

Supporting Exonerees

Ensuring accessible, consistent and continuing support

A report by JUSTICE



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- We promote a better understanding of the fair administration of justice among political decision-makers and public servants.
- We bring people together to discuss critical issues relating to the justice system, and to provide a thoughtful legal framework to inform policy debate.

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Contents

Executive summary

Introduction 4

Life after prison 7

Support. 16

Compensation 27

State recognition of miscarriage of justice. 37

Conclusion. 41

Annex 44

Acknowledgments 48

Executive summary

In 1982, JUSTICE published a report, *Compensation for Wrongful Imprisonment*. Unfortunately, little has changed since then. Exonerees still do not receive the support they need to return to a normal life and are not properly compensated.

Drawing upon research and the experiences of former JUSTICE clients and other exonerees, this report demonstrates how the criminal justice system fails to understand the issues facing exonerees: including practical assistance needed upon release, the negative impact of incarceration on mental health and the difficulties readjusting to everyday life. Exonerees do not receive the services and support needed to acclimatise and return to normal life upon release from prison. We note that some support services are available, but these are poorly-resourced, often do not address the complex range of problems faced by exonerees, and are largely available on an ad hoc basis. We recommend ambitious development of existing services that would provide accessible, consistent and continuing support for exonerees.

Our report highlights the inadequacy of the compensation regime. The compensation award is capped and the application process is burdensome and complex. Furthermore, changes to legislation have created a higher threshold test and led to a reduction in successful compensation claims.

We also set out that measures for exonerees should go further than financial and non-financial support and include a public acknowledgement that a wrong has happened.

Based on the issues faced by exonerees, and to ensure proper redress for wrongful imprisonment, we make recommendations on:

- Better management of the transition from incarceration to release
- The need for specialist psychiatric care
- The setting up of a residential service to provide practical and welfare support to exonerees

- An independent body to determine whether applicants are eligible for compensation
- Automatic compensation for wrongful imprisonment, subject to certain exceptions
- An apology and explanation of the failure that leads to a quashed conviction, and where necessary, a public inquiry

Introduction

1. In the JUSTICE 1982 working party report, *Compensation for Wrongful Imprisonment* (the 1982 Report) we stated that:

All those who participate in the administration of criminal law at various levels, including juries, are acting on behalf of society as a whole. As they are human, it is inevitable that mistakes will be made. There are inherent dangers of error and injustice in the accusatorial system of trial... This country has been slow to provide a remedy in damages in the field of administrative law, but if there is an area in which an effective remedy should be provided it is where the operation of the criminal law has resulted in unjustified loss of liberty.¹

2. In this report we refer to those who have suffered wrongful imprisonment as “exonerees.” The 1982 Report pointed out that through “errors in the administration of the criminal law,” any period of imprisonment can bring about the following consequences:
 - loss of liberty and the harshness and indignities of prison life;
 - loss of livelihood and property;
 - break-up of the family and loss of children; and
 - loss of reputation.
3. The 1982 Report was written at a time when it was only possible to receive compensation through the Home Office’s *ex gratia* scheme. The Working Party believed that this scheme should be abolished and that, instead, an independent compensation board should be formed to function along the same lines as the Criminal Injuries Compensation Board.

¹ JUSTICE, *Compensation for Wrongful Imprisonment*, (1982), available at <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/CompensationWronfullImprisonment.pdf>

4. Since the publication of the 1982 Report, a statutory requirement to provide compensation to those who suffer wrongful imprisonment has been enacted, and the *ex gratia* scheme has been abolished. Since 1997, when the Criminal Cases Review Commission (CCRC) was established, there has been an average of 21 quashed convictions a year. However, the number of successful compensation claims has plummeted. In 2014/15 there were 20 quashed convictions and one successful compensation application; in 2015/2016 there were 17 convictions quashed and two successful applications; and in 2016/2017 there were 10 quashed convictions and one successful applicant.² Therefore, the injustice of being wrongfully punished and then denied an effective remedy has become more prevalent.
5. Other than a statutory basis for awards of compensation, little has changed since the publication of our 1982 Report. Exonerees are rarely compensated and they often do not receive the day to day support that they sorely need, both practically and therapeutically. Although the amount of compensation is now decided by an independent assessor, eligibility remains within the discretion of the Secretary of State for Justice, with most of the ensuing problems that our 1982 Report highlighted. In particular, despite the introduction of the Human Rights Act 1998, the decision continues to lack independence and transparency.
6. This report seeks to highlight, nearly 40 years later, the issues that exonerees still face. Although we consider the availability of compensation, our primary focus is on the need for support and other outcomes once a person is released from wrongful imprisonment. As we set out below, compensation is now almost impossible to obtain. Moreover, it can take a long time to receive and, once received, without appropriate support, of itself provides little substantive benefit. We suggest practical recommendations to ensure that exonerees are given the support that they should be entitled to. Without such support, exonerees find it difficult to return to a “normal” life. Exonerees who have been imprisoned by the State when they should not have been subsequently suffer through no fault of their own. It is only right that the State makes amends for such an injustice.

2 Figures derived from CCRC Annual Reports (available at <https://csrc.gov.uk/publications/corporate-publications>), CCRC Case Statistics (available at <https://csrc.gov.uk/case-statistics/>) and Parliamentary Answers (see below).

7. Founded in 1957, JUSTICE for many years represented people who sought to claim miscarriage of justice. It carried on doing this until the creation of the CCRC. We have retained a strong interest in the welfare of exonerees, which has prompted us to write this report on the support provided to exonerees. We agree with the observations in our 1982 Report that anyone wrongly incarcerated, for whatever period of time, may need support upon release to put their lives back together.³ For those that have served many years in prison proclaiming their innocence, such services are almost certainly essential.

8. In compiling this report, JUSTICE has spoken to exonerees, their lawyers, support organisations, journalists, psychiatrists and academics.⁴ Their views as to what exonerees require in order to readjust successfully to everyday life are broadly similar and align with the “Say I’m Innocent Campaign” for exonerated prisoners in the UK, Ireland and United States of America:⁵
 - a. Adequate and appropriate practical support in preparation for and after release;
 - b. Therapeutic support for as long as they need it;
 - c. Adequate compensation; and
 - d. An acknowledgment that they have suffered a wrong at the hands of the state.

These views have helped us to formulate the recommendations that we set out throughout the report and in the **Conclusion**.

3 People who are remanded in custody pending trial and subsequently acquitted may have lost their home, employment, family ties and have suffered the effects of incarceration. This will be especially felt for crimes attracting particular stigma, such as domestic and child abuse and sexual offences.

4 Including holding a roundtable discussion hosted together with University of Oxford DPhil Candidate, Laura Tilt, on 18 May 2016 (the Roundtable). Contributors are listed in the Acknowledgments chapter.

5 For further information see <http://sayiminnocent.com/>

Life after prison

I was a hell of a lot happier in prison than when I got out

– Paddy Hill, exoneree⁶

9. Release from prison involves a rush of emotions for any individual, especially exonerees. However, the relief felt at being released is short-lived, once reality sets in. The person will have spent years trying to clear their name, but once back in their community, they will find that things are very different to what they imagined and there is no apology or explanation as to why this has happened to them. They will find that the world has moved on; loved ones have grown up or passed away and technology has evolved. After incarceration, release can be an equally unjust experience for an exoneree, if they have no support network to greet them. The diverging stories of two former JUSTICE clients demonstrate this.

Mary Druhan was convicted of a double murder in 1989, by causing a fire in a squat at Kingston. She denied being in the house but lost her appeal in 1990. After ten years in prison, the Court of Appeal Criminal Division (CACD) quashed her conviction. It found the conviction to be unsafe due to the non-disclosure of a witness' criminal record and the unreliable evidence given by other witnesses. Her first words after walking out of Court were "I'm free, I'm free, I'm free."⁷ She was met outside the court by her sister and daughters who took her for a celebratory cup of tea and then on a much needed holiday. With the support of her family, Mary was able to secure a flat to live in and make sure that she was receiving the pension that she was owed.

Ashley King, aged 22, was found guilty, together with his friend who was aged 11, in 1986 of the murder of Margaret Greenwood. Ashley, who has learning disabilities, confessed under police questioning to

⁶ Paddy Hill as quoted in M. McLaughlin, *Fallout* (film documentary), 2017, <http://www.miscarriagesofjustice.org/say-im-innocent/>

⁷ *The Guardian*, 'Woman freed after 28 year nightmare', 17 July 1999, available at <https://www.theguardian.com/uk/1999/jul/17/johnzard>

clubbing Mrs Greenwood and claimed that his friend had stabbed her. However, notwithstanding the confession, Ashley maintained his innocence for the 13 years he remained in prison. He was released after the CACD quashed his conviction due to “new psychological evidence of King’s vulnerability during police questioning.”⁸ Following his release, no one was there to meet Ashley outside the Court. He was released together with his belongings in two large transparent plastic bags, which had HM Prison Service stamped in 6-inch high letters on one side. It was the middle of December and all he was wearing was a cotton t-shirt. He was expected to make his own way home with a small discharge grant and a travel warrant dated for the previous day.

