

# Rethinking Innocence Projects in England and Wales: Lessons for the Future

HOLLY GREENWOOD

*Lecturer, School of Law and Politics, Cardiff University and Assistant Director, Cardiff University Innocence Project*

*Abstract: This article draws on original empirical research to explore the rise and fall of innocence projects across England and Wales. Innocence projects are university-based projects which seek to educate students, to assist the wrongly convicted and to contribute to research and reform within criminal justice. Thirty-six projects were established between 2004 and 2014 under Innocence Network UK, but following the network's closure, projects appear to be gradually disappearing. Drawing on empirical evidence from key actors, this article argues that the decline of innocence projects resulted from both emerging tensions within the innocence project movement itself and through the external constraints of operating within a restrictive criminal appeal system. It will conclude by rethinking how surviving projects might play a valuable role in addressing miscarriages of justice in the current climate.*

**Keywords:** criminal appeals; innocence projects; miscarriages of justice; wrongful conviction

Typically, an innocence project is a pro bono scheme dedicated to assisting individuals claiming wrongful conviction. Innocence projects were initially established in the US, with the first being set up at the Benjamin Cardozo Law School at Yeshiva University in New York in 1992 (The Innocence Project New York).<sup>1</sup> Following this, innocence projects spread across the US, leading to the establishment of the Innocence Network in 2004 to represent an 'affiliation of organizations' with shared aims of 'providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted' and 'working to redress the causes of wrongful convictions and supporting the exonerated after they are freed' (see Innocence Network website at <https://innocencenetwork.org/about/> (accessed 8 April 2021)). Innocence projects across the US have helped to overturn numerous convictions and have had a 'profound impact' in criminal justice reform (Weathered 2003, p.77). As of December 2020, the Innocence Project (New York) website

stipulates that 375 people have been exonerated due to post-conviction DNA testing alone,<sup>2</sup> with The National Registry of Exonerations (2021) documenting 2,708 exonerations since 1989 (January 2021). Their success in the US has led to innocence projects being described as ‘the civil rights movement of the twenty-first century’ (Medwed 2008, p.1550), or as an ‘innocence revolution’ (Findley 2014, p.3). Innocence projects have since spread internationally to countries including Australia, Canada, China, New Zealand, Argentina, South Africa, Ireland, the UK, the Netherlands, Italy and France. The Innocence Network now has approximately 67 member projects including international members. Other networks have also begun to emerge such as RedInocente in Latin America and the European Innocence Network. However, despite the growing presence of innocence projects in the international context, innocence projects in the UK appear to have already undergone a rise and fall.

Innocence projects were first introduced to the UK following the establishment of the Innocence Network UK (INUK) in 2004,<sup>3</sup> which was presided over by Dr Michael Naughton, an academic in the School of Law at the University of Bristol. INUK operated as a membership organisation, which aided with setting up an innocence project; hosted student and staff training; and supplied member projects with cases from a central database. During its operational period from 2004 to 2014, INUK assisted in the establishment of 36 innocence projects across the UK.<sup>4</sup> Innocence projects in the UK almost exclusively operated as university clinics (predominantly within law departments, but sometimes in journalism and criminology departments) where students were recruited to assist in the investigation of a potential miscarriage of justice. Despite appearing to have a solid basis in the UK, innocence projects have gradually declined in number over the last six years. The turning point coincided with the decision to fold INUK as a membership organisation in the summer of 2014. Several reasons were given for this decision including funding constraints; problems with member projects not acting in accordance with INUK protocols; a lack of student and staff engagement with INUK; and a diminishing number of eligible cases.<sup>5</sup> Although INUK initially sought to continue operating independently at the University of Bristol, this flagship organisation was eventually closed in July 2015.<sup>6</sup> At the time of the INUK fold in 2014, there were still 25 projects listed as members and others already operating independently of the network. While it currently cannot be said with certainty how many universities are still operating an innocence project or other type of Miscarriage of Justice Project (notably, many former innocence projects changed their name following the collapse of INUK, and so ‘Miscarriage of Justice Project’ will be used as an all-encompassing term for similar projects in the post-INUK era),<sup>7</sup> there appears to have been a continuing decline in numbers, with the last figure of 23 projects<sup>8</sup> now considered to have declined further, with only around eleven projects thought to be active.<sup>9</sup>

Significantly, the decline of innocence projects and Miscarriage of Justice Projects in the UK is in paradox with concerns that there is an increased risk of miscarriages of justice in England and Wales (Westminster

Commission on Miscarriages of Justice 2021, p.11). Years of ‘underinvestment and neglect’ have left the criminal justice system ‘on the brink of collapse’ (Law Society 2019) and continuous cuts to criminal legal aid since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have left defendants vulnerable to wrongful conviction (Ellis 2020; House of Commons Justice Committee 2018a). Further factors contributing to an increased risk of miscarriages of justice have been identified as successive acts of parliament curtailing suspects’ rights (George 2018); the outsourcing of forensic science to private bodies (McCartney and Roberts 2012); and fundamental failings within prosecution disclosure (Greenwood and Eady 2019; McCartney and Shorter 2019). This latter issue garnered widespread attention through the acquittal of Liam Allan,<sup>10</sup> which prompted official reviews into the disclosure process within the police, the Crown Prosecution Service (CPS), and the government (HM Crown Prosecution Service Inspectorate 2017; House of Commons Justice Committee 2018b). Further public awareness of the problems plaguing the criminal justice system has begun to grow through work by The Secret Barrister (2018) whose first book *Stories of the Law and How It’s Broken* became the Sunday Times No. 1 Bestseller in 2018. Thus, there is growing recognition that the criminal justice system in England and Wales is in crisis.

The danger of wrongful conviction is further exacerbated by a dearth of funding for legal assistance post-conviction (Appeal 2019;<sup>11</sup> Hoyle and Sato 2019, p.310) and an appellate framework that is difficult to navigate. Once a defendant is convicted by a jury in the Crown Court, they have an initial 28 days to apply for leave (or permission) to appeal to the Criminal Division of the Court of Appeal (CACD). Applicants must typically demonstrate a serious error in law or procedure or some fresh evidence which has the potential to render their conviction ‘unsafe’ (Section 2(1)(a), Criminal Appeal Act 1995). Applications for leave to appeal are considered by a Single Judge in the CACD, with a decision-making process that has been described as ‘haphazard’ and inconsistent (Campbell, Ashworth and Redmayne 2019, p.389). Where leave is refused by the Single Judge, appellants can renew their application for consideration by the full court of three CACD judges, but where such a challenge is deemed unmeritorious, the CACD can order that time served by the appellant prior to the appeal hearing will not count towards their sentence (*R v. Gray & Ors* [2014] EWCA Crim 2372). As will be discussed later, restrictive legal aid funding for criminal appeals makes it difficult for appellants to get legal assistance at this stage (Criminal Appeal Lawyers Association 2015), yet the chances of mounting a successful appeal without legal assistance are slim. Once leave to appeal is rejected, or the appeal is heard but refused, the only route back to the CACD is through application to the Criminal Cases Review Commission (CCRC). The CCRC was established in 1995 following recommendations from the Royal Commission on Criminal Justice in 1991. The CCRC is an independent body which reviews potential miscarriages of justice and refers appropriate cases to the CACD. The CCRC has been described as the CACD’s ‘gatekeeper’ (Naughton and Tan 2010) as their statutory test stipulates, they may only refer a case where there is a ‘real possibility’ that the CACD will not uphold

the conviction (Section 13, Criminal Appeal Act 1995). Although legal assistance is not necessary to apply to the CCRC, research has demonstrated that applicants with legal representation had ‘a significantly better chance’ of having their case accepted for a full review and of having their case referred to the CACD (Hodgson and Horne 2009, p.42).

Therefore, in a climate where miscarriages of justice are potentially increasing but the availability of post-conviction legal assistance is decreasing, it is important to examine what happened to innocence projects in the UK. Drawing on original empirical research carried out between 2012 and 2017 and building on previous work discussing some of the problems faced by innocence projects (Greenwood 2015, 2018), this article will examine the rise and fall of innocence projects across England and Wales. It will particularly focus on the development of innocence projects under the auspices of INUK and its associated aims and objectives. This is because, while some innocence projects in the UK remained independent of this,<sup>12</sup> most projects set up between 2005 and 2014 were established as members of the network. Therefore, the central role of INUK as a membership organisation and its eventual closure is important context to examining the innocence project movement in England and Wales. First, the article will discuss the rise of innocence projects, examining their aims and the context in which they were developed, before considering why they spread across the UK. Second, the article will examine why the innocence project movement appears to have undergone a fall, by reflecting on their decline in numbers and their perceived lack of success in overturning miscarriages of justice and influencing reform. It will argue that the fall of innocence projects resulted from both internal tensions within the movement along with external constraints from operating within a restrictive criminal appeal system. Third, the article will consider why INUK and innocence projects had limited success in influencing reform to facilitate the development of a broader innocence movement across England and Wales. Finally, the article will question whether there should be a future role for innocence projects or other similar Miscarriage of Justice Projects. This will consider key criticisms of the development of innocence projects in England and Wales and will identify how such projects might play a significant and coherent role in responding to miscarriages of justice.

