To clarify, this is an open letter to the board of the 'Scottish Criminal Cases Review Commission' from members of the campaign group 'Justice for Michael Ross'.

We appreciate that submissions to your organisation would usually come from legal representatives of applicants and initially we were encouraged at your acceptance of our approaches on behalf of the applicant Michael Alexander Ross, convicted of murder at the High Court in Glasgow on 20th June 2008.

We are extremely disappointed however, that the review in this case took a month short of 3 years to come to a final conclusion. Your original decision was reached in July 2014 (19 months after accepting the case for review), at which point a challenge was compiled by our group and submitted on 25 September 2014 within the very tight deadline we were given of 56 days. We received the final response from you on 14 November 2015, almost 13 months after the challenge we made. We can see no logical reason that the final 'Statement of Reasons' would have taken this long to compile and release and are very disappointed that the review in its entirety has taken an unjustifiable and excessive length of time.

It is apparent that there has been very little investigation done by the SCCRC and we are absolutely certain that the general public will be shocked at the realities of the SCCRC review. To the world at large it appears that the case of Michael Ross has been thoroughly investigated, analysed and considered for three full years and absolutely nothing can be found that would indicate that a miscarriage of justice has occurred. In our opinion, nothing could be further from the truth.

The purpose of this letter and attached concerns is to highlight the complete lack of effectiveness of the review process in respect of the conviction of Michael Ross. It is evident that the review conducted by the Commission merely looked at the original High Court trial and Appeal Court decision on a superficial level and opportunity for thorough, meaningful investigation has been completely bypassed. We do not accept that a review of this case has been completed and therefore do not acknowledge the SCCRC decision.

As tax payers and ordinary concerned citizens, we are disgusted and outraged at the blatant disregard of the serious concerns submitted to the SCCRC in respect of the police investigation into the murder of Shamsuddin Mahmood and subsequent targeting, trial and conviction of Michael Ross.

We have attached a document that has been prepared in order to highlight the worst of the many failings of the SCCRC in providing a thorough and fair review of the case of Michael Ross.

Yours sincerely etc

The 'Cadder' Ground (Unfairness of Police Interviews)

The reason that the SCCRC (hereafter referred to as 'the Commission') accepted the initial application submitted by Public Defence Solicitor's Office (PDSO), Inverness on behalf of Michael Ross (hereafter referred to as 'the applicant') was that the Commission may be able to gain access to materials that had been unavailable to defence counsel preparing for appeal, specifically in relation to the 'Cadder' ground and unfairness of police interviews. The applicant was interviewed by police under caution for 'murder' on 6th December 1994 and this police interview was accepted at appeal in 2012 to fall under the 'Cadder' ground, although the Appeal Court decision was that the leading of this interview did not result in an unfair trail.

The applicant's position throughout the representations made to the Commission on his behalf has been that, prior to the 'Cadder' accepted interview on 6th December, he was also interviewed unfairly and without access to legal representation on 24th September and 2nd December 1994. The applicant is convinced that his status on those occasions was 'suspect' of murder and the pretext of interviewing him on the subject of 'breach of the peace' was used as a deliberate tactic by police.

During these police interviews the applicant was a vulnerable young person of newly 16 years old. As far as we are concerned, there is no doubt that he should have had access to the protection of legal representation for all of his police interviews.

In the aspects of the challenge that were compiled in September 2014 by 'Justice for Michael Ross' (hereafter referred to as 'J4MR'), the Commission were asked to examine information that firmly pointed towards the applicant having been identified prior to his three police interviews as the person seen behaving suspiciously in Papdale Woods on 19th May 1994, 2 weeks prior to the murder of Mr Mahmood. The position taken by the Appeal Court in 2012 and thereafter by the Commission was that the applicant was not positively identified on 8th and 9th September 1994 and that the sighting of him on those dates by two witnesses of the Papdale Woods incident was merely a 'resemblance' to the person in Papdale Woods.

The Commission appear to accept that whether or not the conduct of the applicant at Papdale Woods was in fact a 'breach of the peace' is questionable. The Commission also appear to agree that police never held the view that the conduct of the applicant at Papdale Woods was, in its own right, a crime that required to be investigated and solved, rather it was always viewed as a 'lead' in the murder investigation.

We highlighted to the Commission, information taken from the statements of three police officers along with trial testimony and statement extracts of two key witnesses, all of whom were involved in the 'on-street' and CCTV identification of the applicant after he was seen by witnesses on 8th and 9th September 1994.