10. The differing fortunes of Mary and Ashley highlight the lottery that exonerees enter when they are freed. Those who have their conviction quashed are released without any state-given support, other than £46 and a travel voucher. There is no automatic right to compensation and no automatic assistance in finding accommodation or work. This is in stark contrast to the support that is offered to prisoners who are released having served their sentence.
11. Exonerees are an anomaly in the criminal justice system, with no state department responsible for them upon release as they should never have been imprisoned in the first place. This is compounded by the fact that if convicted people maintain their innocence in prison, they are not able to join pre-release prison programmes that assist with the practical issues of life upon release. Due to the unpredictable nature of their cases, exonerees are released at short notice, with little time to prepare, practically or mentally.
12. The trauma of being wrongly incarcerated means that exonerees suffer from unique issues when they are released. These might include not understanding how the modern world works, finding accommodation, work and benefits, coping with readjustment and finding relationships difficult to maintain. These are not easily resolved and the consequence of trauma may last for many years.

8 *The Guardian*, ‘Appeal quashes murder conviction’, 11 December 1999, available at <https://www.theguardian.com/uk/1999/dec/11/claredyer>

Trauma

13. Unique to exonerees is the feeling of injustice that they have carried with them each day of incarceration. According to specialists Professor Gordon Turnbull, a trauma consultant, and Dr. Adrian Grounds, a forensic psychologist, miscarriage of justice victims are likely to experience Post-Traumatic Stress Disorder (PTSD)⁹ akin to that experienced by victims of torture and war, which requires specific support to overcome. This can develop when what has happened to an individual lacks legitimacy and may never be fully explained. Discrete mental health problems, such as depression and anxiety, can be dealt with and there is clear guidance for mental health practitioners on how to do that, but some exonerees may continue to have long-term problems that need ongoing assistance to resolve. Trauma related responses can take time to arise and many years to resolve, if ever. Exonerees require the time and space to readjust and to attempt to deal with what has happened.

Andrew Evans was only seventeen when he was wrongly convicted of murdering 14 year-old Judith Roberts. His conviction was quashed after 25 years when it was discovered that he suffered from a condition that made him susceptible to accusations made against him, which led to him giving a false confession. Such was the impact on his mental health that, when he was released, psychiatric and social work experts were unanimous in agreeing that he was in need of the equivalent of a hostage retrieval programme in order to manage his transition to freedom.¹⁰

⁹ Turnbull explains that the condition develops when trauma – whether physical or emotional – imprinted on the right side of the brain is unable to transfer to the left side of the brain. It is the left side of the brain where experience is processed, allowing someone to come to terms with their experience. The left side of the brain ‘will actually reject material that doesn’t make sense,’ allowing PTSD to develop. A guilty person who is imprisoned “can just send the information across and say, ‘yeah, I did it, fair cop’ and then the brain can settle down.” For individuals who are not guilty: “you get a lot of flashbacks:” unresolved, unprocessed experience that will repeatedly offer itself up with all the intensity of the original: *Nightingale Hospital*, available at <http://www.nightingalehospital.co.uk/specialist/professor-gordon-turnbull/> and *The Guardian*, ‘Freedom? It’s Lonely’, 29 April 2009, available at <http://www.theguardian.com/society/2009/apr/29/sean-hodgson-release-prison>. See also, A. Grounds, Understanding the Effects of Wrongful Imprisonment, *Crime and Justice*, vol.32, (2005), pp. 1-58.

¹⁰ JUSTICE Annual Reports 1998 and 2000.

10 Life after prison

Peter Blackburn, recalling his release, said, “I couldn’t stand still. I was too afraid. Too afraid of what might happen if I stood still as I thought I would end up killing myself. That was the biggest worry when I got out of prison, that there would be nobody left to fight, and I’d just commit suicide, that it was the fight which was keeping me going. I still have nightmares. I wake up and there’s a person-sized pool of sweat on the bed sheets.”¹¹ After release, Peter suffered from intermittent drug and alcohol abuse, as well as the inability to form lasting relationships. He was unafraid of drug addicts and robbers but found the supermarket “utterly terrifying.”

14. The trauma that exonerees have experienced makes it difficult to accept what has happened to them and this manifests in ways that make everyday life hard to manage. Wrongful incarceration can cause particular responses. For example, many exonerees are dealing with unresolved anger and find it difficult to remain in one place. A previous client of JUSTICE, John Kamara, had his conviction for robbery and murder quashed after spending nearly 20 years in prison.¹² He found driving to be therapeutic. He recalled one occasion to us where he drove to Scotland to see his brother, had a cup of tea and then drove home again.
15. Maintaining relationships, both old and new, can be extremely demanding. Relationships that have lasted throughout prison may not survive after release.¹³ The passage of time and separation changes people and makes it hard to relate to who they now are. For family and friends it can be very difficult to comprehend the trauma that an exoneree has been through or how to adequately support the exoneree’s complex needs.

11 *The Guardian*, ‘Crackheads are fine. It’s Asda that scares me’, 9 June 2009, available at <http://www.theguardian.com/uk/2009/jun/09/paul-blackburn-wrongly-convicted>

12 Kamara’s conviction was overturned due to evidence that his identity parade was flawed; and that 201 witness statements that showed his innocence were not disclosed. See BBC, ‘Partners in Pain,’ 15 April 2001, available at <http://news.bbc.co.uk/1/hi/uk/1166124.stm>

13 Angela Cannings’ relationship with her partner had previously endured the loss of two children. However, the four-year enforced separation placed such a strain on their relationship that they divorced following Angela’s release. Mike O’Brien was one of the three wrongfully convicted for the murder of the newsagent Phillip Saunders. He served 11 years in custody before his conviction was quashed, during which time both his father and his infant daughter died. Sam Hallam was just 18 years old when he was wrongly convicted of murder. After seven years in custody, his conviction was quashed due to newly discovered mobile phone photos that cast doubt on his conviction. His father tragically committed suicide during Hallam’s imprisonment.

As John Kamara explained to us having spoken with the partner of Nettie Hewins, some exonerees believe that they will be able to fit straight back into their lives, and try to assume the caring role they once had.¹⁴ This may be impossible and the realisation can exacerbate the difficulties of readjusting. Meaningful connections may also be difficult to form as exonerees are reluctant to trust people.

16. This highlights the importance of exonerees being able to talk about their experiences. Their unique situation requires a form of counselling in addition to any psychiatric treatment that may be recommended. From speaking with exonerees, we understand that this counselling needs to be with people who have gone through similar experiences and will understand what the exoneree is going through. Being able to talk about their experiences, the system, or any other problems with someone who understands will relieve some of the frustration that exonerees face upon release.
17. The idea that someone needs no more than release to feel vindicated in their innocence and to get back to the life they lost is plainly wrong. A justice system that does not acknowledge the unique issues exonerees face risks continuing the punishment of exonerees after they have been released. The unique psychological difficulties exonerees face must be addressed in any provision of support for them. Dr Adrian Grounds has also researched the prevalence of PTSD amongst exonerees, which has led to him to call for an official referral service or initiative to be set up to tackle the psychological trauma exonerees face. Studying the psychological impact wrongful imprisonment can have on an individual he conducted fifty-one psychiatric assessments of individuals released from wrongful imprisonment.¹⁵ Dr Grounds found that thirty-three of the fifty-one exhibited personality change; twenty-four demonstrated symptoms conducive to PTSD and within the fifty-one there was evidence of other psychiatric disorders like depression, adjustment disorder and associated anxiety symptoms.

14 Annette Hewins served 18 months of a 13 year sentence for arson in which a family died. The CACD found that there was insufficient evidence against her. However, the imprisonment had a terrible effect on her and her young family, *The Independent*, 'Verdicts Quashed in Fatal Fire Case,' 16 February 1999, available at <https://www.independent.co.uk/news/verdicts-quashed-in-fatal-fire-case-1071149.html>

15 The Miscarriages of Justice Organisation, Response - Mental Health Strategy for Scotland 2011-15- *A Consultation*, Appendix 3; Experts Response - Dr Adrian Grounds, Iain Stephens and Dr Paul Miller, available at <http://www.miscarriagesofjustice.org/wp-content/uploads/2012/01/The-Miscarriages-of-Justice-Organisation-Report-on-the-Consultation-Mental-Health-Strategy-in-Scotland-.pdf>
[Accessed 27/04/2015](#)

18. **We recommend that specialist psychiatric help should be readily available to exonerees immediately prior to release and following release for as long as they need it.** Such support is provided to soldiers returning from combat and there is no satisfactory reason why exonerees should not receive something similar.
19. The consequences of not providing support are plain. Without support, exonerees can decline following their release. The lack of support exonerees receive often means that their wrongful punishment continues. Some turn to substance abuse, others withdraw from society and some die within a few years.¹⁶

The transition to everyday life

20. Exonerees often spend a significant amount of time in prison, which means that the transition to everyday life can be daunting.
21. When released, exonerees rely on the support of family members or friends to provide shelter. If they have no family or friends, there is a risk that their first night of freedom will be on the streets. As solicitor Mark Newby explained to us, this is what could have happened to Victor Nealon when he was released after spending 17 years in prison. However, he was discovered at a train station by a journalist who recognised him and helped him to find a bed for the night.
22. Although exonerees should have priority status for housing, vulnerability must be demonstrated. Whether this is accepted differs depending on the local authority or housing association. Moreover, unless exonerees can show that a wrongful conviction has had an impact on their health and wellbeing, there is no immediate recourse to unemployment or disability benefits. Without assistance prior to release, the practicalities of applying are a problem - locating a national insurance number; using a computer to make an application; preparing a c.v. and demonstrating that you are actively seeking work; obtaining medical evidence of unfitness for work. This can take months to resolve.

