



## **Victor Nealon and Sam Hallam file application with European Court of Human Rights**

Today, Byline Times News Club hosts the launch of the latest edition of Proof, the magazine of law and justice news site The Justice Gap. This issue, 'Crime and Punishment', examines the prisons crisis and miscarriages of justice. The consequences of miscarriage of justice stay with its victims for a lifetime.

On 30 January 2019, the UK Supreme Court handed down its judgment in the case of *Hallam and Nealon v Secretary of State for Justice* [2019] UKSC 1. It ruled that the statutory provisions governing eligibility for compensation of persons whose conviction for a criminal offence is reversed are compatible with the presumption of innocence guaranteed by Article 6(2) of the European Convention of Human Rights (ECHR). This appears to depart from the case law of the European Court of Human Rights (ECtHR). Sam Hallam and Victor Nealon have now filed their applications for the ECtHR to rule on whether the provisions are a violation of Article 6(2) of the ECHR. If the case is accepted, JUSTICE will file an intervention in the public interest.

Section 133(1) of the Criminal Justice Act 1988 (CJA) provides for compensation following a reversal of a conviction or pardon. Section 133(1ZA) defines a "miscarriage of justice" as occurring when a new or newly discovered fact demonstrates that the person did not commit the offence. It requires the person to prove, for the purposes of compensation, that they were innocent. Of course, once a conviction is quashed, an individual should be presumed innocent, as they have no longer been proven guilty. Requiring an individual to prove innocence reverses this fundamental rule of justice, placing a near impossible burden on the applicant for compensation. A further difficulty with such a test is that the quashing court – the Court of Appeal Criminal Division – does not consider whether the appellant is innocent of the crime; it considers whether the conviction is unsafe. This is because the justice system determines guilt rather than innocence.

This difficulty is demonstrated by the current compensation regime, and the cases of Mr Hallam and Mr Nealon. Mr Hallam served over seven years for a murder. His conviction was quashed on the basis of evidence that had not been disclosed to him at his trial. Mr Nealon served 17 years for an attempted rape. His conviction was quashed on the basis of DNA evidence. Despite the strong evidence that they did not commit these crimes, they were denied compensation as they were unable to produce evidence that satisfied the Secretary of State beyond reasonable doubt that they did not commit these offences.

Mark Newby, solicitor to Victor Nealon, said:

*"How we treat the wrongfully convicted says everything about the sort of society we want to be. It should not be forgotten that the hurdle to even quash a wrongful conviction is set impossibly high and for those who have climbed that mountain it is just wrong to ask them to then scale the same mountain again and prove to the government beyond reasonable doubt that they are innocent."*

*If you weren't at the scene of a murder or the DNA on a victims clothing wasn't you but somebody else, what more should have to be said?*

*That is why we must now ask the European Court of Human Rights to intervene. Justice depends on it."*

Miscarriages of justice destroy lives, with individuals facing numerous difficulties on release from prison. JUSTICE's report [Supporting Exonerees: Ensuring accessible, consistent and continuing support \(2018\)](#), highlights that there is no automatic accommodation, social security assistance or psychiatric assessment available to victims of miscarriage of justice. The report also records the hardship, difficulty in adjustment and trauma that victims of miscarriage of justice face for years after their release. *Supporting Exonerees* recommends:

- that anyone who has suffered imprisonment following a conviction that was later quashed should be entitled to compensation;
- the setting up of a residential service to provide practical and welfare support to exonerees;
- an apology and explanation for the failure that leads to a quashed conviction and, where necessary, a public inquiry; and
- for an exoneree network to be set up so that people who have suffered wrongful conviction can benefit from each other's support.

JUSTICE's director, Andrea Coomber, said:

"This area of law needs urgent and serious overhaul by Parliament to ensure that where miscarriage of justice occurs, there is appropriate reparation. People who have served years in prison and had their convictions quashed deserve support to try to rebuild their lives. This includes not only compensation but readily available and suitable accommodation, financial allowances, psychological treatment and a review of what went wrong."

**We ask Parliament to now revisit this woeful response to the consequence of errors in our justice system.**

Mark Newby, Quality Solicitors Jordans, solicitor to Victor Nealon

Matt Foot, Birnberg Pierce, solicitor to Sam Hallam

JUSTICE

Notes to Editors

1. Details on the case of Hallam v Nealon can be found on the UK Supreme Court website, [R \(on the application of Nealon & Hallam\) v Secretary of State for Justice](#)
2. Please direct any enquiries to JUSTICE's Legal Director, Jodie Blackstock, [jblackstock@justice.org.uk](mailto:jblackstock@justice.org.uk); Mark Newby [Mark@jordansllp.com](mailto:Mark@jordansllp.com) or Matt Foot [M.Foot@birnbergpeirce.co.uk](mailto:M.Foot@birnbergpeirce.co.uk)