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 Criminal • Cases • Review • Commission

CRIMINAL APPEAL ACT 1995

**STATEMENT OF REASONS FOR A REFERENCE TO THE COURT OF
 APPEAL**

CCRC Reference:	00303/2010
Applicant:	Omar Benguit
Applicant's Representatives:	CLP solicitors
Court:	The Court of Appeal Criminal Division Master Egan QC Royal Courts of Justice The Strand London WC2A 2LL
Other parties to the appeal:	The Director of Public Prosecutions FAO Dean Ponder CPS Headquarters Rose Court Southwark Bridge London SE1 9HS

In the exercise of its powers under the Criminal Appeal Act 1995 ("the Act") the Criminal Cases Review Commission ("the Commission") has considered the application of Omar Benguit for review of his conviction.

The Commission has decided to refer Mr Benguit's conviction to the Court of Appeal.

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Details of Conviction and Sentence

Date:	31 January 2005
Court:	Crown Court at Winchester
Offence	Sentence
Murder	Life imprisonment

Summary

- i. The Commission may refer a conviction to the Court of Appeal only if there is a real possibility that the conviction will be overturned. The reference must be based on some new evidence or argument that was not raised at trial or appeal, unless there are exceptional circumstances.
- ii. Further details of the Commission's powers are outlined in Annex A.
- iii. The Commission has decided that there is a real possibility that Mr Benguit's conviction will not be upheld and is referring it to the Court of Appeal. The Commission's decision is explained in the "Analysis and Reasons" section of this Statement of Reasons. The grounds on which this case is being referred are summarised in the "Decision" section.
- iv. The position in relation to disclosure of material is set out in Annex B.

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The Trial

This section summarises the background to the case and the evidence and arguments put forward by the prosecution and defence at trial. It does not necessarily reflect the Commission's view of that evidence or of those arguments or indeed the applicant's assessment of the evidence or arguments as presented to the Commission.

Background¹

1. Jong-Ok Shin, known to her friends as 'Oki', was a 26 year old Korean student living, studying and working in Bournemouth. In the early hours of 12 July 2002, shortly before 3am, Ms Shin was attacked while walking home from a night out with friends. Her assailant inflicted three stab wounds from behind, which were to prove fatal. A number of individuals who administered to Ms Shin recalled a dying comment that she had been attacked by a man wearing a mask, either from Ms Shin herself, or from second hand information they had overheard.
2. While no-one witnessed the attack itself, a number of residents who lived near to the scene recalled hearing either a moan or a scream at around the time of the attack, as well as the sound of Ms Shin falling against a car. One witness, as will become relevant later, believed he had heard someone who may have been Ms Shin talking or arguing with someone who had a foreign accent shortly before the attack, he had seen an oriental woman walking briskly along Malmesbury Park road after he had heard the exchange, and shortly before hearing the sounds of the attack.
3. While the murder weapon has never been found, the injuries to Ms Shin indicated that a knife with a blade of approximately 6 inches with a blade tapering to a point was used.
4. Omar Benguit, a local drug addict, was arrested and charged with Ms Shin's murder after an account was provided to police by Beverley Brown, herself a drug addict and occasional prostitute. Mr Benguit had a history of criminal offences. These included a conviction arising from him stabbing a householder with a knife in the course of a burglary, a conviction relating to threatening to stab a member of the public with a syringe which he claimed to be contaminated with AIDS, and a conviction in respect of carrying a knife in public.
5. After initially giving misleading and inconsistent accounts to police, Ms Brown provided a video recorded interview in which

¹ Summing-up at Annex C, Tab I.

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Wrong - Mr Woolry did not flee the country. He was deported on 5/9/02 as an overstayer after being arrested and interviewed. Who at Dorset police gave this information to the CCRC and was this impression conveyed to the jury who asked about him, or were they simply left to speculate on whether he had pleaded guilty or was being tried separately?

If the CCRC was mis-informed about Woolry, were they also misinformed about the identity of the person whose hair was found at the scene of the crime?

she claimed to have been with Mr Benguit at the time of the murder, as well as two other men. While not actually witnessing the stabbing itself, Ms Brown's account was that she had been present in the immediate prelude to, and aftermath of, the attack on Ms Shin. From her witnessing of those events, she stated that Mr Benguit had been responsible for the stabbing. She also implicated a man named Nick Gbadamos, and another named 'Darius', subsequently identified as Delroy Woolry, a Jamaican national who subsequently fled the country. In addition to the murder, Ms Brown also claimed to have been raped by all three men on the night in question, as well as on a subsequent occasion by Mr Gbadamosi. Mr Gbadamosi was himself charged with 2 counts of rape and 1 count of assisting an offender.

The trial from which this conviction arose was the third and final trial in respect of this matter, owing to the fact that two previous juries were unable to agree on a verdict.

Trial history

7. At the first trial, in August 2003, the jury were unable to come to a verdict on 1 count of murder and 1 count of rape in respect of Mr Benguit. Mr Gbadamosi was acquitted on both counts of rape, but the jury were unable to agree on the count of assisting an offender.
8. At the second trial, in April 2004, Mr Benguit was acquitted on the single count of rape, but the jury were unable to agree on the count of murder. Mr Gbadamosi was acquitted on the remaining count against him, that of assisting an offender.
9. The third and final trial took place in January 2005, by which time Mr Benguit was the sole defendant and facing a single count, murder.

Prosecution evidence

10. **Beverley Brown**², of the prosecution witness of to give evidence against Mr Benguit, Ms Brown was clearly the most crucial. Her evidence directly related to the attack on Ms Shin. Following her providing information to police, she was adopted into the witness protection programme. She was, by her own admission, a drug user and prostitute, as well as a prior police informant.

² Transcript of evidence and cross-examination at Annex C, Tab 2.

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11. Ms Brown said that she had known Mr Benguit for around a year prior to the murder, and knew that his preference was for crack cocaine, albeit he used heroin occasionally. She also said that Mr Benguit mixed his drug use with drink.
12. Ms Brown recalled being with Mr Benguit and Mr Gbadamosi in the Richmond Arms a few days prior to the murder. The subject of Korean girls was raised, and Mr Benguit and Mr Gbadamosi made lewd comments about wanting to have sex with them, and one Korean girl in particular who they had seen in the pub.
13. CCTV footage seized from the Richmond Arms showed Mr Benguit entering the premises on 30 June 2002, about 2 weeks prior to the murder, but only staying for a short time. Despite the seizure of extensive additional footage from the premises, no other sightings of Mr Benguit were recorded, or of Ms Brown, or Mr Gbadamosi.
14. Ms Brown said that on the night of 11 July she had been with Mr Miller, driving him around while he committed crime in order to buy drugs from the crack house. By about midnight, Ms Brown was at the crack house. Mr Miller wanted to go back out, and Ms Brown went with him. Further crime was committed before Ms Brown dropped him off near his home.
15. Ms Brown explained that the pair had been using several different cars around that time, but thought the vehicle on the night in question was either a red Renault or a Volvo.
16. Having dropped Mr Miller off near a local petrol station on Charminster Road, Ms Brown proceeded to some traffic lights, whereupon she heard shouting. She saw Mr Benguit with Mr Gbadamosi and 'Darius', and it had been Mr Gbadamosi who had been the one shouting initially. She stopped and agreed to give them a lift to the crack house. She recalled that she had picked them up from near to a chemist's on Charminster Road, near to the junction with Malmesbury Park Road.
17. With the three men in the car Ms Brown proceeded along Malmesbury Park Road, where she saw a small figure walking along the pavement. Mr Benguit shouted out the window 'look at the arse on that', and told Ms Brown to stop so that he could persuade the woman to come back and 'party' with them, i.e to have sex. According to Ms Brown, the men were generally 'rowdy', but Mr Gbadamosi did not want to stop, but instead wanted to go straight to the crack house.
18. Ms Brown said that she was unable to stop immediately, owing to parked cars, but managed to pull over further down Malmesbury Park Road, towards the Brunswick pub. All three men got out.

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Ms Brown got out but couldn't see where the men had gone, so sat back in the car and started roll a joint.

19. Before Ms Brown had had time to finish, the three men came running back to the car shouting at each other, swearing and generally going 'beserk'. Mr Gbadamosi was shouting at Mr Benguit 'what the fuck have you done' and similar. Ms Brown was ordered to drive, but initially stalled the car. She put the headlights on, but was told to turn them off.
20. Ms Brown recalled the men arguing all the way to the crack house, and Mr Gbadamosi telling Mr Benguit, who was drunk, that 'you can't handle your drink'. She turned round and saw what she believed to be small patches of blood on Mr Benguit's tee shirt, which he proceeded to remove and use to wipe some blood from his arm. Ms Brown assumed that there had been some sort of fight.
21. Ms Brown said that Mr Benguit had wrapped a knife in the tee shirt, before putting the tee shirt in a carrier bag which had been in the car.
22. Ms Brown recalled being with the three men back at the crack house and going up to Ms Sheridan's flat. The men had talked about a handbag snatch which had 'gone wrong', and that there had been a scuffle. They wanted crack cocaine and, once they had got it, wanted to leave. Ms Brown was reluctant to give them another lift, but agreed, explaining that 'you can't argue with them'. Ms Brown got the car and drove it to the front of the crack house, and the three men got in.
23. The tee shirt was swapped into a different carrier bag, which Ms Brown thought was of a Sainsbury's or Safeway's type. She recalled that it had an orangey coloured S on it. She drove the men to a cul-de-sac where there were some flats, and Mr Benguit used one of the flats to have a shower or bath. Ms Brown also stated that Mr Benguit changed into a beige tee shirt. She then dropped Mr Benguit off at another flat, and was told to drive Mr Gbadamosi and 'Darius' to the river at Ifford. She parked and the men got out, but Ms Brown was unable to say where they went or what they did. Subsequently, Ms Brown returned to the crack house. She said that she had been petrified of what had occurred, and had feared that she herself may be stabbed.
24. Ms Brown explained how she had been arrested in August 2002 in relation to shoplifting. She began talking to an officer named Fenn regarding the events of 12 July, but explained that she hadn't been very accurate. This, she said, was due to her wanting to keep herself out of matters and did not trust the police

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- at that time. She said, however, that she had been trying to give the officer 'hints' to point towards those responsible.
25. Ms Brown was extensively cross examined. She insisted that she had picked up the men in Charminster Road, and that her account of events was true. She said that she had no reason to lie. In relation to an earlier statement where she had described being in a police chase along with Mr Miller on the night in question, she insisted that this did occur, but police records proved otherwise. She then said that this was something that had occurred on a number of occasions, and that it was difficult to be specific owing to the fact that Mr Miller had used to 'do 30 cars a night'. She believed that she had picked up the men shortly after Mr Miller had stolen a chainsaw.
 26. Ms Brown was challenged about her allegations that the three men had raped her, followed by a later rape by Mr Gbadamosi. These allegations had resulted in not guilty verdicts at previous trials. Ms Brown became distressed at the raising of this issue, saying that she did not want to go through those matters again. Ms Brown stated that both the incidents of rape had occurred on the night of the murder, though accepted in a previous statement that she had said the second rape, by Mr Gbadamosi, had occurred in mid August. She said that she had been heavily on drugs when she had said this, and had been muddled about dates. As for why she had not reported matters to police, Ms Brown said that she had been an addict, been raped and didn't know what to do.
 27. It was put to Ms Brown that if, as she claimed, she had been raped by the three men earlier that night, she would not have subsequently gone to Mr Gbadamosi's home later to give him drugs, which is when she said that the second rape occurred. Ms Brown insisted, however, that this is what had happened, and that she had done what she had to. Pressed about the vehicle which had been used, Ms Brown said that she believed it had been a Volvo, but that she and Mr Miller had been using up to around 6 cars at the time.
 28. Ms Brown said that she had never wanted the issue of the rapes to be brought up, and that she was 'giving evidence for that girl not me'. She said that she had nothing to gain, and had been given no choice in the rape allegations being pursued to court (a matter which was confirmed). Ms Brown said that she had lived for two years with her 'life messed up' as a result of her involvement in the case.
 29. Ms Brown denied that she had only met Mr Benguit on a couple of occasions, and said that she knew him 'as well as anybody',

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and he had visited her flat on more than one occasion. She agreed that she had initially told police Mr Benguit's name was Omar Hussein, but denied having told a 'pack of lies'. She said that if she had told a pack of lies she had 'done a good job. I have ruined my life by doing so'.

