may encourage *innocent* as well as culpable individuals to plead guilty (McConville and Marsh, 2014). The aforementioned body of research also indicates however, that the most frequent causes of miscarriages are linked to the police investigative, and particularly the interview process (Huff and Killias, 2013). These include issues relating to, for example: non-disclosure of evidence, falsifying/fabricating evidence, relying on circumstantial evidence, false confessions and unreliable witness identification/testimony (Poyser and Milne, 2018). This may be partly due to pressures surrounding and difficulties involved in searching for, and collating, evidence and assembling a case for conviction (Jiang, 2016).

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<sup>1</sup> See for example, the recent case of Christopher Halliwell (Morris, 2013).

<sup>2</sup> In the UK for example, plea-bargaining, the Criminal Court Charge and fixed-fees for solicitors preparing defence cases (McConville and Marsh, 2014).

In terms of efforts made to *reduce* these causes, the research arena which has contributed most to our knowledge is the 'specialised causes' field (Leo, 2005). Conclusions on the individual causes of miscarriages in this area are rooted in empirical research conducted by specialists such as psychologists, and include a focus on phenomena such as problematic witness identification/testimony (Loftus, 2017) and false confessions (Gudjonsson, 2003). Psychological research in the specialised causes field has produced a wealth of information on why problems relating to the issues mentioned above, arise and how they might be tackled. In the UK and some other jurisdictions, such research has, alongside media exposure of miscarriages, impacted on reform relating to policing practice, particularly in respect of improvements made to the investigative and interview process (Poyser and Milne, 2018). In the UK, (which due to space constraints we focus on in this paper), this has occurred alongside legal reform brought about as a result of Royal Commissions and the passing of legislation.<sup>3</sup> The seeds of this important research were sown in the 1970s, the decade when Janet Commins was murdered.

### **From wrongful to rightful conviction - how psychological research has helped reform the investigative and interview process**

Scholar Martin Yant has observed that '*Many wrongly convicted [individuals] end up paying for someone else's crime with several years of their lives...*' (1991: 11). This reflects what occurred in the Janet Commins murder case with the wrongful conviction of Noel Jones, and 40 years later, the rightful conviction of Stephen Hough, as outlined below.

#### Summary of the Commins case

On 11th January 1976, 15 year-old Janet Commins left her house in Flint (North Wales, UK) to go swimming. She never returned. Four days later her body was found by children on a school field. Janet had been repeatedly sexually assaulted and strangled (Williams, 2017a). During the ensuing investigation, a senior officer directed investigators to get the '*Gypsies at Northop...checked out*' (IOPC, 2018: 18), referring to a traveller site recently set up nearby (where 18 year-old Noel Jones resided). Following several interviews with Jones' girlfriend, police were told that Noel had admitted the offence to her. He was taken to the police station, questioned and confessed. He was eventually convicted of rape and manslaughter and sentenced to 12 years imprisonment. During his time in prison, Jones did not appeal his conviction for fear that his sentence might be increased (IOPC, 2018) and was released in 1982. In 2017, Stephen Hough, a 58 year-old man, who had lived just streets away from Janet and her family throughout his life, was found guilty of the same crime following 'Operation Orbicular' - a lengthy case review. Hough came to police attention after being accused of a sexual offence relating to another 15 year-old girl. This led to his DNA being taken and a match to DNA preserved from the Commins crime scene. Furthermore, it was apparent that Hough alone had killed Janet when he was just 16 (IOPC, 2018).

On 31st January 2019, Court of Appeal judges quashed Noel Jones' conviction, declaring that he had had no '*...involvement in this terrible crime*' (Evans, 2019, n.p). The Senior Investigating Officer (SIO) who had led the review, highlighted discrepancies in the confession evidence obtained during the 1976 investigation, triggering an independent investigation into the conduct of officers involved in the case and Jones' treatment and questioning whilst in custody (IOPC, 2018).

#### *The investigation into, and questioning of, Noel Jones*

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<sup>3</sup> Although it is noted that not all reform of this nature has had a positive impact in this regard (See Sanders et al, 2010).