¹⁶ For example, Sean Hodgson died three years following his release. Sally Clark died four years following her release having never fully recovered from her ordeal. Peter Blackburn suffered from intermittent drug and alcohol abuse and was unable to form lasting relationships.

Paul Blackburn was jailed for life at the age of fifteen, convicted for attempted murder and sexual assault of a young boy in 1978. He spent 25 years in prison before his conviction was quashed. It took him four years following his release to secure his own house. Prior to that, he moved between sofas, floors and the streets.

23. Even where exonerees are fit enough to work, it is difficult to secure work quickly. Criminal record checks may not detail whether convictions have been overturned. Currently, the conviction is displayed, with a second line indicating that it has been quashed. This is unhelpful as many people do not know what ‘quashed’ means and the record of the conviction is still prominent.¹⁷ This means many employers are reluctant to hire exonerees. **To assist with job applications, Her Majesty’s Courts and Tribunals Service should liaise with the Disclosure and Barring Service to automatically amend criminal records and remove quashed convictions.**
24. Moreover, a lack of training on how to find work, and write a CV, inhibits the prospect of applying for a job. Of those who are able to secure work, only a minority of exonerees can actually manage to engage in the activities a job requires.
25. In addition to these practical issues, the world outside prison can be completely alien to someone who has been incarcerated for a long time. Without a social support network, exonerees struggle to manage their day to day lives.
26. Prolonged periods of imprisonment usually result in an individual becoming institutionalised. Day after day prisoners have been told when to wake up, when to go to sleep and when to eat. Permission is required for many activities. Because of the risk of institutionalisation, the release of prisoners is carefully managed. Many go on day release, volunteer in the community and can spend multiple days in a row outside prison. This allows prisoners to acclimatise to what life will be like when they are released.

17 At the Roundtable, Paul McLaughlin told us of a client that was placed on the sex offenders register and had not yet been removed from it.

14 Life after prison

27. The release of exonerees is not managed at all and the unrestricted freedom they suddenly have can be overwhelming. It may even result in an exoneree only using one room in their accommodation to replicate the confines of a cell, as this is the environment they feel most comfortable in.¹⁸

Sunny Jacobs told us, “[i]t is not only their past they have taken away and all your possible futures; there is no future.” She continues, “our normal is to feel isolated, to feel confused about what to do ... For most people they don’t get any compensation at all – they can’t see any future. No one tells you when you get out your problems are just beginning. There’s a whole other set of problems that you weren’t prepared for.” Sonia was terrified of crossing the road when she was released. Peter was afraid to use the stove. “When I was released,” Sonia recalls, “I felt unconsciously I needed permission to go anywhere. So if someone showed me that this was the way to the shops I would not deviate from that route even if it was quicker.” Although she knows this is not logical it is part of the effect of institutionalisation.

28. There are many practical issues exonerees face when they leave prison. Many exonerees were imprisoned before the use of mobile phones became prevalent, never mind smart phones. On release, the devices are baffling and public telephone boxes have been removed almost everywhere. Financial changes are also a concern; something as simple as a bus fare rising from 40p to over £1 can be disconcerting and mean that exonerees are unsure of the value of everyday things, making it difficult to manage finances.¹⁹
29. Other everyday tasks that can be problematic are: opening bank accounts; using the internet; and filling out forms. The reluctance of exonerees to ask for help can exacerbate these problems

¹⁸ *Supra, Fallout.*

¹⁹ Without support, exonerees are unlikely to be suitably adjusted to receive and manage any compensation they receive, let alone use it to support themselves. The Birmingham Six received £50,000 each when they were released. Paddy Hill explained they blew it, and did not use it the way they would have been able to if they had support. “We were bringing our grandkids out and buying them stuff down Oxford Street, and all we were trying to do was buy love and affection. It doesn’t work.” *The Guardian*, ‘I’m dead inside,’ 17 June 2002, available at <http://www.theguardian.com/uk/2002/jun/17/northernireland.ukcrime>

30. It can also be difficult going back into the community where the crime occurred. Despite a decision quashing the exoneree's conviction, some people may be sceptical or disagree with the decision and react adversely to the exoneree's presence in the community. On some occasions relocation will be necessary because there will be no support available where they are. This can even be the case when there is family nearby, who have said that they will provide support upon release; the reality is that they struggle to do so because they do not understand the complex needs of exonerees. Moreover, some exonerees, as Nettie Hewins explained to John Kamara and Bettina Dix, receive death threats on release, meaning that they find it difficult to live where they are released to.

31. **We recommend that to better manage the transition from incarceration to release, cases that are likely to be overturned should be identified early and the individual should be provided the same pre-release support as other offenders.**

Support

32. The difficulties exonerees face when they are released, and the scant support available to them, highlights their unique situation. There are some support services available for exonerees, but these lack the resources to adequately deal with the full spectrum of exonerees' needs, are usually only available on an ad hoc basis, and rely on exonerees knowing they exist and how to access them.
33. There are two immediate types of support exonerees require: financial and non-financial. Financial support is required not only to compensate the individual for miscarriage of justice but to ensure that they are able to support themselves following release. Non-financial support includes helping exonerees with practical support and resettlement, as well as counselling and psychiatric treatment.
34. The two organisations that provide support to exonerees in the UK are the Citizens' Advice Bureau Miscarriage of Justice Support Service (MJSS) in England and Wales and the Miscarriages of Justice Organisation (MOJO) in Scotland.

Services Currently Available

Miscarriage of Justice Support Service

35. MJSS is funded by the Ministry of Justice but is independent of Government. Its service is free, confidential, impartial and independent.²⁰ MJSS' remit is one of advice, assistance and support with accessing services and day to day matters.²¹

²⁰ Royal Courts of Justice Advice Bureau incorporating Islington CAB, *Miscarriages of Justice*, available at <http://www.rcjadvice.org.uk/miscarriages-of-justice/>

²¹ C. Hoyle and L. Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (article forthcoming) discuss the scope and operation of the recent public tender for aftercare for miscarriages of justice.

36. Exonerees are referred to MJSS by the Criminal Cases Review Commission (CCRC) when the CCRC refers a case back to the CACD.²² MJSS will then offer support to exonerees during the appeal, immediately following release and subsequently as they need it. Another way to access the service is for exonerees to self-refer, which some will also do when they are successful at their first appeal.²³
37. The MJSS supports about 20-30 exonerees a year and there is no time limit on the support offered. For instance, one exoneree has been receiving support for about 14 years, although the average is about three years.²⁴
38. Once referred to MJSS, it can help the client with a number of activities, such as:
 - a. Finding accommodation;
 - b. Securing a job;
 - c. Applying for National Insurance credits; an
 - d. Registering with a GP and accessing appropriate healthcare and counselling.
39. However, although this sounds like it provides the necessary assistance that exonerees need, MJSS does not provide the extensive service that is necessary.²⁵ Efforts to engage exonerees who would benefit from the service can be ineffective. A leaflet is sent to the person in prison or their solicitor while the appeal is pending. However, given their wrongful imprisonment, people may not understand or trust the service being offered.²⁶ This should be followed up by a prison visit, irrespective

22 The CCRC can investigate a case when a person applies to them following a failed first appeal, on the basis of fresh evidence (ss. 8-19 Criminal Appeal Act 1995). As a consequence, getting a referral to the CACD can take many years.

23 Following conviction, a first appeal must be lodged within 28 days on the ground that the conviction was unsafe due to an error during the trial. The time from application to hearing is usually around six months. See <http://www.rcjadvise.org.uk/miscarriages-of-justice/>, however, this will in practice involve standard CAB advice rather than the active assistance of the specialist service (for example with form filling). L. Tilt, 'The Aftermath of Wrongful Convictions: Addressing the Needs of the Wrongfully Convicted in England and Wales' (DPhil thesis, University of Oxford, forthcoming).

24 Hoyle and Tilt, (article forthcoming).

25 Hoyle and Tilt (article forthcoming) observe that the remit imposed by the grant funding agreement does not provide for a comprehensive service focussed on resettlement.

26 A letter from an exoneree about their experience of MJSS and how it has helped him is now included, which seems to have increased the successful take up of support, L. Tilt.