### **Methodology**

This was the first empirical research to explore the role of innocence projects in the UK and was undertaken between 2012 and 2017. Despite at least 36 innocence projects existing across the UK at their peak, the literature on innocence projects was only from a few select authors (that is, Naughton 2006a, 2006b, 2009, 2010; Naughton and McCartney 2004; Price and Eady 2010; Roberts and Weathered 2009), and there had been no empirical research examining how innocence projects were operating. The research aimed to gain a deeper and broader understanding of the objectives of innocence projects across the UK and how they operated in practice. The research design took the form of a comparative, multiple-case

study (Bryman 2012, p.74). Twenty-five innocence projects were contacted with a request to participate, of which: 13 agreed; one refused; three cancelled or failed to arrange; and seven failed to respond. All participating projects were from England and Wales, so the research cannot represent any views about the experiences of innocence projects operating elsewhere in the UK.<sup>13</sup> Semi-structured interviews were used to explore the research questions, which examined how participants described the aims, objectives and functions of their institutions; how they approached their casework; how they perceived and interacted with criminal justice agencies; what was successful or unsuccessful about their innocence project and projects more generally; what the benefits and limitations were of innocence projects; what difficulties and challenges they faced; and their views of the criminal justice system. Sixteen individuals were interviewed from 13 projects with some being co-directors of a project or former leaders. The sample sought to be as representative as possible of the different types of innocence project across England and Wales. It included eleven innocence projects based in law schools (reflective of the most typical model) and two based in journalism schools (of three known to have existed in the UK). The sample included six projects that were INUK members until its fold; five which left INUK voluntarily; and one that always operated independently. The sample included only two closed projects (one closed a few years prior and one just before the interview following the INUK fold), although several of the sampled projects now appear to have closed.<sup>14</sup> *Table 1* provides key details about the projects sampled, but the background experience of participants has not been specified due to the potential for this to be identifying alongside the other information presented.

The research data were predominantly gathered in 2014. Although this was several years ago, the data retain their significance as from the only empirical study conducted during the INUK era, and while innocence projects were still widespread across the UK. Furthermore, because 2014 marked a turning point for innocence projects across England and Wales with the folding of INUK, the data are arguably of particular importance in charting a historic moment in the evolution of innocence projects.

### **The Rise of Innocence Projects in the UK**

This section will examine the rise of innocence projects in the UK. It will first highlight the aims and objectives of innocence projects as outlined in the literature, before moving on to engage with the findings of the empirical research which involved interviews with innocence project leaders. For the reasons outlined in the introduction, this does particularly focus on literature surrounding the role of INUK, which appeared to be crucial to understanding the rise of innocence projects across the UK. In founding INUK, Naughton was concerned that previous attention over miscarriages of justice had ebbed following the recommendations of the Royal Commission on Criminal Justice in 1993 and the resulting establishment of the CCRC in the Criminal Appeal Act 1995, due to a perception that this had resolved the problems (Naughton 2006a, p.7).

TABLE 1  
 Overview of Research Sample

	Participant innocence project leaders	University school/ dept.	INUK status (up until 2014–fold)	Interviewed pre/post INUK fold in 2014	Running/closed at time of interview
<b>Project A</b>	IPL1	law	member	pre	running
<b>Project B</b>	IPL2	journalism	left INUK	pre	running
<b>Project C</b>	IPL3	law	left INUK	pre	running
<b>Project D</b>	IPL4	journalism	n/a	pre	closed
<b>Project E</b>	IPL5	law	independent	pre	running under new directorship
<b>Project F</b>	IPL6	law	member	pre	running
<b>Project G</b>	Co-directors: IPL7	law	left INUK	pre	running
	IPL8				
<b>Project H</b>	IPL9 (ex-director) IPL10 (current director)	law	left INUK	pre	running
<b>Project I</b>	Co-directors: IPL11	law	left INUK	post	running
	IPL12				
<b>Project J</b>	IPL13	law	member	post	running
<b>Project K</b>	IPL14	law	member	post	closed
<b>Project L</b>	IPL15	law	member	post	suspended
<b>Project M</b>	IPL16	law	member	post	running

However, Naughton considered this ‘premature’ (p.7) and suggested that innocence projects were necessary because existing appeal and post-appeal provisions were still ‘failing potentially innocent victims of wrongful conviction’ and ‘in urgent need of reform’ (Naughton 2010, p.31). Naughton (2006a) described criminal appeals as ‘highly technical affairs governed by strict rules and procedures’, where there is a perception of offenders as ‘getting off on technicalities’ (p.1). He criticised the CACD’s admissibility requirements for receiving evidence (which, under Section 23, Criminal Justice Act 1968, excludes evidence that was available at trial unless there is a reasonable explanation for failing to adduce it earlier) for presenting ‘insurmountable barriers’ to overturning wrongful convictions where evidence supporting innocence exists but cannot be reheard (Naughton 2012, p.214). Furthermore, it was claimed to be ‘increasingly apparent’ that the CCRC was not an effective solution to wrongful conviction of the factually innocent (Naughton 2009, p.22). Its statutory real possibility test (Section 13, Criminal Appeal Act 1995) was criticised for ‘fatally’ compromising the CCRC’s independence and requiring them to second guess the CACD (Naughton and Tan 2010), rendering them ‘helpless’ to refer a case unless it satisfied the CACD’s requirements, even where the evidence supported innocence (Naughton and McCartney 2006, p.74). Naughton argued that INUK and innocence projects were necessary to serve ‘unmet legal needs of a different order’ because victims of wrongful conviction could ‘exhaust all existing legal remedies and still remain unable to overturn their convictions’ (Naughton 2006b, p.4). Therefore, Naughton envisaged INUK and its associated innocence projects as having the potential to drive reform through challenging the ‘significant limitations’ of the current legal framework governing criminal appeals (Naughton 2006a, p.1). Furthermore, INUK sought to reinvigorate concerns around wrongful conviction of the innocent (Naughton 2009, p.30) and thus to instigate a broader innocence movement across the UK. This is important context to understanding the aims of innocence projects as described in associated literature.

The literature typically suggested that innocence projects had three central aims: to educate students about wrongful conviction; to conduct research on the causes of wrongful conviction to effect legal reform; and to work on cases of prisoners maintaining innocence (Naughton 2006a, p.11). First, the educational role of innocence projects was fundamental given their situation within universities. There was a view that innocence projects could provide ‘unparalleled insight into the workings of the criminal law, criminal procedure and the law of evidence’ (Naughton and McCartney 2006, p.75) and encourage students to ‘think critically and ethically’ (Roberts and Weathered 2009, p.67). Furthermore, that there was the potential for innocence projects to provide students with crucial skills for future practice (Naughton and McCartney 2006, p.75), while also instilling a passion for justice, ethical practice, and pro bono work (Naughton 2006a, p.12). Second, it was hoped that INUK could attract research funding, collate research efforts, and identify knowledge gaps (Naughton and McCartney 2004, p.152), while individual projects could use their casework to inform academic research into the causes of wrongful conviction to help

encourage corrective reforms (Naughton and McCartney 2004, p.152; Roberts and Weathered 2009, p.69). Third, innocence projects would carry out casework investigations to assist those convicted of criminal offences who maintain innocence but have exhausted appeal processes (Naughton and McCartney 2004, p.153). In undertaking casework, it was claimed that innocence projects would focus on factual innocence (Naughton 2006a), which refers to the wrongful conviction of an innocent person, distinguishable from the legal test examining conviction safety, which encapsulates errors in law or procedure (Roberts and Weathered 2009, p.45). The focus on factual innocence was described as the ‘essence’ of innocence project casework and their ‘overriding consideration’ (Roberts and Weathered 2009, p.45, 51). This unique approach of innocence projects to casework merits further discussion.

As a membership network, INUK undertook responsibility for screening cases and maintained a database of eligible cases that could be shared among member projects which were able to assist. INUK would screen cases by examining applicants’ responses to a questionnaire, seeking to sift out false claims of innocence such as: those hoping to overturn their conviction on legal grounds due to procedural irregularities in the criminal justice process; those who did not know that their behaviour was criminal; those who disagreed that their actions should be a criminal offence; and those maintaining innocence to protect loved ones (Naughton 2007, p.9). INUK thus sought to select cases based on their determination of whether the claim of innocence appeared to be genuine, rather than focusing on the potential to identify legal grounds for appeal. Furthermore, it was claimed that INUK innocence projects would take a different approach to casework investigation. Conversely, while conventional pro bono assistance required working ‘*within* the parameters of the existing legal framework’ to help those who cannot afford legal advice, innocence projects would operate ‘*outside* of the parameters of the legal system’ to assist ‘victims’ of the restrictive legal framework in challenging their conviction (Naughton 2006b, p.4, italics in original). Although a ‘pragmatic need’ to identify legal grounds for appeal was recognised (Naughton 2009, p.34), innocence projects would not focus their investigations on whether the conviction was ‘safe in law’ or whether there was a legally arguable case for appeal, but instead would concentrate on determining whether the accused actually committed the offence (Naughton 2009, p.32; Price and Eady 2010, p.6). Naughton (2010) criticised lawyers working with INUK for ‘resigning themselves to the legal framework’ by encouraging projects ‘to ignore the question of factual innocence or guilt’ and to ‘seek out legal grounds for appeal’ (p.32). Instead, Naughton (2010) told law student caseworkers to ‘suspend the pursuit of legal grounds’ and to focus on examining whether the client was ‘telling the truth’ (p.32). In doing so, Naughton called for innocence projects (and lawyers working with them) to ‘truly challenge the criminal appeal system’ to encourage the necessary reforms that ‘we are together supposed to be working towards’ (p.32). Therefore, INUK was portrayed to represent a network of universities united by an agenda to use casework, education and research to challenge the perceived inadequacy of the criminal appeal legal



framework, with a view to assisting factually innocent victims of wrongful conviction.