The investigation into Janet Commins' murder in 1976 appears, at face value, to have begun well. However, as soon as Noel Jones was arrested, Janet's family became concerned, expressing that *'Anything else...we put forward was dismissed'* (Williams, 2017b). This raises the possibility that investigating officers, under pressure to catch a dangerous offender, may have honed down too quickly on one suspect. Indeed, from the moment, that they were told to 'check out the gypsies', they seem to have become fixated on the idea that Jones, clearly an 'outsider' to the local community, was their man. Jones' blood group (O) did match that obtained from material left at the crime scene, however being the most common blood group, it was hardly a strong indicator of guilt.

The focus on Jones seems to have set off a chain reaction, leading to investigating officers visiting his girlfriend several times to ask the same question - whether he was involved in Janet's killing (IOPC, 2018). When, she told Jones about the visits, this vulnerable young man joked that when police next visited, she should just say that he did it (Y Detectif, 2018). So, when the police next visited, this is what she told them. On 29<sup>th</sup> January 1976, Jones was met by police officers and taken to the police station (it is unclear whether he was formally arrested), where he quickly retracted his admission. However, according to Jones, he was then kept in a room for two days without refreshment, rest, nor anyone being informed of his detention, whilst he was repeatedly questioned (IOPC, 2018).

The officer overseeing the investigation did not offer Jones a solicitor during questioning because, he said, he *'...wanted to investigate properly...[and] we were often...impeded by solicitors representing clients'* (Evans in Williams, 2017a: n.p). Jones, a man of low intelligence and illiterate, was questioned on three occasions, describing each as oppressive, coercive and relentless: *'They were continuing at me...If they had told me I'd killed 10 people...I would have said yes to get out of there...'* (IOPC, 2018: 9). Police officers also drove him to the crime scene to describe what happened and where, whilst one of them made notes. At each interview, he provided contradictory, and at times incredulous, accounts of what happened (Y Detectif, 2018). Jones maintained that he was *'...saying what they [the police] wanted'* (Williams, 2017a: n.p). Subsequent linguistic analysis of his confession statements, written by police (and signed, but not read, by Jones), confirmed that the interviewing officers *'...did at least sometimes, offer complete utterances to be confirmed or denied and then incorporated them almost verbatim into the suspect's statement'* (IOPC, 2018: 22). Jones' confession (which he later retracted) also contained details of the crime that were not publicly known, because, he argued, officers discussed these details between themselves in front of him. Police believed that Jones had an accomplice and in one of his statements he *did* implicate his friend, Michael Orford. Orford however, denied involvement and was not prosecuted due to lack of evidence (Y Detectif, 2018).

Whilst we cannot know for certain whether or not the events relayed above have been sullied by the memories of those involved, a factor that seems to have featured in this case – one that, according to psychological theory, may have driven the events outlined above, is that of closed investigative mindsets (Ask and Granhag, 2005; Fahsing and Ask, 2013).

Although officers may have begun their investigation with mindsets open to considering several lines of enquiry, these may have prematurely closed around a particular suspect (Jones). From thereon, driven by a presumption of Jones' guilt, (rather than open to the possibility of his innocence), a process of case construction (an issue we return to later) may have begun (Shepherd and Milne, 1999) with the investigation becoming a narrow search *only* for information that confirmed the idea that Jones was the killer, rather than an open-minded search for information about 'What happened?' (Ask et al, 2008). This is the problem with a presumption of guilt as opposed to presumption of innocence.

Psychological research relating to investigative decision-making has helped to identify how, in such situations, the shape, direction and quality of an investigation may be negatively impacted (Irving and Dunningham, 1993) and impeded by psychological phenomena such as cognitive biases, tunnel vision and belief perseverance (Findley and Scott, 2006). These may play a role in investigators embarking on a process of *'selectively weav[ing] together...fragments of information...to produce a simplified...coherent story'* and 'successful' case conclusion (Sanders et al, 2010: 368). Furthermore, it explains how, when information comes to light which contradicts their belief (in the Jones case, there were several documented moments which might have acted as 'red flags' in this regard) investigators continue to cling to it (Innes, 2003: 185).

Problematic investigative decision-making and closed mindsets presuming guilt, appear to lie at the root of numerous miscarriages worldwide (Ask and Fahsing, 2018), impacting on every aspect of an investigation including the interview process. Thus, as Griffiths and Milne (2018: 270) suggest, if the investigator is guilt-focussed, they may use the interview to deploy particular tactics, relating to for example, lie detection, (rather than open-mindedly using it to explore differing hypotheses).

