

## **Double Injustice, Double Trauma:**

The effects of acquittal of offenders upon the families of victims of homicide

This research report was commissioned by Justice After Acquittal (JAA) – an organisation campaigning for legal rights and support for victims’ families following an unjust acquittal after a murder trial: [www.jaa-campaign.org.uk](http://www.jaa-campaign.org.uk)

By the very nature of the focus of the report, no perpetrators had been convicted for the murder of any of the victims discussed. However, at the request of JAA the word ‘offenders’ has been used to describe all these individuals throughout. Partly as a result, all individual and family names used in the report have been replaced by pseudonyms.

JAA is appreciative of the emotional involvement required of the families who participated in the interviews that form the basis of this report.

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### **Introduction**

The families of victims of homicide have been shown to suffer severe emotional stress and trauma (see, for example, Armour, 2002; Asaro, 2001a; Casey, 2011; Getzel and Masters, 1984; Parkes, 1993; Mezey et al., 2002; Rock, 1998). Suddenly and incomprehensibly taken, homicide victims leave behind them distraught parents, children, siblings, partners, friends and more. Homicide ruptures any certainties and normalities held by victims' families, which may never be recovered (Armour, 2002; Asaro, 2001a). Significant trauma can also emerge from the families' experiences of the criminal justice system (CJS) which bears down on their lives in an apparent attempt to provide redress and accountability for the crime. Indeed, the CJS can create a form of 'secondary victimisation' for families who become disempowered, distressed and dictated to by the criminal justice process (Asaro, 2001a; Burgess, 1975; Casey, 2011; Mezey et al., 2002; Murphy et al., 2003; Rock, 1998). These experiences of the families of homicide victims have been reasonably well charted in the academic literature but what is uncharted and unknown is the effect of homicide and the CJS on families when no person has been convicted for the crime. This report addresses that gap by showing, through the words of the victims' families themselves, how acquittal of homicide offenders has specific effects on the families of victims which significantly compounds their stress, trauma, anger and grieving processes.<sup>1</sup>

Families of homicide victims may never find any real 'closure' to their loss but they may achieve some solace and 'semi-resolution' when they see that justice has been done (Armour, 2002). For families where no one has been convicted of the homicide, however, even semi-resolution is deeply problematic. Homicide defendants may of course be acquitted for legal and evidential reasons, and, in British law, they remain innocent until proven guilty. Other homicide defendants may be convicted of lesser crimes such as manslaughter. However, in

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the view of distressed and traumatized families, legal and evidential reasons for acquittal or, conviction for lesser charges, are commonly unconvincing, unjust, and seen as wholly inadequate. Acquittal generates a sense of ‘double injustice’ whereby families lose a close relation to homicide and then receive no redress for that loss. They can feel victimised by their loss, the criminal justice process, and its failure to convict a perpetrator. This may further augment their trauma, leading families to lose all faith in and support for the CJS. Families have their own knowledge, information and feelings about the events surrounding the homicide, and about those involved, to which the reasons for acquittal can be in complete contradiction. Yet, following the decision to acquit, the work of the CJS effectively ends, leaving families adrift in their trauma with numerous unaddressed questions and needs.

This report, based primarily on 15 in-depth interviews with members of families of homicide victims where no perpetrator has been convicted of the homicide, was commissioned by Justice After Acquittal ([www.jaa-campaign.org.uk](http://www.jaa-campaign.org.uk)) - a self-help and campaign group formed by the families of victims of homicide where offenders are seen to have been unjustly acquitted. The report aims to provide a sensitive and systematic analysis of how acquittal affects the families of victims, and, through that analysis, offer insight and make suggestions for better practice to help families cope with, and do something about, the double injustice and trauma that follows acquittal for homicide. The report is divided into four main sections organised around central themes that emerged in the interviews. It opens by describing the severe and specific forms of stress that the families were put under following an acquittal. It then looks at their interaction with and views of the CJS, and examines what the families wanted from it, concluding with some recommendations for practical measures that could be taken to better support such families.

## **Methodology**

Justice After Acquittal (JAA) arranged interview participants through a call for their members to volunteer to talk to a researcher about their experiences of homicide acquittal. Twenty participants representing 12 families of homicide victims initially volunteered out of a total JAA membership of 34 families. However, five individuals, feeling that it could be too traumatic, could not ultimately go through with an interview, leaving a total of 15 individuals representing the families of 10 homicide victims, comprising 13 parents and two

siblings. Approximately half of the respondents lived in London and the South East, and half in the north of England, and they were all white British. The data generated thus represents the views of those who had sought membership of JAA and should not be seen to represent the entirety of the families of homicide victims where no offender has been convicted. Many of the homicides had occurred a number of years before the interview (up to 22) and consequently represent retrospective accounts of the families' experiences - often of a CJS that has since made a number of changes in line with the desires of victims and secondary victims (see Casey, 2011; Rock, forthcoming).

Interviews were carried out by a post graduate student, James Bocking, either at the families' houses or, for those who preferred not to talk at home, at another JAA member's house, or, if in the south east, at a room in the Tavistock Centre. One interview with a very softly-spoken father was conducted in a café but the recording was mostly inaudible. Due to the sensitivity of the topic, all names and some details of the cases have been changed. The respondents' pseudonyms and a short summary of the actual homicide are shown in Table 1 below. Two former senior members of the CJS were also interviewed: a retired senior Judge and an ex-senior policeman. Representatives of Victim Support, the Crown Prosecution Service, the Independent Police Complaints Commission, and the Ministry of Justice were contacted but no interviews could be arranged within the short duration of the research project. As a result of the small number of CJS representatives interviewed, their perspectives are not presented in the report.

**Table 1: Interview participants and brief detail of the homicide.**

<b>Participants</b>	<b>Brief detail of the homicide</b>
Jess Brown, mother Alex Brown, father	Steve, aged 25, died in an attack outside a pub in 2007.
Charlotte Dove, mother Eve Dove, sister Ian Dove, brother	David, aged 39, died from asphyxiation during an attack outside a nightclub in 2005.
Laura Huntley, mother	Matthew, aged 29, died through stab wounds to the back in 2009.
Lisa Wilson, mother	Twins, Katherine and Claire, aged 17, their bodies were recovered from barn fire outside of a party in 1991.
Sarah Bell, mother Rodger Bell, father	Jason, aged 32, died from stab wounds in 2007.
Tina Merrifield, mother	Michael, aged 40, died as a result of stabbing in 2006.
Fiona Shearing, mother Ben Shearing, father	Jonathan, died in an attack outside a nightclub. <sup>2</sup>
Becky Bamforth, mother; James Bamforth, father	James, aged 28, died through stab wounds in 2005.
Rob Holmes, father	Colin, aged 30, whose remains were recovered from a house fire following a stabbing in 2003.

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<sup>2</sup> No details of Jonathan's age or date of death were available.

## **1. Double injustice, double trauma**

I would like answers. And if that's the way the court works, the justice system works, it's disgraceful. Because if you come away with that 'not guilty', you're thinking -'Well, how? Why? What did go wrong?' You put all your faith in everything. I was bitter for a long time, bitter and hurt. (Jess Brown, mother)

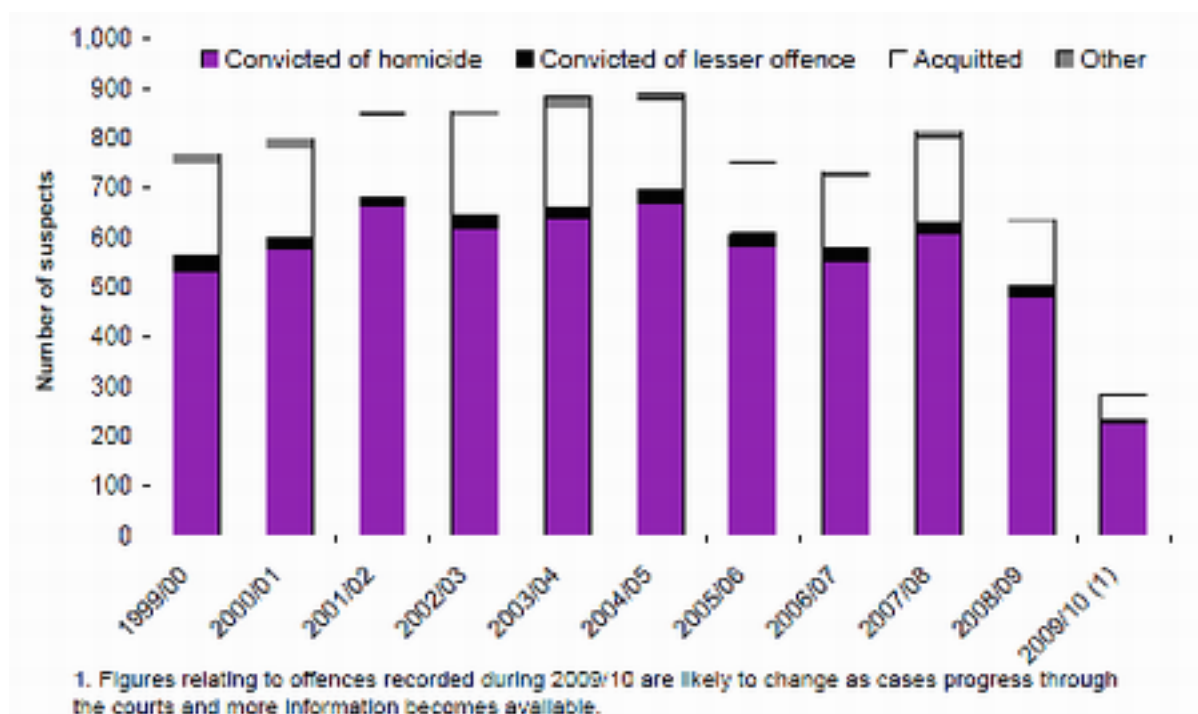
The acquittal of homicide offenders has specific effects upon the families of the victims. All families in this study experienced serious issues, problems and injustices at each stage of the criminal justice process, from initial police investigations through to the trial and beyond. Families craved information about what had happened to the victim and what would subsequently happen in response, and they understandably became preoccupied with the details of the police investigation and court case. In order to help them comprehend the homicide, families developed narratives in an attempt to understand the events and individuals surrounding the case. They drew their knowledge from what they knew about the deceased and their lives, the details they had gleaned about the events surrounding the homicide itself, and often also what they knew about the offenders. Acquittal, however, smashed those narratives. Families' outlooks were once again shaken, exacerbating their distress. This forced them to examine and re-examine the police's initial investigation, the trial, and the main participants that had acquitted, or aided the acquittal of the defendants.

In common with many victims and secondary victims of serious crimes (Rock, forthcoming), families felt, and were, largely excluded from court proceedings. The adversarial nature of the trials also meant that details of the cases presented by defence lawyers severely conflicted with the families' understandings about the events surrounding the homicide. As the homicide victims were so closely tied in with the families' lives and emotions, families retrospectively felt that they would have been best placed to know the details of the case, while lawyers, judges and juries were seen to have held less valid or, even false knowledge. This further angered and frustrated families, leaving them often in guilt, feeling they had not done enough to help secure justice for their loved one.