Turning to the empirical research, when asked to identify the aims of their innocence project, participants typically identified the two central aims of their project as casework and education: to assist individuals claiming wrongful conviction who could not get legal assistance elsewhere, and to educate law students about the problem of miscarriages of justice. Despite all innocence projects sampled (except Project E) having been members of INUK at some point, only one sampled project (Project G) identified a reform agenda linked to that of INUK, to challenge the legal framework governing criminal appeals. Some participants recognised that innocence projects could identify valuable data which could feed into criminal justice research and/or contribute to government reviews (IPL1, IPL2, IPL12), but this was considered a secondary aim. When discussing why they joined INUK, some participants recognised the value of combining efforts through a network (IPL13, IPL14, IPL8), where there was the possibility for universities to work together productively to ‘potentially make a difference’ (IPL8). Others discussed its benefit as an already established organisation with standardised casework protocols (IPL13, IPL6) preventing the need for ‘reinventing the wheel’ (IPL13). Therefore, despite the predominance of innocence projects associated with INUK, the empirical research does not support a view that the rapid spread of projects resulted from an affinity with the INUK reform agenda.

Rather, the spread of innocence projects across the UK between 2004 and 2014 appears to be better explained by the legal and educational context. First, by the time of the interviews in 2013–15, there had been significant cuts to criminal legal aid and participants discussed the potential value of innocence projects in fulfilling a gap for individuals who were unable to get legal assistance to appeal against their conviction.<sup>15</sup> Second, given that all (except one)<sup>16</sup> of the 36 innocence projects established were set up within universities, the potential educational value of such projects was also significant. The emergence of innocence projects in 2004 coincided with an increasing trend towards clinical legal education (Sylvester 2003) and such projects were well placed to complement law departments looking to develop ‘new and innovative ways of law teaching’ (Roberts and Weathered 2009, p.65). Existing clinical schemes were predominantly confined to civil law, so innocence projects enabled universities to provide a criminal law alternative (Roberts and Weathered 2009, p.65). This was confirmed in the empirical findings where, in addition to the primary aim of assisting those wrongly convicted, all participants (except IPL4) identified the educational value of innocence projects as fundamental to establishing the project. Participants saw innocence projects as offering a ‘huge opportunity’ (IPL9) for students to examine ‘legal issues in a broader context’ (IPL14), to teach law beyond the textbooks and ‘to open their eyes’ to its impact on real people (IPL5). Thus, the empirical data suggest that the growing gap in criminal legal aid provision, and the potential for innocence projects to align with key university objectives around teaching (and potential research) was key to understanding their spread.

From 2004 until 2013, the future for innocence projects in the UK appeared promising as new projects were established across universities and membership of INUK continued to grow. However, the year 2014 appeared to be a turning point. Despite INUK having been in operation for nearly a decade, innocence projects had had limited success in casework and reform. Only three cases worked on by innocence projects had been referred to the CACD by the CCRC; in two of these (both submitted by the University of Bristol innocence project) the conviction was upheld (*R v. Hall* [2011] EWCA Crim 4 and *R v. Beck* [2013] HCJAC 51), while the other appeal was upcoming.<sup>17</sup> Furthermore, despite INUK leading several reform efforts (discussed later) there had been little success. While participants in the empirical research said almost universally (except for IPL4 and IPL15) that the educational aims of the project had been achieved or even ‘surpassed’ (IPL10), over one-half felt that their project had not yet been successful in their casework.<sup>18</sup> Furthermore, it was in the summer of 2014 when INUK announced its intention to close as a membership organisation for innocence projects across the UK. This decision was certainly a crucial turning point. However, some participants interviewed prior to this had already begun to question the future of innocence projects. Four participants expressed views that the UK innocence project movement was ‘fragile’ (IPL7) and ‘going downhill rapidly’ (IPL8) with projects ‘dropping or going silent’ (IPL2) and ‘dying out’ (IPL5). The potential for decline was therefore apparent even prior to the closure of INUK as a membership organisation. While this no doubt compounded the challenges faced by innocence projects, this article will argue that there were several complex contributing factors to the decline of projects across England and Wales.

### **The Fall of Innocence Projects in the UK**

The fall of innocence projects will be examined through consideration of the contributing factors to their lack of success in casework and reform with reflection on how this may have influenced their decline in number. This section will adopt a crude measure of success for innocence projects (looking at convictions quashed and direct advancements in reform); however, the limitations of this are addressed in the final section of the article. First, by drawing on the empirical data from innocence project leaders from 2013 to 2015, this section will demonstrate that the innocence project movement was underpinned by internal tensions both within INUK and within the model of innocence projects. These tensions presented significant challenges for innocence project leaders in pursuing their aims and thus can be understood as contributing factors to the decline of such projects across England and Wales. However, internal tensions within the innocence project movement only partially explain the challenges faced by such projects; this also must be examined within the systemic context of the appellate system in England and Wales to understand the external constraints which limited the success of the innocence project movement.

*The UK Innocence Project Movement: Internal Tensions*

First, tensions within INUK were becoming apparent prior to the network's end, as some well-established innocence projects began leaving the network to operate independently.<sup>19</sup> Innocence projects had been described as 'in a state of civil war' said to be 'notoriously clawing each other's eyes out' and 'squabbling over cases' (Jessel 2014). The empirical data from innocence project leaders evidenced significant tensions underlying INUK as a collective network of support. One participant said that problems existed from the outset as two projects had withdrawn from the network in the initial stages following concerns that the newly-formed INUK was undemocratic (IPL8). In reflecting on their own later decision to withdraw from the network IPL8 reflected:

INUK doesn't actually exist, it's not anything other than Michael [Naughton] and some people paying to join this organisation, there is no democracy, there's no system at all ... in the eyes of the outside world, people see INUK and think it's a group of universities who are all putting their weight behind this, the reality is they don't actually know what is being said in their name and that I think is a huge problem.

Another participant discussed their decision to leave the network, hoping to 'cut ties' with the INUK 'knot' and to 'disassociate completely' (IPL12). Participants raised concerns with the INUK approach. One such concern related to INUK's combative approach to pushing its reform agenda, which participants suggested was poorly handled (IPL14) and unhelpful (IPL2). One participant criticised the 'shrillness' of the INUK approach, describing its criticisms of the CCRC as 'negative', 'derogatory' and amounting to 'personal attacks' on individuals (IPL2). Another also explained that INUK members were banned from attending events hosted by the CCRC (IPL12). Two participant projects also discussed relationship breakdowns between innocence projects, with one associating INUK with causing the 'complete isolation and destruction of relationships' (IPL12). Therefore, difficulties with achieving a collective means of working meant that by 2014, the hope of a mutually supportive network underpinned by shared aims appeared to have been disappointed. This provides further context to understanding the INUK fold in the summer of 2014.

Second, the empirical data also revealed that difficulties within INUK were compounded by emerging tensions within the aims and functions of innocence projects. First, the innocence project casework approach gave rise to inevitable tensions with its aim to work 'outside the parameters' of the legal framework with a central focus on examining factual innocence. By directing focus away from identifying viable legal appeal grounds in both case screening and casework, it was difficult for innocence projects to progress their cases through the legal framework governing the CCRC and CACD. As discussed above, by 2014 innocence projects faced scrutiny for limited casework progress. At an INUK conference in November 2013, the CCRC urged innocence projects not to delay cases, questioning why they had received so few applications from universities (IPL6, IPL11). Participant projects discussed difficulties with identifying viable new grounds for appeal in their cases. There was some recognition that innocence projects

would inevitably have challenging cases because meritorious cases would have been picked up by practitioners (IPL4, IPL6). Cases may also have been through ‘multiple layers of appeal’ and been seen by experienced practitioners (IPL4, IPL14); one likened the situation to asking a junior doctor to examine a patient presenting with rare symptoms (IPL2). Thus, the inherent ‘last-resort’ nature of the innocence project role made it difficult to identify fresh and/or credible grounds to apply to the CCRC.

Questions also arose over whether the INUK case screening process was identifying appropriate cases. One participant suggested that their approach was ‘questionable’ (IPL10). Another explained becoming ‘increasingly frustrated’ with receiving cases from INUK that had been through the CCRC multiple times and received considerable media attention, stressing the need to be ‘realistic’ in identifying something ‘in the case that students can do something with’ (IPL14). Another suggested that in their INUK case there was ‘obviously nothing that can be done’ (IPL6). The nature of cases received may (to some extent) have resulted from tensions underlying the INUK screening process and its focus on identifying potentially genuine innocence claims rather than looking for potential avenues for appeal. In many instances, the more credible the innocence claim, the more legal attention it is likely to have received, thus limiting the path for innocence projects to identify fresh evidence or new legal argument to apply to the CCRC.

Participants also discussed how INUK discouraged projects from closing cases even where it was difficult to identify potential grounds for appeal. One said that they received mixed messages (IPL3):

two years back the complaint was that projects were being too willing to stop cases, the following year it was we were sitting on cases and not sending them to the CCRC.

Similarly, another explained that they were unable to close their case as INUK insisted ‘you must do everything you possibly can’, but it was suggested that this policy had evolved to recognise that it is sometimes not possible to do anything further (IPL6). Another participant was critical of INUK for recycling cases that had already been investigated by other innocence projects (IPL10). The reluctance of INUK for cases to be closed is, again, reflective of tensions underpinning the innocence project casework model. As discussed above, Naughton criticised lawyers working with INUK for ‘resigning themselves to the legal framework’ by telling students to close cases where no obvious appeal grounds emerged, instead calling upon them to ‘challenge the criminal appeal system’ to encourage reform (Naughton 2010, p.32). Such an approach is clearly difficult to reconcile with progressing cases through the legal framework and might explain (to some degree) why innocence projects struggled to make applications to the CCRC.