30. Ms Brown denied enquiring about a reward, but said that Mr Oliver had done. It was pointed out, however, that on an occasion when Mr Oliver had enquired about a reward, Ms Brown had said words to the effect of 'yes, what about it?'. Ms Brown said that she did not care about a reward, and that she didn't 'want a penny'.
31. Ms Brown was questioned about an initial description she had given describing Omar Hussein as black. She said that she had believed that, even if she gave a false name and described him as black, the fact that she said he had a false eye would lead police to Mr Benguit, without her having named him. Ms Brown also denied that Mr Benguit always had a shaved head, a matter relating to her description previously having referred to him as having hair. She agreed that she had initially incorrectly referred to Mr Gbadamosi as 'Mike'.
32. When it was put to Ms Brown that she had previously acted as a police informant, she readily agreed, and said that the person in question had been sent to prison as a result. She also agreed that she had engaged in a considerable amount of drug dealing in order to fund her habit, but said that she had been helping police as a result of coming to trust them, rather than for any benefit to herself. Ms Brown also denied that her actions had come about owing to her wanting 'out' of the drugs world, notwithstanding that she had told Ms Sheridan that she did not want to deal any longer. Ms Brown stated that her involvement with police had not, in fact, helped, but had led to her habit increasing to around £600 per day. Ms Brown agreed that, while in the witness protection programme, she had, unsuccessfully, asked officers to supply her with drugs, had been arrested for shoplifting and had sent a text message to an officer thanking her for giving her the chance of a 'fresh start'. She also accepted that she had had to be moved on a number of occasions owing to drug dealers learning of her background, as well as her disclosing her status, contrary to the agreed terms of the witness protection programme.
33. Ms Brown insisted that the conversation in the Richmond Arms about the attractiveness of Korean girls had taken place between Mr Benguit and Mr Gbadamosi, notwithstanding that she had previously said it involved Mr Benguit and another of his friends. She accepted that there had been a time when she had

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threatened to leave witness protection and return to Bournemouth, explaining that she missed the town and especially her daughter.

34. It was put to Ms Brown, and she agreed, that she had been provided with basic necessities during witness protection, including a home, and had had the support of witness protection officers. Ms Brown said, however, that her life had been far from happy and she had suffered considerably, over and above having to repeatedly come to court to give evidence.
35. Ms Brown accepted that she had initially named other men as being responsible, but said that she had said 'all sorts of things' because she had wanted to 'get away'. In relation to various other inconsistencies, such as previously saying that she had heard Mr Benguit and Mr Gbadamosi come to the crack house, as opposed to being with them herself, Ms Brown maintained her account that she had been trying to give police 'a picture' of what happened, without becoming involved.
36. Ms Brown maintained that her account of events was true, and said that she 'had no reason to be here' other than to say what had really happened.
37. **Joan Sheridan**, a middle aged drug dealer and addict, carried on her business from the upstairs flat at 47 St Clements Road, a notorious 'crack house' which features prominently throughout this case.
38. She recalled how, during the early hours of 12 July, she was visited by Mr Benguit and Mr Gbadamosi. Mr Benguit was looking for a change of clothes, and she described him as having been 'bouncing around', which she attributed to drugs. Ms Sheridan understood that he had been fighting and had blood on his hands. Beverley Brown had also been at the crack house that night, and had been pressed for a lift by Mr Benguit, which she had initially refused. Ms Sheridan told Mr Benguit and Mr Gbadamosi to leave, at which point they went to the downstairs flat to see another drug dealer, John Kelly.
39. Ms Sheridan said that she knew the date was 12 July owing to her upbringing as a catholic in Liverpool. She explained that 12 July was the date of the Orangemen's parade and, as such, a contentious and memorable date given her background.
40. Ms Sheridan agreed that she had been 'off her head' on drugs at the time of the murder, but stated that she was able to, and had to, 'keep her wits about her' in light of her activities. She accepted that, since the time of the first trial, she had discussed the case with a fellow witness, Charlotte Johnson. She had referred in a

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statement to a discussion between the two of them in which it was claimed that Ms Johnson recalled a knife being given to John Kelly by Mr Benguit for disposal. Charlotte Johnson, in due course, was to deny that such a conversation took place, while Ms Sheridan stated that this was what she had heard.

41. Ms Sheridan accepted that Mr Benguit was a frequent visitor to her flat, and that one day very much ran into another, with her not keeping regular hours.
42. Ms Sheridan was pressed about the fact that she had initially told police that she had no recollection of the night in question. She stated that this had been due to her not wishing to get involved, until such time as the enormity of the situation had 'hit her' and the realisation that it would not be right to say nothing. She denied that there was an inconsistency in the fact that she had told a previous jury that her memory had 'come back to her' over time, as against her claim that her initial denials to police were lies in order to avoid becoming involved. She stated that, in reality, her memory of events had never left her.
43. It was pointed out to Ms Sheridan that in her incriminating police statement, referred to as her 'main statement', she had only referred to Mr Benguit telling her that he had been in a fight and had blood on him, while at court, she had stated that she had seen the blood herself. She denied that her evidence at trial was the first time she had said this, stating that she must have said such to someone otherwise she wouldn't have been called as a witness.
44. **John Kelly**, the drug dealer who lived below Joan Sheridan at the crack house with his partner, Charlotte Johnson, also said that he had cause to remember the events of 12 July. He had been brought up in Glasgow and explained that 12 July and the Orangemen's parade was of cultural resonance for him.
45. Mr Kelly recalled being visited by Mr Benguit in the early hours of 12 July, with two other men who stayed in the background. Mr Benguit appeared agitated and was desperate to obtain drugs. He asked to wash his hands, which appeared to Mr Kelly to be dirty. His belief was that one of the other men was Mr Gbadamosi.
46. Mr Kelly accepted that, having moved to Bournemouth in 1979, 12 July was no longer a particularly significant date for him. He also agreed that nighttimes were particularly busy periods for him and his drug dealing activities, and that he had served Mr Benguit many times in the early hours of the morning. He also confirmed that, at the time, he had been heavily into the local drugs scene, and that days had a tendency to merge into one another.

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47. **Charlotte Johnson**, Mr Kelly's partner and fellow addict, recalled being in bed when she heard Mr Benguit shouting to be let into the flat. She then heard the sound of a tap being run and, latterly, Mr Kelly came into the room shouting about the fact that Mr Benguit had messed up one of his towels. Ms Johnson was aware of 12 July being of some significance to Mr Kelly and his background.
48. Ms Johnson confirmed that she had a very bad drug habit at the time, and that her days were largely indistinguishable. While accepting that she had not had any particular reason to keep track, she was sure of the day on which the incident she described had occurred. Ms Johnson denied having colluded with Mr Kelly over their witness statements, pointing out that they had not been living together by the time their statements were made.
49. Ms Johnson was challenged about the fact that she had previously said that Mr Benguit had stayed at the flat that night, and she responded by saying that she could not be sure. She maintained that she had not actually seen anyone that night, apart from Mr Kelly, and was therefore challenged about a previous occasion when she had said that she had seen Mr Gbadamosi in the hallway. She said that, as far as she could recall, she had seen Mr Gbadamosi, but it could have been someone else or, indeed, she could have been mistaken.
50. **Vicky Ling**, another addict who was staying with Mr Kelly and Ms Johnson at the time, heard people coming round the side of the flat. She remembered Mr Benguit coming in and speaking to Mr Kelly, before using the sink. She had a recollection of Mr Benguit coming into her room sweating and looking flustered, and wanting a change of top, which she helped look for. The two of them shared some drugs, after which Mr Benguit fell asleep.
51. Ms Ling accepted that she had not really been 'with it' at the time, owing to her drug use, and could not be 100% certain as to the date, though believed it was sometime in July. She said that, despite her drug use, she had not been completely 'obliterated'. She agreed that she had no particular cause to remember dates, and that Mr Benguit would frequently come to her room to chat when he visited the flat to buy drugs.
52. Ms Johnson was asked about the fact that, when giving evidence in a previous trial, she said Mr Benguit had appeared 'scatty', but otherwise normal. She explained that, to her, 'scatty' had meant the same as flustered. She was insistent that Mr Benguit had wanted a change of top. She was also challenged about a disparity with regard to her assertion that Mr Benguit had gone by