The majority of the information available, taken from statements and trial testimony, suggests that a positive identification was indeed made on those dates and the only testimony to the contrary was one vague statement that appeared not to correlate. We were convinced that the case made, accompanied by additional investigation by the Commission, would reinforce our position that the applicant was indeed identified by police as the 'man' in the woods, at the latest, on 9th September 1994. We believed that the Commission would conclude that all of the applicant's subsequent interviews were then unfair given that the 'attitude' of the police was that there was a link between the Papdale Woods sighting and the murder. The Commission however, in its final 'Statement of Reasons', have adopted the same position as the Appeal Court that the identification of Michael Ross on 8th and 9th September was merely a *"resemblance"* to the 'man' in the woods.

J4MR had requested that the Commission investigate the Crimewatch appeal aired nationwide on 6th October 1994 featuring Mr Mahmood's murder. We believed that, if the identification of the applicant as the 'man' in Papdale Woods was indeed made on 8th and 9th September, it was oppressive that Crimewatch portrayed the Papdale Woods sighting as if police were completely unaware of the identity of the person seen in Papdale Woods. We also asked that the Commission examine the 'Unsolved – Getting Away with Murder' episode aired in January 2004 that featured the murder of Mr Mahmood and highlighted the applicant as the only suspect 4 years prior to his arrest and subsequent conviction for the murder. In this programme, it is stated that the applicant *was* identified to police on 8th September 1994.

J4MR submitted that, on paper, police appeared to manipulate the sighting of the applicant on 8th and 9th September in order to make the identification appear vague, thus providing justification for using a clip of the scenario in Papdale Woods on Crimewatch UK. The case made for this was, in our opinion, strong and warranted thorough investigation by the Commission. In its response, the Commission take the view that J4MR are submitting an absurd claim that police officers involved with taking the statement referring to the vague 'on street' identification were able to see into the future to a challenge made on the 'Cadder' ground and distort the identification on 8th and 9th September to make it appear uncertain. J4MR are convinced that the Commission are well aware that the implication made was that the identification was distorted in order to justify the portrayal of the Papdale Woods scenario on the Crimewatch UK appeal. The filming for Crimewatch ended on 23rd September 1994, the very day before the applicant was questioned in relation to his behaviour in Papdale Woods.

In our opinion there is no logical explanation for the delay in interviewing the applicant having identified (whether or not the identification was vague) and been provided with the name of the applicant in connection to Papdale Woods on 8th and 9th September and the (accepted) position that Papdale Woods was linked in the minds of police officers to the murder of Mr Mahmood. That this factor went on to be relevant in relation to the 'Cadder' ground is incidental; however, highly relevant

to the applicant's 'suspect' status at the time of his police interviews on 24th September and 2nd December 1994.

J4MR submitted to the Commission that the Crimewatch UK broadcast on 6th October 1994 was not a *"genuine search for the truth"*; however, the Commission have completely dismissed this claim, with no thorough investigation into the circumstances surrounding the broadcast. The Commission insist that the public appeal was indeed a genuine search for the truth. If this is the case, how can it possibly be justified that the appeal did not feature an unsolved sighting of two men arguing with Mr Mahmood two days prior to his murder at which point a witness heard one of the aggressors use the words *"I'll shoot you"* several times? The Commission in its first 'Statement of Reasons' confirmed to J4MR that this incident was indeed unsolved. We are aware that this altercation was witnessed both by customers in the restaurant and passers-by. Surely the Crimewatch appeal would be the ideal opportunity to highlight this scenario. Did the police not need to know who threatened to shoot the victim two days before he was shot and killed?

In light of this omission, the Commission's position on the Crimewatch broadcast cannot be reconciled. Furthermore, while we understand the importance of solving the Papdale Woods sighting, J4MR are absolutely certain that police included the clip featuring the applicant's behaviour in Papdale Woods, while knowing full well his identity, in order to highlight and cement this line of enquiry in the minds of the general public. If police were, as it appears, aware of the name of the person in Papdale Woods and had valid reason to believe it had been the applicant, why include this sighting as if completely unaware of his identity? In a similar attempt to cement the case against the applicant, police arrested him from school on 6th December 1994 in a public display, despite his alibi witness, at that time, having given a statement that partly corroborated his alibi*. In January 1995, the applicant (aged 16) was again arrested for an identity parade, during which he was presented to three witnesses that had seen and described a person aged 25-30. Unsurprisingly, he was not picked out at the parade; however, this soon became public knowledge and further inflated the 'suspect' status of the applicant in the public at large.