### a. Homicide and acquittal in the UK

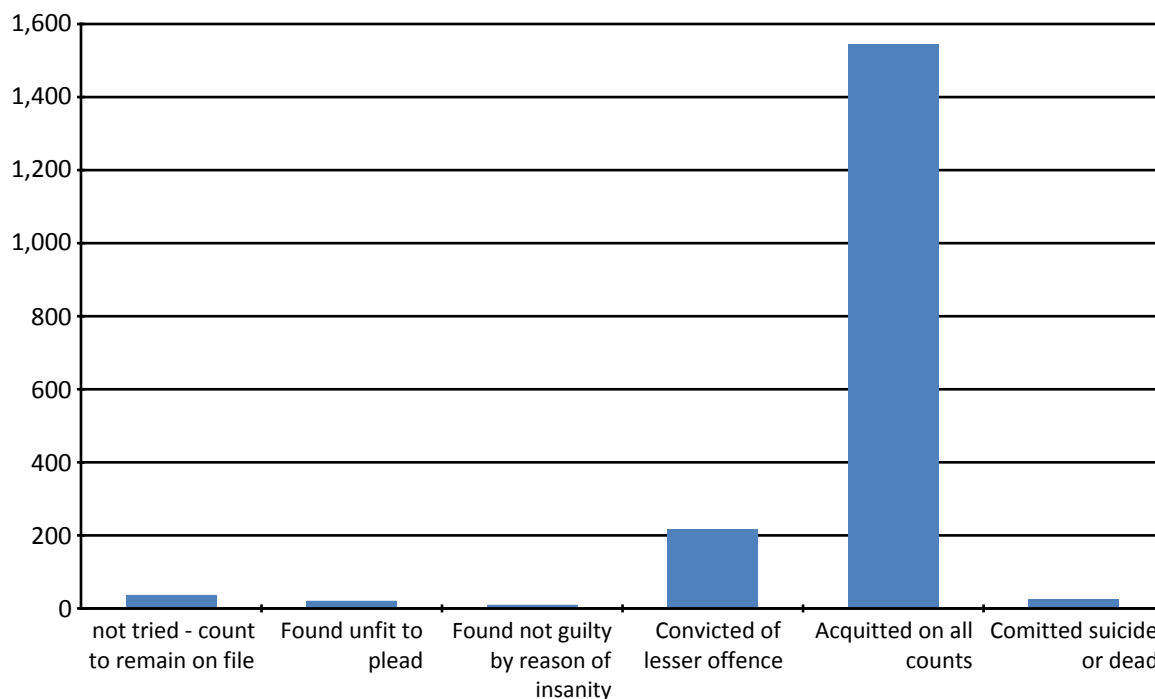
In England and Wales, from 1999/00 to 2008/9, an average of approximately 800 defendants each year were sent for trial accused of homicide. Around 15 per cent of these were acquitted, representing roughly 120 homicide defendant acquittals in each year (see Table 2). Acquittal for homicide is thus not a rare occurrence and, in many cases, it is for a good reason, ranging from the death of the defendant, to the defendant being convicted of a lesser offence. Yet, in the vast majority of cases, defendants are acquitted ‘on all counts’ (see Table 3). If a homicide has occurred and defendants are acquitted on all counts, however, *killers walk free*. Each year, therefore, homicide acquittals are likely to leave behind them a significant number of traumatized families of the victim who witness no justice. The families interviewed for this study, and the 25 other families that were members of JAA, represent only a small part of a much larger number of secondary victims of homicide case acquittal.

**Table 2: Numbers of suspects tried for homicide and outcome of proceedings, 1999/00-2009/10**



Source: Home Office 2012.

**Table 3: Grounds for homicide case acquittal in England and Wales, 1999/00-2009/10**



Source: Calculated from Home Office, 2012 (see appendix).

## **b. Trauma and acquittal**

It is understandable that the murder of a family member like, for instance, one's child, is an extraordinarily traumatic event. Hearing the initial news, usually through phone calls from hospitals or the police, is accompanied by disbelief and severe shock (Getzel and Masters, 1984; Von Block, 1996; Whent, 1991). Only those who have experienced this at first hand can begin to express the depth of feeling involved. The words of James and Ben, fathers of victims of homicide, provide some insight:

We wanted to see him [the victim] but they [the hospital] said 'no, he's dead' like, you know, it was unbelievable... It still is a shock now, like five, six years on and it's still the same.... it felt like somebody's ripped my heart out, you know what I mean. The pain - I couldn't eat or sleep, you know. You wake up and you think 'Oh it's a dream' and it's not.... No man should bury his son... I go every Sunday without fail to my son's grave. I admit, like, I cry... I kiss his picture and it just breaks my heart (James Bamforth)



After it happened I went for a walk because I just couldn't get my head round it, it was a full moon. I mean how stupid can you be, I'm crying my eyes out and I'm walking and I'm thinking to myself 'I'm going to catch that moon up'. And I'm probably three miles before I've tired myself out and knew that it was an impossible task (Ben Shearing)

Anyone who has had the misfortune to lose a close family member suddenly to a homicide is likely to experience severe shock, trauma and anger, and a feeling of loss from which they believe they will never fully recover (Armour, 2002; Asaro, 2001a; Getzel and Masters, 1984; Mezey et al., 2002; Parkes, 1993; Rock, 1998). For the families in this study, however, their grief and trauma were exacerbated by the acquittal of offenders in court and the subsequent feeling that the homicide remained open because no one had been brought to justice. James Bamforth expressed his sense of shock at the acquittal decision:

I mean, the police kept saying to us basically 'It's an open and closed case', kind of thing. 'It's murder, he's admitted taking the knife up there'. But then when it come to court after six or seven months, they said 'How do you plead?', he said 'Not guilty', 'What!', you know what I mean... When they read the charge out... and he [the lead juror] said 'Not guilty of murder', I thought, 'Well, he's got to be guilty of manslaughter' - but 'Not guilty of manslaughter', so, 'What!' I just walked out. I just, I thought if this is what you call justice... I just felt disgusted.

The families' sense of injustice and their many subsequent questions about why defendants had been acquitted meant that they felt they could not put the case to rest or begin to grieve in the normative ways that they desired. As two mothers' of victims explained:

[I] just keep hoping and hoping that someday [my deceased son] will get justice because it's wrong. He's lying in his grave because of their violence and they're walking about free. I just can't get my head round it... just can't move away from it. I mean its seven years [since my son's death], I just can't move away from it... (Charlotte Dove)

I've still got no closure now. I won't have a closure, ever have a closure, until obviously, really and truly, these boys are brought to justice. I'm still fighting for justice now. (Jess Brown)

Eve Dove, sister of a victim, had a similar outlook:

But, no, they got away with it, and why? My brother's not here, but they can go out now and do it all again, kill somebody else and get away with it. But, at end of the day, my brother's not here. So someone - them three, have done that to my brother and he's not here. We're not, I mean, I've got two young children... and they kept coming up to me... 'Where's my uncle gone?' We can't, it's so hard to move on, we can't move on.

The grief experienced by families of homicide victims may never recede (Armour, 2002; Parkes, 1993) and it may also be magnified by an acquittal. In, for example, one of the rare published academic works referring to a homicide victim's family member where no person had been convicted, the author described: 'One survivor [who] kept the police scanner on whenever she was home in an effort to glean information that might be used to identify her loved one's killer. The murder had occurred 17 years prior to the time of the study' (Asaro, 2001a: 96). Similarly, one of the respondents in this study was the mother of two children who had been victims of a double homicide over two decades previous, for whom she clearly continued to grieve.

Compounding their extreme shock and prolonged grief, acquittal leads families to question the law, the CJS, and justice itself, tending to lose faith in it. As Alex Brown, a father, told us:

I just think it was a joke. I mean our law is a joke, to be honest. I thought I'd go to the Old Bailey, it's a main court, we'd get everyone there... And I thought I'd get the truth at court [but] I probably got a bigger pack of lies than I actually found out before... I was naïve, I'm not naïve to it now. But I think our justice system is appalling to be honest... I've got no respect for the police whatsoever... The system has completely failed, yes, without a doubt, without a doubt, failed us as a family.

Alex Brown's wife, Jess, concurred: 'Failed by the police, failed by the criminal justice system, completely, absolutely'. Laura Huntley, mother of a victim, held a similar view:

Oh I'm angry, frustrated, I've absolutely no regard for British justice. I mean, I used to think it was brilliant, the best - because I'd never been involved with it... But to have it first hand and it's just, it's so unjust at times. I think if you get a judge who's decided beforehand that 'Oh well it's going that way', and he - they turn it that way, you know... [And] now, after it's [the trial] finished, that there's absolutely nothing you can do about it.

Following their re-traumatization when cases were acquitted, families felt, despite their loss and sense of victimisation, that they had fewer rights than defendants (cf. Casey, 2011; Mezey et al., 2002; Rock, 1998). If defendants were to have been convicted, they would have an automatic right to appeal. Yet, because homicide cases are the property of the Crown, families, unless involved as witnesses, were not parties involved in the prosecution and trial (see section 3 below), and they thus had no corresponding right to appeal against an acquittal, feeling ‘that there’s absolutely nothing you can do about it’. Laura continued:

But had that lad been found guilty, he would still have had, he would have had the freedom to appeal. He would have had more say in his outcome than we did. Ours is, the outcome is this, ‘He’s been found not guilty’ and ‘That’s it now’- ‘Tough, you get on with your life’.

Most families of homicide victims report problematic relations with many aspects of the CJS and many are commonly very critical of it (Armour, 2002; Burgess, 1975; Casey, 2011; Getzel and Masters, 1984; Parkes, 1993; Riches and Dawson, 1998; Rock, 1998). Yet, for those where no offender has been convicted, the CJS is likely to be perceived as even more problematic. Acquittal contradicts families’ perceptions of the events surrounding the homicide and destroys their expectations for justice, re-traumatizing them. In this situation, they re-examine particular details and contradictions in the law, the stories told in the trial, and the decisions made by CJS professionals. This is part of the reason why families experiencing acquittal in particular crave information about the investigation and trial - in order to help them understand and account for why defendants had been acquitted when it seemed they were clearly guilty of the homicide. Jess Brown, mother of a victim, explained:

Because all four men got away, they got away with manslaughter - well, I still say murder. They got away with manslaughter, violent disorder, and they got away with affray. How can a courtroom listen to what happened, see somebody with all those injuries on them, and all those four men... never had a single, single mark on them. How can that happen...? There were so many, there were so many questions I wanted answers to, because you are in oblivion when you’re in court, you do keep quiet, you do listen, you do put your faith in the justice system. And you think ‘No, it’ll all be okay, it’ll all be okay.’ But when you hear that ‘Not guilty’ verdict, Not guilty of anything? Nothing at all? How did my son lose his life? Didn’t beat himself up did he? How did he lose his life? They did it. They walk free.

From what families knew about the details of the event, the people involved, and what they were lead to believe by the police, they felt certain that someone would be convicted for the death of their family member. Acquittal broke these certainties. Ian Dove, brother of a victim, expressed his experience:

I thought it was all black and white, and things aren't black and white, and things can be turned by just how things are presented... even though there's evidence, the CCTV... you would have thought it just shows, but it wasn't enough.

Fiona Shearing, mother of a victim, also thought the case was 'black and white', thus experiencing a profound sense of injustice at the acquittal:

The fact that they got away with it, you just sort of think 'Well how can they? It's black and white to me, they killed him... there's no two ways about it, they're responsible... Or, if they didn't kill him... they are responsible for his death, whichever way you put it... As I say, if they hadn't hit Jonathon then he would have been alive, so they're guilty... Whether it's completely malicious or an accident, they are guilty and they should have been made to suffer.

Not all of the families interviewed had seen the offenders acquitted of all charges but some had witnessed lesser convictions decided by the court. This, however, was also perceived as unjust - especially, as in some cases, the investigation and trial had been conducted over such a long time period that the time the defendant had spent on remand was considered by the judge to have been punishment enough. As one mother, Becky Bamforth, said:

They got in a fight in the flat and he, my son, was trying to get out of the door and he [the defendant] stabbed my son in the back. And he got seven months remand and he walked free from the Old Bailey... He said he killed - he said he stabbed him but didn't mean to, you know. He did stab him but he didn't mean to stab him...it was a fight and he walked free.