Second, despite the apparent potential for innocence projects to align with university objectives around teaching and research, operating within university structures raised significant tensions (Greenwood 2015, 2018). One participant suggested that a ‘fundamental problem’ arose because miscarriage of justice casework does not fit into the usual law clinic model,

which lends itself to ‘quick turnaround stuff’ (IPL8). Case investigation could span multiple academic years, which meant that there were considerable periods of case inactivity (perhaps five to six months a year (IPL13, IPL6)) when students were unavailable during the university holidays and exam period. Further delays were also caused by recruiting and training new students when a previous cohort left (IPL14). Some participants reflected on their naivety at the outset of starting the project (IPL2, IPL4, IPL8), with one reflecting that, had she known how long casework would take, she would not have established the project because it did not provide students with more transferable skills than work on a general law clinic (IPL8). Similarly, another suggested that universities would likely move away from ‘hellish’ miscarriage of justice work to opt for easier clinics with a clear resolution (IPL2). Consequently, the innocence project model was described as ‘unsustainable’ (IPL10) and likened to a ‘busted flush’ (IPL2), which did not work (IPL8).

Several participant projects also discussed challenges with finding sufficient time to run the project in their traditional academic role.<sup>20</sup> The time-consuming nature of overseeing the project led one participant to caution that it was ‘impossible’ for a full-time lecturer to run an innocence project well (IPL7). Two participants (who directed several schemes at their respective universities) said that they recruited a staff member to solely oversee the innocence project with both suggesting that their respective projects would have shut down without this (IPL12, IPL8). As most sampled innocence projects were extra-curricular schemes (except three linked to a module), the project often did not count towards core teaching responsibilities. Two participants ceased running their respective projects explaining that they had insufficient workload allowance and were essentially overseeing it in their spare time (IPL14, IPL5). Two also highlighted the tension between running an innocence project and maintaining REF<sup>21</sup> commitments as the project did not easily lead to publications or REF impact, with one describing running the innocence project as ‘suicidal’ for an academic career (IPL5). Tensions thus arose from reconciling innocence projects with an academic job because they operated on the fringes of core university activities around research and teaching.

Third, academic leadership of innocence projects was itself considered potentially problematic. In American literature, the prospect of an academic running an innocence project was described as potentially ‘disastrous’ unless they had practised criminal law in the relevant jurisdiction (Stiglitz, Brooks and Shulman 2001, p.427). Yet in the UK, most innocence projects were (and still are) run by academics. Within the 13 innocence projects sampled: three were run by legal academics who were ex-criminal practitioners; eight were run by other legal academics (some had practised, but not in criminal law) with two of these also co-directed by former campaigners; and two were run by academics in journalism. One participant recognised that without practical experience, there was a danger of entering ‘academic mode’, which would not necessarily advance the case (IPL15). Another said that it would be impossible to effectively run an innocence project unless you were a practising barrister or solicitor

advocate (IPL4). One participant suggested that the academic leadership of innocence projects was a key contributor to their decline as there was a failure to ‘grab the casework problem by the neck’ due to the lack of involvement from criminal practitioners (IPL8). Two participants said that it was intended for the project to liaise with practitioners in casework, but this became unsustainable as practitioners were under huge strains with their time (IPL8, IPL10). Thus, difficulties arose due to the lack of practitioner involvement because the conventional academic skill set in research and teaching is distinct from the skills required for the casework.

Therefore, significant practical challenges arose from tensions underpinning the innocence project model. Nevertheless, of the 13 projects sampled, eleven intended to continue in 2014. Initially it seemed that innocence projects in the UK were undergoing a reconfiguration (Greenwood 2017), as participants discussed new ways of working. For some, independence from INUK meant broadening out the strict factual innocence focus on casework (IPL10, IPL12, IPL16), enabling projects to potentially examine a broader range of cases with perhaps greater focus on legal grounds for appeal. Some participants also discussed a partnership project programme with the charitable law firm Appeal, which aims to investigate miscarriages of justice, litigate for prospective appellants and advocate for certain criminal justice reforms (see Appeal website at: <http://appeal.org.uk/> (accessed 8 April 2021)). This partnership aimed to be mutually beneficial as universities could bring ‘manpower’ while Appeal could bring specialist legal knowledge.<sup>22</sup> However, despite initial promise, this partnership has not been cemented across all surviving projects and it is unknown to what extent university projects still work with Appeal in this capacity. Steps were also taken towards establishing a looser network of universities under the ‘Miscarriage of Justice Review Association’ led by McGourlay,<sup>23</sup> but this has not yet come to fruition and there is currently no official national association between surviving innocence projects. Instead, university involvement in miscarriages of justice casework appears to be going quiet across the UK, with the number of projects appearing to continually decline. Reflecting on the above, we might conclude that this is unsurprising: when the tensions underpinning the innocence project model were compounded with tensions surrounding INUK and its collapse as a support organisation, the burden of the work potentially eventually outweighed its benefits.

Therefore, the empirical data suggested that, at least in part, the decline of INUK and innocence projects can be understood as resulting from tensions underlying the movement both within the network and within the innocence project model itself. However, it would be short-sighted to explain the fall of innocence projects in the UK as explicable only due to internal tensions within the movement. The difficulties in running innocence projects which were revealed in the empirical data no doubt made advancing casework and reform challenging, but this does not necessarily explain why the efforts that *were* made might be deemed ‘unsuccessful’ (insofar as success might be understood as having impact in overturning convictions in their casework and influencing reform of the criminal justice system). To understand the latter, it is arguably necessary to examine

the challenges faced by innocence projects in the context of the external constraints of the criminal appeal system.

*The UK Innocence Project Movement: External Constraints*

First, in respect of casework, while the tensions discussed in the previous section may explain difficulties that innocence projects had in advancing cases for submission to appeal (either at the CCRC or CACD), it does not necessarily explain why such projects did not have more success in securing appeals or getting convictions overturned in the cases which were submitted to the CCRC (or even CACD).<sup>24</sup> Since 2004, university projects are known to have contributed to:<sup>25</sup> three referrals from the CCRC to the CACD<sup>26</sup> of which one conviction was quashed (*R v. George* [2014] EWCA Crim 2507); two appeals against conviction where one conviction was quashed (*R v. Jones* [2018] EWCA Crim 2816); and two hearings in the CACD for leave to appeal (both refused in *R v. Conaghan (and others)* [2017] EWCA Crim 597). Having overturned two convictions, the Cardiff University innocence project is currently the most successful in this respect. However, the Cardiff University innocence project has submitted applications to the CCRC in 20 individual cases of which 16 have been rejected (with one referred (*George*) and three decisions outstanding). It has also assisted with two cases heard directly at the CACD (one quashed (*Jones*) while the other was rejected (unreported (30 January 2019)). Therefore, of 22 cases submitted to the CACD or CCRC, the Cardiff University innocence project has had rejections in 17 cases. There is no up-to-date figure from either the CCRC or other university projects to determine how many further cases might have been submitted to the Commission and/or rejected. However, in 2015, the CCRC estimated that they had received submissions from innocence projects in approximately 25 cases from ten projects,<sup>27</sup> of which still only three appear to have been referred.

Questions undoubtedly arise over the poor success rate for university innocence projects in advancing cases through the appeal system. First, critics might suggest that this is reflective of poor-quality casework investigations and legal submissions. At present (as has previously been flagged by Quirk (2007, p.772)) no research has been undertaken to explore the quality of innocence project work. In respect of applications to the CCRC, the CCRC has previously suggested that some innocence project applications are ‘voluminous’ and lacking focus, which can result in delay to the detriment of the applicant (Robins 2013). Furthermore, the CCRC has cautioned that innocence projects need to recognise that applying to the CCRC is not a ‘theoretical academic exercise’, but the start of a ‘practical rule-governed process’, thus calling for projects to focus more clearly on whether the evidence is both new and significant so that it might satisfy the real possibility test (Robins 2013). However, given that the CCRC accepts submissions from non-legally represented applicants, the quality of submissions made by innocence projects should not be determinative of outcome, as the CCRC should undertake its own review to determine any potential grounds for appeal. However, research has suggested that the quality of

legal submissions has some influence (Hodgson and Horne 2009). Without up-to-date research, no further comment can be made about the quality of innocence project applications and the extent to which they help their clients in applying to the CCRC. Nevertheless, the quality of innocence project submissions should not be fatal to the success of cases. Second, questions may arise over whether innocence projects select appropriate cases. Without a fresh analysis of case selection across university projects the criteria adopted cannot be examined, but inevitably, as innocence projects are a last resort for those who have exhausted other options it is likely that they receive challenging cases. It is, however, helpful to examine the experience of the law firm Appeal, which was established in 2014. Since then, Appeal has screened 900 applications from convicted prisoners, given legal advice and assistance to 60 people, and made 35 legal submissions to the CCRC, the CACD and to the administrative court.<sup>28</sup> Notably, despite Appeal employing specialised individuals including qualified criminal practitioners, only one conviction associated with the organisation has been overturned by the CACD.<sup>29</sup> Consequently, Appeal dedicates approximately a quarter of its time to campaigning for reform of the ‘broken’ criminal justice system (Appeal 2019). Therefore, it is arguably important to consider the constraints of the criminal appeal framework in England and Wales in examining the poor success rate of innocence projects and other university Miscarriage of Justice clinics in overturning convictions.

Drawing on the empirical research, some participants commented on the restrictive nature of the criminal appeal system (IPL3, IPL7, IPL8). One explained that running the innocence project had required them to become a campaigner because ‘you’re fighting the system’ (IPL8). Seven participants thought that the CCRC required a high threshold to be met before making referrals to the CACD with some suggesting that it was perhaps too ‘cautious’ in its approach (IPL8, IPL7, IPL6, IPL3). There was a view that CCRC applications needed to be ‘spot on’ (IPL1) to stand a chance at being examined and applications needed to be presented in their best possible light to ensure that the CCRC fully investigated the issues (IPL6). Participants also said that a significant barrier to casework was gaining post-conviction disclosure of exhibits from criminal justice agencies with one saying that they were ‘blocked by the police’ in every case (IPL9). This latter issue of post-conviction disclosure remains a significant barrier to appellate work and the legal test remains difficult to satisfy (see Greenwood and Eady 2019; McCartney and Shorter 2019).