J4MR are certain that there followed an oppressive 14 year public persecution of the applicant who was regularly featured as 'prime suspect' in the media, was formally named as suspect at the trial of his father, Edmund Ross in 1997 and had a documentary made in 2004 highlighting him as the only suspect in the police enquiry into the murder of Mr Mahmood.

* On 2nd December 1994, 6 months after the murder of Mr Mahmood, the applicant had told police that he had spoken to his alibi witness who had been cutting grass at a specific location that was not his own home on 2nd June 1994. The alibi witness confirmed to police that he had indeed been cutting grass at the location provided by the applicant; however, he had not seen the applicant that day. Police were also able to speak to the resident of the property, who hired the alibi witness and another boy to cut her grass. The resident produced a calendar entry that confirmed that her grass had been cut on 2nd June 1994. It is hard to see how the applicant could have known this if he had not seen it for himself.

In its response, the Commission maintain the position that the applicant did not firmly become a 'suspect' in the murder of Mr Mahmood until 5th December 1994 after the witness James Spence changed his account of a transaction of bullets made between himself and Edmund Ross (father of the applicant).

In our first submissions, we asked the Commission to examine the circumstances around Mr Spence's re-interview and subsequent change of statement. Mr Spence was visited at home and spoken to 'off record' and again spoken to 'off record' at the police station prior to giving a statement during which he changed his account of the quantity of bullets given to Mr Ross. Mr Spence was subsequently charged with three offences which, if convicted, could potentially have led to conviction and a prison term. Upon giving evidence at trial against Mr Ross Snr in May 1997 (almost 3 years later), all charges against James Spence were dropped.

J4MR highlighted the fact that, in Mr Spence's second transcripted interview, he did not say that Mr Ross had 'asked him to lie' to the police about the rounds of bullets he had received. In fact the initial statements given in August 1994 by Mr Spence and Mr Ross did not match each other in relation to quantities of bullets, which indicates that it is highly unlikely that Mr Ross coached the witness in the first instance. Mr Ross was convicted in 1997 of 'Perverting the Course of Justice' on the basis that he had coached Mr Spence to 'lie' about the events that occurred. The Commission accepted our argument that Mr Spence did not actually state that Mr Ross had 'asked him to lie' about the bullets; however, adopted the following position:

"With regard to Mr Ross Snr asking Spence to lie, it is true, the Commission notes, that Mr Spence does not say in terms that he had done so. However, his position is that he gave Mr Ross Snr three boxes of bullets, and that Mr Ross Snr made a point of asking him to tell the police that he had supplied only two boxes. If what Mr Spence says is true, then it would appear to the Commission that the inference that Mr Ross Snr knowingly asked Mr Spence to misrepresent the true position is irresistible."

J4MR requested that the Commission investigate the time period prior to Mr Spence's second police interview on 5th December. It is documented at the start of the interview transcript that Mr Spence was spoken to off record twice by police prior to changing his account, once at his home and again at Kirkwall police station. We felt that it was crucial to establish what had transpired during the 'off record' conversations and what Mr Spence's motivation had been to change his account of the transaction of bullets, especially given that he did not state that Mr Ross senior had asked him to lie to police during the transcripted interview. The Commission had access to the 'Unsolved' programme during which, when discussing Mr Spence's initial police interview on 14th August 1994, DI Chisholm states: *"He told us that he had given Eddy two boxes of bullets, one being the significant 9mm batch from India and the other box being .22 bullets.* ***He stuck to that, <u>he wouldn't be swayed from that at all</u>****. There was only the one box of 9mm bullets. He'd given that to Eddy. There was no more than that*

one box". It is clear that the Commission had cause to investigate Mr Spence's subsequent change of account given that DI Chisholm has since stated on film that an attempt had been made to 'sway' James Spence on the detail of the transaction of bullets during his initial interview on 14th August 1994.

The Commission's final position on the matter is that the applicant only became a 'suspect' for murder after Mr Spence changed his account. The case against the applicant went to trial on the weakest of circumstantial evidence. J4MR are disappointed that the Commission did not complete more than a paper exercise in examining the scenario where the witness Spence changed his account after being spoken to by police off record twice, being charged with three offences himself and subsequently having had his charges dropped on giving evidence that led to the conviction of Mr Ross senior. The conviction of Mr Ross senior and the testimony of Mr Spence went on to be a key factor in the guilty verdict reached at the trial of the applicant in 2008 and the testimony of Mr Spence was entirely uncorroborated.