In the light of this discussion, it is interesting to note that after hearing the evidence against Jones at trial, Janet Commins' uncle concluded that he was innocent, because his statements appeared nonsensical. He later retraced Jones' steps as described in the statements and concluded that they *'were ridiculous...there's no way he could have done what he is supposed to have done'* (Williams, 2017b: n.p).

These troubling features of the Jones case remained hidden for over four decades, when the true perpetrator of the crime, Stephen Hough, was eventually brought to justice. However, in the time between these wrongful and rightful convictions, it became increasingly clear that problems relating to investigative, and particularly interview processes, featured strongly in miscarriages in the UK and that psychological research would contribute to bringing about much needed reform. This realisation, in turn, was triggered (initially at least) by another miscarriage (with similar features to the Jones case) that of the Catford Three.

#### The roots of reform

On 22<sup>nd</sup> April 1972, firefighters attended an address in Catford, East London. There they found the body of 26 year-old Maxwell Confait. He had been strangled and an attempt had been made to burn his body. Colin Lattimore (aged 18) who, like Noel Jones was of low intelligence and illiterate, Ronnie Leighton (15), and Ahmed Salih (14) were arrested, questioned and confessed to the crime (later retracting their admissions). It was subsequently argued that the contents of the boys' confessions were suggested to them by police (Price, 1978: n.p). Their treatment during questioning certainly seems to share similarities with that of Jones. They were all vulnerable by virtue of age or having a learning disability and their questioning took place in the absence of legal representation and a parent/guardian. At trial in 1974, the boys were found guilty and received custodial sentences. However, shortly after, their case was referred to the Court of Appeal by the then Home Secretary (Price, 1978) and in 1975, their convictions were quashed. It was clear that the confessions on which they were based were untrue and that oppressive police questioning may have played a role in bringing them about. In response to public concern around the case, an independent inquiry (Fisher, 1977) was undertaken into the circumstances surrounding the boys' convictions. This concluded that their false confessions were the result of the convergence of a flawed interview process and their inherent vulnerabilities (Gudjonsson, 2003 – see later).

The 'Catford Three' were not the only ones whose false confessions had occurred in this way. Whilst it was not known at the time, (because, as with the Jones case, these errors were only exposed decades later), the 1970s spawned several wrongful convictions with features similar to those in the Catford Three case. These included those of Stephen Downing and Stefan Kiszko - vulnerable individuals, who had made erroneous admissions to serious crimes during custodial questioning (Gudjonsson, 2003 - see later).

The findings of the Fisher inquiry (1977) set the agenda for the subsequent Royal Commission on Criminal Procedure (RCCP) (1981). Tasked with examining how investigators question suspects, the RCCP commissioned research, including several studies undertaken by psychologists. It should be noted that confessions, if true, play an important role in securing convictions but they must be authentic, voluntary and reliable. However, the psychological research revealed that investigators' focus on gaining a confession at all costs (rather than conducting a neutral search for information) was leading them to engage in overbearing questioning and attempts to manipulate suspects and exploit their vulnerabilities (Softley, 1981; Hilgendorf and Irving, 1981). Furthermore, it revealed that many people – even those without predisposed problems - may be vulnerable in this setting (Irving, 1980).

A key conclusion of the RCCP, was that the 'Judges' Rules' (which outlined expectations for the treatment of individuals in custody and the custodial questioning process) were inadequate. This was because although the Rules stated for example, that suspects should be able to communicate with a solicitor and that their statements must not be induced by oppression, they had no basis in statute (IOPC, 2018). Therefore, investigators could not be punished for failing to adhere to them. That is, if indeed, they appreciated their meaning, because as the Fisher inquiry (1977) had found, nobody including judges themselves '*...understood what the...Rules actually meant!*' (Price, 1978: n.p). Recommending significant reform to police working practices and procedures, the RCCP report (1981) called for a fuller appreciation of the inherently coercive nature of the questioning process (and more broadly the impact of custody on suspects) and the need to ensure that information provided by suspects during questioning was reliable.