A mother of double homicide victims, Lisa Wilson, had a similar experience:

[The detective inspector] rang and said, you know, 'The murder charges have been dropped'... and I was furious, but I still didn't realise, and I still thought 'Oh well, you know... we'll get them for manslaughter and arson and perverting the course of justice' - because they'd changed their story, still really having faith in the British legal system that, you know, although it wasn't murder... we assumed that once they'd been arrested, they'd go to court in a couple of weeks and go to prison for a few years and, you know, 22 months for the trial and then nothing at the end of it anyway.

Following acquittal, families faced the likely prospect that no one would *ever* be convicted of the homicide. Once a case is ruled upon it is largely closed by the police and effectively shut by the CJS.<sup>3</sup> For the families, however, it was quite the opposite situation - the case was *never* closed and *never* forgotten. Their family member had been murdered, they continued to experience loss but no person had been found responsible for the homicide. As Rob Holmes, father of a victim, explained:

But that's gone, that is gone, dead, that is absolutely finished. There's nothing ever going to happen against that, at all, unless someone confesses. Now, even with a confession, someone, even if he confessed, I've been told that they would have, still have to have hard evidence.... To be honest, I was going to ask for some sort of judicial review or whatever you call it, but it [the homicide] was 3½ years [ago] and for me it was intense.

To deepen their already compounded trauma, acquittal also meant that families faced the possibility that they would see offenders walking free, or even hear of them joking about the case, rubbing salt into the families' raw wounds:

[Following the acquittal decision] they were rushing us out of the court, and we were like, 'We're the innocent ones, they're the guilty ones.' And then they got us in this courtroom and I looked straight out the window and you could see them, [the defendants], just running over the courtyard, laughing and joking as if they'd done nothing. (Eve Dove, sister)

He's [the defendant] wrote on Facebook, not that I've seen it, but my daughter told me, he's said 'Hated by many, wanted by many, but ha, ha, ha, I got the dosh [compensation]' - something like that you know, even now rubbing it in, and there's absolutely nothing I can do about that. (Laura Huntley, mother)

All these issues left families confused, doubly-traumatized and facing the prospect of never finding any adequate answers to their many unanswered questions. Their grieving processes

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<sup>3</sup> Unless new evidence emerges cases remain closed but, it is, of course, unlikely that new evidence will emerge when the police investigation has ceased (see section 4, page 34). A number of UK police forces do now regularly review historic, 'cold cases', but this is not standard practice across all forces and the reviewed cases will only be re-opened if new evidence has coincidentally emerged.

were arrested indefinitely while they felt unable to move forward until their questions were answered (see Riches and Dawson, 1998), prolonging their distress. Jess Brown, for example, said:

I didn't really grieve for the first year because I think I didn't have time to grieve because I was so busy walking the streets of London, trying to find answers, trying to get somebody to listen to me - why it all went wrong? Why no-one's helping me? And just why? Why? Why? There was lots of whys.

The families' lives were disrupted, effectively frozen during the police investigation and trial, and severely disturbed again by the acquittal. This affected their outlooks on the world and their well-being:

He's [my husband] quite sad, he doesn't smile and laugh. He's not as laughy, jokey as he used to be. I think it just changes everyone. Everyone's changed. Like my other son, I think he's changed as well, quite a lot. He's changed, he's quiet, he doesn't speak about my [deceased] son. (Becky Bamforth, mother)

Rodger [my husband] had a nervous breakdown. I felt like I was trying to hold everything together... I just felt that if I break down, everything's going to go. (Sarah Bell, mother)

I don't know whether it is coincidence but, you know, since all this happened [my husband] Ben's now medically retired with heart problems and that, the stress and strain of it all can't have helped you know. (Fiona Shearing, mother)

Acquittal of defendants of homicide cases has a severe and particular impact upon families' emotional and physical well-being. It generates specific stresses and strains that inhibit perceptions of psychological closure and interfere with or, even halt, grieving processes. Acquittal also leads to strong and certain opinions about the injustice of the CJS. The next section will look closer at the families' experiences of the CJS, examining their views of, and their specific traumatized interactions with it.

### **3. Victims' families and the criminal justice process**

If you were in the back seat role, sort of thing, you're going along in a car - you know you're going to turn right here, you know you're going to turn left, but you're not doing it, the driver's doing it... But you don't even know that when you go to a court case. You just don't know what's going to happen... All you're doing is crying and so forth, and [thinking] 'what's the outcome going to be? Are they going to prove the person's guilty? Are they actually going to catch them?' (Ben Shearing, father)

There are various stages of the criminal justice process that families of homicide victims negotiate. These range from initial police investigations, to coroners' examinations, through to dealing with barristers, the press, and the court case itself. All families reported frustrations and problems with most features of the process. Like other families of homicide victims, they found that the criminal justice process was outside of their control and that their needs and desires were essentially surplus to criminal justice requirements (cf. Armour, 2002; Casey, 2011; Getzel and Masters, 1984; Mezey et al, 2002; Rock, forthcoming). Yet, due to the acquittal, and the families' experience of this, their grief and trauma were considerably amplified. Acquittal also meant that families became especially preoccupied with and distressed by contradictions in the trials, the adversary role of defence lawyers, lack of meaningful contact and consultation with prosecution lawyers and counsel, the form of police investigations, and the actions of juries and judges.

#### **a. 'We don't exist'**

When an indictable crime is committed in the UK, the case becomes not the property of the victim but the belonging of the Crown (see Christie, 1981). This means that the CJS essentially owns the case - to the almost total exclusion of victims and their families (see Rock, forthcoming). As a consequence, families in this study reported that they felt they had no control over how the CJS dealt with the 'cases', feeling as though they 'didn't exist'. Unless family members were witnesses, they were excluded from input into the process, disallowed to contribute to case materials, and, as the majority of families had little or no previous experience of the CJS, they felt washed along, powerless in the ebb and flow of

police investigations and court proceedings.

These processes began near the very start of the families' ordeal in their contact with the victim's body. As a vital aspect of the 'case', the body becomes the property of the Crown, and 'Once the body is in the hands of the coroner and police it does, in fact, belong to the state - not the family' (Riches and Dawson, 1998: 155). Families' contact with and choices about their interactions with the victim's body were thus dictated to them by the law and CJS.

Rob Holmes, one of the fathers, spoke about this:

Because the Crown take over the body, and they prosecute, we're superfluous to opinion, we don't even exist, we don't exist, we just, we don't exist.... And that's what they do, they prosecute, not for you, they prosecute because the Crown says so. The Crown says that you have to prosecute anyone that takes another life.

Contact with the deceased - often the last physical contact where families could say goodbye - was something that they felt they had lost all control of. The deceased was treated as a 'case' and as 'evidence' - the property of the crown, where medical professionals, police and coroners made examinations of the victim's body. Having some form of physical contact with the deceased is, however, an important aspect of the families' grieving process (Casey, 2011; Riches and Dawson, 1998; Van Bloch, 1986). Yet the families interviewed here were often not allowed to touch or even see the body of the victim:

They wouldn't even let us see [our son] in the hospital. And then when we went to identify him... Silly things, they'd combed his hair wrong, you know, I wanted to put it how it should be. And they said his hands were still all in plastic bags because of taking things from under his finger nails and that sort of thing... He looked perfect apart from this big bruise at the back of his neck and, I said, you know 'He could be full of gunshot wounds, knife stabs, [but] I want to see him'. They said 'Well no, he's naked under there, you don't want to see, and you can't contaminate.' But I just wanted to put his hair right and give him a cuddle you know... I mean it would have been just sort of saying goodbye physically. (Fiona Shearing, mother)

In common with Fiona, many families desired physical contact with the deceased but were commonly not allowed to do so for the Crown's fear of forensic contamination - or sometimes because medical professionals wanted to prevent magnifying families' trauma if the body was mutilated (see Whent, 1991). Yet families could not understand why they were



not allowed to choose - especially when criminal justice agencies, particularly those working on behalf of the defence, were perceived to be able to do what they desired. Lisa Wilson explained:

I did go up and touch the coffins but it's not quite the same. I could have, I mean it sounds awful, but, if I'd known I could have held Katherine's hand through a plastic bag. But, I, if - I know it's not going to happen again, but if it did, I would definitely want to physically touch... The defence were trying to find medical reasons for the twins having dropped dead both at exactly the same time, and I didn't want them to be touching the remains but, legally that was allowed, they were allowed to poke them about as much as the prosecuting forensic scientists were, and I didn't like that. I just wanted them back... [It made me] very angry yea, because they were my children. They were our children.

Although some families had a strong desire to see and touch the deceased, others did not but they nonetheless described their contact with the victim's body as massively distressing.

Becky Bamforth provided an example:

We had to have a closed coffin for the funeral because it was weeks later, a long time later... So we didn't see him at all really... I had to pull my other son away from him, you know... 'It's my brother, it's my brother' - he was like that you know, and... not being able to see him in the coffin. Well, they advised us at the funeral parlour not to see him because obviously he had two post mortems done... so not to see him, so we didn't.

As Becky shows, contact with victims' bodies could also be limited and frustrated by the time in which cases took to come to trial, further inhibiting families' grieving processes. Jess Brown had a similar experience:

[After] three days the life-support machine was turned off. The next day we had to go back to the hospital, to the mortuary, to identify our son, which was very sad, very very sad, the way he looked. And then after that they kept [him] from us for two months before we could see him. He had two post-mortems and then he had his burial in the July, two months later.

Compounding families' trauma, the victims were labelled by criminal justice professionals as 'the body' or 'the remains', depersonalising and dehumanising them (see Riches and Dawson, 1998; Rock, 1998). Lisa Wilson told us about this:

What upset us most, all the hearings, was the fact that Claire and Katherine were always referred to as 'the remains'. Their names were never ever used, they were always 'the remains', which I thought was appalling.... I don't think they were people. No, I don't think they were at all.

Families' perceptions of having little or no control over what happened to the victim's body was only the beginning of a much longer criminal justice process ordeal in which they felt very sidelined. Having little or no control over the events meant that families could not grieve in the ways they desired, and their lack of control over the process was itself felt as unjust. Seeing the CJS bearing down on themselves, dictating and engulfing their lives, was at odds with their being the innocent secondary victims of a homicide - especially when they later saw that defendants had more autonomy and apparently more rights than themselves (cf. Casey, 2011; Mezey et al, 2002; Rock, 1998).

#### **b. The police investigation**

Initial police investigations are the vital component for building a strong and effective case to present to the court in order to secure a conviction (McConville et al., 1991), and families understood this. Police detectives not only investigate the crime, however, but they have multiple roles. Detectives must generate any evidence and information from the families themselves, and simultaneously support the families (cf. Ericson, 1981). They are also one of the few sources of information about the case for families that desperately desire it, and they are often endowed with an ability to bring someone to justice when, in actuality, the circumstances surrounding the homicide mean they may not be able to do so. Detectives are consequently in a delicate position in terms of their multiple roles and interests in relation to the families of victims. Since the recommendations of Macpherson Report (1999) into the homicide of Steven Lawrence, all British murder squads have dedicated Family Liaison Officers (FLOs) to provide support for families, and many of the respondents in this study had found FLOs invaluable. Other families, however, expressed disquiet with the way in which the police had handled the investigation and treated them.

*'I wanted to know everything'*

Families were eager to move on from police investigations to the trial but, in addition to the CJS interfering with victims' bodies and holding up funereal ceremonies, the time in which it took police to bring the case to court further augmented families grieving and their attempts for psychological 'closure'. Laura Huntley explained:

It's awful because you've got no closure properly, you know, it's hanging over you all the time. I understand they've got to get, collect evidence and different reports, but you've got November, December - five months, well, it's nearly six months by the end of April. It is a long time and, I'm sure, for what they've collected, it could have been done quicker than they did.