Considering that the Commission accepted the applicant's case for a 'Stage 2 Review' on the basis that they may have access to materials not available to the Appeal Court in relation to the 'Cadder' ground, in light of this we are compelled to draw attention to the following:

- The Commission did not speak to either of the two witnesses that could provide clarity upon the identification of the applicant that occurred in Kirkwall on 8th and 9th September 1994, despite the volume of conflicting testimony given in statements and at trial.
- The Commission did not interview any of the three police officers involved in the on-street identification to clarify their position, despite written statements from each of those officers in 2007 that suggest that a positive identification had indeed been made on 8th and 9th September 1994.
- The Commission appear not to have consulted the hard copy police notebooks of the officers involved in the 'on-street' identification to clarify whether it was indeed definite, despite J4MR requesting it to do so.
- The Commission did not interview James Spence to investigate the circumstances around his change of account despite the concerns highlighted by the initial J4MR submission.

It appears that the Commission took no opportunity whatsoever to access any materials that were not available to the Appeal Court. This begs the question, why did the Commission accept the case for review on the basis of their powers to access and acquire such information in relation to the 'Cadder' ground?

J4MR believe that the majority of our campaigners and the general public would expect that these matters would be thoroughly investigated during the course of a case review; however, the Commission completed no more than a superficial review of the paper files.

Unfair Trial and Defective Representation

J4MR asked the Commission to consider a wealth of information not put before the court at the trial of the applicant in 2008, much of which referred to information from statements about the murder victim Mr Mahmood.

We raised a concern citing numerous statement extracts that suggested that Mr Mahmood was preoccupied and worried about something in the weeks prior to his murder. Some of the statements suggested that his personality and demeanour had changed in the time he had been away from Orkney after his first spell of working at the Mumutaz in 1992/3 and that he had gone from having a generally sunny disposition to the exact opposite when he returned to Orkney.

In its response, the Commission have taken a 'Devil's Advocate' approach to the issue of a change of personality in the victim and submit that it could be that *"the life of a Bangladeshi waiter in Orkney in 1994 may not have been an easy one"*. We accept that this could have indeed been the case; however, we assume that the life of a Bangladeshi waiter would have been the same or similar on the previous occasion that Mr Mahmood worked at the Mumutaz when he had presented with a sunny disposition. In any case, we did not intend that the Commission rely solely on the information highlighted in our submission, but requested that the Commission attempt to gain access to the diary of Mr Mahmood which existed but was not disclosed to the applicant's defence team.

There follows the extract from our submission that refers to our request that the Commission attempt to access the diary of the victim, which we believed would be a crucial item of evidence:

> ***"From the statement excerpts below, it can be seen that the victim, Mr Mahmood had kept a diary. A translation of his diary was not disclosed to the applicant's defence team, but in any case it appears that the diary was 'missing' for more than 4 months. Either the diary was missed by the police in a search of the Mumutaz after the murder, or it had been withheld from the police deliberately. Given that this could potentially yield information on Mr Mahmood's feelings prior to his death and an indication of any difficulties he may have had, it would appear essential that the Commission gain access to Mr Mahmood's diary in order to assess whether the information within could provide support for either a 'Disclosure' ground or 'Defective Representation'.***
>
> *3rd June 1994* – Excerpt from a statement of a young waiter from the Mumutaz Restaurant giving information on the family of Mr Mahmood**:**
>
> ***S23:*** *"I only know of them because Shamol told me of them. I have never met them. I do not know if Shamol had any other relations in this country although he told me that he had a girlfriend in Bangladesh. This girl lived in the Mid Poor area of Dacca in Bangladesh, but again I do not know the exact address. Shamol was originally from the same area of Dacca himself.* ***You will be able to get all the details of his family from his diary.****"*

The above suggests that the police were told of the existence of the victim's diary the very day after the murder, therefore should have known to look out for this item in the searches of the Mumutaz from the outset of the investigation.

The same waiter's *statement dated 20 October 1994 where police were presented with Mr Mahmood's diary (4 months and 18 days after his murder):*

S23F: *"Since I came back from holidays at the end of September* ***I have found Shamol's diary under his bed.*** *It was about 2/3 days ago I found it when I was tidying up my room."*

If the above claim is correct in that (the waiter) ***had discovered the diary of Mr Mahmood while having a general tidy of the bedroom they shared in the restaurant, and that the diary was under the bed of Mr Mahmood, it does not say much for the search and investigation techniques employed by the police in the days after the murder when there should have been stringent searches done in order to attempt to establish a motive for the crime, especially given that the police knew of the existence of a diary."***

There follows the entirety of the Commission's response to our request to locate the diary of the murder victim which was known to exist and had been handed directly to the acting Senior Investigating Officer DI Angus Chisholm on 20th October 1994:

"The Commission contacted Police Scotland in this regard. They informed the Commission that they were unable to locate any such document. It did not appear on the production register. It would thus appear to the Commission that this line is a dead end. It is regrettable that the diary appears not to be available, although, standing the age of the case, not overly surprising."