Despite the RCCP's recommendations, interview quality remained poor and the use of pressure and intimidation during custodial questioning continued virtually unabated (Smith, 1983: 325). However, the RCCP *had* set a 'blueprint' for a fair and effective system of custodial questioning and paved the way for radical legislative change in the form of the Police and Criminal Evidence Act (PACE) (1984). PACE aimed to strike a balance between the operation of police powers and suspects' rights, introducing measures to establish safeguards for those taken into police custody and the regulation of their questioning, to ensure fairness and transparency in the process (Ozin and Norton, 2019). Section 66 (addressing detention, treatment and questioning) targeted protection for suspects during custodial questioning by requiring that: i) a comprehensive record of suspects' time spent in custody was made, ii) suspects be informed of their right to free legal advice, iii) suspect interviews (aside from exceptional urgent interviews) were tape-recorded and iv) suspects at elevated risk in this setting, (such as the young and those with learning disabilities), had the right to be accompanied by an 'appropriate adult' in order to safeguard their welfare and rights (Eady, 2009).

Ensuing psychological research examined the efficacy of PACE in real-world policing settings and found that it had effected positive change (importantly, police impropriety in the interview setting has rarely been evidenced in appeals during the last 20 years or so (Sanders et al, 2010)). However, several limitations were observed early on in the reform journey (it takes time to change mindsets). These included findings that some officers were adopting methods which discouraged suspects from requesting a solicitor (McConville and Hodgson, 1993) and 'working around' the rules, such as

framing essentially 'off the record' interviews as welfare interviews (Bottomly et al, 1991). Some of these issues may relate to the dominant role the police play in 'case construction' (McConville et al, 1991) a process involving 'interpretation, addition, subtraction, selection, reformulation and in some cases, 'creation of evidence' in order to build a 'legal case'' for prosecution (Eady, 2003: 21). This process is driven by crime control values and clashes with the public rhetoric of the law proclaiming due process ideals of fairness and equality (Eady, 2003; also see McBarnet, 1981). It is also a process that relates to investigative mindset, as previously mentioned. Later research on PACE highlighted other issues, including those associated with abolition of the unqualified right to silence in the Criminal Justice and Public Order Act (1994) and the importance of ensuring that *all* suspects get the protections they are entitled to (Sanders et al, 2010; Edwards and Stockoe, 2011).

Clearly, miscarriages and official recognition of their causes, were important factors in instigating PACE. However, there remained much work to do, particularly in relation to improving the quality of police interviews. The first ever study examining real-life police interviews on a grand scale revealed the use of problematic questioning styles and a sustained focus on securing confessions rather than a reliable account of 'what happened' (Baldwin, 1992). Miscarriages which occurred from the mid-1980s, including those of Ashley King and Mark Clery (Innocent, n.d) reinforced these findings. These cases possessed features similar to those revealed in the Catford Three (and indeed the Jones) case. Importantly, expert witnesses would present psychological theory and research at the subsequent appeals of some of these individuals, highlighting issues relating to coercive questioning, vulnerabilities and false confessions (Gudjonsson, 2003). This situation indicated that change of a 'different nature', relating to police interviewing practice and training, was still required.

#### Blossoming reform

The impact of media revelation of poor police investigative and interviewing practices in these, and other cases, began to seriously damage public confidence in the CJS. This was further eroded with the early 1990s revelation that such practices had contributed to the wrongful convictions of individuals for terrorist-related bombings in the cities of Birmingham and Guildford during the 1970s. As the convictions of these individuals were quashed, one of them publicly announced: *'The police told us from the start that they knew we hadn't done it. That they didn't care who done it...they were going to frame us...'* (Paddy Hill in O'Rawe, 2017, p.x) and an appellate judge acknowledged that officers involved in one of the cases *'must have lied'* (Lord Lane in Rose, 1996: 1).