James Bamforth reported similar feelings:

I mean that six months or seven months waiting for that trial to happen, it's all running through your head, there's no end. If it was a road traffic accident you could bury him and then... you've not got it dragging on and dragging on. That's the way it felt like to us. It kept dragging and dragging until we got the court date.

Over these elongated time periods families craved information. In their attempts to provide some order and logic onto such a disorderly and aberrant event (cf. Lerner, 1980; Rock, 1998), families of homicide victims frequently hunger for factual information about the case (Armour, 2002; Asaro, 2001a; Parkes, 1993; Riches and Dawson, 1998; Whent, 1991; Rock, forthcoming), but they commonly do not get all that they desire (Mezey et al, 2002; Rock, 1998). Indeed, families' thirst for information may be insatiable because no amount of it could actually restore order to a past event that subverted it, and it is thus unlikely that they would be satisfied that they ever had enough information. Yet, the families interviewed here also said that they wanted to simply know what might happen during the police investigation and court case, and what they would have to do for and during it - something that seemed completely feasible, fair and practical. Despite their experience of acquittal and their subsequent re-examination of the police investigation, some families did find the police to be sources of solace in this process - primarily because they were seen to have given the families all the information they desperately wanted. Lisa Wilson was one of these:

They [the police] came round the following day... and we were lucky because we were the first family to be given what are now known as Family Liaison Officers. So we had two girls [FLOs], and they came round that afternoon and were very, very good. We're

still friends with them now... [The Detective Inspector investigating the case] was [also] very good. He was - he learnt early on that I wanted to know everything. I would sit there with a notebook and a list of questions and I would insist that he answered them... He told me everything he could apart from what he called 'operational' reasons... and I think that was only once... And the girls [FLOs], as I say, we were lucky, we all got on very well and it made an incredible difference because they could tell us, up to the minute, what was happening.

While Lisa was satisfied with the detectives, the majority of families felt they were not kept informed and thus felt dissatisfied. Rob Holmes was one of these:

They [the police] never rang me... After that I used to ring them every week, in fact I said to the DI [Detective Inspector], because you only ever speak, get through to the FLO. So I said to the DI... 'This needs to change...', I said 'I'm not going to wait one week, two weeks, three weeks, four weeks because you say "Oh there's nothing to report..."', No, I think it should be on a weekly basis'. First week it happened, but never happened again... and that went on for 2½ years.... So, no, a big big no, they didn't help. They didn't help me as an FLO, they didn't help me understand what the process was, they didn't help with the actual procedure of the case, and, in the end, in both court cases, they never helped me as an individual.

In addition to feeling deprived of the information that was of central importance to them, some families said that detectives simply did not respect their feelings. Sarah Bell's words were representative: 'I just felt we were second class... The person they were looking for, they were more important, I just felt like I was in the background'. Charlotte Dove concurred:

[We were] not as well informed as we should have been, really, no... We were not being told what was going on for months and months. I mean, the liaison police woman she was really nice, I had no problem there but I felt I was kept a bit in the dark as to what was happening... They didn't seem to care about our feelings.

FLOs could also be seen as inexperienced and insensitive, and that was Laura Huntley's experience:

They sent us a family liaison officer, who... he was lovely but he wasn't right for the job you know. We'd just lost our son and we were sat in the lounge and he said 'Hey Laura, what do you think?' he said, 'My daughter's three this month, what do you suggest I can buy her?' you know. And if I wasn't the type of person I am, I mean my daughter was furious... But it was inappropriate you know, and he, he was a nice guy but he said inappropriate things... When we were doing statements and everything,

Matthew [the victim] was called 'Mathew Cyril', and he [the FLO] said 'Cyril? What kind of a name is Cyril? Where've you got that from?' you know, and he was really rude... it was really, really inappropriate and quite hurtful... He's not the type of person for that job. You need somebody who can be sympathetic and just be careful what they say and how they say things.

FLOs and investigating officers could change mid-case, having disruptive effects on the families, increasing their confusion, and their later sense of injustice. Rob Holmes was one of these:

So I've got an FLO that's, it's the first time he's ever done it... so he had no experience, so they were using us as a training ground. The second one... was poor. He eventually went because he had problems at home with his wife, he was drinking and all that. And then the third one, he was there for three or four days, that's all, just while we were waiting for the jury. So, no, the police weren't 100 percent positive on anything they done, in any shape or form.

### *'An open and shut case'*

In supporting the families, the police, in almost all the cases represented here, had inadvertently created false hopes for families by suggesting, often emphatically, that offenders would be convicted for the homicide. Exactly why detectives did this was obscure but they may have done so in order to coax information from families (Erikson, 1981) or, in attempting to console the families, they made it appear that offenders would be convicted. Yet, of course, no offenders were convicted for homicide in any of the cases represented here. For example, Jess Brown told us:

The police kept on saying to us 'Oh don't worry', you know, 'We've got loads of witnesses. They will definitely go down for this, we've got a hundred or so witnesses... No, no, do not worry, this is the way forward'. So really and truly listening to that, you're thinking 'Well, it's going to be okay', nothing will bring Steve back - which is what you want... But at the same time 'Okay, they did what they did, they've got to take their punishment for that'. So, yes, they told us, they really informed us of things they shouldn't have done.

Similarly, Rob Holmes, father of a victim, said:

I think the police thought they'd wrap this case up in 43 hours, and it was just a matter of - he'd confessed... and that's why they didn't bother. They even said to me that they weren't even going to allow him to go to, you know, the mental side of it, where he'd

claim that he's mentally unstable, so he could have got away with murder... That's how, that's how positive they were that he'd done it and they were going to get him.

Another father, James Bamforth, concurred:

[The FLO] was saying 'Oh yes, they've arrested [the suspect] and he's been charged', you know. He said it was an 'open and shut case' because [the suspect] had admitted taking the knife up there, he's admitted stabbing James in the back. But then when it went to court it was, it got turned round - it was self-defence, he done it in self defence.

These are avoidable practices of homicide detectives and FLOs. Experienced detectives are aware that if cases are ambiguous or, if offenders plead not guilty, conviction becomes extremely difficult (Erickson, 1981; McConville et al., 1991; Sanders, 1977). Detectives may have had good reason to think cases were 'cut and dry' but the incorrect information had bad outcomes because families' desires had been unnecessarily raised up, only to be dropped.

### ***'The police did not do their homework'***

The police are in a tremendously problematic and highly fragile situation when dealing with bereaved families. They become associated with the horrific news of the homicide and are unlikely to be welcome additions to an already fractured family life. Moreover, some families saw police as partly responsible for the acquittal. Rob Holmes explained, in his case, why:

One of the most important things about these things is the first three days, four days, two weeks, so you really get together as much evidence as you can. But, they [the detectives] didn't do a thing... So, the most important thing was to get statements. Now, they had an opportunity of getting a statement off of... the sister of the perpetrator. But because she was, she is a manic depressive... they had to have a video recording of the interview, because otherwise it's not legal. That took 4 months... They were just taking their time on everything.

Jess Brown had a similar view of the police investigation into her son's homicide:

The police did not do their homework. I think the police thought it was a cut and dry case... They thought they had the witnesses... [but] the witnesses that did come up were a blank... The police should have been round them houses, they should have arrested those boys straight away... The police had all their addresses, they could have gone round there that very moment and arrested them. Instead of that they waited till the next morning, till the next day. They wasn't blood tested because it was too late... they were

never blood tested. They was on, I think they was on cocaine, absolutely, because when they was kicking my son, they went like a frenzy.

Families, having little or no control over how the police investigated the crime or how evidence was collated, were surplus to the requirements of the investigation. In common with other families of homicide victims (Armour, 2002; Mezey et al., 2002; Riches and Dawson, 1998), and, more generally, many victims of many crimes (Shapland et al., 1985), having regular information about the case could have allowed the families at least a degree of control over their memories and thus help them to begin to adapt to their loss and trauma. Without this information 'feelings of helplessness easily become transmuted into withdrawal and depression' (Parkes, 1993: 53). The families craved not just more information, however, but more input and more voice in the police investigation and subsequent court case. As Jess Brown, mother of a victim, explained:

You're left there, you're not informed of anything. It's in the Crown's hands, it's not in your hands, so you automatically leave everything to them, hoping and praying that they've got it right. Now, I think we should be informed of every case scenario, what's going on. We should be informed of witnesses, we should be informed, we should be involved, we should even be able to have our own solicitor [so] that if there's things that we don't understand, he can take part, he can come back and talk to us. But for goodness sake don't leave us in the dark for that year and then we go to court.

While most families reported negative experiences of the police, more insidiously, others felt that they had been set up and led-on by them. These families suspected that officers were trying to obtain information that had later been used to discredit the victim. This was something that families saw as central to the acquittal because they recognised that character assassinations had biased judges and juries against the victim and in favour of defendants. Their suspicions that negative information had come from the police was thus seen in a very negative light, making these families especially suspicious and distrustful of them. Sarah Bell told us:

Well it was two family liaison officers who came up to tell us about it. And, I think they ask you questions, and you're talking, and I think at that stage, it was bad because you say things that I didn't know they were going to use. Like I'd said that when we went to [the victim] Jason's wedding there was a big fight and he hit his dad and he split his head open... Things like that, or Jason has said 'I'm going to get a gun and shoot you', but, we know Jason would say that but he wouldn't have one [a gun] if you

know what I mean, he wouldn't do it... He would say 'I'm going to have you', and that was Jason's expression. They used that in court and I didn't know they were going to use it, and I felt, I felt betrayed... I felt really betrayed.

Information used in court to discredit victims was something that almost all families, despite not being asked, talked at length about, and it had clearly further angered and traumatized them. Not all families suspected the police as the source of this information, and, whether such information had, for some families, emerged from the investigating police officers or not, it certainly happened during all the trials. Not only had families' lost a close relative to homicide and no offender had been convicted of it, but the victim's moral character was dissected and discredited in the court. It is to this and other problematic issues identified by families as occurring during the trial that this report now turns.

### **c. The Trial**

In order to help comprehend the shocking death of a close relative and attempt to mend the ruptured normality and order that the homicide had forced open, the families' developed narratives to account for what had happened in relation to the homicide and the people involved. These narratives evolved over long periods of months and, sometimes, years while they waited for the cases to come to trial and re-trial. In the court, however, as part of the contested truths produced by lawyers in the adversarial system, the families first witnessed the defence's counter-narratives, which were often totally at odds with what families believed. It was in the courtroom, then, that families' perceptions were challenged and dented, chipping away at any meaningful narrative that they had previously developed (cf. Rock, 1998, 2010). Regardless of this, like other secondary victims, families were not permitted to voice their sides of the story during the trial, engendering a further sense of powerless and anger.

The trial process instigates and enforces strict procedural rules that only allow participants to play a part when called for and which disallow expressions of emotion in the courtroom - a particularly difficult situation for secondary victims that are effectively excluded any



input (see Rock, 1993). Trial proceedings are, nonetheless, highly dramatic and evocative, but the rational outer shell of trial ceremony imposes rigid frameworks on proceedings in an attempt to keep emotions inward, orderly or hidden (cf. Garland, 1990; Rock, 1993). This was experienced by families as oppressive and unnatural, and it magnified their sense of disempowerment and further injustice. Jess Brown graphically illustrated this:

[In] one of the hearings I actually stood in front of them [the defendants] when they was in the dock, and I said to them ‘The four of you, it took four of you to kill my son, it took four of you to kill my son. You’re all cowards!’ And I was pulled out of the courtroom, literally, by the police, just pulled out...