It can only be said that we are thoroughly disgusted with this unsatisfactory situation. Firstly, a crucial source of evidence, the diary of a murder victim, somehow vanished immediately upon being passed into the hands of the senior investigating officer on the case and did not even qualify to be logged as a 'production', as would be required by the most basic police procedures and for the most insignificant items of evidence. Secondly we are outraged at the position adopted by the Commission on this matter. This diary could have potentially been the source of exculpatory evidence in respect of the conviction of the applicant and the attitude of the Commission towards its disappearance speaks volumes. The diary had been handed to DI Chisholm, acting Senior Investigating Officer, on 20th October 1994 at which point we are convinced that the applicant's status as 'prime suspect' was firmly entrenched in the attitudes of the investigating team. The Commission interviewed former DI Chisholm for the first part of the case review; however, neglected to speak to him about the missing diary, its last known location being in his own hands. To play down the significance of the 'lost' diary

of a murder victim and cite the age of the case as justification for what is at best gross incompetence or at worst criminal negligence is inexcusable.

At the time that the diary went missing, police had very little background knowledge of Mr Mahmood's past. J4MR also raised concerns with the Commission that police appear to have only taken one statement from a direct family member of the victim. Mr Mahmood's eldest brother, Mr Shafiuddin gave his first and only statement on 5th October 1994, the very day before Crimewatch aired nationwide, despite the fact that he had actually appeared in the televised appeal. It is baffling that Mr Shafiuddin would appear in a national appeal before any police officer had officially noted a statement from him. On 5th October 1994, Mr Shafiuddin gave information in his statement that should have raised concerns with the investigating team and could have potentially been highlighted on Crimewatch. Mr Shafiuddin was not required to give a follow up statement, in stark contrast to witnesses residing in Orkney who gave multiple statements over many months. In highlighting this, our intention is to reinforce our position that the diary of the murder victim should have been seen as a crucial item of evidence. Considering that police had huge gaps in their knowledge of the life of the murder victim, the missing diary makes no sense. This item of evidence should have been logged as a 'production' in the case immediately and a translation sought.

In our initial submission, J4MR requested that the Commission examine the 'Unsolved: Getting Away with Murder' episode that featured the murder of Mr Mahmood in January 2004. This programme was made and aired solely to put forward to the public that the applicant was the prime and only suspect in the investigation. The Commission acknowledged that there were inconsistencies in the information released during this programme; however, were content to suggest that these inconsistencies were innocent mistakes of the programme makers. During this programme, both DI Chisholm and Det Supt Urquhart implied that the investigating team had left no stone unturned in the hunt for a motive for the murder of Mr Mahmood and no motive could be found. This position cannot now be maintained given that the diary of Mr Mahmood, a potential source of a wealth of information, has somehow inexplicably vaporised along with all potential to examine the detail within. If this was the attention afforded to such a crucial strand of evidence, how many other lines of enquiry were ignored?

J4MR requested that the Commission consider numerous issues we raised about the veracity of the original police investigation into the murder of Mr Mahmood. We presented multiple concerns that leads had not been followed up to any great extent unless they pointed towards the applicant. We also submitted that, despite the existence of very obvious lines of enquiry, with no alternative theories

having been presented at trial, the jury were left with the impression that there was no possibility that Mr Mahmood's murder could have been committed by anyone other than the applicant.

The Commission's position was that the defence team of the applicant did not have anything concrete enough to suggest that the murder could have been committed by an identifiable third party, therefore could not have introduced the special defence of 'incrimination' at trial. In our most recent submission, J4MR requested that the Commission examine a potential non-disclosure of evidence. There appeared to be no statement disclosed to defence from the police officer responsible for investigating the background of Mr Mahmood. The Commission did not even acknowledge this request, let alone investigate it and it was not mentioned in the final 'Statement of Reasons' issued. If defence agents are not made aware of relevant investigations, it is difficult to see how an adequate defence can be presented on behalf of their client.

J4MR submitted to the Commission that the initial police investigation did not appear to follow through on leads from information given to them that would have been of great interest to any competent investigator, therefore it is unsurprising that the Commission found there to be less evidence than would have been required to enable defence to introduce alternative theories as to the possible perpetrator of the crime.