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- the time she had woken, while at a previous trial had said that Mr Benguit had still been present. She accepted that she had made a mistake, and said that she could not be sure as to this detail.
53. **Leanne Mayers** had not given evidence in the first trial, but had been called at the second trial. On that occasion her behaviour was so erratic as to lead to her being withdrawn as a witness. She appeared, however, as a witness in the third trial.
 54. Ms Mayers had known Mr Benguit for some five years before the murder. She said that Mr Benguit had a high drug habit at the time, running to around £150 per day. She recalled an occasion when she had seen Mr Benguit at the crack house with a knife, which was about 6 inches long and curved at the end. She could not, however, recall when this was.
 55. She also recalled an occasion when she had visited Mr Benguit's home, and shared a crack pipe with Mr Benguit and a local taxi driver called Shaun. She said that this had happened about a month prior to the murder. On the night in question, she had been at her mother's house, and learned of the murder the following day.
 56. Ms Mayers was asked about the fact that she had previously described the crack pipe incident as having taken place 'around the time' of the murder, but she said that she had got June and July confused on that occasion. She accepted that each day was much the same as the next.
 57. The relevance of Ms Mayers's evidence in respect of the crack pipe incident related to a claim made by Mr Benguit in his later police interviews, and in evidence. He had told police that at the time of the murder he had been with Ms Mayers and the taxi driver smoking the crack pipe and, therefore, cited this incident as an alibi. Ms Mayers's evidence, therefore, disputed this claim.
 58. **Shaun Phillipson** was the taxi driver referred to by Ms Mayers, as well as by Mr Benguit. He had got to know Mr Benguit, and recalled an occasion when they shared a crack pipe after he had given Mr Benguit, and Ms Mayers, a lift. He said that this had taken place around 2am to 3am, but put the date as sometime in May or June 2002. When challenged, he accepted that this incident could have occurred as late as the end of June, but was adamant that it had not taken place on the night of the murder. He said that he was sure that it could not have been the night of the murder owing to two matters. Firstly, he said that the incident with Mr Benguit had taken place at a particularly low point in his life, after which he had recovered. Secondly, Mr Phillipson recalled being diverted by police cars blocking the murder scene,

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- and was sure that this was not the same night as the crack pipe incident.
59. **Misty Collins** was the ex-girlfriend of Mr Benguit, who had been in a relationship with him in 1996, before he had become addicted to drugs. She confirmed that she had frequented the Richmond Arms pub in or around 1996, but not thereafter, and had not seen Mr Benguit since before 2001. Ms Collins said that Mr Benguit frequently wore hooded tops, but agreed that many young people in the area did so as well.
 60. Ms Collins's evidence related to the reasons why Mr Benguit had appeared on CCTV footage from the Richmond Arms. Mr Benguit had explained his presence at the pub by claiming that he had visited there to speak to Ms Collins, or a doorman that worked there, despite not being a regular patron. Ms Collins's evidence, therefore, was used to call into question Mr Benguit's suggestion that he had any cause to speak to her, owing to the fact that they had not seen each other for some time, and she had not been to the Richmond Arms since 1996.
 61. **Emilene Roberts** recalled an occasion when Mr Benguit had come to her home with crack cocaine. They smoked the crack together, along with Ms Roberts's gay partner. According to Ms Roberts, 'almost immediately' having smoked the crack, Mr Benguit had sex with both her and her partner. She agreed, however, that Mr Benguit had wanted sex in return for drugs, and that that had been what was agreed. She said that the incident had stuck in her mind because she did not normally have sex with men.
 62. **Suzanne Thomas**, Ms Roberts's partner, also recalled this occasion when Mr Benguit had smoked crack, followed by sex with her and Ms Roberts. She estimated that this had occurred in April, May or June 2002. She also said that Mr Benguit had stayed at their house the day before he was arrested, and described how he had been a 'mess', looking drawn and ill. As with Ms Roberts, Ms Thomas confirmed that the sex had been part of an arrangement with Mr Benguit in exchange for drugs.
 63. The evidence of Ms Roberts and Ms Thomas was called in respect of the alleged effect which crack cocaine had on Mr Benguit, which the prosecution asserted led to him becoming sexually aroused. This was relevant to the suggestion that Mr Benguit had approached and propositioned the victim in a sexually excited state resulting from the use of crack.
 64. **Andrew Miller** said that he had a cocaine habit of around £100 per day at the time, which he funded through crime and with the assistance of Beverley Brown, who used to drive him around in

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either a red Renault Savannah or a blue Volvo. He recalled Beverley Brown being at the crack house, to which he was a frequent visitor, in the early hours of 12 July. He had been with Ms Brown earlier, stealing in order to buy drugs.]

65. Mr Miller recalled that Ms Brown had borrowed his car late that evening, or in the early hours of the morning, but was unable to recall the time. He remembered, however, that she had taken the car to give Mr Benguit a lift. After being gone for an hour she returned, and was in company with Mr Benguit and another man. He described Mr Benguit, who he had known for some time, as appearing to be 'panicky' and arguing with someone.
66. When asked about whether he had, in fact, been 'out of it' on drugs at the time, Mr Miller said 'yes and no'. He said that although he had been under the influence of drugs, he had a high tolerance and still knew what he was doing. He said that, while he was unable to be sure about times, he was sure of the day on which these events had occurred, and denied having merged two separate incidents in his mind. He also said that he was confident in his recollection of events, and having lent Ms Brown his car, because he rarely let the car out of his sight.
67. **Carla Mills** stated that on an occasion in July 2002 Mr Benguit had visited her flat and had used her bathroom to shave his head, which she had thought at the time was a 'bit of a cheek'. She remembered this because Mr Benguit had come out of the bathroom having cut himself.
68. Challenged about the date, Ms Mills said that she was sure that it had been in the July, 15 July or thereabouts.
69. **Amanda Freeman** had been in prison for drugs offences until her release on 5 July, a week prior to the murder. She recalled an occasion when she had been staying with Mr Benguit and had been involved in discussions about ways to earn money. She herself had said that, while working as a prostitute, she would steal from her clients. She recalled Mr Benguit referring to the fact that a student had been stabbed, about which she didn't enquire any further.
70. According to Ms Freeman, there was also an occasion when she had done some laundry for Mr Benguit. She happened across a top with what appeared to be a splash of blood on it. According to Ms Freeman, Mr Benguit had said that it related to something that had 'gone wrong'. She said that during her time with Mr Benguit he had 'not been very stable'.
71. When questioned about the conversation regarding the student being stabbed, Ms Freeman said that Mr Benguit had said that he

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had stabbed a student. Under cross examination, however, she accepted that he may not have used those precise words, but that that was her impression from what he had said. She was challenged about previously having said that this comment was made when a group discussion had taken place, as opposed to between her and Mr Benguit, but she said that she could not recall. She was also challenged about the fact that she had previously said that she was unsure as to whether it had been Mr Benguit or another person who had made the comment, to which she responded by saying that she believed that this was a different conversation the one to which she was referring..

72. **Richard Oliver** was Beverley Brown's partner at the relevant time, and described her lifestyle and how he had tried to help her. He recalled Ms Brown leaving to spend the day with Mr Miller on 11 July, and not returning until 9am the next morning. He described how, over the subsequent weeks, Ms Brown suffered from nightmares and was very depressed.
73. **John Cutting** lived in the same house as Mr Benguit from March to August 2002. He recalled an occasion, some time in July, when he was leaving the house and, through the window, had seen Mr Benguit sharpening a knife. He estimated that the knife had been more than 4 inches long, but could not be sure and accepted that he had only had a fleeting glimpse. He denied having suspected Mr Benguit of stealing, and stated that he had no reason to come to court to give his account, other than its truthfulness.
74. **Dr Kelleher** gave evidence in respect of the effects of drugs, in particular cocaine. He said that cocaine can lead to enhanced sexual drive, aggression and disinhibition, particularly when combined with alcohol. He agreed, however, that it was a complex area and that individuals reacted in different ways. He explained that research in this area was limited, owing to the fact of cocaine being an illegal substance.

Defence evidence

75. Mr Benguit gave evidence in his own defence³, and in so doing denied any involvement in the murder of Ms Shin. He said that he could not be '100% sure' of his whereabouts on the night in question, and had a bad memory due to drug taking.
76. Mr Benguit stated that, in 2002, he shaved his head regularly and, therefore, this practice had not been unusual for him at the time.

³ Transcript of evidence and cross-examination at Annex C, Tab 3.

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77. As for Ms Brown, Mr Benguit said that he did not know her well, and that he had only met her on three occasions in total, the first time being in 2001. He denied ever having socialised with Ms Brown, either at the Richmond Arms or elsewhere, whether in a group of friends or otherwise.
78. Mr Benguit explained that he had a bad drugs habit in 2002, which was worse towards the end of that year. He said that he used both crack cocaine and heroin, and that at its height his habit cost £500 to £600 per day. He said he either got his drugs from the crack house, or from a place in Southbourne, and had funded his addiction through credit card fraud. Mr Benguit accepted that crack cocaine gave him a 'high', but denied that it caused him heightened sexual arousal. Recalling the incident with Ms Thomas and Ms Roberts, Mr Benguit agreed that he had had sex with one of them, and oral sex with the other. He said that it had been their mutual intention all along to exchange drugs for sex, and this was the reason for the liaison and his arousal, rather than the effects of crack cocaine. Mr Benguit also denied drinking alcohol, owing to effects on his Crohn's disease, although he had previously referred to having had 'a little drink' that night as well as telling police that he had drunk Fosters Ice.
79. Mr Benguit agreed that he had smoked crack with Vicky Ling on a couple of occasions, and that he had bought drugs from Mr Kelly and Ms Sheridan. He said, however, he would have remembered if there had been a time when he was in the same room as Ms Brown and Mr Miller.
80. As to his movements on the night in question, Mr Benguit said that he believed that he had visited a friend called Natalie Stanton, and that Ms Mayers had arrived at some point. He said he would have stayed until about 1am to 2am. Latterly, he and Ms Mayers took a taxi ride from a South African taxi driver (Mr Phillipson) to the crack house, before proceeding to Mr Benguit's home. There, he, Ms Mayers and Mr Phillipson smoked some crack, before Mr Phillipson left shortly thereafter.
81. Mr Benguit then recalled daylight breaking in the early hours of 12 July. He walked towards Bournemouth, in order to break in to his family's takeaway establishment to steal money, something he had done before. He borrowed a ladder, but decided against breaking in when he saw that the window he was going to use was closed. He walked back home, and was alone. En route Mr Benguit saw police cars near to Malmesbury Park Road. He said that he could not be 100% certain that this was the same night that he had got the lift from Mr Phillipson, as he walked the same route frequently.

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82. Mr Benguit denied there having ever been an occasion when he had asked Mr Kelly if he could wash his hands, or of asking for a change of clothes from Ms Ling. He said that their evidence, as with that of Ms Brown, had been untruthful.
83. In respect of visiting the Richmond Arms on an occasion in the days preceding the murder, Mr Benguit said that this had been to either speak to Ms Collins or a bouncer, and that the Richmond Arms was the only place he knew where he thought he might find Ms Collins. He denied that this related to Ms Brown's assertions regarding the conversation about Korean girls at the same venue.
84. Mr Benguit accepted that he had worn a hooded jacket on the night in question which was exhibited before the jury.
85. He said that, although only having owned the jacket for 2 months prior to the murder, he had washed it before being arrested, though could not recall when. He recognised the jumper which he had been shown as wearing on the night, but was unable to say how or why it had since disappeared. As for why some of his blood had been found on the jacket, Mr Benguit denied that this was because he had cut himself during an attack on Ms Shin, and explained that it was common for drug users to get blood on themselves.
86. Mr Benguit denied that he had been preparing to flee. He said that the fact that his belongings were found to have been packed up into 2 holdalls when his home was searched had had nothing to do with him, and that plans to travel to Liverpool had only been for the purposes of a short visit.
87. Regarding the inconsistencies and uncertainties arising from his police interviews, as to his movements, Mr Benguit said that he had been confused and his head had been 'bad', with his body in 'spasm' due to drug withdrawal, even though he had been declared fit for interview by a doctor.
88. In respect of a recorded telephone call to his brother that he had made from prison, and in which he had been insistent that he had been at the family takeaway establishment at the time, Mr Benguit denied that this was an attempt to concoct a false alibi. Rather, he said, he had been trying to 'find out' from his brother where he might have been, and was angry over having been charged with murder.
89. Mr Benguit explained that his drug use had escalated considerably by August 2002, and stated that this was due to having more money. He denied that it was as a result of the stress of having murdered Ms Shin.