It may also be argued that the criminal appeal system is operating increasingly restrictively. A crude numerical exercise illustrates a downward trend in the number of successful appeals against conviction at the CACD. The Court of Appeal annual report (2009–10) stated that on average, 12% of the applications for appeal against conviction were successful over the previous three years (Courts and Tribunals Judiciary 2012, p.2), whereas the 2018–19 report put this figure at just 6.7% over the previous five years (Courts and Tribunals Judiciary 2020, p.47). The number of cases referred by the CCRC to the CACD has also declined in recent years. Despite the CCRC historically referring on average 3.3% of the cases it reviewed to



the CACD (Berlin 2018), over the previous four years the referral rate has hovered at around 1% with only 0.9% of concluded cases being referred in 2018–19; 1.24% in 2017–18; and the lowest being 0.77% in 2016–17 (Criminal Cases Review Commission 2017). This reduced the average referral rate to around 2.75% (Criminal Cases Review Commission 2019, p.16).<sup>30</sup> Although, notably in 2019–20 the number of cases referred increased to 29 (2% of concluded applications) which the Commission claims brings them ‘back close to the historic average of 30 referrals a year’ (Criminal Cases Review Commission 2020, p.15).<sup>31</sup> Significantly, the 2019–20 annual report documents declining numbers of successful appeals at the CACD following CCRC referral, with only 58.8% of appeals being successful in comparison with a long-term average of 66% (Criminal Cases Review Commission 2020). This article cannot examine the merit of cases at the CCRC or CACD, and therefore it could perhaps be argued that the criminal justice system is simply working better and causing fewer miscarriages of justice. This logic has been previously used to defend the low referral rate of the CCRC, as discussed by Robins (2018, p.131) and Hoyle and Sato (2019, p.17). However, any such current view would seem to conflict with broader concerns that we are facing a criminal justice crisis, as highlighted in the introduction.

There has been academic research examining the approach of the CACD and CCRC, which can illuminate the figures further. There is ‘academic consensus’ (Dargue 2019, p.434) that the CACD adopts a restrictive approach to hearings and quashing appeals against conviction. Research by Roberts (2017) compared the number of fresh evidence appeals in the CACD across a set period in both 1990 and 2016. Roberts found that while a rise in the number of fresh evidence appeals heard might suggest a more liberal approach, the CACD admitted fresh evidence in a lower percentage of cases in 2016 (19%) than in 1990 (61%), and only 2% of the fresh evidence appeals succeeded in 2016, compared with 17% in 1990 (Roberts 2017, pp.319–20). Roberts concluded that the CACD thus still appeared to adopt a restrictive approach to allowing fresh evidence appeals. The empirical validity of this claim is however disputed by Dargue (2019) who replicated Roberts’s study and questioned the inclusion of renewed applications for leave to appeal (that is, those rejected by the Single Judge) for biasing the sample to include larger numbers of unsuccessful applicants (p.466). He also questioned the grounds upon which cases were considered ‘restrictively decided’ suggesting that some of those included were not ‘strong candidates’ to be quashed by fresh evidence (p.499). Nevertheless, the figures above do at least suggest numerically that the number of successful appeals at the CACD are declining (including those following CCRC referral), which arguably leaves this issue open to further examination. There does appear to be a continuing perception that the CACD is too restrictive in its approach to hearing appeals with recent recommendations from the Westminster Commission on Miscarriages of Justice (which has recently published a report based on evidence from academics, practitioners and non-profit organisations) again calling for review of the CACD’s grounds for allowing appeals to ‘encourage the Court of

Appeal to quash a conviction where it has a serious doubt about the verdict, even without fresh evidence or fresh legal argument' (Westminster Commission on Miscarriages of Justice 2021, p.69). In respect of the CCRC, a recent large-scale empirical study into decision making at the Commission concluded that they were perhaps more cautious in referrals than they needed to be (Hoyle and Sato 2019, p.338) giving credence to the view that the CCRC is inclined to apply the real possibility test restrictively. Furthermore, concerns about the CCRC's approach were also raised in the Westminster Commission on Miscarriages of Justice (2021) report which recommended that the 'real possibility' test should be redrafted and that, in the meantime, the CCRC should be 'bolder' in interpreting it (p.68). Further exploration of this is beyond the scope of this article but the above demonstrates that only a small percentage of appeals against conviction are referred by the CCRC and/or quashed by the CACD. This provides important systemic context to understanding why innocence projects and other similar clinics have not had more success in overturning convictions.

Given the above concerns around the CACD and CCRC approach, it is pertinent to consider why the reform agenda of INUK failed to have more impact. The literature suggested that research and reform were core aims of INUK and of innocence projects (Naughton 2006a; Naughton and McCartney 2004; Roberts and Weathered 2009). While the participant project leaders recognised the reform aims of INUK, the majority did not see reform as a central aim of their project or something with which they were able to engage,<sup>32</sup> which is unsurprising given the difficulties with workload. Nevertheless, some significant reform efforts were made by INUK during its operation. First, INUK held a Symposium on the Reform of the CCRC in 2012 which was attended by lawyers, academics, campaigners and victims of miscarriages of justice. This resulted in a report calling for CCRC reform by increasing the CCRC's independence from the CACD; reforming the real possibility test; broadening the interpretation of fresh evidence; and encouraging the CCRC to undertake fieldwork investigation rather than desktop reviews (Naughton and Tan 2012, p.17). Second, INUK contributed to an unsuccessful intervention in the Supreme Court case of *Nunn v. Chief Constable of Suffolk Police* [2015] AC 225, arguing for increased rights for defendants to obtain disclosure of evidence post-conviction.<sup>33</sup> Third, among others, Naughton and Eady, as innocence project leaders, were invited to give evidence to a Justice Select Committee review of the CCRC in 2014–15. Both criticised the CCRC's statutory real possibility test and their restrictive application of it, along with the CACD's steadfast requirement that appellants need to identify fresh evidence or legal/procedural errors.<sup>34</sup> The committee's recommendations initially appeared positive in recommending that the CCRC should be less cautious in applying the real possibility test (House of Commons Justice Committee 2015, p.11) and that the CACD ought to be encouraged to quash convictions in the absence of fresh evidence/legal argument where there was 'serious doubt' about the verdict (House of Commons Justice Committee 2015, pp.27–8). However, the Justice Secretary revealed in October 2015 that the government would not act on the committee's recommendations

to review the CACD approach.<sup>35</sup> Therefore, during INUK's operation between 2004 and 2015, there was little success in influencing reform. The next section will examine why the development of innocence projects under INUK may have had limited success in initiating a broader innocence movement across England and Wales.

### **INUK and Innocence Projects in England and Wales: A Failed Innocence Movement?**

As outlined in the introduction, innocence projects in the US have been extremely successful in overturning convictions, encouraging reform, and have been integral to generating public concern around wrongful conviction sparking an innocence movement across the US (Medwed 2008, p.1550). Despite the rapid spread of innocence projects across the UK, they have had limited impact in terms of casework and reform. Thus, questions arise over why they have not had the success of their US counterparts. However, the multiple variables between the two jurisdictions make drawing comparison difficult. Even putting aside differences between the model of innocence projects in the US (where some are more akin to specialised law firms, which receive significant philanthropic funding),<sup>36</sup> there are significant differences between post-conviction appellate procedure in England and Wales and the US, and further differences between US states (for example, there is no equivalent federal CCRC body in the US, although some states do have Innocence Commissions,<sup>37</sup> which function as state agencies to review potential wrongful convictions). Nevertheless, some insight may tentatively be drawn from considering the findings of an empirical study looking at 22 innocence projects in the US (Krieger 2011). First, Krieger found a correlation between the amount of money received by an innocence project and the number of exonerations achieved (that is, those with higher funding overturned significantly more convictions), highlighting that no project with an annual budget of 200,000 dollars or less secured more than five exonerations (Krieger 2011, p.381). As indicated above, innocence projects in England and Wales were typically run in-house at universities, and therefore likely only have a budget which extends to the basic running costs of the project; thus, to the extent that Krieger's finding has any relevance in the English and Welsh context, finances may be an important factor. Second, Krieger (2011) also found that innocence projects achieved more exonerations in states with a larger prison population, potentially because they receive more applications and thus can identify more promising cases (p.381). A comparatively low prison population has previously been considered relevant to understanding the lower exoneration rate of innocence projects in Australia than in the US (Weathered 2015, p.518), which would also apply in England and Wales which, as of December 2020, had a prison population of 78,722 compared with the figure of 2.3 million prisoners across US institutions given in a recent report (Sawyer and Wagner 2020). A final issue to flag is Krieger's (2011) finding that sampled innocence projects would review an average of 1,750 requests for assistance for every exoneration

(p.369). It cannot be determined with any certainty how many cases have collectively been reviewed by innocence projects in England and Wales, but notably during INUK's operation it reviewed over 1,000 applications, of which over 100 cases were referred to member projects for further investigation (INUK website at: <http://www.innocencenetwork.org.uk> (accessed 29 March 2021)). Taking Krieger's finding into account, this makes the one exoneration of an INUK case (*R v. George* [2014] EWCA Crim 2507) look less insignificant in comparison. It would be outside the scope of this article to explore further the reasons behind the greater overall success of innocence projects in the US. However, to understand the limited impact of innocence projects in influencing criminal justice reform in England and Wales, arguably some further insight can be drawn from considering the contrasting experience in the US.