J4MR highlighted issues that we believe that the jury should have been made aware of in connection with the lifestyle and activities of Mr Mahmood, his associations and his background. The Commission in its response to these concerns stated that, had witnesses been led at trial to elude to these issues, it could have damaged the defence in the eyes of the jury and it could have appeared that the victim was on trial. While we understand the sensitivities involved, we are extremely concerned that the jury were left with the impression that there was nothing in the past life of the victim that gave any cause for concern and that the 'answer' to his murder could not possibly have been other than that the applicant took his life in an inexplicable, random and uncharacteristic act of violence by a 15 year old child with no previous or subsequent misdemeanour attached to his name.

<u>The Anonymous Letter received by the SCCRC</u>

In its first Statement of reasons, the Commission informed the applicant that they had received an 'anonymous' letter two weeks after receiving his application which was submitted in September 2012. As well as containing *"vague and unverifiable allegations and information that was already in the public domain"*, this letter detailed an allegation that the applicant had confessed to the murder of Mr Mahmood in front of a room full of people. This confession was alleged to have taken place at a

dance at Orkney's TA centre on Saturday 14th June 2008, at which time the applicant was on trial for murder at Glasgow High Court. The letter spoke of a *"Black Watch piper"* who had been in attendance at this function and another witness who was named. The allegation was that the Piper had asked the applicant *"Did you do it Michael?"* to which he had allegedly responded *"Of course I did, but they'll never prove it because Dad got rid of all the evidence".*

The Commission stated that they would not under normal circumstances investigate an anonymous allegation such as this; however, because the letter had provided detail of two separate individuals that could potentially substantiate the alleged confession aspect of the letter, they decided to investigate and attempt to locate the two individuals cited as witnesses. The Commission provided the following justification:

"Whilst this would not have had a direct bearing on the determination of any of the miscarriage of justice issues considered above, the commission considered that it would have been of relevance to the second half of the Commission's test, the determination of the "interests of justice". The Commission thus took the decision to investigate this line".

The Commission entered into discussions with a representative of the Black Watch and managed to track down a former soldier believed to be the most likely candidate for the 'piper' cited in the anonymous letter as a potential witness to the 'confession'. The Commission had direct discussions with the former Black Watch piper and established that he had never been to Orkney and had no knowledge of the 'confession'. The Commission requested that Police Scotland discreetly make attempts to trace the other witness referred to; however, having made enquiries, they were unable to locate anyone meeting the criteria laid out in the letter. The Commission then made the decision that *"it would not be worthwhile to continue this line of investigation"*.

While awaiting the response to the challenge to the initial 'Statement of Reasons', a representative of J4MR contacted the legal officer assigned to the case by telephone to discuss the above and to put forward concerns at the stance taken by the Commission on the anonymous letter. It was put to the Commission's legal officer that the applicant was in fact forbidden by the trial judge, Lord Hardie, from returning to Orkney as a condition of his bail and that, had he returned to Orkney without permission (as alleged in the letter), he would have been remanded in custody for breaking his bail agreement. The applicant had returned to Orkney on one occasion during his bail period in order to attend the funeral of his grandmother. At that time, in order to comply with his bail conditions, he requested and was granted permission in writing to travel to Orkney for one day for this occasion.

During this conversation with the Commission's legal officer, it was put to him that J4MR were unsatisfied at the Commission's handling of this scenario and were concerned at the lack of interest shown by the Commission into the apparent malice behind the anonymous letter, especially given that the case was brought to trial in the first instance by a cold case review that commenced after an anonymous letter was handed in to police. The author of that anonymous letter was described by senior counsel in summing up as a *"self-confessed liar"* and the appeal court stated that he was a *"less than satisfactory witness"*.

It appeared that the author of the 2012 anonymous letter was retelling a story that s/he had heard from a third party, and yet the author cited fear for their own life if the applicant was released as a reason for submitting the allegation to the Commission. J4MR are concerned that a member of the public is being manipulated into holding a set of beliefs about the applicant that cannot be substantiated when put to the test. If this is the case, then surely this is a scenario that should be investigated?

That the Commission chose to investigate the content of the anonymous letter it received and take no interest in the malice behind the unsubstantiated claims, again, speaks volumes of the attitude adopted by the Commission to this case.

<u>The witness William Grant</u>

During the early stages of the initial review, a case officer from the Commission visited the applicant and during this meeting asked if there were any other avenues that he would like to be investigated as well as those put forward by PDSO. The applicant requested that the Commission examine the circumstances surrounding the witness William Grant and the testimony he gave.