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90. As for Ms Freeman, Mr Benguit disputed ever having made reference to stabbing a student, or that she had ever found blood on a top of his. He said that he never carried a knife for protection in 2002, even though he had previously been attacked and badly injured, and said he would never have shown off with a knife at the crack house. He explained that the reason Ms Freeman left his house was because he had thrown her out, unhappy at the fact of having woken to find her performing oral sex on him. Mr Cutting, he said, was mistaken in his account of seeing him sharpening a knife, as it was Mr Benguit's practice to keep his curtains closed, as well as the fact that he did not own a knife sharpener.
91. Mr Benguit asserted that all the witnesses against him had either been lying or otherwise mistaken in their evidence. He said that a number of witnesses must have colluded to give false evidence, though was unable to suggest a motive for such.

Verdict and sentence

92. At the conclusion of the trial Mr Benguit was unanimously convicted of murder, and sentenced to life imprisonment.

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The Appeal

This section summarises the arguments raised on appeal and the outcome of the appeal.

93. On 12 July 2005 Mr Benguit had an appeal against conviction heard by the full Court of Appeal, leave having been granted by the single judge.⁴
94. The first ground of appeal advanced on Mr Benguit's behalf was that the trial judge had been wrong to permit the third and final trial, i.e. the second retrial, to take place, given that two previous juries had failed to agree upon a verdict. It was argued, principally, that the evidence of Ms Brown, who the Court of Appeal stated was the most important witness in the murder case, had been so unreliable and inconsistent that it had been inappropriate to ask a jury to accept her evidence on a third occasion, particularly when account was taken of the lack of any forensic evidence against Mr Benguit. It was also argued that the evidence from others who had been at the crack house was also inherently suspect and, therefore, insufficient to justify a third trial.
95. The Court of Appeal, however, disagreed. It was held that the judge had given proper and careful consideration to the principles to be applied, and had been correct to determine that the evidential weaknesses in the case were the proper preserve of the jury.
96. The second ground advanced related to the admission of the evidence of Ms Mayers and Mr Cutting, which related to Mr Benguit's alleged carrying, or use of, knives. It was argued that such evidence had not been admissible applying the prevailing legal tests which were in force at the time and in any event, its prejudicial effect was such as to substantially outweigh its probative value. It was pointed out, in support of this argument, that this evidence amounted to a 'last resort' on the part of the prosecution to support the case against Mr Benguit.
97. The Court of Appeal concluded that the evidence of Ms Mayers and Mr Cutting was properly admissible, and that its probative value was such as to outweigh any prejudicial affect.
98. Mr Benguit's appeal against conviction was, therefore, dismissed.

⁴ Court of Appeal judgment at Annex C, Tab 4.

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The Applicant's Submissions

99. On 10 May 2010 the Commission received an application asking for a review of Mr Benguit's conviction. Throughout the course of the Commission's review, a number of submissions have been made in support of the contention that Mr Benguit's conviction can be regarded as unsafe. The submissions received can be broadly summarised as follows:

- New evidence to support a contention that Mr Danillo Restivo presents as a viable alternative suspect for the murder of Ms Shin, in light of 'striking similarities' between his offending history and the circumstances of the murder of Ms Shin.
- New evidence which reveals post-trial inconsistencies in respect of Ms Brown's account of events, and further evidence to call into question the accuracy of her evidence.

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The Commission's Review

100. In the course of its review of this case the Commission has considered the following:

- Mr Benguit's application together with supporting submissions.
- A transcript of the trial judge's summing up.
- A transcript of the evidence of Ms Brown.
- A transcript of the evidence of Mr Benguit.
- The Court of Appeal judgment.
- The HOLMES (Home Office Large Major Enquiry System) database in respect of the investigation into the murder of Ms Shin.
- The HOLMES database in respect of the murder of Heather Barnett (including material in respect of the murder of Elisa Claps.).
- Post mortem examination reports in respect of Ms Shin, Ms Barnett and Elisa Claps.
- Documentation requested of, and provided by, Dorset police.
- The Crown Prosecution Service files in respect of Mr Benguit's case.
- A tape recording of a public interest immunity hearing preceding the third and final trial.
- A copy of the 'Jeremy Kyle Show' featuring Ms Brown, together with other relevant material relating to her appearance.
- A report produced by Hampshire Constabulary, together with supporting material, in respect of enquiries conducted at the direction of the Commission, including an interview with Ms Brown.
- Expert reports prepared by Mr Neil Millar and Mr Matthew Cass on the instructions of Mr Benguit's representatives.

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Analysis and Reasons

Beverley Brown

117. Ms Brown appeared on the television programme 'The Jeremy Kyle Show' during 2008. Her appearance related to the case of Mr Benguit, and her experiences of being within the witness protection scheme. In the course of her appearance, Ms Brown provided an account in which she claimed to have actually witnessed Mr Benguit stab Ms Shin. It has been submitted that this inconsistency in Ms Brown's account is such as to further undermine her credibility as a witness.⁵
118. Additionally, the Commission has been provided with a report, and supplementary report, from a Mr Neil Millar, whose expertise includes analysis of CCTV footage and image comparison. He has undertaken a visual analysis of CCTV footage from Charminster Road on the night of Ms Shin's murder, in order to identify whether either of the two vehicles which Ms Brown said that she had been driving at the relevant time, could be identified from that footage. Ms Brown had previously, and consistently, described driving along Charminster Road immediately prior to picking up Mr Benguit and his associates which, in turn, was shortly before the murder occurred. Mr Millar has concluded that, of the vehicles which pass through the CCTV footage within what the Commission considers to be the relevant period of time, neither of the two vehicles described by Ms Brown can be identified. Furthermore, Mr Millar has provided a schedule of all the vehicles which did pass that point within the relevant time period, and has provided reasons why each can be excluded as being one of either of the two vehicles in question. This, it is submitted, further calls into question the account which Ms Brown provided at trial.
119. Ms Brown's appearance on the Jeremy Kyle Show has been the subject of an interview with her conducted by officers of the Hampshire Constabulary, acting under the direction of the Commission. In addition, enquiries have been made, and relevant material obtained, relating to how Ms Brown came to appear on the show.⁶

⁵ Transcript of television broadcast at Annex C, Tab 8.

⁶ Hampshire Constabulary report at Annex C, Tab 5 (subject to certain necessary redactions, but which do not impact on the issues concerned).

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The history of Ms Brown's television appearance

120. Prior to appearing on the Jeremy Kyle Show, Ms Brown spoke to a freelance journalist regarding her involvement in the case⁷. As a consequence of this, an article appeared in a women's magazine⁸. Her account in the magazine article was inconsistent with her evidence at trial. In the article Ms Brown claimed to have actually witnessed Mr Benguit stab Miss Shin. It was as a result of this article that the producers of the Jeremy Kyle Show approached Ms Brown asking her to appear on the show.
121. The Commission is satisfied that Ms Brown did not receive any payment for her appearance on the Jeremy Kyle Show, and that hospitality offered was minimal. In respect of the magazine article, it appears likely that she received in the region of £500, which was the 'going rate' at that time. To that extent, the Commission is satisfied that neither Ms Brown's appearance, nor the detail of her accounts, can be readily explained away wholly by reference to financial motives. Consequently, the Commission is of the view that her inconsistent account is one which she provided of her own volition, and must therefore be assessed accordingly.

Ms Brown's explanation

122. Ms Brown was interviewed by Hampshire Constabulary in respect of this matter on 1 April 2012. That interview was conducted by police acting under the direction of the Commission. In the course of her interview with Hampshire Constabulary, Ms Brown recounted how she was encouraged by her then partner to try and sell her story, as he felt that she had not fared well from the witness protection scheme. She explained that it was her partner who brought about the interview with the journalist, and he who had initially encouraged her to appear on the Jeremy Kyle Show, until he discovered that no payment from the producers would be made.
123. Ms Brown also claimed that she had received none of the money which had resulted from the magazine article. Instead, she claimed, her partner received the money and promptly spent it on himself, owing to the fact that she herself did not have a bank account at that time.

⁷ Transcript of recorded telephone conversation between Ms Brown and journalist at Annex C, Tab 10 (subject to necessary redactions, but which do not impact on the issues concerned).

⁸ Draft of article at Annex C, Tab 6 and transcript of published article at Annex C, Tab 7 (subject to necessary redactions, but which do not impact on the issues concerned).

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124. Ms Brown has explained her reference to having witnessed the stabbing by stating that this was a detail which, over time, she had come to genuinely believe, even though, in reality, she knew that she had not witnessed such. She also explained that her medication use over that period was such as to have had a serious and negative effect on her health and wellbeing.⁹

CCTV evidence - assessment

125. The Commission has been provided with two reports dated 29 May 2012 and 27 June 2012 by Mr Neil Millar, an expert in CCTV analysis and image comparison instructed by Mr Benguit's representatives. His reports relate to analysis of CCTV footage which was seized from a business premises on Charminster Road, the route along which, according to Ms Brown, she has driven just prior to picking up Mr Benguit and his associates.
126. Comparing that footage with images of the two vehicles which Ms Brown had, at various times, claimed to have been driving on the night in question, Mr Millar has concluded that neither of Ms Brown's vehicles appears on the footage. Moreover, Mr Millar has concluded each of the vehicles passing that location within the relevant time parameters can be positively excluded as being either of Ms Brown's vehicles. Consequently, it has been submitted that this further undermines Ms Brown's version of events in respect of her movements on the night in question and, therefore, her credibility.
127. The Commission has also however, had sight of reports prepared for Mr Benguit's representatives by Mr Matthew Cass from Transport Research Laboratories, who are leading experts in this field. His view differs from that of Mr Millar, and his report explains his reasons for stating that the basis upon which Mr Millar has excluded certain vehicles is not reliable.
128. In the Commission's view, this matter is not capable of providing substantive new evidence capable of raising a real possibility of the Court of Appeal overturning Mr Benguit's conviction. In coming to this view, the Commission has taken account of the fact that there is an important dispute in respect of the conclusions reached by the two experts who were instructed on Mr Benguit's behalf. In addition, the Commission considers that, in reality, this matter does not significantly extend beyond those aspects of the evidence at trial which, of themselves, called into significant doubt Ms Brown's evidence in relation to her particular movements on the night in question.