Once again, the exposure of miscarriages, brought about calls for further reform. In response, the Royal Commission on Criminal Justice (RCCJ) was established in 1991. Aiming to review and improve the efficiency and effectiveness of the criminal justice process, including the police investigative and interview process, the RCCJ commissioned bespoke research, including 15 psychological studies. Many of the recommendations in its subsequent report (1993) not only failed to address the causes of miscarriages, they ultimately weakened due process protections for the accused, (for example, police powers of questioning were increased and suspects' rights in some areas, curtailed) (Bridges and McConville, 1994), reflecting politically, a move towards tougher crime control measures (see Nash and Savage, 1994), which continues to the present day<sup>4</sup>. However, the report did ultimately

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<sup>4</sup> See for example, changes introduced in the Criminal Justice Act (2003) relating to disclosure of previous convictions, abolition of the double jeopardy rule, and the use of anonymous and hearsay evidence (Sanders et al, 2010).

spring-board establishment of the CCRC (mentioned above). It also concluded that, confessions continued to play '*...too central [a] role in police investigations*' and securing convictions (1993: 64).

This conclusion was based, in part, on the findings of the psychological studies mentioned above, which examined several issues relating to custodial questioning (Moston and Stephenson, 1993) and protection of vulnerable suspects (Gudjonsson et al, 1993). The latter study was later extended to investigate the relationship between different types of psychological vulnerability and confessions (Gudjonsson et al 1994), factors that predicted the likelihood of a confession and interviewing techniques associated with the breaking down of resistance during questioning (Pearse and Gudjonsson, 1999). This research built on earlier work on false confessions and psychological vulnerability and the development of a taxonomy (comprising voluntary, coerced-compliant and coerced-internalised) of false confessions (Kassin and Wrightsman, 1985) and was later added to with identification of the sources of pressure (internal, custodial and non-custodial) on interviewees. This research evidenced how some dispositional and situational factors increased interrogative influence in general and risk of false confessions, in particular (see Gudjonsson, 2003).

In the early 1990s, the appellate courts increasingly recognised such issues in admitting expert evidence relating to concepts such as 'interrogative suggestibility', 'compliance', 'borderline intelligence' and 'personality disorder' (see Gudjonsson, 2003) as factors that may make a confession unreliable. The appeals of Engin Raghip in 1991 and Judith Ward in 1993 were particularly important for psychology in this regard, as the criteria for the admissibility of psychological evidence in cases of disputed confessions, were broadened (Gudjonsson, 2003: 334). Psychological research of this nature impacted, and continues to impact on law, trial verdicts and appellate decisions. It also impacted ultimately on police practice, not least due to the input of expert witnesses at the appeal of Stephen Miller (1992), involving a miscarriage of justice wherein a vulnerable individual had been bullied and intimidated into making a confession in the presence of a solicitor. The confession, which had been recorded, led Tom Williamson (1994: 17) a former senior police officer, turned academic psychologist, to conclude that the police had a '*serious skills deficit in its ability to obtain evidence through questioning*'. Miller's confession was used in police interview training as a lesson to learn from and Williamson (1994: 109) played a key role in what happened next.

A key challenge for psychological researchers at this time then, was how to ensure effective, ethical custodial questioning which prioritised searching for the 'truth'; over gaining 'proof' via a confession. Important progress was made soon after with the development by psychologists (alongside lawyers and police officers) of the PEACE investigative interviewing model (Milne and Bull, 1999; Williamson, 2009). Rooted in psychological theory and research, this model (of the recommended phases of an interview process), recognised that information-gathering should not be confined to the interview, but should also play a role in the planning and preparation for that interview. PEACE, (a mnemonic for the Planning and Preparation, Engage and Explain, Account, Closure, and Evaluation stages of an investigative interview) consisted of two interview types: i) 'conversation management' - for more resistant interviewees (Shepherd, 1993; Shepherd and Griffiths, 2013) and ii) the 'cognitive interview' - for more co-operative interviewees (Fisher and Geiselman, 1992; Milne and Bull, 1999).

Investigative interviewing is a difficult skill to master and if poorly performed may fail to generate good quality evidence. Therefore, over the next decade, over 140,000 officers in England and Wales were trained in the PEACE model (Milne et al, 2007). In 2001, a national evaluation of PEACE revealed a 'mixed bag' of results. PEACE training had greatly improved the quality of suspect interviews (Clarke and Milne, 2001; Clarke et al, 2011) particularly officers' interviewing style (for example, there was reduced use of leading questions) and legal compliance (there was more frequent provision of information to suspects, such as notifying them of their right to legal advice).