J4MR put forward concerns about the friendship between the 'witness' Grant and the only local police officer that had been heavily involved in the investigation from the time of Mr Mahmood's murder in 1994 up to the arrest and conviction of the applicant. This officer was detailed to the investigation throughout and especially during the cold case review, where he handled the 'witness' Grant, including initial investigation of the anonymous letter (the first contact made by Grant to police), taking initial statements from Grant, travelling to Inverness with Grant who was then interviewed by officers leading the cold case review and providing counselling and support to Grant for the duration of his involvement in the case.

Both Grant and the police officer in question confirmed during evidence at trial that they had been acquaintances of each other since childhood and the officer gave trial testimony that the witness Grant had told him in 1994 that he'd been in Kiln Corner toilets on the evening of Mr Mahmood's

murder, thus providing the only corroboration to Grant's claims. The officer also testified that he hadn't seen fit to interview Grant in 1994, despite recalling 14 years later that Grant had provided him with this information.

William Grant came forward to police 12 years after the murder of Mr Mahmood with not one, but two sightings of the applicant. This provided police with an eye witness account of the applicant on the evening of the murder wearing a balaclava and holding a gun and also a 'sighting' of the applicant shouting racist abuse and threats of violence outside the Mumutaz restaurant in May 1994. J4MR submitted that the circumstances around Grant's decision to come forward are highly suspicious to say the least, especially considering that defence counsel was able to systematically discredit every claim made by the witness Grant during the course of his trial testimony. Despite this, the Commission declined to entertain the idea of interviewing either Grant or the police officer concerned, in much the same evasive manner in which they declined to interview former DI Angus Chisholm upon discovering that he had mislaid the diary of the murder victim, Mr Mahmood.

After the initial refusal by the Commission to refer the conviction of the applicant to the Court of Appeal, J4MR were in a position to submit further information that cast further doubt on the integrity of the evidence of the 'witness' Grant and requested that the Commission examine the testimony he gave (some of which was under oath) relating to having 'witnessed' the applicant shouting racist abuse and threats of violence outside the Mumutaz Restaurant circa May 1994. Grant was the only witness that spoke to this event and the Crown libelled a charge of 'racially aggravated breach of the peace' exclusively based around this testimony. Clearly this charge added a considerable amount of weight to the murder charge libelled by the Crown and, despite the applicant being acquitted of the 'racially aggravated breach' charge, its existence can only have been damning to the applicant. It was submitted to the Commission that the advocate for the Crown spoke of this charge in his summing up before the jury at the conclusion of the applicant's trial even after the charge had been acquitted:

"He (Mr Grant) also spoke about an incident close to the time of the murder when ***he heard young boys shouting racist abuse outside the Mumutaz Restaurant****."*
"Base that on what you know about Michael Ross, and it ***makes sense****. The* ***charge is no longer there*** *but the* ***evidence may still be relevant****"*

J4MR submitted to the Commission that there is documentation and an account of a conversation between the applicant and defence investigators that confirms that William Grant confessed during precognition interview to two agents for the defence that he was, in fact, lying about the account of the racial breach of the peace upon which this charge was exclusively based. In spite of this, the Commission declined to interview either of the defence agents that had allegedly heard this confession from Grant, or the witness William Grant himself.

The Commission's response to this chapter of the challenge is confusing and difficult to follow; however, J4MR surmise that the stance taken by the Commission to their request to investigate this scenario is as follows:

- The Crown were acting within the correct legal parameters in libelling the 'racially aggravated breach of the peace' charge.
- The applicant's defence did in fact (unbeknown to J4MR) request that the charge be dropped citing that there was no proof of the 'racially aggravated breach of the peace'. The Crown refused and the Commission see no issue with their decision in this regard.
- The Commission hold no issue with the libelling of 'evidential charges' and cite it as a long established practice for the Crown to libel evidential charges where it does not intend to seek a conviction.
- An alleged admission during precognition cannot be put to a witness by defence counsel during oral evidence.
- The jury as 'masters of the facts' could make as they would of all the evidence before them and the trial judge had no duty to *"counter any misconception"* about Grant's evidence and the comments made in summing up by the agent for the Crown on the (dropped) 'racially aggravated breach' charge.
- The 'racially aggravated breach' charge was not relevant to the murder charge because it is not a requirement to prove the existence of 'motive' in a capital case.
- The applicant was not convicted of the 'racially aggravated breach of the peace', therefore whether or not the charge was genuine or corroborated is of no concern to the Commission.

J4MR acknowledge that there is no doubt that the Commission have presented the legal perspective in respect of the 'racially aggravated breach' charge and the allegation that William Grant admitted during precognition that this aspect of his testimony was complete invention; however, J4MR are completely dissatisfied at the unwillingness of the Commission to investigate the motivation of William Grant in coming forward with what looks to be testimony that was complete fabrication from start to finish.