⁹ Transcript of interview with Ms Brown at Annex C, Tab 9.

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129. By way of some examples, the Commission notes that Ms Brown's account of dropping off Andy Miller close to a petrol station was wholly unsupported by relevant CCTV footage. Additionally, Her description of the flat in which she claimed Mr Benguit showered was shown to the jury to bear no relation to its actual layout, her account of being involved in a police chase on that night was unsupported, as were certain specific offences that she said had been committed by Mr Miller.
130. Taking these considerations into account, the Commission is unable to conclude that there is any substantive new evidence to further undermine Ms Brown's account of her movements on the night in question, or which, even at its highest, extends beyond those matters already before the jury.

Beverley Brown's post trial accounts - assessment

131. Ms Brown was a witness who had very many problems at the time of trial, and thereafter. There were numerous credibility issues which were well known to the defence, and jury, arising from both her lifestyle, as well as inconsistencies in her account. The previous acquittals of Mr Benguit and Mr Gbadamosi in respect of the charges of rape, as well as the previous acquittal of Mr Gbadamosi with regard to the charge of assisting an offender, serve to demonstrate that, at least in relation to previous juries, Ms Brown's evidence was not such as to be considered reliable. Indeed, such were the issues relating to Ms Brown that the trial judge specifically directed the jury as to the need for caution in assessing her evidence:

"So, members of the jury, it is in that context obviously that you will look at Beverley Brown as well as every other witness. You may think because she is so important to the prosecution case you would need to be cautious about pid:1651her evidence. She is, on any view, an admitted liar, not just generally but about the murder and those involved, and she has changed her account more than once, and up to October 2002 she led the police a merry dance. So look to see when you pid:1701consider her evidence, as Mr Pascoe has invited you to do, whether there is evidence from other people, whether there is independent evidence that supports her account."¹⁰

132. The Commission recognises, however, that Ms Brown's evidence was consistent throughout the three trials that Mr Benguit was responsible for the murder of Ms Shin, as well as the circumstances directly surrounding the incident. Ms Brown did not, as far as the Commission is aware, receive any financial reward, or consequent sentencing concessions, as a result of her

¹⁰ Summing-up at 10C – E.

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evidence. Additionally, no reason for personal animosity towards Mr Benguit was ever suggested at trial as a possible motive for Ms Brown seeking to falsely incriminate him.

133. The Commission also recognises that, notwithstanding the post-trial inconsistency in the account provided by Ms Brown to the media, she remains clear in her attributions of blame to Mr Benguit.
134. The Commission also notes that Ms Brown's account of actually witnessing the stabbing does at least bear some resonance with statements previously made to police, and disclosed to the defence, in which she describes having vivid nightmares about witnessing such, even though the Commission accepts her accounts to the magazine and the TV show are specifically on the basis she saw what she describes, not what she had dreamt. However, her most recent account is in accordance with her evidence at trial that she did not witness the stabbing of Miss Shin.
135. The Commission considers it to be clear that Ms Brown has demonstrated a continuing ability throughout her various accounts of events, to be inconsistent with regard to her account of events and, it could be argued, an ability or willingness to adapt her account depending on the forum in which it is being given.
136. In the Commission's view, this matter must be considered in the context of other inconsistencies and lies which arose in respect of Ms Brown's accounts, and as outlined both in her cross examination, as well as in the trial judge's summing-up. Such matters include both the general evolution of her account and the admitted lies she told police, as well as the following and specific examples:
 - Her initial attribution of blame to a man named Ricky Thompson.
 - Her inaccurate or untruthful claim to have been involved in a police chase on the night in question.
 - Discrepancies in her description of the flat in which she claimed Mr Benguit had showered following the murder, as compared to the actual appearance of the flat in question.
 - Her inconsistency as to the vehicle she had been driving on the night in question.
 - Allegations she made against witness protection officers which were found to be unsubstantiated and in some instances demonstrably untrue.

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- The absence of forensic evidence to connect Mr Benguit or Mr Gbadamosi to any of the vehicles associated to Ms Brown.
- The absence of any independent verification as to Ms Brown's movements on the night in question, notwithstanding the seizure and viewing of a considerable amount of CCTV evidence by police.

137. The Commission considers that, in this context, the post-trial accounts provided by Ms Brown, further undermine her credibility in respect of a crucial aspect of her evidence. In the Commission's view, such inconsistencies go beyond peripheral matters, such as Ms Brown's movements before and after the incident, but, concern a direct account of the incident itself.

138. The Commission considers that, had such matters arisen at the time of trial, they would have provided a further and highly significant issue about which Ms Brown would have doubtless been subject to vigorous cross-examination. Given the matters which were already before the jury in respect of grave concerns regarding Ms Brown's credibility, such further issues would likely, in the Commission's view, have been sufficient for the jury to conclude that Ms Brown was simply not a witness upon which any reliance could be placed. While the Commission notes that there was, to some limited degree, supporting circumstantial evidence against Mr Benguit, it is apparent that such evidence was also reliant upon witnesses whose credibility was accepted as being questionable. The Commission also considers that, notwithstanding such credibility issues in respect of the remaining evidence, the extent of their evidence would not be sufficient to have sustained the prosecution case in the absence of the jury accepting the evidence of Ms Brown.

139. In applying the considerations under section 23 of the Criminal Appeal Act 1968 (as amended), the Commission is of the view that there is a real possibility of the Court of Appeal concluding that the new material in respect of Ms Brown should be admitted in the interests of justice. There is a reasonable explanation for why this material was not adduced at trial or appeal, given that Ms Brown's media appearances post-dated such. The Commission considers that the material is, of itself, capable of belief, as it is a record of what Ms Brown has said in the media post-trial. Whether or not the material in question could have been admitted in the course of prior proceedings, the Commission is of the view that, at the very least, they provide matters upon which Ms Brown would have been subject to further cross examination. The Commission also considers that the

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material does, potentially, provide a ground for allowing an appeal, given its relevance to the principle prosecution witness in the case. In the Commission's view, therefore, the issue in respect of this material centres upon its potential impact on the safety of this conviction, rather than questions of admissibility.

140. The Commission has concluded that, were the Court of Appeal to consider this matter in light of the clear problematic nature of the evidence at trial, as well as the history of proceedings in respect of this case, there is a real possibility of the Court concluding that this conviction is unsafe.

Danillo Restivo

141. Danillo Restivo is an Italian national who came to live in Bournemouth in or around May 2002. At the time of his arrival in the UK, he was the principal suspect in relation to the disappearance of a teenage girl named Elisa Claps, who went missing on 12 September 1993 in Potenza, Italy. Mr Restivo was the last known person to have seen Ms Claps alive, having arranged to meet her outside a local church. He was subsequently convicted, and served a sentence of imprisonment, for providing false information to the Italian murder enquiry. Since that time, the body of Ms Claps has been discovered secreted in the loft of a church at which she had arranged to meet Mr Restivo on the day of her disappearance, and Mr Restivo has been convicted, in absentia, of her murder.
142. On 12 November 2002 (four months after the murder of Ms Shin in July 2002) Heather Barnett, who lived opposite Mr Restivo, was brutally murdered in her home. Mr Restivo became a suspect for that murder in 2004 and, subsequently, was convicted of Ms Barnett's murder in 2011.
143. At his trial for the murder of Heather Barnett, the prosecution adduced evidence in respect of the murder of Elisa Claps to establish that Mr Restivo was responsible for that offence, and in order to assert that strong similarities between both offences pointed towards Mr Restivo also being responsible for the murder of Ms Barnett.
144. In the submissions made to the Commission, it has been asserted that there are striking similarities between the murders of Ms Shin, Ms Claps and Ms Barnett so as to suggest that the same offender is responsible, and that Mr Restivo is, or may well be, responsible for the murder of Ms Shin. It has been argued that, had the defence been aware of such at the time of Mr Benguit's trial, considerable doubt would have been raised as to

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Mr Benguit's guilt. It is therefore suggested that these matters provide new evidence to render Mr Benguit's conviction unsafe. It is also suggested that there has been substantive non-disclosure of material and information known to Dorset police in respect of Mr Restivo and his suspected activities.

145. In support of the contention that Mr Restivo may be responsible for the murder of Ms Shin, the following features have been highlighted.

- That the victims were all women.
- That the use of a knife is common to all three murders.
- That all three murders took place on the 12th day of the month.
- That there was an occasion when Mr Restivo was observed acting suspiciously by being dressed in unseasonal clothes, with gloves with his hood pulled up around his face apparently observing women while - a knife and change of clothing including a balaclava helmet were all found in the boot of his car, which was also on the 12th day of the month.
- That one witness who overheard the prelude to the attack on Ms Shin recalled hearing a foreign sounding male voice.
- That Ms Shin described her assailant as having worn a mask and Mr Restivo was latterly found in possession of a balaclava in suspicious circumstances.

146. A statement has also been provided by a Professor Loveday, in respect of a conversation he had with a Ms Jakes. Ms Jakes apparently told him that she had a conversation with Mr Restivo in which the murder of Ms Shin was discussed. She recalled Mr Restivo describing that a 'chef's knife' had been used in the attack which, it has been submitted, demonstrates a 'guilty knowledge' on the part of Mr Restivo. It is suggested that Ms Jakes's information was not known to Mr Benguit's defence.

147. Additionally, it has been identified that a clump of hair was found near to the murder scene of Ms Shin which, it is argued, is resonant with Mr Restivo's practice of leaving cut hair in the hands of his victims and, therefore, a further 'striking similarity' between all three offences.

148. Owing to the fact that the issues pertaining to Ms Jakes and the clump of hair can be dealt with briefly, the Commission will address these matters first, before proceeding to address the other issues about Mr Restivo's possible involvement, and disclosure.

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Ms Jakes

149. The Commission can confirm that Ms Jakes spoke to an officer during the original murder enquiry. She was a friend of Mr Restivo's then partner, Ms Marsango. Ms Jakes told the officer that she found Mr Restivo 'creepy', and that he had an obsession with discussing blood and surgical procedures. Ms Jakes also recalled a conversation where, in respect of the murder of Ms Shin, Mr Restivo had said, translated by Ms Marsango: 'It must have been a large chef's knife to go right through her.' (emphasis added).

150. While it is suggested in the statement provided to the Commission that Ms Jakes was told by officers that they already had the persons responsible for Ms Shin's murder, such a suggestion is difficult to reconcile with the fact that the date of Ms Jakes's discussion with the officer is recorded as 26 July 2002, which pre-dates Mr Benguit becoming a suspect, as well as the date of his arrest. The Commission also notes that the record of this conversation contains no reference to Ms Jakes expressing a belief in Mr Restivo's guilt, but rather refers to her general assessment of him being 'creepy' and obsessed by blood. In any event, whether or not Ms Jakes herself believed him to be responsible is not evidence of such.