Eve and Ian Dove, siblings of a victim, had similar experiences:

And all we got off our barrister [was] ‘Be quiet, when you get called be quiet, don’t say anything, don’t cry, don’t...’ And I’m thinking ‘Well, we’re not the guilty ones, we’re not guilty here’. That’s all we got off our barrister ‘Be quiet, don’t be crying, don’t be crying, don’t shout, don’t’, ‘Excuse me, my brother’s not here!’ That’s all, and it was weird. It was so unreal. (Eve)

You felt their eyes in the back of - you felt like you was sort of in the wrong being there. And actually as the case starts, the people involved walk right across the front... and I have to just sort of just try not to make eye contact... you’ve not to do anything... It frustrated me because it felt like a natural thing had to be denied. (Ian)

Families found it difficult that they were not allowed by the court to express their emotion, say anything or even to look at the defendants or jury. They also found that the design of courts meant they often had to sit close by to families of the defendants, or they would come into contact with them during recesses. Victim’s families are now sometimes provided a space in the court rather than being allowed only in the public gallery, but this does not prevent all contact with defendants and their families - and some of the families in this study went through the court system before such changes had been implemented. Nonetheless, they regularly spoke about their discomfiting contact with defendants:

We had the accused family sitting behind us. I found that very uncomfortable. Really uncomfortable, they had body guards with them... I felt they should not have been there, one of the people sitting there was actually accused, charged, and then the case was dropped, and they were sitting there. (Sarah Bell)

Eve Dove too felt uncomfortable and, indeed, intimidated by such close contact with the defence:

You should be not sat with their relatives you know, you should be miles away from them because you're sort of intimidated. That's how we felt. We felt so intimidated because they were like - you could feel them staring at you, and we weren't the guilty party. We were the innocent ones and you should be separated from them. You should - I mean when our liaison officer was like 'Don't show your emotions, don't be crying, don't be shouting'. Sorry, if you feel upset, you've got to cry.

The emotions triggered by coming into contact with the defendants' group in and around the court were compounded by the families' perception that they were controlled by the court more so than the defendants. Jess Brown told us about this:

Come out of the lift [at the court], we bumped into them. Couldn't believe it, just could not believe they was allowed to run and roam around the courtroom like they did. They should have been made to be in the cells, to come up from the cells into the dock and then go back down into the cells.

Laura Huntley felt that the defendant group were actually trying to further victimise her and her family:

When they [the defendants' family] were sat at the back of us when we were in the court, anything they [the court] said about Matthew, they were... coming out with comments and laughing and things like that. So in the end we said 'We're finding it very distressing, can they be moved?' So, the judge was, he wasn't nice at all, and he said 'Well, we'll move most of them, but the mother and somebody else can stay in.' So we was sat there and they were sat behind us, and that's awful you know. And even then they were going 'cough, cough, cough', you know, little things... But there was no - no sympathy, no apology, no remorse, nothing. It was like cold and laughing at us you know... It was awful. A horrible, horrible thing to go through.

None of the family members interviewed for this study had been witnesses to the homicide and they consequently had zero input into the trial. Yet, if members of the victims' families were involved in the trial as witnesses, other family members were instructed to not talk to them either - their own family - a rather impossible situation. Ben Shearing spoke about this:

I think that's the most shocking thing, for her [my daughter and sibling of the victim] to actually be there [at the homicide], see it, try and save him, and, when you think about it, her trying to explain to me what happened on the night. And I'm not supposed to talk to her for two years? Upfront I should have said 'Stuff you lot' you know. I can't

change any evidence, how it happened is how it happened but, for her you know... I mean, I wanted her to be here [at the interview] today, but she can't face it.

Rob Holmes had a similar impossible experience: 'Now, even to the point of, for two years I was told that I couldn't say anything to my son about anything pertinent to the case, because it could upset it, in the trial'.

Families were excluded from the trial other than as mere observers but were simultaneously legally and emotionally tied into its rules, procedures and outcome. They craved input into the case but were not allowed to do so because the Crown effectively owned it. Such high levels of family interest and emotional energy were in complete contrast to some of the actions of the judges, juries and prosecution barristers. This led to considerable disbelief and frustration for the families for whom the trials were so utterly important. For instance, a number of respondents spoke about their frustrations at jury members who appeared disinterested or even to fall asleep during the trial:

To be honest, they [the jury] were falling asleep, they weren't even listening to it... There were about three people... was actually listening to the case. The rest of them was just dozing about and not really listening to what was going on. And I think that was a big - that was a big issue, a big issue. (Alex Brown)

[The trial] dragged out and dragged out... until the point that the jury were just falling asleep, I could see it. You could see it, they were just dropping their heads... (Rob Holmes)

The jury system was, like the police investigation, often held partly responsible by families for the acquittal. Juries were frequently deemed as not knowledgeable, interested or qualified enough to decide on cases. As Fiona Shearing explained:

If you've got somebody that's a strong personality, they'll talk the other jurors down... Some [jurors] are there against their will anyway, so they don't want to be there, they just want to get out and go and see the football or whatever. I don't know whether it would work, but... I'd like to see the jury, a professional jury, and not the sham that they put in my case.

Charlotte Dove had a similar view:

I must admit that even the police didn't understand how a jury could come back with a not guilty verdict like that, when it was so cold clear evidence - the video, witnesses... Well, when I went to see a solicitor he said that the jury thought that they didn't mean to kill him. But they must have done, the violence they used... I was just, I was absolutely dumfounded, I couldn't believe a verdict like that... I mean I've been on a jury myself, and unless you understand a lot you're, you just go along with it. You're not, they're not good enough to deal with it, in my opinion. You need somebody more qualified to be on a jury.

Despite their reservations about the juries, families also suggested that sometimes juries had little choice but to acquit the defendant because information that was presented in court was biased and partial - particularly with regard to what was said about the characters of both defendants and victims (see below). Another reason for information in the trial being only partial was, the families thought, because of disparities between the skills and number of defence lawyers as compared to the prosecution. Families were, for example, upset about prosecution barristers who were deemed soft, unskilled, and inexperienced relative to the defence. Laura Huntley explained her experience:

Our barrister was a lovely man but useless... The other one was like a Rottweiler... And ours was, he was a lovely, lovely man but he was too gentle and too - If he said something, he just left it you know. And sometimes I felt like standing up and saying myself 'Do this, do that.' But you can't, can you? You're absolutely tied, you just can't say anything... But there were lots of things that, that was said that he could have made more of an issue of, and he didn't... Like I say, the other one was like a Rottweiler and, you know, and went... for our witnesses... really like a terrier. But ours was so gentle and nice... I felt as if I could have done a better job myself, you know. And whether he thought he couldn't win, I don't know, but that's not the attitude is it?

James Bamforth explained this from his perspective:

The barristers we had in court were like trainees basically. The main barrister, she didn't even bother turning up for the final stages. She left it to a trainee to read out the, you know, the summing up... She wasn't even there, she'd gone on holiday or something. And his [the defence] barrister, he took about three hours, four hours summing up and ours took about 20 minutes... and I thought that was wrong.

***'I've never seen such a circus in all my life'***

In adversarial trial systems like those in the UK, each side - the defence and the prosecution - effectively engage in a narrative battle over the truth of the events (Kalunta-Crumpton, 1999; McConville et al., 1991; Rock, 1993). Each side develops stories to account for the events, and each side desires to win the case regardless of the actual evidence or what they may personally believe. Families saw that the adversarial nature of the UK court system meant that trials were indeed a competition between two sides rather than an attempt to find out what really had happened to the victim and who it was that caused their death. This made them feel the trial was a sideline to what should have been its main purpose. Charlotte Dove was representative of their views:

All they [the defence] cared about was getting the person off, it doesn't matter about the victim. What I've just seen in my eyes, and I believe that today, they just don't care about the victims. Them that committed the crime, they want to do their best to get them off.

Jess Brown, reflecting on what she saw as elevated rights of defendants, explained how stories told in the trial could also be falsely constructed by defendants because they had been granted bail:

What is all this bail about? They're on bail, they all get together, they can get their story straight, they can change their stories. They haven't even got to stick to the statements they put in the courtroom, they can change them... What's all that about? What's the point of them swearing an oath when you can change your statement? No, I don't agree that they should have been on bail. I think they should have been put in prison because what they did was so horrendous. If people saw the pictures of my son and saw what they did...

Families experienced a further injustice within the competitive nature of the trial because they thought the prosecution were sometimes unfairly outnumbered by having to compete with often more than one opposing defence barrister. Ben Shearing spoke about this:

I also felt that we only had one prosecutor, as you might say, where they had two, you know, two barristers that asked two questions. So one barrister asked the first question, the other guy was sitting there ready to load and do the second question. And I found that each of those were playing off against each other because they wanted to get their defendant off, you know... I know they're not there for the family, but they're there, you know, for the Crown, and I just think it's, you know, very unfair.

Jess Brown too thought that the prosecution barristers were in a weak position compared to the defence:

I do think our barristers were very ill-prepared. They [the defence] wasn't questioned like I thought they'd be questioned, the things that was coming out, that they - I mean they wasn't cross-examining them or anything, and the lies they were telling. There was false witnesses there... but they was not cross questioning these witnesses. We know, we know for a fact, the witnesses were false, a hundred and one percent those witnesses were false witnesses... I've never seen such a circus in all my life, it wasn't about Steve's case, it was about one barrister against another barrister, who was the strongest. Because there were four barristers - they [the defendants'] had four barristers, they had one barrister each. So really there was five barristers against our one barrister...

### ***'His character was annihilated'***

Barristers are trained to develop convincing narratives about the events that inform a case. They play on the ambiguity of the actual events, utilising drama, rhetoric, and evidence as props to support and bolster their claims (McConville et al, 1991). Like most stories, however, barristers' narratives are also buttressed by images of who were the good guys and bad guys in the event (cf. Plummer, 1995). Defence lawyers describe the defence as good people who could not reasonably commit such aberrant acts or, at least, suggest that they would have never meant to cause such harm. On the other hand, they may also try to discredit the character of the victims - to describe them as the bad or mad guys who must have been somehow responsible for their own death. This was particularly painful for the families who, as part of their grieving, developed strong moral images about the deceased victim (Parkes, 1993; Rock, 1998) which, in the court, were subsequently fractured and 'spoiled' by the defence (Riches and Dawson, 1998; Rock, 1998). The actions of the defence were therefore much to the incredulity and anger of the victims' families who experienced the character assassinations of their relatives as a particular and specific source of strain that haunted their memories. Alex Brown was representative of the families' views:

You go down there [the court] like a victim yourself... and then they say things about your son which you can't even retaliate. They make him out into... the aggressor, and I think the [defence] barrister turned round and called the [defendants] 'little munchkins'... He [the defence barrister], he actually said 'Well if Steve Brown had been alive now, he would have been in the dock for assault.' That's the barrister, I mean, how could he say things like that...? For me, the barristers, it's like a, a who wins, isn't it? I'm not being funny, they've got no, there's no feeling... Steve couldn't speak up for himself... They said he was high on drink and drugs, was their comment...

[the defendant's family were also] trying to make out that we're a bad family, trying to blacken our name, and, you know, these people, I think they're deep into crime and other things that we don't know about, and I think they've got the contacts to get, to beat the system...

Laura Huntley's perceptions were similar:

I just sat nearly three weeks [in court] while my son was annihilated and his character was annihilated, and this lad [the defendant] was lying through his back teeth. I bet you 80 per cent of the questions he said 'I've no recollection of that', 'I've no recollection of that', 'I've no recollection of that'... It was awful. The trial was absolutely awful... When anything was said about Matthew, because, of course the, it was - It felt right from the word go that because Matthew was a drug addict, it didn't matter - 'It's just another one of them off the face of the earth', and it was my son. Nobody said anything about his good points. I mean, we had to write how it affected us... and nothing of that was ever mentioned or brought into the equation.... So all that was just sort of ignored, and that was really hard for us to do.