18 Support

of whether the person has requested one, to build a relationship of support as soon as possible. MJSS operates a helpline and is accessible by email. Caseworkers can be seen in person, but this is not a dedicated exoneree service and therefore does not encourage personal support. Around six CAB branches across the country have a caseworker to assist exonerees, operating to a model where new caseworkers can be assigned if an exoneree arrives in an area without an MJSS assigned caseworker.²⁷ The service used to be centrally located in London but was spread out to be closer to clients. Caseworkers are provided with information about the fast track avenues to services and are familiar with local housing authorities and processes through their existing CAB work. The MJSS is very successful at securing accommodation and social security benefits for exonerees.²⁸

40. However, MJSS caseworkers do not receive comprehensive training on the specific vulnerabilities of exonerees, the kind of trauma they may be experiencing and appropriate responses. This often means that they do not understand the specific needs of exonerees. As caseworkers are not exonerees themselves, it is difficult to understand the unique experience of exonerees.
41. Funding for MJSS is provided through a one-year renewable contract, making long-term planning difficult, hindering the good work MJSS tries to do. The current grant offer is for a two-year period, but this is still far too short to enable a suitable service to be established.²⁹ The lack of resources is highlighted when it comes to assisting exonerees in the transition to everyday life. MJSS finds it difficult to assist with finding appropriate psychiatric treatment, counselling services and the general pastoral care that exonerees require because of an absence of services.

²⁷ L. Tilt, DPhil, *supra*. For more information on the structure and operation of the Miscarriage of Justice Support Service, see Hoyle and Tilt, *supra*.

²⁸ Exonerees will usually refuse temporary accommodation because this will generally be provided by bail hostels and exonerees do not want to have to continue to be associated with offenders. Exonerees would prefer to rough sleep than be placed there. MJSS tries to get exonerees on the housing list before release from prison so that they will have adequate social housing to come out to.

²⁹ MoJ, *Grant Funding Opportunity - For the provision of advice and support for those released from custody following a Miscarriage of Justice, 2018*, available at <https://www.contractsfinder.service.gov.uk/Notice/7dd7de31-9a79-4227-9555-b948b4504df4?p=@jNTO8=UFOxUIRRPT0=N> See Hoyle and Tilt, *supra* for discussion of the grant proposal.

42. The location of MJSS within CAB branches also inadequately responds to the need for exonerees to have a dedicated place to go for support. For instance, exonerees are required to sit in waiting areas along with other CAB clients to see a caseworker. This is very difficult for people who are managing anxiety and trauma. It is also problematic for exonerees who have been speaking with the central MJSS for many years and are now required to adjust.

Miscarriages of Justice Organisation

43. MOJO provides day-to-day support for exonerees from its office in Glasgow. MOJO seeks to manage an exonerees' release by identifying appeals and beginning to set up services in anticipation of a successful application. Once released, MOJO attempts to support exonerees in trying to acclimatise. MOJO is also funded by an annual grant from the Scottish Government, making long-term planning difficult.
44. MOJO has the language and understanding to provide pastoral care as it was set up by an exoneree, Paddy Hill of the Birmingham Six. It has a shop front which enables it to offer a drop-in service. Some exonerees come in to have a chat, use the internet or have a cup of tea. This is useful as it means someone is always around to listen.
45. MOJO also suffers from a lack of resources meaning that it is unable to reach as many exonerees as it would like, with those who know where the office is most likely to receive its assistance.
46. Both MOJO and MJSS have found that accessing appropriate psychological support is difficult. Medical assessments of exonerees' are inconsistent, with many not understanding the unique needs of exonerees. When a need is identified, the availability of specialist psychological support is limited.

Services offered to offenders on release

47. The lack of support offered to exonerees can be contrasted with the support offered to other prisoners.

20 Support

48. In the last twelve weeks of their sentence, prisoners attend courses provided by Her Majesty's Prisons and Probation Service (HMPPS) and voluntary services. These courses provide advice and support on: (a) finding somewhere to live; (b) getting a job; and (c) looking after money. Additional support will be provided if prisoners: (i) have abused substances; (ii) are sex workers; or (iii) are the victim of domestic violence.³⁰
49. A popular service is run by Nacro; its computer-based programme provides up-to-date information on practical issues, such as finding accommodation, as well as counselling services and money advice.³¹ Prisons also work with Jobcentre Plus which helps prisoners with welfare claims and provides further advice on claiming benefits when prisoners are released.³²
50. Moreover, most prisoners spend the last few months of their sentence near where they plan to live.³³ There are also resettlement prisons and units available that are designed to help prisoners serving longer terms adjust and prepare for release.
51. Despite these services, many charities offer a 'Through the Gate' service. This reflects the fact that the services offered by HMPSS are not sufficient for successful reintegration and more is needed. For instance, the St. Giles Trust (the Trust) offers a holistic, person-centred approach.³⁴ It seeks to build a connection with clients prior to release, which increases levels of engagement on release as it removes the faceless caseworker. The Trust will then meet its clients at the gate and support them to attend relevant appointments. Where needed, they will advocate on behalf of their clients to ensure the best outcome is achieved.

30 MoJ, *Resettlement of released prisoners*, available at <http://www.justice.gov.uk/offenders/before-after-release/resettlement>

31 Nacro, *About us*, available at <https://www.nacro.org.uk/about-us/>

32 *Supra*, MoJ.

33 Gov.uk, *Leaving prison*, available at <https://www.gov.uk/leaving-prison/before-someone-leaves-prison>

34 Other services are run by the Prison Advice and Care Trust, Revolving Doors and Catch 22, among others.

52. In addition to this, a support plan is devised with the client to identify what the client's priorities are and help them achieve these, while also managing expectations. The Trust, like MOJO and the 'Sunny Center' (discussed below), sees the value in lived experience, and tries to train ex-offenders to provide its services.

Effective support

53. From our conversations, it seems to us that the services currently available in the UK are far too limited to assist exonerees in rebuilding their lives and the State must do much more to support this. Support upon release needs to be readily **accessible, consistent and continuing**. In our view, the starting point is a centrally located residential and daytime exoneree-specific support centre.
54. MOJO has previously tried to set up a refuge for exonerees that would work as a half-way house for people that are released. However, it has so far not managed to obtain the funding for this.
55. An example of such a centre is the Sunny Center.

The Sunny Center

56. The Sunny Center (the Centre) was set up by Sonia 'Sunny' Jacobs and Peter Pringle, who were both wrongly sentenced to death.³⁵ They set up the Centre after experiencing their own difficulties with reintegrating and hearing the plight that others have gone through.

³⁵ Jacobs was imprisoned for 17 years in the United States prior to her conviction being overturned, and Pringle spent 15 years in prison in Ireland before his sentence was overturned.

57. The Centre has been running for three years and aims to provide a place for exonerees who have served long prison terms, to ‘safely rest, recuperate and transform.’ It provides this through recreating a ‘family unit’ to help establish belonging and a circle of support in a therapeutic environment.³⁶ Anne Driscoll explained to us that, as the exonerees are familiar with what Jacobs and Pringle have themselves gone through, they feel comfortable staying with them. The Centre has so far received 13-15 people a year.
58. The focus of the Centre is to give exonerees the tools they need to cope with what has happened to them. A large part of this toolkit is helping to acknowledge their wrongful conviction, and knowing that how they feel about it is shared by others with similar experiences. The value of the Centre is clear, and it can be shown by the requests it is receiving from around the world to stay there, including from The Netherlands, Pakistan, India, Italy, Uganda, Kenya, Democratic Republic of Congo and South Africa.
59. In addition to the residential service that the Centre offers, it has begun supporting exonerees in their community in the United States. This is due to the understanding that, while exonerees reacted well while in the Centre, there are many challenges that face them when they return home that require continuing support. At the moment, this service extends only to one volunteer, with expenses provided for through donations. The exoneree support coordinator goes to where the exoneree lives and sits down with them to analyse their needs, their resources and their capabilities. After making this assessment the coordinator then puts them in touch with services available.
60. Because of the high number of exonerees who need support, the Centre has begun looking at the viability of setting up a community of exonorees in the USA, as they have nowhere else to go.

³⁶ The Sunny Center, *The Center*, available at <http://www.thesunnycenter.com/the-center.html>

A comprehensive service for exonerees

61. In our view, a comprehensive support service for exonerees is needed. This should borrow many of the aspects of the services described above. This should be situated in a **centrally located residential and daytime exoneree support centre** (the Residential Centre). This centre will provide a place for exonerees to come to terms with what has happened to them, as well as practical assistance, counselling and psychiatric services.³⁷ In particular the service should provide support for:
 - a. Practical assistance, such as obtaining accommodation and work;
 - b. Readjusting to everyday life; and
 - c. Trauma.
62. The service should also ensure that it provides the same reintegration services as other prisoners receive. These should include assistance in finding work and accommodation, advice on how to manage money and the opportunity to acclimatise to the area they wish to live in prior to release.
63. In order to do so, this will require the service to track cases that are coming up for appeal, to ensure provision is in place upon release. Once identified, the caseworker should contact and visit the appellant to establish a relationship with them, which should be an ongoing one. Together with the exoneree, the caseworker can begin identifying what services the exoneree will need on release, and how to obtain them. The application process for the most pressing needs, such as housing and benefits, should be started at this stage. The exoneree should also be informed of the availability of the Residential Centre and the option of attending it after release.
64. Upon release, exonerees should be given the opportunity to either go directly to the Residential Centre or later following a stay with friends and family. The stay at the centre would last for around two weeks. On arrival they should be given a package containing necessities, such as a

³⁷ It will also mean that exonerees will not have to rely on the kindness of strangers when they are released, which can be embarrassing to some, according to John Kamara.

bus pass, clothing, a mobile phone, a range of gift cards and perhaps, at Sonny Jacobs suggestion, a comforting pair of slippers. A support worker should be available to take time to acquaint the exoneree with the local area, including going to the shops and allow them to choose what they want and how the transport system works and what other facilities are accessible in the area.³⁸ The centre should have communal spaces, such as a comfortable seating area and a kitchen facility.