First, it is important to examine why innocence projects in the US may have been so integral to the creation of a national innocence movement. As indicated above, innocence projects have had a 'profound impact' in criminal justice reform (Weathered 2003, p.77). Reforms have been brought about at federal level (such as the Innocence Protection Act 2004 and the Wrongful Convictions Tax Relief Act 2015) and at state level, with at least 35 states introducing reforms to a major contributing factor to wrongful conviction and 30 enacting compensation statutes for exonerees (Norris 2017, p.27). Norris sought to understand the success of the US innocence movement through the application of Social Movement Theory, concluding that its success resulted from the alignment of the foundation of organisations (such as innocence projects); the leadership from cause-lawyers (such as Scheck and Neufeld who established the first innocence project); and the emergence of DNA as a tool for exoneration, which was 'core' to the movement in providing the basis for collective action (pp.34–7). When the Innocence Project New York was established in 1991, it was perfectly positioned to take advantage of new developments in DNA technology and sought to use post-conviction DNA testing to establish a 'dataset of irrefutable wrongful convictions' to help change public policy (p.31). By mid-1995, there had already been nearly 30 DNA exonerations enabling the US innocence movement to gain momentum (p.32). DNA was thus a powerful tool to challenge convictions, described as an 'absolute identity-prover that could not be disputed', thereby enabling innocence projects and other similar organisations to demonstrate wrongful convictions in a 'scientifically irrefutable' way (p.34).<sup>38</sup> This challenged the prior public perception that the US criminal justice system was a 'well-functioning machine that rarely, if ever, made mistakes' (p.35) and demonstrated that wrongful convictions were a systemic problem, rather than isolated tragedies (p.27). This was crucial to making the criminal justice system in the US 'vulnerable to reform efforts' (p.34).

Arguably, we may be able to draw some limited insight from this analysis to consider why innocence projects in the UK might have failed to achieve the same impact. First, it is questionable whether there was any need for an innocence movement in England and Wales. The criminal justice system had already undergone periods of significant criminal justice reform

following highly-publicised miscarriages of justice. For example, the wrongful convictions in the Maxwell Confait case (see Fisher 1977) leading to the Royal Commission on Criminal Procedure reporting in 1981 and the introduction of the Police and Criminal Evidence Act 1984; and the Royal Commission on Criminal Justice reporting in 1993 following the Birmingham Six and Guildford Four.<sup>39</sup> From the outset, Quirk (2007) was critical of the decision to transplant the innocence project model from the US into the UK without considering ‘the significantly different realities’ and ‘histories, of the two jurisdictions’ (p.771). Quirk (2007) questioned the value of utilising innocence as a campaign tool in England and Wales where the debate should have progressed ‘beyond the simplistic dichotomy of guilt and innocence’ (p.762). It was highlighted that innocence projects in the US were fighting for reforms that had been commonplace in the UK for the last 20 years, such as the recording of suspect interviews (p.773). Consequently, Quirk (2007) emphasised the limitations of a focus on factual innocence, which is ‘almost impossible to establish’ (p.768) and cautioned that the ‘shortage’ of clear-cut innocence cases would make it ‘more difficult to argue that the system is in need of reform’ or that due process ‘protections must be retained’ (p.773). Therefore, it may be concluded that the system in England and Wales did not need an innocence movement in the first place.

Nevertheless, the INUK reform agenda did have a specific target. The discourse of factual innocence was utilised with the aim to demonstrate the perceived limitations of the criminal appeal framework in addressing claims of miscarriages of justice. For example, INUK published a dossier of 44 cases of concern, which highlighted cases of potential wrongful conviction that had been refused referral by the CCRC ‘despite continuing doubts about the evidence that led to their conviction’ (Naughton and Tan 2012, pp.44, 73). Thus, there was a specific reform agenda channelled towards encouraging reform of the legal framework governing criminal appeals, which continues to be subject to criticism as discussed above. Key to understanding the success of US innocence projects in influencing reform appeared to be their ability to harness DNA testing to demonstrate the systemic wrongful conviction of factually innocent people. Conversely, by the time innocence projects were established in the UK in 2004, the use of DNA was already well established in criminal investigations. Thus, while innocence projects in the UK placed this same emphasis on factual innocence, they had less opportunities to utilise post-conviction DNA testing within casework as a means of proof of innocence.<sup>40</sup> The importance of DNA testing was recognised with Naughton and Tan (2010) arguing that individuals contesting their conviction should have a right to access testing. They criticised the CCRC for failing to use DNA testing in certain INUK cases, using this as evidence of the Commission’s ‘systemic apathy’ towards potentially innocent victims of wrongful conviction (Naughton and Tan 2010, p.343). Crucially, had any of INUK’s flagship cases resulted in DNA testing leading to a conviction being quashed, their narrative may have gained significant strength to give rise to an innocence movement in the UK. Conversely, in 2013, the defendant in one of INUK’s flagship

project cases confessed to having committed the murder for which he was convicted, which made national news.<sup>41</sup> This case had been at the forefront of the INUK reform campaign, having been featured in a television programme about the Bristol University innocence project (April 2007) and was often utilised by INUK as a case study to highlight criticisms of the criminal appeal system (such as, Naughton 2010, 2011). This therefore caused significant damage to the cause of INUK and their argument that factually innocent victims of wrongful conviction were being neglected by the criminal appeal framework in England and Wales.

Thus, despite INUK's aims to reinvigorate the miscarriage of justice debate and to expose the continued flaws within the criminal justice system (Naughton 2009, p.34), INUK and innocence projects were largely unsuccessful in raising public awareness of wrongful conviction. After 16 years, with only two convictions having been quashed following innocence project casework (*R v. George* [2014] EWCA Crim 2507 and *R v. Jones* [2018] EWCA Crim 2816), this is insufficient to have had significant impact. Although such cases generated media interest, reporting typically focused on the specific case itself, rather than any broader systemic issues.<sup>42</sup> Therefore, innocence projects in the UK never gained sufficient traction in successfully overturning convictions to convince the government and the wider public that miscarriages of justice remain a systemic problem rather than just isolated tragedies (identified as key to the US innocence movement's success by Norris (2017, p.27)). Nor did they persuade the government or wider public that the existing criminal appeal framework was ineffective in correcting miscarriages of justice. Without pressure generated by public concern, it is that much easier for reform attempts to be largely ignored, such as the Justice Select Committee Review of the CCRC in 2015. Thus, the lack of success in casework is also significant to understanding why innocence projects and INUK failed to have impact in criminal justice reform. Yet, as highlighted in the introduction, the criminal justice system in England and Wales is in fact reaching a crisis point and therefore, efforts to challenge miscarriages of justice ought to be given renewed importance. In this context, the next section will consider the extent to which innocence projects and/or other similar projects may be able to play a valuable role in responding to the problem of wrongful conviction.

### **Rethinking the Future Role for Innocence Projects in England and Wales**

The introduction sought to highlight current concerns that our criminal justice system is in crisis. Consequently, the question arises whether innocence projects or similar clinics could play a valuable role in assisting the potentially wrongly convicted. However, in considering this, it is necessary to address the criticisms which have previously been levelled against the establishment of innocence projects in the UK. First, it has always been questioned whether there is any need for innocence projects to assist with miscarriage of justice casework. Quirk (2007) suggested that the establishment of innocence projects in the UK was 'assumed rather than evaluated

or explained’, stressing that innocence projects in the US were ‘the legal equivalent of emergency relief, operating in desperate circumstances that do not exist in the UK’ and few would recommend them as a ‘prototype’ (p.772). Conversely, in England and Wales, there is both legal aid for post-conviction assistance and the CCRC, which has government funding and statutory powers to undertake post-conviction reviews, and it is possible to apply to the CCRC without legal advice (p.772). Despite the position with criminal legal aid worsening over the last decade, Quirk (2021, p.93) recently reaffirmed her earlier view that innocence projects are not the answer to perceived problems within the criminal justice system. This is an important point. Quirk (2021) is right that innocence projects are not the ‘answer’ to problems in criminal justice, and they are not an effective substitute for a properly resourced legal aid system. However, given the significant cuts to legal aid over the last decade, there may now be a stronger case for innocence projects than before.

Generally, criminal legal aid granted for a defendant’s trial will extend post-conviction to cover written advice on appeal by the trial barrister and, if grounds for appeal are found, to submit these to the CACD (JUSTICE 2018, p.31). However, as application for leave to appeal ought to be lodged within 28 days post-conviction, unless the barrister can identify serious legal issues arising from the trial, which may affect the safety of the conviction (that is, decisions on evidence admissibility by the trial judge/errors in the summing up) or significant fresh evidence emerges quickly post-trial, then it will be difficult to identify grounds for appeal at this stage. This leaves potential victims of wrongful conviction in a difficult position once they have been advised that there are no grounds for appeal post-trial (or if their application for leave is rejected by the Single Judge) as their legal aid will normally cease. Further legal aid can be sought through the advice and assistance scheme, but an applicant would need to demonstrate that a ‘new matter’ has arisen (JUSTICE 2018, p.31). Therefore, there may be difficulties in getting legal aid to cover legal advice where a prospective appellant cannot satisfy the above. Furthermore, even where available, legal aid cuts mean that ‘those who are eligible struggle to find law practices willing to represent them ... because the legal aid rates make the work “effectively a loss leader”’ (Westminster Commission on Miscarriages of Justice (2021, p.29), quoting written evidence submitted by a leading criminal defence solicitor, Mark Newby, p.3). The Criminal Appeal Lawyers Association highlighted that legal aid appeal lawyers are paid less for their work now than in 1996, and therefore it was ‘unsurprising that many good appeal providers have disappeared from the work over the last few years’ (Westminster Commission on Miscarriages of Justice 2021, p.30, quoting written evidence from Mark Newby, p.3). There appear to be increasing numbers of non-legally represented appellants lodging first appeals with the CACD with assistance from third parties (that is, university projects/McKenzie friends) as discussed in *R v. Conaghan (and others)* [2017] EWCA Crim 597, which might reflect the difficulties with obtaining legal assistance post-conviction in the current legal aid climate. Furthermore, while the CCRC is an important safeguard in that applicants can apply with or without legal advice,

prospective appellants are generally only eligible for assistance from the CCRC once they have exhausted their appeal rights with the CACD (unless there are exceptional circumstances). Recent research has demonstrated that in a sample of 183 cases rejected by the CCRC for not yet having applied for leave to appeal, only 11.5% of these went on to appeal (Hodgson, Horne and Soubise 2018, p.28). Therefore, there is danger that potential victims of wrongful conviction could remain in limbo where they are unable to obtain legal representation to lodge their first application for leave to appeal with the CACD.