The muddying of the victim's character further fuelled families' hunger to have some say in the trial - to show the court that their loved one was not the bad guy described by the defence but, rather, an innocent victim (cf. Rock, 2000). It was obvious to families that defendants were the bad guys. Yet they had no way of presenting such information to the judge or jury, frustrating them and commonly leaving them with overwhelming feelings of guilt that they had not done enough for their deceased family member. As James Bamforth said:

We had no impact on it [the trial]... I mean, to let them know what kind of person he [our son] was. We told the police that but they said 'Well there is nothing we can do, you can't say a word'. The judges in the court like, you can't say 'boo' otherwise they'll put you inside... Yea, I would have liked to thought I've done something for my son... to try but, you, your hands are tied, you can't do nothing can you...? In my eyes he's [the defendant] walking around free. And I looked at the jury when they said 'Not guilty', I thought, 'Well... you don't know what you're talking about'. And nothing what - his [the defendant's] past, he's been done for, robbery and violence and all that, and none of that come out in the court, which is wrong. They should know a bit about his background, to know what kind of character he is and what he is capable of doing to people.

Lisa Wilson expressed a similar sentiment:

Although a lot of things have changed, I think, since we did it, I would have liked to have been able to speak on behalf of the twins. And I think other people should have

been allowed to have character references, and I think that what was known about the boys [defendants] should have come up in court, more I think, more of the character...

Families said that prosecution lawyers were not permitted in court to discuss the characters of defendants in the trial because this was deemed non-admissible information<sup>4</sup>. Yet, as can be seen in the statements of James and Lisa above, the defendants' characters were something that preoccupied the families. They saw defendants' character as a further indication of their guilt - and it was thus something they thought was as vital information about the case. They also saw that if juries had character information about defendants, they may have come to a decision other than to acquit them. Indeed, studies show that the moral character of defendants does sway the decisions of judges, juries and the police (Cicourel, 1968; Kalunta-Crumpton, 1999). Rob Holmes summed up most families' feelings about this:

It just amazes me that evidence that may convict a person cannot be put to the jury, because it may convict him. You think 'Oh, I thought that was what the whole game was about', but it isn't. You know, we couldn't say in court why he [the defendant] was on the run from the police. We couldn't say that he was a drug induced psychotic. We couldn't say that he had never worked in his life. We couldn't say that his mother was a, a psychotic, a registered drug addict, his sister was a manic depressive... So all these things that would have, the jury would have been interested in... [But] they [the defence] can say things that are very detrimental against, but, to them it's making, it's using the system to break down the character of the person that has been murdered and can't answer back. And I just think that has to stop.

It was not only the law and the defence lawyers that were perceived as maligning the character of the victims. Laura Huntley thought that the judge also played a part in this:

It was just so obvious that it was like - 'It's just another drug addict' you know. But that drug addict was my son, and that drug addict had a lovely, lovely other part to him, and that drug addict was working hard to get off the drugs you know, and I'm sure, with time... and everything, he'd have done it... he was just lovely you know. But they've just sort of, wiped him off the face of the earth... I do think if he hadn't been a drug addict, they'd have fought harder you know, truthfully. It's completely wrong that isn't it, because they're a person, and they're somebody's son... I will not be swayed from the fact that the judge... he's been judgemental to Matthew... and he's dug

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<sup>4</sup> The law on 'bad character evidence' was changed in 2005 to allow more leeway to use character descriptions when they were deemed relevant or explanatory to the case. What is deemed relevant is, however, highly negotiable and subjective, leading to considerable ambiguity and variability in legal process (see: [http://www.cps.gov.uk/legal/a\\_to\\_c/bad\\_character\\_evidence](http://www.cps.gov.uk/legal/a_to_c/bad_character_evidence)).



his nails into that and that's what he's used. And of course obviously the defence had cottoned-on to that.

Speaking ill of the dead is highly objectionable in British culture, yet, paradoxically, it is *de rigueur* in the British courts. As mentioned above, all the individuals interviewed for this report spoke at length, unprompted, about how their loved one's character was desecrated in court. This shows clearly that what the families saw as one-sided character assassination had haunted them for many years after the trials had ended. Character assassination in court - in public - is likely to be painful for any families of the victims of homicide but its effects are amplified in cases where defendants are acquitted. This is partly because acquittal is deemed by families to be influenced by uneven character descriptions but it is also because families' faced by acquittal are not permitted to make any statements to the court and are thus forced to remain in silence. Victim Impact Statements, through which the families of homicide victims are sometimes permitted to make a statement to the court, were introduced to British courts in 2001, but, if defendants are acquitted for the homicide, there is no sentencing hearing and thus no place for the statements (see Casey, 2011; CPS, 2007).

#### 4. What families want

People need more support, a lot more support from the police and the CJS, yes indefinite support - even though the case is closed, it's not closed but I feel they think it's closed. Technically it's open because it's not solved but I feel it's closed and they push it away... They should be all the time working to resolve the case and working with you but it's in a cupboard... It's never going to come out, and that I feel is wrong. Even if they took it out every two years and reviewed it I think that would help. (Sarah Bell, mother)

The preceding sections have illustrated how families' crave information, input and voice into trials and investigations but are excluded from doing so. The families of homicide victims where no offender has been convicted, hunger in particular for information so they may begin to make sense of why no offender has been convicted, or why defendants' characters were not discussed in court. Moreover, as illustrated in the first section of this report, following acquittal, families also experience a profound sense of abandonment. This is unsurprising for a number of reasons but, abandonment is compounded because, when defendants are acquitted, the case is effectively closed by the CJS. As a consequence of this, most of the families in this study desired some form of post-acquittal aftercare that involved explanation of what had gone on and which informed them about possibilities to appeal the acquittal. Victim Support's National Homicide Service was established in 2010 to provide aftercare to homicide victim's families in order to help them cope with their distress. Yet, when defendants are acquitted, families have no automatic right to any statutory help.

Not all families wanted to fight for a retrial. As Rob Holmes said above: 'To be honest, I was going to ask for some sort of judicial review... but it [the murder] was 3½ years [ago] and for me it was intense.' Lisa Wilson also thought that retrial would be too traumatic:

They never investigated anybody else because it's quite obvious that it was them [the defence] that did it. So it's worse in a way, but I don't think I would want to [have a retrial]... because I often only realise when I'm talking to somebody else, what I actually feel. And no, I wouldn't want to go through that again... I don't think I could.

Charlotte Dove was, however, more representative of the families' views. She desperately wanted to know about the possibilities of appeal but had no one to advise her:

[I] suggest [that] when a verdict like that comes back like that and everyone knows it's wrong, there should be something that should be done about it... I did ask the police [if there could be a re-trial] and they said they 'need fresh evidence'... That's all you get out of the police - you need fresh evidence... But after the trial we was just left on us own, which I thought was wrong. Didn't know which way to turn... I had to go find my own solicitor that told me there was a chance to take them back to court. Well, why couldn't the police have told me this?

In a further assault on the families' wounds and their sense of right, acquittal also commonly meant that they might not receive any compensation or legal aid. This was the situation of, for example, the Brown family:

And the worst thing was because of the outcome of the case... and they were found not guilty, we had to pay for everything, everything... Not that I want a pay-out, I want my son back... but at the same time there was nothing because they was found not guilty. (Jess)

I did go and see Victim Support. I seen them because they said they would pay some money towards the funeral costs. [But] because [the defendant] said that Steve went to hit him and he went to retaliate and he punched Steve - Steve fell - they said he caused his own death, wouldn't pay up. He caused his own death? That's ridiculous. (Alex)

### ***'Nobody wanted to know us'***

Families that had spent many traumatic months and years tangled up with and smothered by the CJS found, on acquittal, the obverse - that they were suddenly completely dropped from it. As mentioned above, this left families' feeling abandoned with many unanswered questions. James Bamforth explained this:

After James had died we had a liaison officer, like, from the police but, then after [the defendant] got found not guilty, nothing at all like - we had to get on with it... Because he was, in their eyes, he was innocent, but we were the victims then, you know, because we had nobody to turn to... But, we had, no, nothing after, after that trial, it was just the family [that] looked after us like. If we wanted to cry or moan, we'd do it to each other... We had letters from SAMM [Support after Murder and Manslaughter]... but that's the only contact. We've had, no, nobody come round to see us or anything like that and talk to us about it... We're trying to get on with our lives now and that's basically what everybody left us to do. He's got 'not guilty' so that's... 'Get on with it', you know, 'deal with it', and that's how I felt that they left us... I feel it was disgusting, to be honest.

Jess Brown, like most of the families, had a similar experience:

I never really got any support from anybody, no, not at all... We was in contact with the liaison officer and the police, but we had no help from anybody else.... And once the trial had finished, we never had anybody at all come. In fact, nobody wanted to know us, after the trial, which I found really hurtful and I'll never ever forget that, ever... No, no, no, we was just left to more or less get on with our lives. And I think it's absolutely disgraceful really. I mean, it's a good job we're a strong family because a lot of people wouldn't be able to do that, and I should imagine a lot of people have done terrible things to themselves.... But, no, no support whatsoever. I was, I'm actually very bitter about that.

All the families spoke about their feelings of being abandoned and left to 'get on with it' following the acquittal. The families interviewed here did, of course, eventually find their way to either SAMM or JAA, which they suggested could be a real source of solace. Yet many could not understand why no one had told them about these organisations. Fiona Shearing, for example, had found SAMM only by accident:

Well, I think that once, you know, the verdict was out, that was it - we walked out of court and never heard any more at all... Somebody at work said 'Oh, I saw a program on television about SAMM'. And so I said 'Oh well I'll phone and see.' But that was us contacting them.

There is substantial evidence to indicate that families joining with others who have experienced similar traumatic experiences can be a valuable and effective source of solace and recovery (Armour, 2002; Asaro, 2001b; Casey, 2011; Parkes, 1993; Murphy et al, 2003; Riches and Dawson, 1998). Families felt that only those who had been through something similar would be able to understand their ordeal and thus be able to be a source of help. Ben Shearing spoke about how important this was to him:

I feel that there should be some after-care, after the court case... not just 'You've had your court case, get out, get on with your life.' Because you just can't do that... I know you could turn round and say 'Oh you can go to the psychiatrist'... but I think that is just pointless, you actually need someone that understands... That's why I think SAMM is so good. You know, you can take it or leave it, go there, someone understands what you're talking about you know. I'm now actually at the point where, you know, I sort of say 'Oh my son was murdered' - because you can't say - sort of, seven or eight years ago, I couldn't have eyed somebody up and said that... It was only after the court case

that we could come involved in SAMM, but I think that there should be something in the procedure that you are put in contact with somebody or a group of people like that... The only people that can really understand it, is when it's happened to yourself... and it's got to be people like that you know.

As has been illustrated above, throughout the various stages of the criminal justice process all families craved information about procedure and the details of the case, and this was massively amplified after the acquittal. Families longed to know why defendants had been acquitted and, in particular, why the jury had come to such an incomprehensible decision. As Laura Huntley explained, they were also compelled to want to tell their sides of the story to the court:

I know it would never have happened, but I would have liked to have spoke to the judge and the barrister, you know, and said 'Why?' Asked why things weren't... why things were ignored? Because even speaking to other people, it's all second hand, passed down the line... I needed to speak to those people [the jury] who decided, I wanted to speak to them and say how I felt, and what hadn't been done for Matthew, and tell him [the judge] that he was totally biased against him you know. I know it probably won't do anything but... I'd say to [the judge]... if the victim is a drug addict or he's got something against him - just try and forget that, and think of that person as a person. He's somebody's son, he's somebody's husband.'