65. During the stay, the caseworker would identify needs with the exoneree, such as housing, employment, healthcare and create an action plan for the exoneree to work through, with the caseworker's assistance. If not already done, state services should be applied for and the Residential Centre should have computer facilities to assist people in accessing online services. This computer facility should also be available to exonerees who no longer reside in the centre. Courses could also be run on important practical activities, such as using the internet or cooking.
66. To assist with this, **the exoneree's status should give rise to priority services and automatic eligibility for housing and benefits**. This will remove the need for a national insurance number, and also mean that suitable accommodation will be offered to exonerees automatically. A standard bail hostel will not be appropriate.
67. At the Residential Centre, exonerees should be able to undergo a routine mental health screening to assess their needs, including therapy for trauma. This must be provided to them free of charge. If not, incidents such as what happened to Andrew Evans will continue to happen. In his case, the intensive psychiatric help that he vitally needed was not available on the NHS, and the Home Office refused to meet the cost from his compensation award. JUSTICE had to borrow money to ensure he received the treatment he needed. Without it, he would not have been able to cope with life outside prison.³⁹

³⁸ Anne Driscoll believes that the support worker really must "hold an exoneree's hand" in these circumstances.

³⁹ JUSTICE Annual Reports 1998 and 2000. Mark Newby also explained that finding appropriate support for a current client has also been of benefit.

68. When the residential stay ends, the assigned caseworker should go with the exoneree to the organised accommodation and agree future visits. Day to day support should be available if required by local caseworkers, similar to the MJSS system but more widely accessible, to cover everything from benefits enquiries to support with an application for compensation. **Until a residential centre is established, all the services we recommend should be facilitated by local caseworkers.**
69. Any continuing counselling or therapy that the exoneree requires should be made available at the Residential Centre, as this will be a familiar and comfortable place for exonerees. Group meetings and a weekly legal clinic could also be held there. It should also remain open for drop-ins, giving the chance for exonerees to talk informally with others who have shared their experience. John Kamara suggests that a volunteer network of exonerees across the country should also be established under this service. This could create a ‘buddy system’ away from the Residential Centre, which may be more preferable to some exonerees.
70. The centre should be staffed by specially trained support workers, who may be former exonerees, volunteers and specialist psychological and counselling practitioners who are familiar with this unique form of trauma.
71. The service outlined above aligns with what many of our consultees suggested, but particularly Professor Turnbull, Professor Grounds, John Kamara, Robert Brown⁴⁰ and Sonia Jacobs believe is necessary for successful reintegration with society.

⁴⁰ Robert Brown was wrongly convicted of murder in 1977 and spent 25 years in prison. His conviction was quashed due to evidence of his confession being coerced. See *The Herald*, ‘Robert Brown calls for reforms of justice system after being freed following 25-year jail term,’ 20 November 2017, available at http://www.heraldsotland.com/news/11889191.He_spent_25_years_in_jail_for_a_murder_he_didn_apos_t_commit__Now_Robert_Brown_wants_revenge/

72. The cost of such a centre would have to be found. However, it should not be prohibitively expensive, especially if the consequence of the centre is to reduce the cost exonerees incur for subsequent interaction with medical services, the police and the court system where they have not received adequate support. The Sunny Center relies wholly on donations and volunteers, with its expenditure coming to €50,000 a year. This figure, however does not include staffing costs.
73. At the end of 2017, MOJO applied for funding to set up its own centre. The figures it used were extrapolated from its current costs and provide another example that a centre would not be prohibitively expensive. Its figures showed that it would cost around £98,000 a year to run a similar centre.⁴¹ Even though the service we envisage is more ambitious, the figures of the Sunny Center and MOJO give an indication of what value can be provided with little funds and the assistance of volunteers. Given that this would be a public service, efforts should be made to find a suitable building within the Crown Estate that would not incur significant rental or purchase costs. **It is important that there is a commitment to long-term funding, so that appropriate services can be provided for.**
74. Our idea is ambitious, but nevertheless achievable. The aim of the centre would be to help exonerees manage their day to day lives through accessing essential financial support in the form of state benefits and housing as soon as possible, and ongoing longer term welfare support. It is important that it offers comprehensive and continuing support to exonerees, in order to ensure that the unique trauma they have suffered is adequately supported and managed.
75. **Those we have consulted have also impressed the need for services to be consistent across the country and subject to annual assessment by an independent inspectorate, which should also have an oversight role.**

⁴¹ These figures include very reasonable rental costs.

Compensation

If it can be conclusively shown that the State was not entitled to punish a person, it seems to me he should be entitled to compensation for having been punished. He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now

– Baroness Hale, Justice of the UK Supreme Court⁴²

76. As indicated in the previous chapter, the belief that a lump sum can compensate wholly for the pain, distress and loss that exonerees have suffered is misplaced. However, although there is a need for other immediate support services and compensation is not a panacea, exonerees should still be entitled to compensation.
77. There is no automatic right to compensation, and the eligibility test is narrow. Where an exoneree believes they have a right to compensation, the application process can be complex. Accessing assistance, and any associated legal advice is also difficult for exonerees.

Applying for Compensation

78. An individual may wish to apply for compensation for a number of reasons, including needing financial security, being unable to obtain a job and recognition of the wrong that has happened to them.
79. Applicants must complete a form that is available on the Ministry of Justice website to apply for compensation. It covers basic personal information and other details that may be complex and hard to provide, such as why the applicant considers themselves to be eligible for compensation and information on previous compensation applications.⁴³ The applicant must

⁴² *R (Adams) v Secretary of State, Re MacDermott's Application and Re McCartney's Application* [2011] UKSC 18; [2011] 2 WLR 1180, para 116. Baroness Hale is now the President of the UK Supreme Court.

⁴³ *Gov.uk, Miscarriage of Justice: Claim Compensation*, available at <https://www.gov.uk/claim-compensation-for-miscarriage-of-justice>

indicate how much compensation they believe they are entitled to and must submit any relevant information they wish the Assessor to consider. This is a burdensome and complex task to do alone.⁴⁴

80. The Secretary of State determines whether an applicant is eligible for compensation. This is a relic from the ex gratia system, and despite the introduction of the Human Rights Act 1998, in our view, the decisions continue to lack independence and transparency.⁴⁵ This issue was also identified in our 1982 Report, which recommended the abolition of the ex gratia scheme and the setting up of an independent body to review compensation applications. This is because:
- a. The making of Home Office decisions and the considerations which prompted them were shrouded in secrecy;
 - b. The reports on which decisions were based were not made available to the claimant or his or her legal adviser;
 - c. They may have involved an assessment of the extent to which the prosecution or the police or the administration of the court is responsible for the wrong conviction and it is neither right nor fair that this should have been entrusted to the Minister who is heavily involved in the administration of criminal justice and the conduct of the police; and
 - d. Appellate courts should not consider the eligibility for compensation as they are concerned with narrower issues than those which may be relevant to the issue of compensation.⁴⁶
81. Many of the problems identified in 1982 remain prevalent today. **As such, we agree with our 1982 Report and recommend that an independent body should determine eligibility for compensation.**

44 Where the applicant seeks an award for psychiatric injury, at least one independent medical record must also be submitted. The applicant can obtain the report independently. However, should the applicant wish to claim back the cost of the report, the Assessor's advance approval is needed.

45 Similar bodies that make decisions about criminal justice related claims, such as the CCRC and Criminal Injuries Compensation Board are independent of Government.

46 *Supra*, The 1982 Report, p. 18.

82. If the Secretary of State decides that an applicant is eligible, the amount of compensation awarded is determined by the Independent Assessor of Compensation (the Assessor), who is appointed by the Secretary of State for Justice.⁴⁷ The Assessor awards compensation taking into account loss of earnings and:
- a. The seriousness of the offence concerned and the severity of the punishment suffered as a result of the conviction; and
 - b. The conduct of the investigation and prosecution of the offence.⁴⁸
83. The aim of the statutory provision is to give a “clearer and fairer test.”⁴⁹ It is hard to see how the objective of fairness is being met given the hurdles to obtaining it. The eligibility criteria for compensation is very narrow; applicants face administrative obstacles in finding the necessary evidence to support their claim, such as obtaining a medical report. Furthermore, the compensation award is capped.⁵⁰
84. Given the complexity of applying for compensation we believe the Residential Centre should offer assistance with the application process and a weekly legal clinic. Until this is available, **we recommend that existing support services refer exonerees to specialist lawyers who undertake compensation cases. Legal aid should be available.**

47 Ministry of Justice, *Anti-Social Behaviour, Policing and Crime Bill – Fact Sheet: Compensation for Miscarriages of Justice*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251337/18_Factsheet_miscarriages_of_justice_-_updated_for_Lords.pdf

48 S. Lipscombe and J. Beard, *Miscarriages of justice: compensation schemes*, (6 March, 2015), House of Commons Library, SN/HA/2131, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN02131#fullreport>

49 MoJ, *supra*.

50 Compensation is capped at £500,000 if a person has spent less than ten years in prison and £1m if the person has spent over ten years in prison.