151. The Commission further observes that there is some inconsistency between what Ms Jakes is reported to have told the officer at the time, and that which she has now apparently relayed to Professor Loveday. According to Professor Loveday, Ms Jakes told Professor Loveday that Mr Restivo said the knife 'had been' a chef's knife, whilst the contemporaneous report of her conversation with the officer refers to Mr Restivo saying that it 'must have been' a large chef's knife. Additionally, the Commission notes that the officer who spoke to Ms Jakes records her as claiming that Mr Restivo had referred to the knife having gone 'right through' Ms Shin. This, of course, is inconsistent with the facts of the case.

152. Having considered the statement of Professor Loveday, the Commission is unable to conclude that there is any material which does, in fact, suggest a 'guilty knowledge' on the part of Mr Restivo. Rather, the Commission considers it could simply reveal some speculation on Mr Restivo's part as to the nature of the murder weapon used to kill Ms Shin. The Commission also notes that Mr Restivo's reported reference to the knife having gone 'right through her', as contemporaneously reported to the officer

It was not inconsistent because Restivo was found with a large chef's knife in his car on 12/5/04, along with a balaclava.

This is a silly observation by the CCRC. The fact that Restivo said that the knife must have gone right through the victim when in fact it only penetrated about 15 cm is irrelevant and does not negate guilty knowledge.

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by Ms Jakes is, in fact, inaccurate and therefore a further matter negating a suggestion of Mr Restivo's guilty knowledge.

3. For these reasons, the Commission does not consider the prospective evidence of Ms Jakes to provide any substantive evidence in respect of Mr Restivo's possible involvement in the murder of Ms Shin.

The clump of hair

154. Much has previously been made of the fact that a clump of hair was found in Malmesbury Park Road during examination of the scene following the murder of Ms Shin. While the precise location of the hair is not known, it was recorded as having been found 'outside number 223'. Also outside number 223 was a car whose exterior had been stained with Ms Shin's blood, consistent with her having fallen against the vehicle after being stabbed. It is possible, therefore, that number 223 was the scene of the stabbing before Ms Shin managed to walk a short distance before falling to the ground.

The CCRC has refused to disclose the forensic report and it is not clear at all whether the person whom the police say was "Donna Welstead" is actually the person from whom the hair originated.

Her platinum blonde hair is not the same colour as the hair found next to Oki.

55. The Commission has had the clump of hair forensically examined. That examination has yielded a DNA profile and, from that profile, the source of the hair has been identified as a resident of Malmesbury Park Road. That individual is someone who has no association to the offence, or Mr Restivo, and is not someone who has ever reported having their hair furtively cut, as a number of other women had reported.

56. The Commission also considers that the hair does not bear the resemblance of a clump of hair that has been removed from the head by cutting. The presence of root material, and the absence of two distinct cut ends on all but a limited number of the hairs is, in the Commission's view, strongly indicative of the fact that the hair had not been cut from the individual concerned, as opposed to a clump of accumulated hairs.

157. In light of the visual appearance of the hair being contrary to what would be expected if it had been cut from the head, together with the fact that the person from whom it originated is a resident of the street in which it was found, the Commission can find no basis to suggest that the clump of hair is in any way associated with the murder of Ms Shin.

158. Consequently, the Commission does not consider the clump of hair to have any bearing on this case, or the possible involvement of Mr Restivo.

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Danillo Restivo – Background¹¹

The murder of Elisa Claps

159. On 12 September 1993 Elisa Claps, aged 16, left home having arranged to meet Mr Restivo at their local church in Potenza, Italy. By all accounts, Mr Restivo was attracted to Ms Claps, but this was not reciprocated. She did, however, apparently feel sorry for him, and he had asked to meet her in order to give her a gift for having passed her exams. Ms Claps was never seen alive again.
160. In 1995 Mr Restivo was convicted of having provided false information to the police enquiry, in respect of his assertions as to how he had come by a cut to his hand on the day of Ms Claps's disappearance. He had also said that, while he had indeed met Ms Claps on the day in question, he had left her alive and well.
161. On 17 March 2010, Ms Claps's remains were found in the loft of the same church at which she had arranged to meet Mr Restivo on the day of her disappearance.
162. A post mortem examination revealed that Ms Claps had suffered at least 12 penetrating stab wounds, some of which with sufficient force to damage bone structures, as well as at least 1 cutting type injury. The evidence suggested that, while Ms Claps had most likely been alive when entering the loft, her body had been dragged to the area in the loft where it was latterly found, and attempts had been made at concealment. The murder weapon was considered to have been a single edged small sharp blade.¹²
163. Other findings of note included:
 - Areas of 'contusive lesions' on the inner thighs and breasts, suggestive of sexual violence.
 - Ms Claps's bra had been cut or torn at the point which joins the two cups.
 - Her trousers had been unzipped and partially lowered to reveal her pubic area.
 - Locks of Ms Claps's hair were found next to the body which had been cut from her head shortly after death.
164. As previously mentioned, Mr Restivo has since been convicted, in his absence, of the murder of Elisa Claps.

¹¹ Prosecution opening in R v Restivo at Annex C, Tab 11.

¹² Autopsy report extract (translated) at Annex C, Tab 12.

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The murder of Heather Barnett

165. Heather Barnett, aged 48, lived opposite Mr Restivo in Bournemouth with her two children, aged 11 and 14. She had undertaken a course in curtain making, and ran a small business from her home as well as a small workshop which she rented nearby.
166. On 12 November 2002 Ms Barnett's two children returned home from school to find the front door unlocked and Ms Barnett's body on the bathroom floor.
167. Ms Barnett's death had been particularly horrific. A post mortem examination found that she had been bludgeoned to death, before having her throat cut, almost entirely severing her head. Both breasts had been cut off, and placed beside her head. There was a long, but superficial, cut along her abdomen, as well as two smaller cuts in the same region.
168. The evidence suggested that Ms Barnett's body had been moved from the scene of the initial attack to the bathroom, where the mutilation had then occurred.
169. Ms Barnett's bra had been cut or torn at the section joining the two cups (as with Ms Claps), and her trousers had been unzipped and partially lowered in the same manner and to the same level as with Ms Claps. A lock of hair from an unidentified person was found in Ms Barnett's hand, and a lock of her own hair was found underneath her other hand. These locks had the appearance of having been cut.¹³
170. Apart from living opposite him, Ms Barnett was known to Mr Restivo. Shortly before her death, Mr Restivo had asked Ms Barnett to make up some curtains for him, which he said was to be a surprise for his partner, Ms Marsango. Following a visit by Mr Restivo in relation to the curtains, Ms Barnett had been concerned about some house keys which had gone missing, and was suspicious that Mr Restivo may have taken them.
171. Mr Restivo was not, initially, a suspect for the murder of Ms Barnett, but became a suspect over a period of time. Ultimately, in June 2011, he was convicted of her murder and sentenced to a whole life term of imprisonment.

Restivo's suspicious activities

172. During the course of the Heather Barnett murder enquiry, and as adduced in evidence at Mr Restivo's trial, Mr Restivo had an

¹³ Autopsy reports at Annex C, Tab 13.

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unusual fetish for cutting women's hair. A number of women in the Bournemouth area informed police of occasions when they had felt their hair being cut surreptitiously when, for example, they were using public transport. Certain of those women were, in due course, to identify Mr Restivo as the culprit. Similar accounts were also recorded from women in Mr Restivo's region of Italy.

173. This evidence was viewed as significant in light of the cut hair found at the murder scenes of both Ms Claps and Ms Barnett.

174. In addition to the above, and as part of the Heather Barnett enquiry, covert surveillance was undertaken of Mr Restivo. The following observations were considered to be worrying, and/or of significance:

- 5 April 2004: Mr Restivo was seen watching women in the Throop Mill area of Bournemouth while wearing gloves and a black coat, he was also carrying a bag. Prior to leaving the area he changed into a different coat.
- 6 May 2004: Mr Restivo was seen in the Throop Mill area repeatedly leaving and returning to his car. On one occasion a lone female was in the area, and he was seen to be wearing a coat with the hood pulled tightly around his face and had a bag. He was also seen carrying a pair of gloves, on what was a warm day.
- 11 May 2004: Mr Restivo was observed in Pig Shoot Lane, about a mile from Throop Mill. He appeared to be watching women from inside his car.
- 12 May 2004: Mr Restivo was seen lurking behind some bushes at Throop Mill while women walked nearby. He was wearing unseasonal clothes for the weather, including a black coat, some over trousers and carrying a pair of gloves. He was also carrying a satchel. Mr Restivo's behaviour caused police such concern that an offence may be committed, that they decided to stop and search him on the pretext of investigating vehicle thefts, notwithstanding the risk this might pose to their covert surveillance. The Commission considers that it is important to note that the police arrived at these concerns without being aware that the 12th day of the month could be significant to Mr Restivo's offending. Found in the boot of his car were two jackets, a balaclava, a bag containing a large fillet knife and some tissues, as well as two pairs of gloves and some scissors. These items were seized.

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Restivo's appearance in the Jong-Ok Shin enquiry

175. Mr Restivo did feature, to some degree at least, in the Jong-Ok Shin murder enquiry. He was not, however, treated as a suspect and, following the arrest of Mr Benguit and Mr Gbadamosi was, in effect, treated as eliminated. The following is a chronology of how Mr Restivo featured:

- 24 July 2002: Police received a phone call saying that a friend, who lived nearby had a friend who was living with an Italian male who had murdered a girl in Italy and, as a consequence, had been 'on a curfew' which had since lapsed. She said that the friend of a friend and the Italian male had argued about the Italian murder on the afternoon preceding Ms Shin's death.
- 25 July 2002: Police received a phone call from a Mr Richardson. He recounted a conversation he had that day with an unknown lady who told him that a friend of hers, or a friend of a friend, is living with an Italian male who has been convicted of murder in Italy. (It seems likely that this is the lady who phoned in the above message, though it is possible that the lady could be Ms Jakes.)
- 26 July 2002: Mr Richardson was seen by an officer and provided a statement outlining the above in more detail.
- 26 July 2002: Ms Jakes spoke to DS Brown in the course of routine enquiries. She stated that Ms Marsango is an old friend, and went on to say that Ms Marsango met Mr Restivo over the internet and chatted with him for about a year. Mr Restivo told Ms Marsango that he had been 'on a curfew' owing to serving a prison sentence in respect of the murder of an Italian girl some years previously. Ms Jakes recounted her understanding that Mr Restivo had been the last known person to see the girl alive, and that he was sent to prison for her murder. Ms Jakes understood that Mr Restivo came to the UK 2 or 3 months previously, and that he sleeps in a downstairs bedroom of Ms Marsango's house. Ms Jakes had met Mr Restivo on several occasions, but found him 'creepy'. Mr Restivo apparently had an obsession with blood, and took 'delight' in describing his experience of surgical procedures.