However, the listening skills of interviewers remained poor and 10% of the interviews examined involved potential breaches of PACE (Sanders et al, 2010). Additionally, over time, some officers 'returned' to their 'old' interview techniques, demonstrating a need for regular training updates (Wright and Powell, 2006). Nevertheless, the model worked (leading to a fuller account from suspects) and represented a more ethical approach (Walsh and Bull, 2010).

Another finding from the PEACE evaluation was that the skills levels of officers remained variable (Clarke and Milne, 2001). Clearly, the 'one-size-fits-all' model required development. In response, psychologists created the 'Tiered Approach' to interview training (Milne, et al 2019). In 2007, this was enhanced and incorporated into the Professionalising Investigation Programme (PIP) intended to increase the professionalisation of all investigators (Centrex, 2005a). This 5-tier training strategy (from tier 1, introducing interviewing to new recruits; to tier 5, introducing the specialist 'interview coordinator' role into serious and complex crime cases) provided theory-driven developmental interview training, specific to officer ability and career-stage. The approach also included elements relating to interviewing vulnerable individuals and supervising/monitoring interview quality and was subsequently adopted in several countries, including Australia, New Zealand, Canada and Norway (Griffiths and Milne, 2018).

Importantly, some psychological research has suggested that 5-tier interview training results in not only improvements in interviewing skills, but that there are broader impacts in the workplace, including an emphasis being placed on the collection of accurate information in investigative work more generally (Scott, 2010). The principles of investigative interviewing may also have a broader regulatory impact in that lawyers representing clients at interview may remind officers of these principles when appropriate (Sanders et al, 2010). However, some issues remain, including the fact that despite the cognitive interview element of PEACE being taught across the tiers, alongside acknowledgement that it is best practice, some of its components are rarely used (thereby lacking transference to the field) (Milne et al, 2019) – an issue returned to shortly.

Relatedly, whilst PEACE and 5-tier interview training have facilitated a change in the ethical conduct of interviews; some officers, particularly time-served investigators, continue to believe that a confession-focussed approach to questioning suspects is the optimal way to secure the facts of an incident (Bearchell, 2010: 71). Furthermore, when police are under pressure to get a result in, for example, a high-profile case, they typically employ all tactics available to them despite interview training. Consequently, some innocent individuals may confess (Gudjonsson, 2003: 55). Clearly, there is some distance to travel before a confessions-focus is completely erased. Such problems may be ameliorated through the supervision of investigative interviewing, which may also improve quality (Clarke and Milne, 2001). However, whilst Clarke and Milne's recommendations for this were integrated into the PIP (Centrex, 2005a); training is still not widely offered to police supervisors, partly due to limited resources. Undoubtedly, quality assurance is costly in this regard, however it is a key cog in the wheel of transformation.

Over the last 40 years or so, psychologists have conducted numerous studies, highlighting issues relating to police questioning, including problems with existing techniques and information on what alternatives are most effective. Certainly, they have made a critical contribution to the development of interviewing practice in the UK (and in some other countries, such as Norway (see Griffiths and Rachlew, 2018)). In this respect, their work has scaffolded the general move away from a confession-focussed interrogational approach; to a more professional approach (focussed on information-gathering through investigative interviewing) (Milne et al, 2019). As mentioned earlier, this reform was initially catalysed, in the 1970s not by the Jones case, but by the Catford Three case. However,

ultimately it did (alongside other developments), benefit Noel Jones, as it led to the arrest and conviction of the true killer of Janet Commins and to Jones' wrongful conviction being exposed.

#### *The investigation into, and interviewing of, Stephen Hough*

Stephen Hough came to police attention in 2016, following a turn of events going back a decade earlier. In 2006, advances in the field of DNA testing led to a re-opening of the Commins case, based on the belief that Noel Jones did indeed have an accomplice (most likely Michael Orford), and that a case review might bring him to justice. On testing samples from Janet Commins' clothing preserved from the 1976 crime scene, police obtained one, and only one, DNA profile. This belonged to neither Jones nor Orford and when uploaded to the National DNA database, did not match any existing profiles (IOPC, 2018). There it remained, until 2016, when a 15 year-old girl reported to police that she had been sexually assaulted by a man at a house party. That man was Stephen Hough. Hough was arrested and his DNA taken. This was found to match the profile obtained from the Commins case.