The Right to Compensation

85. The requirement to compensate those who have suffered miscarriage of justice is derived from Article 14(6) of the International Covenant on Civil and Political Rights 1966 (ICCPR) which the UK has ratified. This provides:

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

86. This obligation was brought into domestic law by s. 133 of the Criminal Justice Act 1988 (CJA), which largely mirrors the text in the ICCPR.
87. Prior to the introduction of the CJA, the only way an exoneree could claim compensation was through the ex gratia scheme, operated by the Home Secretary. This scheme was designed to compensate where:
- a. a wrongful conviction resulted from serious default by the police or other public authority; and
 - b. where facts emerged at trial or on appeal that exonerated the applicant.
88. Under this scheme, compensation was payable to individuals who had either been pardoned or had their conviction quashed upon a recommendation from the Home Office. Once eligibility was confirmed, an independent assessor would advise on the amount of compensation to be given.
89. The *ex gratia* scheme was abolished in 2006, leaving s. 133 CJA as the only route available for those seeking compensation for a miscarriage of justice. This meant that compensation was no longer available for a wrongful conviction resulting from a serious default by the police or other public authority. Section 133 provides only that the Secretary of

State shall pay compensation when a conviction has been reversed or an individual has been pardoned “on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.”

90. Although JUSTICE recommended that the ex gratia scheme be abolished in our 1982 Report, we did not intend for its abolition to coincide with a reduction in eligibility for compensation. Indeed, we recommended that those who are granted a free pardon or whose convictions are quashed should have an automatic entitlement to compensation as they effectively had under the existing provisions for ex gratia payments.⁵¹
91. At that time the CJA did not define ‘miscarriage of justice’. This reflected the absence of a definition in Article 14(6) ICCPR. This led the courts to develop a definition, which culminated in the decision in *R (Adams) v Secretary of State, Re MacDermott’s Application and Re McCartney’s Application*⁵² (Adams). In this case it was ruled that a miscarriage of justice for the purpose of s. 133 CJA fell into two out of four categories:⁵³
 - a. Fresh evidence that shows clearly that the defendant is innocent of the crime of which he was convicted; and
 - b. Fresh evidence such that, had it been available at the trial, no reasonable jury could convict the defendant.
92. The two categories that could not be considered a miscarriage of justice for the purpose of s. 133 CJA, clearly excluding the ex gratia scenarios were held to be:
 - a. Fresh evidence rendering the conviction unsafe; and
 - b. Where something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted.
93. For the majority, Lord Phillips reasoned that:

⁵¹ *Supra*, the 1982 Report, p. 22.

⁵² [2011] UKSC 18; [2011] 2 WLR 1180.

⁵³ Though by a majority of five. Four members of the Court considered the test should be limited to category one only. These categories were developed by Lord Dyson when the case was before the High Court.

32 Compensation

This is a matter to which the test of satisfaction beyond reasonable doubt can readily be applied. It will, however, ensure that when innocent defendants are convicted on evidence which is subsequently discredited, they are not precluded from obtaining compensation because they cannot prove their innocence beyond reasonable doubt. I find this a more satisfactory outcome than that produced by category one. I believe that it is a test that is workable in practice and which will readily distinguish those to whom it applies from those in category three. It is also an interpretation of miscarriage of justice which is capable of universal application.⁵⁴

94. Following Adams the Government introduced legislative changes that gave a statutory definition of a miscarriage of justice. The stated purpose of this legislation was to provide greater clarity to the process of applying for compensation and to narrow the definition of miscarriage of justice in compensation claims as the definition in Adams ‘may result in someone who was not innocent of the offence nevertheless being eligible for compensation’.⁵⁵ The Joint Committee on Human Rights raised concerns about the narrowing of eligibility and the House of Lords amended the test. However, the current test was reinserted when the Bill returned to the Commons.⁵⁶
95. The new legislative change was brought in by s.175 of the Anti-social Behaviour, Crime and Policing Act 2014, which creates a new s.133(1ZA) of the CJA. It provides:

There has been a miscarriage of justice in relation to a person convicted of a criminal offence in England and Wales or, in a case where subsection (6H) applies, Northern Ireland, if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence.

⁵⁴ Adams, p. 55.

⁵⁵ MoJ, *Supra*.

⁵⁶ Anti-social Behaviour Crime and Policing Bill, HL Deb, 26 January 2016, Volume 751, Col. 6712-698, available at <https://hansard.parliament.uk/Lords/2014-01-22/debates/14012297000946/Anti-SocialBehaviourCrimeAndPolicingBill>

Compensation awards in practice

96. The introduction of the new test has extended the drastic reduction in the number of successful compensation claims, which, according to available data, began in 2006/2007. Since the number of applications remains relatively high, the cause is likely to be for a number of connected reasons:
- a. The abolition of the *ex gratia* scheme;
 - b. The restrictive decision in *Mullen*⁵⁷ in 2004 that narrowed eligibility for compensation to those who could demonstrate innocence, and the subsequent judicial review challenges to the definition of miscarriage of justice; and
 - c. The introduction of s.133(1ZA) in 2013.
97. These figures can be seen in the table below. It should be noted that the money awarded in a particular year may not correlate directly to the number of applications received or granted.⁵⁸

Year	Applications Received	Applications Granted	S133	Ex gratia	Paid (£M)
1999/2000		23	15	8	5.7
2000/2001		41	21	20	8.4
2001/2002		29	18	11	6.7
2002/2003		37	26	11	9.4
2003/2004		32	23	9	7.5
2004/2005	88	48	39	9	6.6
2005/2006	74	29	21	8	8.3

⁵⁷ *R (Mullen) v Secretary of State for the Home Department* [2004] UKHL 18; [2005] 1 AC 1.

⁵⁸ The data on applications for compensation is limited and where there are blanks in the table, figures are not available, but a significant reduction in the number of both received and granted applications is apparent in 2006/2007. At this time, the number of applications received remains fairly constant. However, the number of applications granted continues to drop significantly, which could be due to the MoJ applying *Mullen*. There is a slight rise in 2011/2012 to ten granted applications (which is still historically low) which may be due to the Adams judgment broadening the scope for compensation. The number of granted applications falls to one again the next year, where it has remained since, which likely reflects the definition of miscarriage of justice now provided in legislation; Parliamentary Answer by Lord McNally, HL Deb, 26 November 2013, c259W (<http://www.theyworkforyou.com/wrans/?id=2013-11-26a.259.0>) and *Adams* para 75, and written answer, Dominic Raab available at <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-12-13/119274/>

34 Compensation

Year	Applications Received	Applications Granted	S133	Ex gratia	Paid (£M)
2006/2007	39	29	24	5	12.4
2007/2008	40	12	10	2	8.4
2008/2009	38	7	7	0	12.7
2009/2010	37	1	1	0	12.1
2010/2011		1	0	1	11.3
2011/2012		10	10	N/A	13.2
2012/2013		1	1	N/A	1.3
2013/2014	45	1	1	N/A	
2014/2015	43	1	1	N/A	
2015/2016	29	2	2	N/A	
2016/2017	51	1	1	N/A	
2017/2018 ⁵⁹	27	0	0	N/A	

98. That there has been a high of two successful compensation claims since the introduction of s.133 (1ZA) shows that the test it prescribes is very difficult to meet. Only those who can prove their innocence beyond reasonable doubt are now eligible for compensation. Practically, this means that only those who can demonstrate that new DNA or alibi evidence proves that they did not commit the crime will receive compensation. This is a high threshold to meet, since, as Lord Philips indicated in *Adams*, it is difficult to achieve this standard of proof in the majority of cases.⁵⁹
99. The impact of this change can be seen by considering previous high profile exonerees who received compensation and would no longer be eligible, such as: The Birmingham Six; The Guildford Four; The Cardiff Three; Sally Clark; and Angela Cannings.⁶⁰
100. Our 1982 Report recommended that the right to compensation should

⁵⁹ The test is currently being challenged by way of judicial review for incompatibility with the presumption of innocence set out in Article 6(2) ECHR, *R (Hallam) v Secretary of State for Justice; R (Nealon) v Secretary of State for Justice* [2016] EWCA Civ 355; 3 W.L.R 329. The challenge will be heard by the UK Supreme Court in May.

⁶⁰ See Annex for more detail.

be automatic once a conviction has been quashed following a reference, a first appeal or following acquittal at trial. The Report qualified this by stating that the decision-maker would be entitled to refuse or reduce compensation if it considered that the conviction had been quashed on a mere technicality, or if the claimant's conduct led to the criminal proceedings. It also recommended that the decision-maker could take into account matters which had come to light in the course of a subsequent investigation. We see no reason why these recommendations are any less relevant today.