Turning back to the empirical research, participants felt that innocence projects could fill an important gap and perform a useful role for clients provided that they were working properly (IPL2, IPL11, IPL6), with one former practitioner saying that inadequate legal aid funding meant they are ‘more crucial now than probably ever’ (IPL16). While *Conaghan (and others)* highlights numerous problems caused by third party involvement (such as pursuit of ‘unmeritorious’ cases), where university projects can obtain pro bono legal assistance from practitioners to support their case, they may be performing a helpful role (the Cardiff University innocence project has secured this to support two first applications for leave to appeal). The potential value of innocence projects in this respect was recognised by IPL5 who considered some of their ‘biggest successes’ to be getting lawyers to take over their cases. Therefore, while it is fundamentally important for prospective appellants to explore all their available options to obtain proper legal representation from criminal practitioners, where this is unavailable, innocence projects may have a valuable role to play in helping to identify potential grounds for appeal to engage the assistance of legal practitioners.

Second, concerns have also been expressed about the potential for innocence projects to usurp the role of the CCRC (Quirk 2021, p.96). Quirk (2007) has previously suggested that innocence projects in England and Wales are a ‘retrogressive step’ given the existence of the CCRC, which has both government funding and statutory powers to undertake post-conviction reviews (p.772). Furthermore, it is possible to apply to the CCRC with or without legal advice, which may also be funded by legal aid (Quirk 2007, p.772). Given that the CCRC is the only route back to the CACD once first appeal rights have been exhausted, it was suggested that innocence projects might interfere with the CCRC role, resulting in potential delays and contamination of evidence (p.772). However, it has previously been suggested that these criticisms failed to recognise the ‘important role’ that innocence projects could have in England and Wales in working effectively alongside the CCRC (Roberts and Weathered 2009, p.60). They highlighted the potential value of legal representation for CCRC applications, which can help identify the central issues and reduce the CCRC’s workload (p.61). They also stressed that gaps in legal aid funding made it difficult for practitioners to undertake miscarriage of justice work and concluded that ‘it would be far more beneficial for an innocent person wrongly convicted to have an innocence project assisting with his or her application, than no one at all’ (p.62). These arguments are potentially even more relevant now.



Recently, it has been highlighted that current legal aid fees are ‘unsustainably low’ making it difficult to obtain legal representation for CCRC applications (Westminster Commission on Miscarriages of Justice 2021, p.31). Significantly, the proportion of unrepresented applicants to the CCRC has climbed to approximately 90% in recent years, compared with a historical average closer to 70% (Criminal Cases Review Commission 2020, p.14). This may be explained in part by the CCRC’s efforts to make applications easier,<sup>43</sup> but it also validates concerns about declining legal representation for appeals against conviction. Although unrepresented applicants can apply to the CCRC, the benefits of legal representation have previously been recognised (Hodgson and Horne 2009). Furthermore, concerns have recently been raised that the CCRC’s effectiveness has been diminished by inadequate funding and an increasing workload (Westminster Commission on Miscarriages of Justice 2021, p.28). In this context, the potential value of legal representation for CCRC applications has again been stressed for its potential to save the CCRC ‘a great deal of time and effort by organising the case’ and for directing the CCRC to ‘the most potentially fruitful lines of enquiry’ thereby enabling it ‘to use its ever more strained resources as efficiently as possible’ (Westminster Commission on Miscarriages of Justice (2021 p.31), citing evidence from criminal advocate, Michael Birnbaum QC, and solicitor and academic, Dr Lucy Welsh). Therefore, while innocence projects cannot be an adequate substitute for legal representation, where this is unavailable, such projects may provide a valuable role in helping their clients to prepare an application to the CCRC, provided they can go some way towards replicating the assistance of a practitioner.

Third, a further criticism surrounds the emphasis of innocence projects on factual innocence. As highlighted above, this was distinguished from the legal test examining conviction safety, which encapsulates errors in law or procedure (Roberts and Weathered 2009, p.45). This fed into the INUK case selection criteria, which excluded those looking to overturn their conviction on legal grounds due to procedural irregularities in the criminal justice process (Naughton 2007, p.9). As discussed above, Quirk (2007) criticised the use of innocence as a campaign tool in England and Wales where significant advancements had already been made in establishing due process protections. Concerns were flagged that a focus on factual innocence could unfairly stigmatise those who had a conviction quashed due to procedural or legal irregularities and that this rhetoric could only assist in a drive to curtail due process protections (Quirk 2007, p.768). Furthermore, Quirk (2007) also emphasised that a focus on innocence at appeal stage would only exacerbate difficulties for victims of wrongful conviction as the current ‘unsafety’ test applied by the CACD provides much broader protection in safeguarding against wrongful conviction (p.776). Finally, it was suggested that focusing on factual innocence is ‘potentially misleading for students’ who will need to work with ‘the more mundane, but more protective, standard of safety’ once they enter practice (Quirk 2021, p.94). These are important arguments and weigh strongly against a significant emphasis on factual innocence in campaigning, casework and education. There is a continuing perception that the ‘allure of [innocence] projects is around

the certainty of innocence' (Quirk 2021, p.94) and it has recently been suggested that innocence projects might reject cases with valid legal arguments if they are not persuaded that the applicant is innocent (Hoyle and Sato 2019, p.16). However, it is debatable whether innocence projects and/or Miscarriage of Justice projects do still operate with such a strict focus on factual innocence. Several participants in the research expressed discomfort with the factual innocence distinction<sup>44</sup> with some suggesting that they might broaden their focus post-INUK membership (IPL10, IPL12, IPL16) (Greenwood 2018). Indeed, there is a strong argument that if such projects are to be valuable in assisting unrepresented individuals, a stringent focus on factual innocence is unhelpful, as errors in law and procedure should carry equal weight in protecting defendants' rights to a fair trial. Furthermore, given the potentially increased risk of wrongful conviction in the current climate outlined in the introduction, it is fundamentally important to protect existing due process safeguards.

Fourth, given the numerous tensions discussed above with operating innocence projects within universities, before any future role for such projects could be advocated, it would be essential for such problems to be addressed to ensure the best possible service to clients. This would include the provision of sufficient resources, appropriate staff with both the time and requisite knowledge and experience, and an ability to ensure that casework continues all year round. Without this, even if innocence projects have the potential to be valuable in assisting prospective applicants, this would reinforce concerns that they will only exacerbate delays for their clients (Quirk 2007, p.772). Surviving projects have had significant time to evolve and resolve those tensions, however further research would be required to determine the extent to which previous challenges have been overcome. Additionally, concerns will remain that there is currently no formal mechanism to hold university projects to account and that the extent to which such projects provide valuable assistance to clients remains undetermined (Quirk 2007, p.772). However, in the current climate, there is a strong argument that *if* working effectively, pro bono schemes, such as innocence projects and other similar Miscarriage of Justice projects, could provide valuable assistance to the potentially wrongly convicted who are unable to get help elsewhere.

Finally, in drawing this together, it is important to address how the value or success of innocence projects or other similar clinics is being measured. It has recently been suggested the practical benefit of innocence projects to prospective appellants 'has been almost non-existent' (Quirk 2021, p.94). However, there are clear limitations to analysing the value of innocence projects by looking only at the number of convictions quashed or even through the number of applications to the CCRC/CACD, as not all cases will be appropriate to advance for appeal. Most participants<sup>45</sup> said that they would define a successful investigation as one where all potential avenues for appeal had been explored and a resolution was reached. As such, the innocence project role may be better understood for its potential to aid the unrepresented, which could sometimes just involve explaining to someone why they had been convicted (IPL5). Furthermore, the role of universities

in addressing research and reform has important potential. Recently, surviving university innocence projects have become involved in renewed reform efforts. An All-Party Parliamentary Group on Miscarriages of Justice was launched in November 2017 to examine structural problems within the criminal justice system<sup>46</sup> and to gather evidence from various stakeholders. Its recently published report on the work of the CCRC quotes evidence from the Cardiff University innocence project and other academics, practitioners and non-profit organisations (Westminster Commission on Criminal Justice 2021). Additionally, 2018–19 saw the Innovation of Justice movement<sup>47</sup> (co-ordinated by Liam Allan, Annie Brodie-Akers, a student with the Miscarriage of Justice Review Centre at the University of Sheffield, and Manchester Innocence Project), which sought to highlight wide-scale problems within the criminal justice system. The involvement of universities in criminal justice reform is arguably important due to their potential to develop evidence-based research to inform, but also to improve public awareness through the education of students. Thus finally, although this should never be at the expense of vulnerable clients, the importance of innocence projects to education should not be overlooked. Participants in the empirical research suggested that innocence projects had the potential to create ‘a sense of awareness’ about miscarriages of justice (IPL7), educate future lawyers (IPL1, IPL5, IPL12) to develop ethically as future practitioners (IPL1) and to be sceptical in examining cases (IPL5). Furthermore, participants discussed their aims to make students ‘passionate’ about miscarriages of justice (IPL1, IPL5, IPL7, IPL12) with one hoping to involve students in ‘a movement’ that could help to create change (IPL7). In a time where the criminal defence profession is marked by a continuing crisis around funding,<sup>48</sup> the importance of engaging students in such work is particularly crucial. Therefore, provided university innocence projects and other similar Miscarriage of Justice Projects have worked towards overcoming previous tensions within their model so that they are able to provide effective and beneficial help to their clients, then there may be a continued case for their involvement in challenging miscarriages of justice through casework, education and reform.