In a telephone conversation between a member of J4MR and the Commission's legal officer, it was brought to the attention of the legal officer that no connection existed between Mr Grant and the Ross family prior to his initial anonymous letter detailing his alleged encounter with 15 year old Michael Ross in Kiln Corner toilets, and this factor was confirmed during trial testimony at the 2008 trial of the applicant.

During this telephone conversation it was also suggested to the Commission that Mr Grant has displayed characteristics that could suggest that he is a vulnerable adult who could be open to

suggestion and manipulation. This is evident from the following testimony he gave at the trial of the applicant in 2008:

QC *"Is your evidence that when the person came out of the toilet you recognised him as someone you thought you knew, you thought it was Michael Ross?"*

WG: *"Yes"*

QC: *"When did the name Michael Ross come to you?"*

WG: *"It was quite a while after. I have no idea how long. It was probably days after; days or weeks. It was more than days later. I have no idea how it came to me, I must have been speaking to someone about it. I must have been describing the person I saw. I spoke to quite a lot of people. I was not talking about the person that I saw in the toilets"*

QC: *"Who were you describing?"*

WG: *"I don't understand"*

QC: *"Are you suggesting that, until the name Michael Ross was said to you, you did not know who that was?"*

WG: *"He looked familiar but I wasn't sure.* ***I was wrong to say*** *that I saw the person and straight away recognised him as Michael Ross"*

QC: *"That is monstrous?"*

WG *"Yes"*

QC: *"This was someone that you recognised and it was only when the name was given to you, that you said it was Michael Ross?"*

WG: *"Yes"*

QC: *"Was it a civilian or a policeman?"*(that provided the name Michael Ross)

WG: *"I am not sure"*

QC: *"Could it have been a policeman?"*

WG: *"Quite possibly. It could have been at the Masonic Lodge"*

QC: *"Who might it have been?"*

WG: *"Could have been any of quite a few people. If I was to say a name I might be wrong. I don't know. I'm sorry"*

QC: *"Over the period of the 12 years, there have been many stories about this murder?"*

WG: *"Oh, yes"*

QC: *"When you told the police that the person you saw was Michael Ross, may it be that you have allowed yourself to be influenced by what you had seen, read or heard?"*

WG: *"Very possibly, yes"*

QC: *"It was not Michael Ross that you saw that night, would that be right?*

WG: *"I am not sure. Maybe it could be right"*

QC: *"Important for everybody, could that be right?"*

WG: *"I don't know what to say.* ***It very possibly wasn't****"* (Michael Ross)

J4MR are of the understanding that, during precognition, when speaking of the 'racially aggravated breach of the peace', Mr Grant had used a phrase along the lines of *"….to be honest I made that part up to make the story sound more believable."* Surely this alleged confession, if investigated and confirmed, would provide sufficient grounds to examine the motivation behind what appears to be inexplicable malice towards the applicant and his family.

If the Commission are unwilling to investigate the scenario surrounding the testimony of William Grant, then who will? As tax payers and ordinary members of the public, members of J4MR are thoroughly disgusted that the Commission have completely side stepped any opportunity for thorough investigation of what we believe to be one of the worst and most corrupt miscarriages of justice seen in recent times.

Conclusion

The Commission, during the course of its review, consulted with the Senior Investigating Officer from the cold case review, DCI Iain Smith and two of the detectives involved in the initial police investigation, former DI Angus Chisholm and former DS Alan Mackenzie. The Commission also interviewed the senior defence counsel and a PDSO representative. Other than the applicant's father, Edmund Ross, the Commission interviewed NOT ONE witness involved with this case.

If a person is convicted after 14 years of public persecution, through selective and oppressive information released by police to the media, how can this be reconciled with the basic human right of the presumption of innocence?

If the Commission eagerly investigate an anonymous, malicious letter that cannot be substantiated and take no notice of an allegation from reliable sources that a witness has lied to police and committed perjury, how can they perform a fair and unbiased case review?

If the complete response of the Commission on the lost diary of a murder victim during a police investigation comprises four lines containing 64 words, none of which ask how it is possible that this could have occurred, where do we all stand within the Scottish system of justice?

J4MR and the family of the applicant are of the opinion the SCCRC are an inadequate mechanism in establishing whether or not a conviction is a miscarriage of justice. The purpose of this open letter and report is to add to the debate on the wider issue of whether or not it is possible to achieve true justice in Scotland and to highlight the major difficulties that a convicted person faces in negotiating the legal avenues available.