Benefitting from 40 years' progress, the ensuing complex investigation (Operation Orbicular) and interview process, differed markedly from that which took place in 1976 (IOPC, 2018). This was managed by a highly experienced SIO who had benefitted during his service, from the drive within the UK Police to professionalise investigative and interview processes. By this stage in his career, he was an accredited PIP tier 3 investigator and tier 4 strategic adviser, highly trained in complex investigation. He led his team on a detailed investigative strategy which enabled him to eliminate Jones and Orford from any involvement in the crime. In doing so, he re-examined the statements made by Jones in his police interviews and concluded, just as Janet's uncle had 40 years earlier, that they were riddled with inconsistencies and things that made no sense (Y Detectif, 2018).

In conducting his investigation into Hough, the SIO was supported by another feature of the professionalisation of policing agenda, namely a gold group. Comprising senior police officers and external community stakeholders, this strategic forum managed the risk presented by Hough whilst he remained in the community and oversaw the investigation process (challenging mindsets and reviewing investigative decision-making and strategies adopted). Importantly, the concept of gold groups was developed in response to recommendations arising from an inquiry (MacPherson, 1999) into another miscarriage (a failure to convict) relating to the racist murder of Stephen Lawrence in 1997.

Drawing on psychological research pinpointing the cognitive weaknesses that may negatively influence investigative and decision-making processes, this inquiry identified the cognitive biases present, and quality assurance measures absent, in the Lawrence investigation. It concluded that oversight of these processes was crucial in ensuring that errors made at one stage of an investigation, could be corrected at a later stage (Poyser and Grieve, 2018). The Inquiry's report ultimately helped to drive some of the recommendations from psychological research into practice in the form of the Murder Investigation Manual (ACPO, 2006) which aimed to institutionalise review of serious crime investigations and the aforementioned PIP (Centrex, 2005a)). The Core Investigative Doctrine (Centrex, 2005b) also drew on psychological research in advising police investigators to avoid rushing to premature judgements, question assumptions, and seek to disprove their theories. These reforms impacted on Operation Orbicular in several ways, including the fact that the SIO was required to meticulously document, and explain, his decision-making at every stage of the investigation (Y Detectif, 2018).

When Hough was eventually arrested, due to the reforms previously discussed, he had the benefit of legal representation as required by PACE. Additionally, the SIO was supported by a specialist tier-5 interview adviser who provided guidance on how Hough should be questioned and the evidence-based strategies to be used to gain the fullest account possible from him. As Hough's interviews were video-recorded, it was possible, at his later trial, for the court to observe, and be satisfied that, they had been conducted appropriately (Y Detectif, 2018).

Before this trial could begin however, another matter had to be settled. This was a unique case, a first in British legal history, as Jones stood convicted of a crime which Hough was now to be tried for as the sole culprit. Quoting his interpretation of s.74 of PACE, the trial judge told the jury that before beginning to consider whether Hough *was* guilty of the offence, they must be satisfied beyond reasonable doubt that Jones *was not*. The jury returned a verdict of not guilty and Jones' conviction was later formally quashed (Williams, 2017a). Hough was found guilty in the trial that followed. A troubling finding from the re-investigation into Hough was that in the time between him evading justice in 1976 and his conviction 40 years later, he had victimised others, including a young woman whom he had attempted to strangle shortly after he had killed Janet (Y Detectif, 2018).

Clearly, in the time between Jones' wrongful conviction and Hough's rightful conviction, police investigative and interviewing processes, have been reformed and professionalised in the UK. This has reduced the incidence of certain forms of miscarriages, particularly those related to some of the problems featured in the cases discussed. Perhaps one of the most important contributions that psychologists have made to this area, has been to encourage investigators to see themselves as ethical professionals who value the learning opportunities presented to them by miscarriages. Certainly, the SIO managing the Hough investigation, stated that he had learned lessons from the Commins case and crucially, that he felt he had a '*moral obligation*' to apologise to Jones whom he was proud to see have his conviction quashed due to his investigation (Y Ditectif, 2018, n.p).