Ms Jakes recalled a conversation about Ms Shin's murder between herself, Ms Marsango and Mr Restivo, in which Mr Restivo said that 'It must have been a big chef's knife to go right through her'. Ms Marsango had translated this comment owing to Mr Restivo's poor English. DS Brown made a report of this conversation.

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- 31 July 2002: As a result of the above information, an 'action' was raised to research the background of Mr Restivo, although at that time he was only known as 'Daniello' (sic).
- 2 October 2002: Ms Marsango was seen by officers and provided a statement. She explained how Mr Restivo had come to live with her on 21 May 2002. She also said that she was aware that the Italian police suspected Mr Restivo of the sexual assault and murder of a girl in Italy, for which Mr Restivo had been held under house arrest and served a period of imprisonment. Mr Restivo had told her that a number of people had seen the girl alive after he had seen her, but that this evidence had been disregarded by the Italian police. Ms Marsango could not recall what she did on the night of 11/12 July, but did recall that Mr Restivo woke at the same time as her, at about 7.45am, and seemed normal. She said she was sure she would have heard if he had gone out during the night.
- 3 October 2002: Information was received from the National Criminal Intelligence Service (NCIS) detailing information from the Italian authorities in respect of Mr Restivo.
- 4 October 2002: DS Brown reports matters relating to Mr Restivo and related enquiries, including information received from the Italian authorities detailing the disappearance of Elisa Claps and Mr Restivo's status as a suspect for that offence. DS Brown expresses the view that 'Clearly with two offenders charged Restivo is not a suspect in this enquiry but is worthy of future note as he is still subject of ongoing enquiries into the disappearance of the girl in Italy.'

176. Mr Restivo did not feature in the Jong-Ok Shin murder enquiry after this point. It is clear, however, that he did feature briefly in the enquiry, and was subject to some limited investigations, albeit that he was ultimately not regarded as a suspect. It is also clear that Mr Restivo did not become a suspect for the murder of Ms Shin following the murder of Heather Barnett.

Danillo Restivo – Disclosure

177. The Commission understands that Mr Benguit's representatives do not hold all of the original defence files in respect of this case, some of which appear to have gone missing. Consequently, they have not previously been aware that there was, in fact, a degree of disclosure made to Mr Benguit's defence of material relating to Mr Restivo. That disclosure related to material in which Mr Restivo had been drawn to the attention of the enquiry, and also a summary of information received from the Italian authorities.

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178. It is clear to the Commission that the defence were aware that Mr Restivo had been someone named to the enquiry as being of potential interest, and that he had been suspected of murder in Italy. The defence were also aware that a decision had been made not to pursue him further as a line of enquiry. That was, of course, a decision which the police were entitled to make, but one which could have been open to question or challenge by the defence had they considered it appropriate and of additional benefit to their case so to do.
179. What is also clear, however, is that the defence were not aware of a possible connection between Mr Restivo and the murder of Heather Barnett. At the time when the above disclosure was made, Mr Restivo was not a suspect for the Heather Barnett murder, though he was by the time of Mr Benguit's third and final trial in 2005. No further disclosure was made to the defence in this regard.
180. The police and CPS did, however, provide the trial judge with further material regarding Mr Restivo, his suspect status in respect of the Elisa Claps enquiry, and also his suspect status in relation to the Heather Barnett murder. The disclosures to the trial judge took place by way of an application for Public Interest Immunity (PII) in light of the fact that they related to matters subject to an on-going enquiry. The trial judge granted PII status to this material in January 2005, shortly before Mr Benguit's final trial.
181. In light of Mr Restivo now having been convicted of the murder of Heather Barnett, the Commission has sought, and acquired, consent from Dorset police to disclose the PII material that related to Mr Restivo to Mr Benguit's representatives. What follows is a summary of the material in respect of Mr Restivo and the method of disclosure which took place.

Material disclosed to the defence

182. The material outlined below represents a summary of the material which was disclosed to the defence. The Commission also notes that items 2, 5 and 6 were provided to the trial judge by way of background information relating to the PII application.

Item 1

The Action directing officers to take a statement from Mr Richardson regarding information he could provide relating to the Italian male he had referred to in his message. (Viewed by junior

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defence counsel and solicitors representative on 20 March 2003.)¹⁴

Item 2

Mr Richardson's statement in which he recounted the conversation he had had with the woman who had referred to a friend living with an Italian male who had murdered a girl in Italy. (Viewed by junior defence counsel and solicitors representative on 25 March 2003.)¹⁵

Item 3

The Action directing officers to make enquiries as to whether the unknown 'Daniello' was still resident at his address. (Viewed by junior defence counsel and solicitors representative on 25 March 2003.)¹⁶

Item 4

The Action directing officers to speak to Ms Marsango regarding her knowledge of 'Daniello'. (Viewed by junior defence counsel and solicitors representative on 25 March 2003.)¹⁷

Item 5

Ms Marsango's redacted statement purporting to give an alibi for Mr Restivo. (The redactions related to her knowledge of the matters relating to the murder of Elisa Claps.)¹⁸

Item 6

DS Brown's report detailing the enquiries made in relation to Mr Restivo, and summarising the information received by the Italian authorities. (Viewed by junior defence counsel and solicitors representative on 25 March 2003. It was served on the defence on 23 May 2003 following a request for disclosure dated 11 April 2003.)¹⁹

Material disclosed to the trial judge at the final trial

183. In addition to the material outlined above, the trial judge at the final trial, Hallett J, also had sight of the following documentation, for which PII status was granted on the basis that it related to ongoing enquiries which might be prejudiced:

¹⁴ Annex C, Tab 14.

¹⁵ Annex C, Tab 15.

¹⁶ Annex C, Tab 16.

¹⁷ Annex C, Tab 17.

¹⁸ Annex C, Tab 18.

¹⁹ Annex C, Tab 19.

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Item 1

The Message received on 24 July 2002 referring to the friend of a friend who had an Italian lodger who had been on a 'curfew' for murdering a girl in Italy²⁰

Item 2.

The message from Mr Richardson regarding his conversation with a woman who referred to a friend having an Italian lodger who had been convicted of murder in Italy.²¹

Item 3

A report by DS Brown referring to the information provided by Mr Richardson, and its similarity to information provided by Ms Jakes.²²

Item 4

The Report by DS Brown dated 26 July 2002 detailing his discussions with Ms Jakes regarding Ms Marsango living with 'Daniello' who was 'creepy', obsessed with blood and surgery, and who had been suspected of a murder in Italy.²³

Item 5

An Action directing officers to make enquiries in respect of a then unknown 'Daniello' who was believed to be living with Ms Marsango and suspected of murder in Italy.²⁴

Item 6

Material provided via Interpol to NCIS in respect of Mr Restivo's suspect status and conviction with regard to the disappearance of Elisa Claps.²⁵

Item 7

The unredacted statement of Ms Marsango in which she details her knowledge that Mr Restivo had been suspected of murder in Italy, as well as purporting to give him an alibi for the murder of Ms Shin.²⁶

Item 8

A Report by DI Connolly outlining the details of the murders of Elisa Claps and Heather Barnett, and Mr Restivo's suspect status in respect of such. The report also outlines the differences

²⁰ Annex C, Tab 20.

²¹ Annex C, Tab 21.

²² Annex C, Tab 22.

²³ Annex C, Tab 23.

²⁴ Annex C, Tab 24.

²⁵ Annex C, Tab 25.

²⁶ Annex C, Tab 26.

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between those offences and the murder of Ms Shin, and applies for PII status on the basis of prejudice to on-going enquiries. The report also details the covert surveillance which took place against Mr Restivo, and the suspicious activities observed, and items seized from him, as a result of such.²⁷

The Commission's approach

184. The Commission would observe that there has previously been some limited disclosure in relation to what can be described as the 'Restivo material', both to Mr Benguit's original defence team, and also to the trial judge. The trial judge, in turn, and having been availed of information relating to the murders of both Elisa Claps and Heather Barnett, concluded, the Commission would say with a degree of caution, that the material did not undermine the prosecution case, or support the defence case, so as to necessitate disclosure in order to ensure a fair trial.
185. Had Mr Restivo been charged or convicted with the offences for which he was only a suspect at the time of Mr Benguit's trial, those issues of sensitivity would not, in the Commission's view, have arisen. Consequently, the Commission does not consider that the issue of public interest immunity would have arisen. That, however, is not the end of the matter. In addition to the issues of sensitivity underpinning the PII determination by the trial judge, inherent within the judge's assessment of disclosure was a test as to the relevance of the material in question, and whether it would undermine the prosecution case or support the defence case. Consequently, it remains necessary to consider how that test may apply to the material in question.

Danillo Restivo – Assessment

186. As previously outlined, it has been suggested that the circumstances of the murders of Elisa Claps and Ms Barnett bear such 'striking similarities' to the murder of Ms Shin that they point to Mr Restivo being a viable alternative suspect for that offence.
187. The principle similarities are said to be threefold, namely, the fact that all three victims were female, that a knife was used in all three attacks, and that all three murders took place on the 12th day of the given month. It is also observed that both the murders of Ms Shin and Ms Barnett occurred in Bournemouth, where Mr Restivo was living at the time. Additionally, it would appear to be the case that Ms Claps, as with Ms Shin, was attacked from

²⁷ Annex C, Tab 27.

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behind. In respect of Ms Barnett, it seems that this is also a distinct possibility, owing to the fatal blunt trauma received to the back of her head.

188. There are additional matters which have been submitted as ~~lending support to the contention that Mr Restivo was, or may~~ have been, responsible for the murder of Ms Shin. Firstly, it has been observed that a witness who believed he had overheard the prelude to the attack on Ms Shin thought that he had heard a male with a foreign accent arguing with Ms Shin shortly before the attack. Secondly, a knife which was found in Mr Restivo's possession on 12 May 2004, when he was stopped by police at Throop Mill, is said to be consistent with the injuries sustained by Ms Shin. This assessment has been confirmed by an expert report provided to the Commission by Mr Benguit's representatives. Mr Benguit's representatives have, in the course of the Commission's review, gone as far as to refer to this knife as the actual murder weapon which killed Ms Shin. Thirdly, the fact that Ms Shin referred to her attacker as having worn a mask is said to be significant, not least owing to the fact that a balaclava was found in Mr Restivo's possession, as well as gloves and a knife, when he was intercepted by police as a result of their grave concerns regarding his behaviour when covertly observed at Throop Mill.