Laura wanted this input after the trial had ended and she knew 'it probably won't do anything' but it would have allowed her to express her concerns and ask questions, which could have at least provided her and her family some ceremonial input and explanation (cf. Rock, 2010). This may have provided some form of solace to Laura - and all the other families who craved this. Considering the degree of loss, trauma and anger that the families had experienced, their desire for some input, expression and explanation is completely reasonable. It is to this and other recommendations for the treatment of families of homicide victims where defendants have been acquitted, that the report now turns.

## 5. Recommendations

Nothing can be done to bring back the deceased, and it is almost as unlikely that, in the foreseeable future, the adversarial nature of the British trials system or some of the fundamentals of British law will be changed. Yet there are some very practical and reasonable adaptations that could be made to the CJS and its laws in order to help the families of homicide victims cope better with the homicide, the CJS, and the acquittal. None of the families' wants presented in the last section call for unworkable, impractical or extreme measures, rather each is entirely reasonable. Considering the severe trauma and sense of injustice that the families have experienced, the CJS may be compelled to address their needs.

In Riches and Dawson's research into the families of homicide victims - a study published over 16 years ago - they concluded that: 'Access to information appears to be crucial - even if it is information that explains why many details are not available to relatives at a particular time in the investigation. Written advice, in user-friendly language, on relatives' rights, on the nature of formal procedures and on possible outcomes might help prepare them for what is to come... Clear descriptions of the injuries, and of the degree of facial disfigurement could enable them to make more informed decisions about whether or not they want to see the body... Referral at an early stage to support groups... might also enable parents to overcome feelings of stigma by sharing experiences with other "survivors"' (1996: 157-8). Riches and Dawson recommend this as best practice for all families of homicide victims and it is supported by the evidence in this report. Yet, as the preceding discussion illustrates, for families of homicide victims where no person has been convicted, they face additional needs.

Based on experiences of the families that have been presented in this report, there are six relatively simple and practical measures and changes that could be implemented by the CJS to provide at least some level of care and assistance to victims' families who experience the double injustice and trauma of homicide and acquittal. It can be stated with some certainty that if these recommendations are ignored, the harrowing experiences of the families of victims of homicide where no perpetrator has been convicted will continue to be magnified by a CJS that is meant to provide redress and reassurance but, which, in the case of homicide acquittal, actually produces a compounded form of secondary victimisation. The

recommendations are as follows:

- 1) Detectives, by expressing their confidence that defendants will be convicted for the homicide, unnecessarily and damagingly build families hopes up. Detective Inspectors and Family Liaison Officers should be trained to discuss all possible trial outcomes with victims' families, alerting them to the hard but real facts that some 'cut and dry' cases result in acquittal.
- 2) Following the trial, families should be afforded some level of explanation about how the jury might have come to the decision to acquit defendants. It may not be the place of non-professional juries to be required themselves to provide oral explanations to the families but the responsibility of the judge to spend time explaining both their own sentencing remarks and the probable reasons for the jury's verdict. This information should also be transcribed and made available to families so that they have time to digest and consider the explanations.
- 3) Families craved information and explanation throughout their experience, but particularly after the trial had ended following the acquittal. In their trauma, families may have hazy perceptions of some of the events around them – such as in the early stages of a police investigation (Asaro, 2001a; Burgess, 1975; Van Bloch, 1996; Whent, 1991) or following an acquittal decision. Consequently key information that should be given to families throughout their interaction with the criminal justice process should also be written or recorded in summarised form to enable families' to better reflect on the events and explanations.
- 4) Following acquittal, families had overwhelming desires to air their views and concerns about the acquittal decision. They also craved to be able to talk to the court about, and restore, the tainted character of their loved one. Through Victim Impact Statements (VISs), homicide victims' families are (sometimes, see Casey, 2011) permitted this. Research shows that, although limited, VISs can have some cathartic effects for families (Casey, 2011; Rock, 2010). VISs are, however, usually only permitted by judges when defendants are convicted. Acquittal bars this right when, paradoxically, families are likely to have more reasons to want to give a statement.

Allowing victims' families to have their concerns aired publicly to at least some section of the court would go some way to addressing this serious issue, and more research needs to be conducted into the most appropriate times and ways to do this.

- 5) Families craved someone or something to be found culpable of the homicide. In some cases, conviction for lesser offenses, such as manslaughter, were seen as inadequate. The Law Commission's proposal for a 'three tier' homicide law which deems that partial defences could be ruled as second degree murder rather than as manslaughter, could go some way to addressing this.<sup>5</sup> Moreover, following the recommendations the Victims' Commissioner (Casey, 2011), cases of homicide where no one has been convicted are recommended to be open to regular re-investigation - not only when new evidence arises - but in order to actually investigate if any new evidence can be found. Reinvestigation could be a costly procedure but, when killers are deemed to continue to walk free, this raises serious questions about the effectiveness of justice, not only for the victims' families but for society at large. The re-opening of homicide acquittal cases has now been agreed by the Director of Public Prosecutions (see below) and it is standard practice for some police forces – but not all. The regular reinvestigation of 'cold cases' should thus be recommended as standard practice by the Association of Chief Police Officers.
  
- 6) Families desired help from others that had had similar experiences to themselves. Indeed, evidence shows that coming together and helping others in the same situation is one of the few paths to an element of solace for the families of homicide victims (Armour, 2002; Asaro, 2001b; Casey, 2011; Parkes, 1993 Murphy et al, 2003; Riches and Dawson, 1998). The families of homicide victims where no person has been convicted could similarly benefit from the choice to have contact with those who have experienced a similar situation. Victim Support's National Homicide Service should thus consider providing appropriate and meaningful support to families thorough collaborative working with (and funding for) SAMM and JAA representatives that have themselves experienced the trauma of homicide acquittal.

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<sup>5</sup> See: <http://www.justice.org.uk/pages/homicide-law-reform.html>



JAA are currently in talks with the UK Director of Public Prosecutions and the Association of Chief Police Officers about piloting a series of National Minimum Standards (NMS) for victims' families experiencing homicide case acquittals. These will represent a significant move forward for how victim's families are treated by the CJS. One of the most important changes that have so far been agreed with the Director of Public Prosecutions is that the CPS will be bound to conduct a review of cases following homicide case acquittal. The details of JAA's proposals for NMS and a number of recommendations drawn from their understanding of homicide acquittal are outlined in the following section.

## **6. NATIONAL MINIMUM STANDARDS AND FURTHER RECOMMENDATIONS FROM JAA**

In all homicide cases involving an acquittal, the National Minimum Standards agreed between Justice After Acquittal (JAA), the police and CPS will be followed. The purpose of the National Minimum Standards is to ensure that:

- the police and CPS comply with the agreed processes set out below and that there is openness and transparency in all communications with the family and/or their representative;
- the family and/or their representative is/are given every opportunity to discuss any issues they may have throughout the process; and
- JAA are involved in the process if this is what the family chooses

### **CPS offers a post acquittal meeting (PAM)**

The CPS will offer to meet with the victim's family and/or their representative following an acquittal. The offer will be made approximately three weeks after the acquittal, which will give the family the opportunity to consider any points they wish to raise at the meeting. This does not preclude any discussion which may take place with the family at court at the time the defendant is acquitted.

At the PAM, the prosecutor will:

- deal with any questions that the family may have about the process, including the trial and verdict;
- provide an explanation as to the high level of proof necessary to trigger an application to quash an acquittal – this is to manage any expectations raised in the minds of the family;
- draw attention to the support available to the family through victim support groups including JAA; and
- offer to act as a contact point for any queries up to three months after the verdict.

The meeting will also provide the family with an opportunity to put forward their views about the proceedings and/or possible future actions.

### **CPS and police reviews**

Following acquittal, both the CPS and the police will each conduct a case review. In some circumstances they may conduct a joint review but this will be decided on a case-by-case basis. These reviews will consider the evidence in the case, how the evidence was presented during the trial and whether anything could have been done differently.

The victim's family and/or their representative will not be present during the review stage but they will be kept informed throughout, in line with ACPO Authorised Professional Practice guidance (police reviews) and in accordance with CPS Core Quality Standards (CPS reviews).

It is also important that the family and/or their representative are given the opportunity to put forward their views and to raise any additional issues not yet discussed. This may be via the Family Liaison Officer (FLO), the Senior Investigating Officer (SIO), the family's representative or following the PAM with the CPS.

### **Case review meeting**

The purpose of this meeting is for the police and CPS to share their review findings with the victim's family and/or their representative and where appropriate, identify further actions. The police (SIO) will chair the meeting which may include a representative from JAA if the family so desire.

The case review meeting will include:

- an explanation to the family, (if relevant), in relation to the law in respect of 'double jeopardy' legislation and whether any evidence from the case review may provide opportunity for a further trial;
- a reference to the requirement for and availability of new and compelling evidence to support any subsequent proceedings;
- where appropriate, identification of how new and compelling evidence will be obtained in this case; and
- a discussion to establish the needs of the victim's family in relation to further contact and to identify and maintain, if possible, a specific point of contact.

The meeting will also give the victim's family and/or their representative a further opportunity to ask any questions they may have and to express their views/opinions. It will also establish the needs of the victim's family and/ or representative in relation to further contact and to identify and maintain, if possible, a specific point of contact.

### **Meeting following consideration of a case after acquittal ('double jeopardy')**

The CPS will offer to meet with the bereaved family where, following an acquittal, the case has been re-referred to the CPS for consideration of applying to the Court of Appeal to retry the defendant under Part 10 of the Criminal Justice Act 2003 ('double jeopardy' cases). These meetings will be personally conducted by the Director of Public Prosecutions.