It is important however, to remember that much psychological theory and research, despite its robustness and obvious utility, does not, (as alluded to earlier in this discussion), make its way into real-world policing and if it does, is rarely fully utilised/may be diluted, due to an array of competing pressures and inhibitors, internal and external to the police organisation. These include the changing socio-political circumstances of policing and crime control, funding issues caused by austerity measures, (likely to worsen post-COVID-19) and obstacles to change that, to some extent, remain embedded in police organisational culture) (Milne et al, 2019). Similarly, whilst miscarriages and the lessons learnt from them, have driven some reform within policing, a frustration expressed by many is that *more* is not learnt (see the House of Commons Justice Committee, 2015). Furthermore, the reform that *has* occurred has involved individuals, such as Noel Jones, being harmed in the process. A more proactive driver of change is required, one which 'misses out the miscarriage' and which also draws on psychological research from other jurisdictions (Fahsing and Rachlew, 2012).

Certainly for change to occur, it must happen in collaboration with academics and must be driven from within the police organisation (Griffiths and Rachlew, 2018). A very recent, promising development is the Framework for Investigative Transformation (FIT) (Griffiths and Milne, 2018). Developed by UK psychologists, this details eight factors that must be present if police organisations are to achieve the goal of conducting open-minded, professional, evidence-based investigations. These are: leadership (which recognises and embraces change aimed at optimal performance and fosters a learning culture), legislative framework (which recognises the need for balance between the powers of the state and protection of individual rights and which is enforced by other parts of the CJS), investigators' knowledge-base (grounded in contemporary research and theory), training and knowledge regime (fit for transference to real-life practice), quality assurance mechanisms (to

ensure continuance of standards after training – whilst costly, and therefore often neglected, this is essential, particularly to guard against skills fade), the ability/skills set of investigators (investigators' knowledge and skill acquisition as individuals) and technology (to improve transparency, fairness and performance). FIT provides the potential to '*break the reactive cycle of responding to failure*' and to address the 'transference problem' in policing worldwide (see Griffiths and Milne, 2018: 273).

## Conclusion

*'...the person who...took Janet's life has been living in our community all these years...'* (Derek Ierston in Williams, 2017b: n.p).

Many people were harmed by the killing of Janet Commins and the flawed police investigation and interview processes that followed. These included Janet, whose life was abruptly taken; Janet's family, who were torn apart by her death and whose pain was renewed when they discovered that her real killer was someone they had always known; the individuals who became Hough's next victims after he evaded capture in 1976; and Noel Jones, whose life was ruined by his wrongful conviction. For sure, miscarriages of justice create ripples of harm, which often continue for decades. Therefore, every effort should be made to reduce their occurrence.

This paper has argued that much of this effort should be concentrated on the police investigative, and particularly the interview process. Thanks to psychologists, working alongside UK police – a joint partnership with the shared goal of 'getting it right' - there is greater knowledge and understanding of factors that increase the likelihood of a miscarriage relating to policing, occurring. For sure, the contribution of psychological theory and empirical research to progressing and professionalising investigative and interviewing practices and processes in the UK in terms of facilitating the 'search for the truth approach', is indisputable. Crucially, in the time between the 1970s and the second decade of 21<sup>st</sup> century, it has demonstrated that the risk of certain forms of miscarriages can be minimised through i) the development of high-calibre investigation and interview processes, particularly good-quality, careful questioning of suspects, (as this will reduce dependence on confessions evidence) and the development of enhanced processes which challenge investigative mind-sets, ii) greater appreciation and awareness in relation to interviewing vulnerable suspects, and iii) a continued focus on, and commitment to, evidence-based policing, whereby knowledge rooted in robust research is utilised within the field. This research agenda has been driven by the exposure of miscarriages, legislative reform, and a desire within the UK police service to embrace the learning opportunities miscarriages present. However, we must now move beyond this, to focus on achieving proactive change, FIT for 21<sup>st</sup> century policing.

It would be wrong to conclude that miscarriages are no longer a problem in the UK. Recent cases demonstrate that ensuring that police interviews are *always* undertaken professionally is difficult and that, despite training officers to recognise the existence of cognitive biases, they continue to impede investigative decision-making (Innocent, n.d). This underlines the need for psychologists in the UK and worldwide to ensure that they persist with their scientific inquiries (and where possible, collaborate with practitioners), so as to continue to identify weaknesses in police investigative and interview processes and provide evidence to help ensure that measures that work to reduce these weaknesses are proactively implemented.

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