101. The trend over the last decade has been to narrow eligibility for compensation. Yet this ignores the loss of liberty that many people have endured prior to acquittal or quashing of their conviction. An automatic right to compensation for those who have had their convictions quashed would demonstrate an acknowledgment that the wrongful conviction has impacted negatively on an individual's life. Where a person has been remanded in custody and acquitted or the prosecution is discontinued and where an individual is acquitted following a first appeal, they have also suffered negative consequences. The same principle that applies to entitlement for compensation following CCRC referred appeals should also apply to these circumstances.
102. Our analysis of the compensation available to victims of miscarriage of justice in other jurisdictions shows that mainly in other common law jurisdictions, the right to compensation is restricted, if available at all. However, civil law jurisdictions appear more willing to compensate those who have been unjustly imprisoned.⁶¹
103. For example, in Germany, the right to compensation is derived from what is called the *Ausopferungsanspruch*, or the "responsibility for sacrifice."

⁶¹ For example, in Norway there is a right to compensation if an individual is acquitted and if a prosecution has been discontinued. There is also an opportunity for compensation 'if it seems reasonable.' Individuals are eligible for compensation as soon as they are exonerated, prosecution is discontinued or an arrest is in breach of article 5 ECHR. Sweden has a similar compensation scheme to Norway, also giving a right to compensation if a minor sanction is pronounced.

This is:

The idea that one citizen has been made to bear an especially high personal cost or burden resulting from the proper administration of state law, and since these laws exist in the interest of everyone and the burdens of lawful state action should be shared among citizens equally, it is a requirement of distributive justice for the state (i.e. the other citizens, via the state) to compensate those amongst their number who were burdened with more than their fair share.⁶²

104. This principle is not only used in criminal law but also with regards to other areas such as adverse effects from immunisation that the state requires children to have. This principle also exists in French law, where it is known as “equality in the face of public burdens.”⁶³ The principle results in compensation that is far more generous than in the UK. It is available for excessive length of criminal proceedings, false imprisonment and remand in custody.
105. The principle of “responsibility for sacrifice” also exists elsewhere in English and Welsh law. For instance, legislation has been passed to compensate those who suffer adverse reactions to vaccinations, those whose healthy animals are slaughtered to prevent the spread of foot and mouth disease, those whose land is compulsorily acquired for public works, and those whose adjoining land is blighted by the grant of planning permission.⁶⁴
106. The automatic benefit of compensation for those who have been wronged by state action should extend to the criminal jurisdiction. The focus on whether or not someone is able to demonstrate innocence ignores the fact that state actions have resulted in the wrongful imprisonment of a person. The test set out in the ICCPR provides a minimum starting point, which other countries have gone beyond. **We consider that, in a just society, compensation should be available for all cases of wrongful imprisonment, subject to the same exceptions set out in our 1982 Report.**

62 J.R. Spencer, ‘Compensation for wrongful imprisonment,’ *The Criminal Law Review*, 11 (2010), p. 829.

63 J. Bell, S. Boyron and S. Whittaker, *The Principles of French Law*, 2nd Ed (OUP, 2008), 193-195; R. Errera, “The scope and meaning of no-fault liability in French administrative law” [1986] *Current Legal Problems*, 157-189; *Supra*, Spencer pp. 26-27.

64 *Supra*, Spencer, p. 27.

State recognition of miscarriage of justice

107. As important as non-financial and financial support are to exonerees they do not provide exonerees with an explanation. For many exonerees, a quashed conviction is not enough. Most would, unsurprisingly, also like acknowledgment.
108. The fact that a conviction has been quashed means something has gone wrong and demands a response: an apology and an explanation. Dr. Grounds considers that an explanation is also very important to psychological healing, and its absence can contribute to prolonged trauma.
109. A public apology and acknowledgement that a wrong has taken place will not only allow an individual to heal, but also ensure that the public are aware that the individual is not considered to be guilty of the crime. This will contribute to exonerees reintegrating with their community and transitioning back into everyday life.

Nettie Hewins thought that CACD judges should say “what has been done to you has been done wrongly and we apologise on behalf of ...” She also believes that there should be a public apology to remove the stigma that surrounds exonerees. Nettie received death threats when she was released. At the very least “the police should have gone to the victim’s family and explained that I haven’t done anything wrong.”

110. Public inquiries are not only put in place to assure victims or their families that what has happened is taken seriously but to identify failures and necessary improvement to procedures in order to make sure that what has happened does not take place again, either through systemic changes or identifying individuals responsible for the actions under scrutiny.

However, there is rarely a review or inquiry process when a wrongful conviction is discovered.

111. In certain contexts, inquiries automatically take place and are conducted by dedicated bodies, such as:
 - a. Death and serious incidents in police custody;
 - b. Investigations into serious patient safety incidents; and
 - c. Care and treatment of children.

Death and serious incidents in police custody

112. The UK has a dedicated reviewing body and investigatory procedure to inquire into cases of potential police misconduct relating to death and serious incidents that occur in police custody or due to police action.
113. The Independent Office for Police Conduct (IOPC) (formerly the Independent Police Complaints Commission), created by the Police and Crime Act 2017 has the following key functions:
 - a. Setting the standards to which police should handle complaints;
 - b. Considering appeals where people believe the police have acted improperly; and
 - c. Carrying out its own investigations relating to the most serious issues of police conduct.
114. Although most incidents are dealt with by individual police forces, the most serious incidents are referred to IOPC. IOPC can investigate a death or serious incident as either a Death or Serious Injury investigation (a DSI investigation) or as a potential criminal matter (a conduct investigation).
115. In a DSI investigation, the police are given the status of witness. In conduct investigations, the police officer or officers are the subject of the investigation. In order for a conduct investigation to begin, there must be reasonable grounds to suspect that a disciplinary or criminal offence may have been committed. This is a relatively low threshold. After an

investigation is carried out, the IOPC will make recommendations for action against any individual officers involved and learning outcomes for the force. It will publish a summary of its findings and recommendations.⁶⁵

Investigations into serious patient safety incidents

116. Although NHS organisations are able to conduct their own investigations, the Independent Patient Safety Investigation Service Expert Advisory Group (IPSIS) has offered support and guidance to health and care provider organisations on investigations from April 2016. It also has the ability to undertake certain investigations.⁶⁶
117. Although IPSIS only reviews select cases, its broader role includes setting the standard for investigations across the NHS so that the NHS can learn from its mistakes.
118. In addition to IPSIS, the Healthcare Safety Investigation Branch (HSIB) investigations up to 30 incidents every year. It focusses on incidents which it believes could lead to significant improvements in healthcare.⁶⁷

Care and treatment of children

119. The Department for Education (DfE) also carries out investigations following complaints about poor standards of care provided by a school, an early years provider, or a children's social care service.
120. The complaints procedure allows for any individual to initiate a complaint by writing to the DfE providing information as to what the problem is and suggestions for what actions the DfE should take to resolve the issue. On this basis, an investigation is started. This shows a low threshold to commence investigations, demonstrating the importance that is placed on

⁶⁵ IOPC website, available at <https://www.policeconduct.gov.uk/>

⁶⁶ *Healthcare Safety Investigation Branch (HSIB) Expert Advisory Group*, available at <https://www.gov.uk/government/groups/independent-patient-safety-investigation-service-ipsis-expert-advisory-group>

⁶⁷ For more information on HSIB investigations, see <https://www.hsib.org.uk/investigations-cases/>

the welfare of children and ensuring that high standards are kept.⁶⁸

121. The above procedures were set up to improve upon deficient state processes and inappropriate state conduct to ensure that what led to the wrong cannot happen again. They acknowledge that mistakes can happen and attempt to remedy those mistakes. As such, a need for a review procedure exists not necessarily to compensate victims but to identify exactly what went wrong.
122. **Where the evidence is clear as to fault, there should be an apology and explanation given by the appropriate or responsible organisation, such as the Ministry of Justice, Police or Court. In more complex cases, we recommend that a quashed conviction should trigger an inquiry to ascertain what went wrong and to make recommendations as to how to avoid it in the future.**
123. An independent public body should be established to undertake these inquiries, which will include a permanent panel of relevant experts. The panel should have the power to call witnesses and make recommendations for the improvement of criminal justice processes.
124. A similar process takes place in Canada, where full public inquiries are often held after high-profile cases of wrongful conviction. These inquiries are not confined to the facts leading to the particular miscarriage of justice, but also include broad and holistic examinations of the causative factors of wrongful convictions in Canada and elsewhere. The aim is to improve the Canadian justice system through this process of review.⁶⁹

68 For more information on the DfE complaints procedure, see <https://www.gov.uk/government/organisations/department-for-education/about/complaints-procedure>

69 Department of Justice, *FPT Heads of Prosecutions Committee Report of the Working Group on the Prevention of Miscarriages of Justice* (2004), available at <http://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/pmj-pej/pmj-pej.pdf>