### **Conclusion**

This article has drawn upon original empirical data to explore the reasons behind the rise and fall of innocence projects across the UK, with a focus on England and Wales. It has also sought to use this to reimagine the future role that such clinics might play in addressing miscarriages of justice. Despite the rapid spread of innocence projects from 2004 until 2014 and the value which INUK appeared to offer in supporting projects with a united agenda, the success of innocence projects was limited both through internal tensions within the movement and by external constraints from operating within a restrictive criminal appeal system. In this context, the decline in the number of innocence projects at universities across the UK is not surprising. In reflecting on any future role for innocence projects or similar clinics, while it must be conceded that such projects are not the ‘answer’

(Quirk 2021), the significant cuts to legal aid for appellate work make the case for such projects stronger than before. However, any involvement of university clinics in miscarriage of justice work needs to be carefully considered accounting for their previous limitations. It seems likely that innocence projects and other similar projects will continue to face significant challenges in pursuing miscarriage of justice work. Despite growing awareness of the problems plaguing the criminal justice system, until there is a public crisis in confidence in criminal justice which can match that leading to the Royal Commission on Criminal Justice in 1991, any advancements in casework and reform within miscarriages of justice will continue to be an uphill battle. At present, innocence projects and other similar organisations seem to be stuck in a catch-22: to make the criminal justice system more receptive to reform around wrongful convictions they need to create awareness of the current limitations to the criminal appeal framework; but, to create that awareness, there needs to be considerable progress in overturning and exposing miscarriages of justice, which is dependent upon successively navigating that very same system. This is not a new problem, and the failure of INUK and innocence projects to resolve this during 2004 and 2014 was no doubt a contributing factor to their fall. Drawing together the numerous challenges in this arena, there is the potential for university involvement in miscarriage of justice work to disappear altogether. This may not be deemed worthy of much attention given their limited success in overturning convictions. However, the value of innocence projects extends beyond the number of convictions they have quashed. Such projects provide an opportunity to facilitate structural reform through education, in the creation of a new generation of lawyers who are passionate about criminal justice, at a time we perhaps need it the most.

### Notes

- 1 Although the innocence project established at Yeshiva University in New York in 1992 was the start of the spread of innocence projects, notably it was pre-dated by Centurion Ministries, which was established in 1983 to act as an organisation dedicated to assisting the wrongly convicted.
- 2 This figure can only give a partial picture as it does not account for the number of convictions that have been overturned by innocence projects in the US on other grounds.
- 3 Again, although this was the first innocence project to be established in the UK, it was pre-dated by the Northumbria Law Clinic which looked at criminal appeals and led to the quashing of the conviction of Alex Allan in 2001 (see Stokes 2001).
- 4 Innocence Network UK. Available at: <http://www.innocencenetwork.org.uk/impacts> (accessed 2 June 2020).
- 5 Innocence Network UK: New Beginnings. Available at: <http://www.innocencenetwork.org.uk/inuk-new-beginnings> (accessed 22 June 2016).
- 6 Innocence Network UK Website. Available at: <http://www.innocencenetwork.org.uk/> (accessed 25 March 2021).
- 7 The name 'innocence project' is trademarked to the Innocence Network. Following the collapse of INUK, innocence projects in the UK were told that they would need to join the international Innocence Network to continue using the name. Many former innocence projects either were ineligible to join the Innocence Network due to its membership requirements or chose not to, which resulted in many former projects or newly-established ones opting to use a different name. The term

- Miscarriage of Justice Project has thus been used to refer to those university projects which examine potential miscarriages of justice, but which do not call themselves an innocence project.
- 8 This figure is based on unpublished research by the Innocence Project London at Greenwich University in 2017.
  - 9 This figure is currently an estimate. However, there should be updated figures published soon from research led by Dr Louise Hewitt at the Innocence Project London (Greenwich University) to identify the number of UK universities still involved in miscarriage of justice work.
  - 10 Liam Allan became well known after he was acquitted for the offence of rape following the discovery of significant disclosure failings by the prosecution and his case led to a wide-scale examination of prosecution disclosure failings (see, for example, <https://www.bbc.co.uk/news/uk-england-42873618> (accessed 25 March 2021))
  - 11 Appeal is a charitable law firm dedicated to criminal appeal work – it relies on donations due to insufficient legal aid (see <http://appeal.org.uk/our-work> (accessed 25 March 2021)).
  - 12 The author is aware of only two UK innocence projects established prior to 2013 which never joined INUK – this includes one at the University of Leeds and one at the University of Westminster.
  - 13 There were innocence projects operating in Scotland that did not participate.
  - 14 It is estimated that only four of the participant projects still operate.
  - 15 IPL1, IPL2, IPL5, IPL6, IPL10, IPL11, IPL14, IPL16.
  - 16 One was established in a law firm (White and Case LLP).
  - 17 This was *R v. George* [2014] EWCA Crim 2507, where the conviction was quashed in December 2014.
  - 18 IPL14, IPL7, IPL3, IPL9, IPL1, IPL15, IPL11, IPL4, IPL8.
  - 19 Such as innocence projects at Cardiff University, Portsmouth University, Winchester University, Sheffield Hallam University and Sheffield University.
  - 20 IPL7, IPL8, IPL12, IPL14, IPL1, IPL5.
  - 21 Research Excellence Framework (REF) is a system for assessing the quality of research at higher education institutions in the UK.
  - 22 This was highlighted by a lawyer working with the Appeal organisation who agreed to an interview as part of the doctoral research.
  - 23 McGourlay established and ran the innocence project at Sheffield University for several years, but since 2017 has worked at Manchester University and now runs an innocence project there.
  - 24 Some projects have also dealt with first applications for leave to appeal which must be lodged directly with the CACD.
  - 25 As above, prior to the INUK establishment, students at Northumbria University helped to quash the conviction of Alex Allan in 2001 (see Stokes 2001).
  - 26 Two cases from the University of Bristol and one from Cardiff University.
  - 27 The CCRC provided this information in response to a Freedom of Information Request (Greenwood 2017, pp.147–8).
  - 28 Figures are taken from the Appeal website at: <http://appeal.org.uk/our-impact> (accessed 28 March 2021).
  - 29 See the case referred to as John Doe on the Appeal website (see <http://appeal.org.uk/john-doe> (accessed 24 March 2021)).
  - 30 Notably, these figures also include some referrals based on appeals against sentence only.
  - 31 A number of these cases were linked, or so-called batch, referrals, so that several cases might be referred on one point of law, for example. The Commission responds to critics that this does not undermine the importance of the cases referred, which must be accepted. However, it does suggest that there is a disproportionate representation of certain categories of cases.
  - 32 Only two participants from one project identified reform as a key aim (IPL8, IPL7).
  - 33 There is no general right to post-conviction disclosure for convicted appellants, but they must show that there is a ‘real prospect’ that further inquiry may reveal

- something affecting the safety of the conviction (*Nunn v. Chief Constable of Suffolk Police* [2015] AC 225, para. 42, p.249).
- 34 See M. Naughton, 'Written evidence on the CCRC', February 2014; M. Naughton, 'Oral evidence: Tuesday 13 January 2015', HC 850; J. Price and D. Eady, 'Written evidence on the CCRC', December 2014; and D. Eady, 'Oral evidence to the committee: Tuesday 13 January 2015'.
- 35 Justice Select Committee Correspondence: letter from Rt Hon Michael Gove MP, Lord Chancellor and Secretary of State for Justice, 30 September 2015, on freedom of information; the Criminal Cases Review Commission; and joint enterprise: published 14 October 2015.
- 36 A study of innocence projects in the US by Krieger (2011) gives an insight into the level of funding some innocence projects receive and the importance of this.
- 37 More information about the establishment of Innocence Commissions across some US states is available on the Innocence Project website at: <https://innocenceproject.org/criminal-justice-reform-commissions-case-studies/> (accessed 29 March 2021).
- 38 As described by Peter Neufeld (Norris 2017, p.34).
- 39 *R v. McIlkenny (Richard)* [1992] 2 All ER 417 and *R v. Richardson* [1989] 10 WLUK 234.
- 40 This was a defining feature of the Innocence Project New York. While other US innocence projects also restrict their focus to DNA testing, there are numerous innocence projects which do not.
- 41 See, for example, *Simon Hall Confesses to Joan Albert Murder 12 Years On*, BBC News, 8 August 2013. Available at: <https://www.bbc.co.uk/news/uk-england-suffolk-23611821> (accessed 29 March 2021); Bowcott (2013); Carter (2013).
- 42 See, for example, *Ex-gang Member Dwaine George Cleared of 2002 Murder on Appeal*, BBC News, 9 December 2014. Available at: <https://www.bbc.co.uk/news/uk-england-manchester-30395753> (accessed 29 March 2021); Thomas and Johnson (2018); Topping (2014); Ward (2018).
- 43 The CCRC introduced an *Easy Read Form* (see <http://www.ccrcc.gov.uk/app/uploads/2015/01/CCRC-Application-form-2016.pdf> (accessed 30 March 2021)) which is often put down to causing an increase in applications (Criminal Cases Review Commission 2020, p.14).
- 44 IPL1, IPL2, IPL4, IPL9, IPL16, IPL14.
- 45 IPL7, IPL2, IPL3, IPL5, IPL1, IPL9, IPL10, IPL11, IPL13, IPL14, IPL15.
- 46 See <https://appgmiscarriagesofjustice.wordpress.com/> (accessed 30 March 2021).
- 47 For information, see <https://www.justgiving.com/campaign/innovation-of-justice> (accessed 30 March 2021).
- 48 See, for example, Bowcott (2018); Newman and Dehaghani (2019).
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