189. The Commission agrees that the murder of Ms Shin presents some similarities to the murders of Ms Barnett and Ms Shin. It cannot be a matter of dispute that all three victims were females, against whom a knife had been used in the course of a murderous attack on the 12th day of the month which, the evidence suggests, had been instigated from behind in all three cases. It is also apparent that Mr Restivo was an individual with a heavy Italian accent, and cannot be in dispute that at least one witness had described hearing a foreign accent shortly before the attack on Ms Shin.²⁸ The Commission does recognise, however, the fact that one of the males claimed by Ms Brown to have been present at the attack on Ms Shin was himself a heavily accented Jamaican national whereas Mr Benguit does not have a foreign accent.
190. The Commission also notes that it is clear that Mr Restivo was acting in a highly disturbing fashion while subject to police surveillance. Such behaviour was considered so serious on 12 May 2004 the police intervened believing he may attack. Moreover, on that occasion he was found to be in possession of a knife which, while not particularly unusual or unique, is at least of

²⁸ Statements of Timothy Curtis at Annex C, Tab 28.

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a generally similar nature to the type of weapon which may have caused Ms Shin's fatal injuries. Additional items in his possession on that occasion, namely a change of clothes, gloves, scissors and a balaclava, are indicative of a preparedness to commit a serious offence. Furthermore, the presence of a balaclava can be considered relevant to Ms Shin's dying comments about her assailant wearing a 'mask'.²⁹

191. The Commission recognises that, while there are similarities between the murders of Ms Claps and Ms Barnett on the one hand, and Ms Shin on the other, there are also dissimilarities. The Commission considers, however, that there are also some dissimilarities between the murders of Ms Claps and Ms Barnett themselves. For example, while a knife was used upon Ms Barnett, she was not, in fact stabbed. Ms Claps, on the other hand, was stabbed repeatedly. It is also evident that Mr Restivo had arranged to meet Ms Claps on the day of her disappearance, which she did willingly, albeit with, perhaps, little enthusiasm. In respect of Ms Barnett, however, there is reason to suspect that, while Mr Restivo was known to her, he had entered her home by stealth, having taken a key from her house shortly beforehand. The Commission also notes that Mr Restivo's conduct at Throop Mill might, at the very least, indicate a preparedness to offend against women who are unknown to him, and otherwise than behind closed doors. Consequently, the Commission does not consider that any safe conclusions can be drawn as to any particular modus operandi of Mr Restivo's offending.
192. The Commission considers that, had the defence been availed of the more comprehensive picture that now exists in respect of Mr Restivo, such matters could have been elicited in the course of cross-examining relevant police officers. Thereafter, the Commission is of the view that arguments could have been made before the jury to suggest that Mr Restivo could be regarded as an alternative suspect for the murder of Ms Shin, in a case where, by definition, Mr Benguit's defence was that another person must have been responsible for the murder.
193. The Commission also notes that the relative strength of the vicarious alibi provided for Mr Restivo by his partner may also be, or have been, open to further question than might have appeared at the time of Mr Benguit's trial. The statement provided by Ms Marsango suggested that, as a light sleeper, she would have been woken if Mr Restivo had left the house on the night in question. However, a statement provided to the Heather Barnett enquiry by a student who began lodging at the house in October

²⁹ Summing-up at 19C to 20A.

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2002 suggests that Ms Marsango and Mr Restivo were not, in fact, sharing a bedroom, at least by the October, and further, that their bedrooms were on different floors of the property, with Mr Restivo's being on the ground floor.³⁰

194. In examining the discussions which took place during the PII hearing concerning the Restivo material, it is evident that the trial judge was concerned. Having been availed of the Restivo material, the judge indicated that, while it was her view that the material should not be disclosed, it was a matter about which she would consider further. Such further consideration which may have taken place thereafter clearly did not alter the judge's view, but this desire for further reflection is at least indicative of the fact that the issue was not considered to be entirely clear cut. This is further reinforced by the judge mooting whether it might be possible to disclose certain details to the defence, but absent those matters which were deemed sensitive; a matter which was ultimately considered to be not possible.
195. From the Commission's review of the PII hearing, it appears that one of the key factors influencing the judge's determination was the fact that Mr Restivo was only a suspect in respect of the Heather Barnett murder, and only a possible potential suspect for the murder of Elisa Claps. It is therefore arguable that, had there been stronger grounds for suspicion at that stage, the judge's determination may have been different. The judge was also not specifically informed that all three murders took place on the 12th of the month. Conversely, she was told that there was no significant similarity between the facts of the three cases. It also appears that the judge may not have considered Mr Restivo's alibi for the murder of Ms Shin to have been particularly strong, and such a view may well have been reinforced had she been aware of the statement in which it is suggested that Mr Restivo and Ms Marsango may have been occupying bedrooms on separate floors at the relevant time.³¹
196. In the Commission's view, had the trial judge at the time of her PII determination been availed of the more compelling evidence pointing to Mr Restivo's guilt for the murders of both Ms Barnett and Ms Claps that are known today, her determination of the merits and relevance of the material to Mr Benguit's defence may well have been different.

³⁰ Statement of lodger at Annex C, Tab 29..

³¹ The Commission has prepared a transcript of the PII hearing and provided it only to the Court of Appeal, at Annex C, Tab 30. The Commission considers the summary provided in this Statement of Reasons to adequately rehearse the issues and considerations that took place. The Commission notes that the Court may consider whether the parties should be provided with a copy of the transcript

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197. In turn, the Commission considers that, had the defence been aware of the material and evidence which is now known in respect of Mr Restivo, they would have been in a position to cross-examine the officer in charge of the case in respect of those matters. In so doing, a number of points would have been able to be made on Mr Benguit's behalf, including the following:

- That a known killer who targeted women lived in the area at the relevant time, and within close proximity to where both Ms Barnett and Ms Shin were murdered.
- That both the murders of Ms Shin and Ms Barnett occurred within 6 months of Mr Restivo's arrival in the area.
- That Mr Restivo had an association with knives, and had used such in the course of attacks upon women.
- That the 12th of the month could be said to be a striking similarity in all three murders.
- That Mr Restivo had been observed acting in a disturbing fashion at Throop Mill on 12 May 2004, which was only a short drive from his home, and found in possession of a knife, change of clothes, balaclava and gloves.
- That the possession of a balaclava, could be regarded as of some interest in light of Ms Shin's reference to her assailant having worn a mask (Miss Shin's English being poor reference to a mask might be considered to be a reasonable description of a balaclava).
- That Mr Restivo's observed activities raised the possibility of a preparedness to offend other than behind closed doors, and while in the open and against women who were not known to him.

198. In the Commission's view, such points must be considered in the context of a case against Mr Benguit which had significant difficulties. The prosecution witnesses who gave evidence against him were individuals with obvious credibility issues and difficulties, owing to their own lifestyles as drug addicts funded through criminality. Two previous juries had failed to agree upon a verdict, and there had been previous acquittals in respect of a charge of rape in relation to both Mr Benguit and Mr Gbadamosi, as well as a charge of assisting an offender in respect of Mr Gbadamosi.

199. In assessing the considerations set out in section 23 of the Criminal Appeal Act 1968 (as amended), the Commission is of the view that there is a real possibility of the Court of Appeal admitting the material in respect of Mr Restivo as being in the

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interests of justice. The Commission considers that there is a reasonable explanation for which this material was not adduced at earlier proceedings, principally owing to the fact that, in the main, it relates to matters which have only arisen since. The Commission considers that the material, if not directly admissible at trial, could have founded the basis for cross examination of investigating police officers. The Commission also considers that the material is capable of belief, as it relates to matters which have ultimately been tested in court resulting in Mr Restivo's conviction. The Commission is also of the view that the material affords a ground for allowing an appeal, given that its relevance to a case where, by definition, Mr Benguit's defence was that the murder of Ms Shin must have been committed by another person. In the Commission's view, the key aspect of this material is its potential impact on the safety of this conviction, rather than issues pertaining to its admissibility.

200. In the context of this case, and in conjunction with the further issues identified in respect of the credibility of Beverley Brown discussed previously, the Commission does consider this matter to provide a basis for raising a real possibility of the Court of Appeal concluding that this conviction is unsafe.

Conclusions

201. The Commission considers that it has identified new evidence, not previously available to Mr Benguit's defence. The Commission is of the view that this material can be regarded as so impacting on the credibility of Ms Brown, the principle prosecution witness that she should no longer be relied upon, as well as upon the defence's ability to present evidence to the jury of the possibility of an alternative suspect for the murder of Ms Shin. In the Commission's view, there is a real possibility that the Court of Appeal would consider it in the interests of justice to receive and consider such material in its consideration of this case. The Commission considers that, in giving such consideration to the material in question, in the context of the worrying features of this case as a whole, there is a real possibility of the Court concluding that that this conviction is unsafe. Consequently, the Commission has concluded that this conviction should be referred to the Court of Appeal.

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Decision

202. The Commission has decided to refer this conviction under section 9 of the Act and this statement sets out the Commission's reasons in accordance with section 14(4) of the Act. This decision has been made by a committee consisting of three Commissioners in accordance with paragraph 6 of Schedule 1 to the Act and is signed by one of the committee on behalf of the Commission.

203. In accordance with section 14(4A) of the Criminal Appeal Act 1995 as inserted by section 315 of the Criminal Justice Act 2003, this conviction is being referred on the following grounds:

- New evidence which potentially undermines the credibility and reliability of the principle prosecution witness against Mr Benguit.
- New evidence and material which, had it been known at trial, would have enabled the defence to suggest a possible alternative suspect for the murder for which Mr Benguit was convicted.

Signed:



Date: 19th December 2012

J A Goulding

E M Smith

J England

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Annex A

Summary of the Referral Powers of the Commission

1. Under sections 9 to 12 of the Criminal Appeal Act 1995, where a person has been convicted on indictment or by a magistrates' court in England and Wales or Northern Ireland, the Commission may at any time refer the resulting conviction, verdict, finding or sentence to the Court of Appeal, Crown Court or County Court as appropriate.
2. By section 13 of the Act, a reference shall not be made unless the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made.
3. By the same section, this consideration must be reached because of argument, evidence or, in the case of a sentence, argument on a point of law or information, not raised in the proceedings which led to the conviction or any appeal or application for leave to appeal.
4. A reference shall not be made unless an appeal has been determined or an application for leave to appeal has been refused.
5. In exceptional circumstances, the Commission may refer a case where there has been no previous appeal or application for leave to appeal.
6. In exceptional circumstances, the Commission can also refer a conviction, verdict or finding (but **not** a sentence) even if the evidence or argument upon which the reference is based, has been raised previously before the trial court or on appeal.

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Annex B

Disclosure by the Commission

1. The Commission has a legal duty to disclose any material that it has obtained during its review which would help the applicant to make his/her best case for a reference to the Court of Appeal. The material may be sent to the applicant in its original form, or as an extract or it may be summarised in the Statement of Reasons.
2. The Commission may, in its discretion, provide other material where it considers it appropriate.
3. An indexed bundle of supporting material has been provided to accompany this statement of reasons, at Annex C. In addition, the Commission has provided a confidential appendix to the Court of Appeal only.