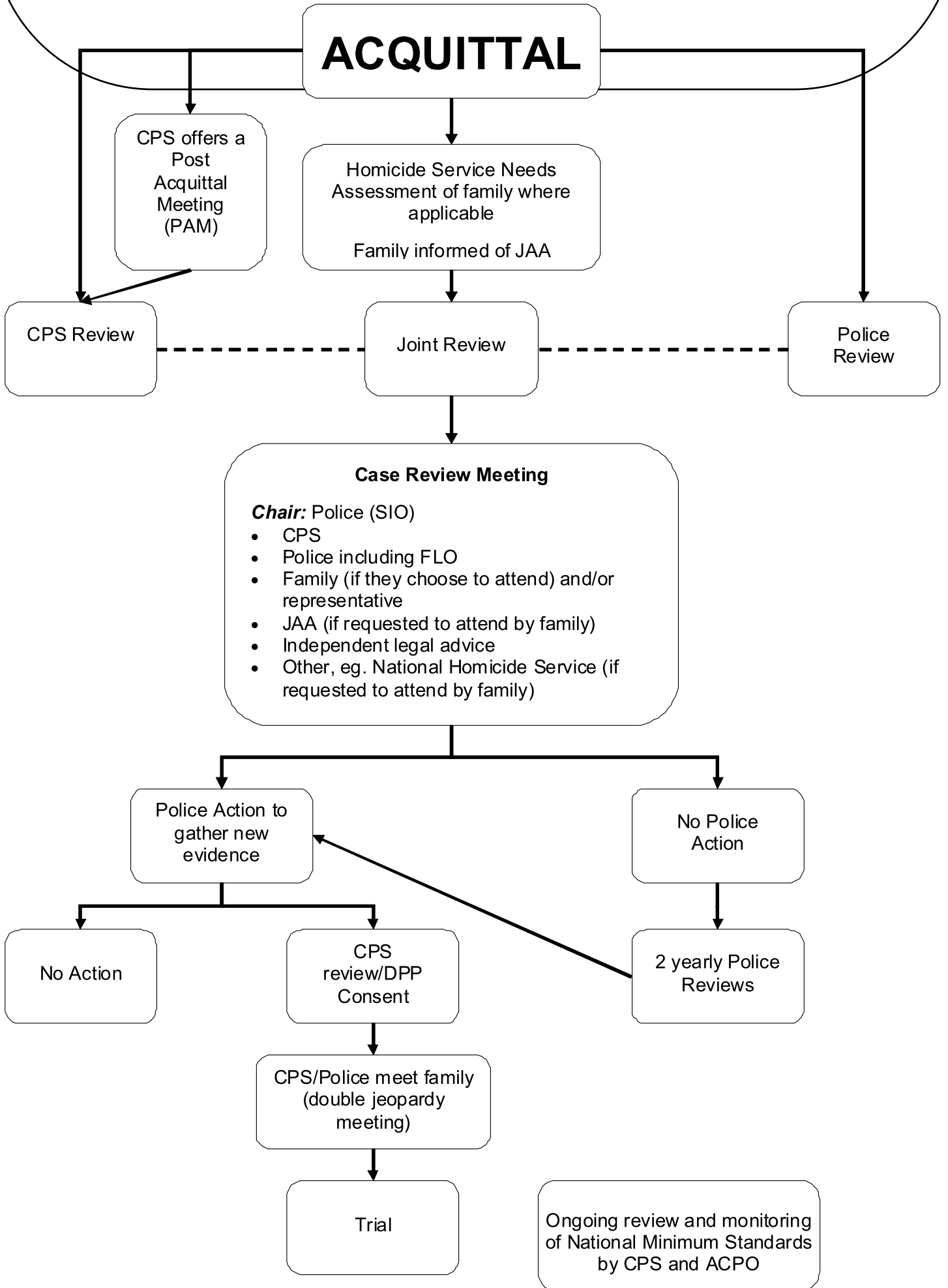
### **Ongoing Review**

A police review of these cases will be held every two years with new evidence/developments being submitted to the CPS as appropriate. There will also be an obligation on the police (or other single point of contact as agreed) to keep the family informed of progress.

### **Review and Monitoring**

Ongoing review and monitoring of the delivery of National Minimum Standards will be undertaken by the CPS and ACPO through their standardised procedures.

# ACQUITTAL



In view of the evidence presented in the main body of this report, the NMS are, however, unlikely to go far enough to address the complex needs of victims' families. As a consequence, JAA have produced a number of further recommendations for changes to be implemented to the CJS before, during and following a murder trial. JAA recognises that a number of these recommendations will involve major legal and procedural changes to the CJS but it is of the view that the rights and protections afforded by the CJS should be balanced more towards the needs of victims and their families.

#### **A. Before the trial**

- 1) Written information to be provided to inform families of their legal rights, of trial processes and possible outcomes including conviction and acquittal.
- 2) Regular meetings to be held with the police and the CPS so that families are kept informed of investigations and findings.
- 3) The current status in relation to the admissibility of "bad character evidence" to be explained to families and families advised that the Defence may attempt a 'character assassination' of the victim.
- 4) Families to be able to waive their role as witnesses in order to be able to meet the CPS lawyer and collaborate in the planning of the case and in drawing up the final case presentation.
- 5) Families to be able to meet the CPS Prosecution Barrister.
- 6) Families to be offered access to ongoing psychological support through the National Health Service, for example, bereavement and post traumatic stress counselling.
- 7) Families to be informed of the National Homicide Service and Victim Support.
- 8) Families to be signposted to voluntary organisations that offer peer support.
- 9) The family should have the right to employ its own lawyer with whom it can confer and consult before, during and after the trial.

#### **B. During the trial**

- 1) Families to be allowed to discuss the victim's positive qualities and create a picture of a "fully rounded" human being.
- 2) The victim should be referred to by name and not referred to as "the body" or "the remains".
- 3) Regular meetings to be held with the police and CPS to discuss and agree on ways to improve the trial proceedings and the possibility of conviction.
- 4) The accused should be compelled to take the stand, and the jury thus enabled to hear the Defence and Prosecution's questions and his or her answers.
- 5) The Courts to ensure that families are made fully aware of court procedures and are supported within all areas of the court (to ensure that they do not have to encounter the offender or family or friends of the offender). Court officials also to ensure that families are seated away from the offender's family and friends.

### **C. After the trial – post acquittal**

- 1) A copy of the trial transcript to be made available, free of charge to families, on request.
- 2) A copy of the Defence and Prosecution Barristers' closing remarks and the judge's summing up to be made available, free of charge to families.
- 3) The judge to meet families to explain his summing up and to offer his interpretation of the jury's reasons for its verdict.
- 4) The CPS lawyer and Prosecution Barristers to meet families to answer questions and explain future legal steps.
- 5) The police to hold regular Police Reviews of the case to which families are invited and supported to attend.
- 6) Families to be informed of JAA and its role in offering advice on acquittals and providing peer support.
- 7) National Minimum Standards (NMS) of support to be put in place following an acquittal. These standards include a series of meetings in which the police, CPS and voluntary organisations work collaboratively with families to offer specific advice,

support and guidance. NMS are currently being agreed with the police, CPS, and JAA under the direction of Keir Starmer, The Director of Public Prosecutions.

- 8) JAA to be granted financial support by the Ministry of Justice as the only voluntary organisation set up by two JAA families to offer specific peer support to other JAA families.
- 9) Families to be given ample time to consider what action/s they want to take once there has been an acquittal. Families to be offered legal advice when making their decisions about how to proceed/who to contact and to be given proper assistance with any representations they make. It is not appropriate for CPS to tell families they have two days to make representation.
- 10) Police and CPS to adhere to NMS, once produced, and instructed to keep families fully informed about all reviews undertaken (even if families are not in attendance).
- 11) NMS procedures, once introduced, to be monitored to ensure proper implementation and to ensure that individual families' needs are met.
- 12) There should be no time limit to advice/support made available to families by the CJS once there has been an acquittal.
- 13) CJS to give proper consideration to research commissioned by JAA and to act on recommendations. CJS to actively encourage and engage in further research around acquittal after a murder trial.
- 14) CJS should be inclusive and not marginalise JAA families or exclude them.
- 15) When an appeal against a conviction is lodged, the appeal may be made to the Court of Appeal without the need for new and compelling evidence. By parity of reasoning, the same criterion should apply in an appeal against acquittal, and new and compelling evidence not be required.
- 16) If, following a Coroner's verdict of unlawful killing, the defendant is acquitted, this indicates that, either the guilt was not proven beyond reasonable doubt, or that the crime was committed by someone else. If the Coroner's verdict of unlawful killing is correct, then a killer walks free and the police should continue their investigations.



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## Appendix

**Table 4: Suspects indicted for homicide by outcome of proceedings<sup>1</sup>, 1999/00-2009/10**

Numbers	England and Wales, recorded crime											
	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	
<b>Male suspects</b>												
<b>Indictment</b>												
Murder	564	579	660	654	660	660	500	599	631	500	229	
Manuslaughter	106	121	115	110	121	134	109	110	100	77	57	
Infanticide	*	*	*	*	*	*	*	*	*	*	*	
<b>Total</b>	<b>700</b>	<b>705</b>	<b>785</b>	<b>764</b>	<b>784</b>	<b>807</b>	<b>627</b>	<b>827</b>	<b>734</b>	<b>580</b>	<b>293</b>	
<b>Outcome:</b>												
<b>Not convicted of homicide<sup>2</sup></b>												
Not tried - count to remain on file <sup>3</sup>	11	9	7	1	3	4	1	7	7	1	1	
Found unfit to plead	2	4	1	2	4			1	4	0		
Found not guilty by reason of insanity	2	1		1	1		2	1	2			
Convicted of lesser offence	31	22	16	20	20	26	15	24	17	21	4	
Acquitted on all counts	163	152	163	174	172	150	129	125	155	117	49	
Committed suicide or died	2	1	2	2	4	6		1	4	1	2	
<b>Total</b>	<b>211</b>	<b>189</b>	<b>174</b>	<b>200</b>	<b>204</b>	<b>194</b>	<b>147</b>	<b>164</b>	<b>194</b>	<b>141</b>	<b>57</b>	
<b>Convicted of homicide:</b>												
Murder	267	272	310	321	309	369	350	315	320	267	141	
Sec. 2 manslaughter	21	15	15	13	19	24	22	33	20	24	5	
Other manslaughter	201	227	261	230	222	215	170	167	164	149	64	
Infanticide	*	*	*	*	*	*	*	*	*	*	*	
<b>Total</b>	<b>489</b>	<b>514</b>	<b>609</b>	<b>564</b>	<b>550</b>	<b>608</b>	<b>552</b>	<b>515</b>	<b>508</b>	<b>440</b>	<b>211</b>	
<b>TOTAL</b>	<b>700</b>	<b>703</b>	<b>783</b>	<b>764</b>	<b>784</b>	<b>802</b>	<b>697</b>	<b>859</b>	<b>734</b>	<b>580</b>	<b>263</b>	
<b>Female suspects</b>												
<b>Indictment</b>												
Murder	54	67	56	68	77	58	37	51	60	149	79	
Manuslaughter	12	21	14	27	24	28	20	29	16	8	3	
Infanticide	-	1	1	1	-	1	7	-	-	-	-	
<b>Total</b>	<b>66</b>	<b>89</b>	<b>71</b>	<b>96</b>	<b>100</b>	<b>87</b>	<b>64</b>	<b>81</b>	<b>76</b>	<b>157</b>	<b>82</b>	
<b>Outcome:</b>												
<b>Not convicted of homicide<sup>2</sup></b>												
Not tried - count to remain on file <sup>3</sup>	1	3	1	7	4	1	1	1	1	-	-	
Found unfit to plead	1	1	-	1	-	-	-	-	-	-	-	
Found not guilty by reason of insanity	-	-	-	-	7	-	-	-	-	-	-	
Convicted of lesser offence	3	7	7	3	7	3	8	3	4	7	1	
Acquitted on all counts	27	26	16	29	26	23	11	29	18	14	3	
Committed suicide or died					4							
<b>Total</b>	<b>27</b>	<b>31</b>	<b>19</b>	<b>35</b>	<b>40</b>	<b>27</b>	<b>20</b>	<b>23</b>	<b>20</b>	<b>16</b>	<b>4</b>	
<b>Convicted of homicide:</b>												
Murder	12	10	14	20	24	26	12	10	26	17	5	
Sec. 2 manslaughter	6	3	4	1	2	1	3	5	5	4	4	
Other manslaughter	23	30	33	30	34	37	21	26	27	29	33	
Infanticide	1	1	1	-	-	1	1	1	-	1	-	
<b>Total</b>	<b>42</b>	<b>44</b>	<b>52</b>	<b>51</b>	<b>61</b>	<b>65</b>	<b>34</b>	<b>46</b>	<b>54</b>	<b>47</b>	<b>29</b>	
<b>TOTAL</b>	<b>69</b>	<b>93</b>	<b>71</b>	<b>91</b>	<b>100</b>	<b>87</b>	<b>64</b>	<b>71</b>	<b>81</b>	<b>58</b>	<b>23</b>	

<sup>1</sup> As at 28 September 2010. Figures are subject to revision as cases are dealt with by the police and the courts, or as further information becomes available.

<sup>2</sup> The offences for which these persons were indicted may nevertheless include counts recorded as homicide.

<sup>3</sup> This usually implies that the suspect has been dealt with for some less serious offence.

Source: Home Office 2011, p.37.