Conclusion

125. A wrongful conviction can ruin a person's life. They will lose their home, their job, their income and their relationships will be placed under immense strain. The public will think that the individual is guilty, which is a mark that is hard to remove. Living for years in prison, knowing that you should not be there can cause serious psychological trauma.
126. When released, reintegrating back into society can be yet another challenge. Without proper support, many exonerees struggle to come to terms with freedom, having become institutionalised. Without proper support, release can turn into a continuation of their wrongful punishment.
127. The serious problems that exonerees face happen through no fault of their own. It cannot be right that, when a wrongful conviction is discovered, the exoneree is left to struggle alone, with limited support and little chance of receiving compensation. It should be accepted that when someone suffers unfairly through the administration of justice, the State must support them to recover. To be effective, support needs to be accessible, consistent and continuing. We consider that this requires a dedicated service for exonerees that includes a residential centre, practical support, counselling services and treatment for trauma. This would be an ambitious and comprehensive service that would meet exonerees' needs and ensure that they have the best chance to readjust to everyday life. The fact that so few exonerees are receiving compensation makes the need for adequate support services more pressing than ever.
128. The availability of compensation has steadily reduced over the past decade. Compensation is the primary method for providing recompense where someone has been mistreated. Wrongful imprisonment results in a loss of liberty and complications that the exoneree has to deal with for the rest of their life. We therefore consider that compensation should automatically be available for anyone who has suffered wrongful imprisonment, unless it can be shown that they contributed to it or it was based on a mere technicality.

129. We consider that a public acknowledgement of the wrong is a notable absence following the quashing of a conviction. A public inquiry to identify the cause of the failure may also be necessary to demonstrate that the authorities take the wrongful conviction seriously and identify measures to prevent it occurring again. An apology and explanation of the failure may also enable exonerees to process what has happened to them.

Recommendations

1. Specialist psychiatric help should be readily available to exonerees immediately prior to release and following release for as long as they need it.
2. HMCTS should liaise with the DBS to automatically amend criminal records and remove quashed convictions.
3. To better manage the transition from incarceration to release cases that are likely to be overturned should be identified early and the individual should be provided the same pre-release support as other offenders.
4. Support upon release needs to be readily accessible, consistent and continuing.
5. Support should be provided through a centrally located residential and daytime exoneree-specific support centre. This would provide practical support with: obtaining accommodation and social security assistance, readjusting to everyday life, therapy and counselling.
6. The exoneree's status should give rise to priority services and automatic eligibility for housing and benefits.

7. Following a residential stay, day-to-day support should be available, if required, by local caseworkers. Until a residential centre is established, all the services we recommend should be facilitated by local caseworkers.
8. A volunteer network of exonerees across the country should be established to enable exonerees to talk informally with others who have shared their experience.
9. The centre should be staffed by specially trained support workers, who may be former exonerees, volunteers and specialist psychological and counselling practitioners who are familiar with this unique form of trauma.
10. Services must be consistent across the country and subject to annual assessment by an independent inspectorate, which should also have an oversight role.
11. An independent body should determine eligibility for compensation.
12. Existing support services should refer exonerees to specialist lawyers who undertake compensation cases. Legal aid should be available.
13. We consider that, in a just society, compensation should be available for all cases of wrongful imprisonment – acquittal following trial, conviction quashed after first appeal or conviction quashed after CCRC referral on new evidence – subject to the decision being based on a mere technicality or the claimant’s conduct causing the criminal proceedings.
14. After a conviction is quashed following a CCRC referral on new evidence, where the evidence is clear as to fault, there should be an apology and explanation given by the appropriate or responsible organisation, such as the MoJ, Police or Court. In more complex cases, we recommend that a quashed conviction should trigger an inquiry to ascertain what went wrong and to make recommendations for the future.

Annex

The 'Birmingham Six'⁷⁰

In 1975 the six appellants, Hugh Callaghan, Patrick Joseph Hill, Gerard Hunter, Richard McIlkenny, William Power and John Walker, were convicted of 21 counts of murder, arising out of the IRA bombing of two public houses in Birmingham in which 21 people were killed and 162 injured. Their appeal against conviction was dismissed. In 1990 the Home Secretary referred the case to the CACD for a second time, due to fresh evidence being available. The fresh evidence was used to cast doubt on the reliability of the scientific evidence and the confessions.

The fresh evidence showed that the police witnesses had deceived the court by stating that their interview notes were taken contemporaneously, when in fact they were written up later. Moreover, fresh scientific evidence threw grave doubt on the prosecution's expert evidence. This suggested that the tests carried out were more than likely contaminated. Thus the convictions were unsafe.

The Court concluded that this was a case where something went seriously wrong, and compensation was subsequently paid. However, the Court did not state that the defendants were innocent. Indeed, the Court stated: 'Nothing... entitles us to say whether we think that the appellant is innocent... The task of deciding whether a man is guilty falls on the jury.' It was of 'great constitutional importance' that the Court did not pronounce on innocence. On the amended definition of miscarriage of justice, the Birmingham Six could not have demonstrated that they did not commit the offence with this fresh evidence.

⁷⁰ *R v McIlkenny* (1991) 93 Cr. App. R. 287.

The Guildford Four⁷¹

In 1975, the four appellants, Patrick Armstrong, Gerard Conlon, Paul Hill and Carole Richardson were convicted of conspiracy to cause explosions and of the five murders arising from a bombing. They had been convicted on the basis that the jury were satisfied that the police evidence in relation to the various interviews and admissions could be relied upon.

However, investigation of officers' notes and interview transcripts revealed that an admission alleged to have been made by Hill 'might very well have been ruled inadmissible if the true circumstances of it had been known'. Interview transcripts were shown to be heavily edited and detention records were inconsistent with the times and durations of the claimed interviews which 'might on their own, let alone in conjunction with those other matters, have made a grave difference to the outcome.'

Lord Lane CJ, giving the judgment of the court, noted '*it follows that any evidence which casts a real doubt upon the reliability or veracity of the officers who were responsible for the various interrogations must mean the whole foundation of the prosecution case disappears and that the convictions will in those circumstances be obviously unsafe.*' Their convictions were consequently quashed, due to the doubt cast upon the interrogations conducted by the police officers.

As such, compensation would not be forthcoming under today's test, as there was no conclusive evidence that the Guildford Four did not carry out the crime.

The Cardiff Three⁷²

The three appellants in this case, Anthony Paris, Yusuf Abdullahi and Stephen Wayne Miller, had been convicted of the murder of Lynette White. The CACD allowed their appeal against conviction.

⁷¹ *R v Richardson, Conlon, Armstrong Hill*, The Times, 20 October 1989.

⁷² *R v Paris (and others)* (1993) 97 Cr. App. R. 99.

In quashing their conviction, the CACD held that although it was perfectly legitimate for police officers to pursue their interrogation of a suspect with the intention of eliciting his account or gaining admissions it was undoubtedly oppressive to shout at the suspect and force him to say what they wanted him to say. Thus the confessions obtained were unreliable. Further, considering the tenor and length of the police interviews, those interviews ought not to have been admitted in evidence. Since there was insufficient evidence apart from the confessions to safely support a conviction, those convictions were unsafe and quashed.

As this case concerned oppression and misuse of evidence, no fresh evidence was raised and compensation would not be granted under today's test.

Sally Clark⁷³

Sally Clark was convicted in 1999 of the murder of her two baby sons through excessive shaking. Significant weight was given to expert testimony that overstated how rare it was that infants died of natural causes, asserting it extremely unlikely to happen in her case.

After three years in prison, the CACD quashed her conviction. It found the conviction unsafe as there was a failure to disclose information in microbiological reports suggesting that her first son died from natural causes. This cast doubt on whether her second son had been murdered. The Court also held that the overstatement of the statistics relating to natural deaths in infants had misled the jury.

Under today's test it is unlikely that she would have received compensation, because the new evidence did not conclusively show that Sally Clark did not commit the crime.

⁷³ *R v Clark (Sally) (Appeal against Conviction) (No.2)* [2003] EWCA Crim 1020.

Angela Cannings⁷⁴

Angela Cannings had four children, three of whom died in infancy. She was convicted in 2002 of murdering her two sons, being accused of smothering them. This was based on the finding of a pattern of deaths within the same family, suggesting that they were not all natural. The same expert witness was relied upon to convict both Angela Cannings and Sally Clark.⁷⁵

The expert medical views differed as to whether the deaths were natural or not. The first appeal was allowed, the Court holding that the natural cause of death could not be excluded, especially where medical opinion differed. Moreover, the exclusion of known natural causes of infant death did not directly lead to the conclusion that the deaths were deliberate.

Being a first appeal, Angela Cannings would not receive any compensation today, despite being convicted due to controversial medical evidence. Moreover, if this had been a CCRC referral, she still would not receive compensation as contradictory evidence does not demonstrate innocence.

⁷⁴ *R v Cannings* [2004] EWCA Crim 1.

⁷⁵ *The Guardian*, 'My home is now my prison cell', 20 February 2005, available at <https://www.theguardian.com/media/2005/feb/20/broadcasting.childrean.services>

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