

# Innocence Projects – Green Shoots

**Mark Alexander** writing on the resurgence and growth of criminal appeals clinics in universities

Over the past nine months I've been trying to get a sense of the health of the innocence project movement in the UK. Between 2005 and 2014, 36 British universities signed up to the Innocence Network (INUK) ([www.innocencenetwork.org.uk](http://www.innocencenetwork.org.uk)). Far from dying back after the dissolution of the INUK scheme in September 2014, there has been a resurgence of growth, aspiration, and zeal in universities across the country. Ironically, it seems that many projects felt stifled by INUK membership and are now experiencing the benefits of liberation. As Professor Claire McGourlay (University of Sheffield) described it to me, "INUK folding was not the end, for us it was the start of great things, for example being able to take on joint enterprise cases".

Under the aegis of British Convict Criminology (run by Dr Sacha Darke and Andy Aresti from the University of Westminster, and Rod Earle of the Open University – [www.convictcriminology.org/bcc.htm](http://www.convictcriminology.org/bcc.htm)). I set out to discover just how many projects had survived the breakup to go it alone. With legal aid cuts forcing more firms out of the criminal appeals industry, and mounting confusion about who we can turn to for help, my primary focus has been to establish exactly what support is available to prisoners like myself maintaining innocence and then to see how this can be built upon. In this article, I bring together views from various academics about why INUK folded, in order to make the case for cooperation between all projects in a new, democratic 'Innocence Committee'. It is hoped that this will encourage more universities to get involved not only in the fight against miscarriages of justice after the fact, but in developing policy to prevent future injustices occurring in the first place.

## Going Solo

The results of my research, whilst by no means exhaustive, show that there are at least 19 universities and two charitable organisations running independent criminal appeals clinics in England and Wales (I use the terms 'project', 'criminal appeals clinic', 'innocence project' and 'justice project' interchangeably throughout this essay to refer to groups of volunteers and students who, under professional supervision, investigate potential miscarriages of justice on a pro bono basis) in England and Wales. Between them they have the capacity to investigate at least 58 cases at any one time where potentially innocent



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men and women have been wrongly convicted. Full details can be found in the accompanying table. Although all of the projects are currently operating at full capacity, anyone who has been a victim of a miscarriage of justice can contact them for help. You may be placed on a waiting list if they have one, and are likely to be sent an application form to fill out. Those prisoners lucky enough to have a solicitor already can still apply for extra support. Solicitors tend to lack the time that innocence projects have to invest in a case, and conversely, innocence projects tend to lack the expertise of a law firm – so collaboration between the two can improve the prospects of an investigation considerably.

Whilst unfettered by their former regime and blossoming as newly independent entities, there are clearly drawbacks to the current lack of co-ordination between projects. Each one runs its own waiting list, assesses cases using different criteria, offers different standards of service to its clients, and has different expectations of its student volunteers. In short, there is no consistency. This was Dr Michael Naughton's chief complaint as Director of INUK, but does it really matter if they can still get the job done? If we are content with a haphazard heuristic approach to justice, perhaps not, but the stakes are too high for this. To treat prisoners as experimental subjects would be reckless. There needs to be a coherent strategy, but in what form? Professor

Julie Price (Cardiff University) sums up the current mood: “Michael Naughton’s vision of a network of universities working together was an admirable one that we know with hindsight was not sustainable in that format... I think it’s fair to say that there’s no appetite for universities to take responsibility for the work of others in this regard, and I don’t think there’s any appetite for some sort of INUK mark II”.

Clearly dogmatism is to be avoided, but I would suggest that an 'Innocence Council' or 'Committee' of all project Directors – perhaps chaired on a rotating basis from university to university – could be established to define standardised practices by democratic means. Dr Andrew Green (University of Sheffield) has previously spoken on the Justice Gap “of a vision for the future of innocence projects... in which they are no longer asked to submit to the rules of a central organisation *over which they have no control*. Whatever networking system or organisation develops, it will be inclusive rather than exclusive, democratic rather than subject to charismatic leadership, cooperative and mutually supportive rather than centralised” [Andrew Green, “UK Innocence Projects: a brighter future?” – *www.thejusticegap.com*] (emphasis added). By working together, a group of the nature just described could achieve five key things in the interests of justice that universities simply couldn’t achieve independently. I shall explore each in turn:

### 1) *A consensus on best practice*

Each project will have learned invaluable lessons over the years about what works and what doesn’t. Sharing these insights with one another will improve efficiency and foster research development. This will also be of benefit to universities looking to join the movement in the future, helping them to avoid known pitfalls and get off the ground quicker.

### 2) *A centralised databank*

In its very simplest form, an online database could hold a shared waiting list of cases. When a university hears from an applicant they could upload the case, placing it in a queue ready to be picked up by the next available university. In a move away from the INUK model, Claire McGourlay “has been working with other projects to find a way to deal with cases in a central bank that come to all universities with no controlling university”. This is fairer on the client because their case will be handled more quickly than it would have been stuck in the queue of one particular institution; and it is fairer on the projects themselves because it means that cases will be more evenly distributed between institutions of variable size and reputation.

Needless to say, there are obvious benefits in terms of avoiding duplication of work where, as is the case now, one applicant may apply to a number of disparate projects who then all assess his application individually.

### 3) *Pooling resources*

One of the many former innocence projects in my survey “put off by the time required to work on cases”, explained that “students’ experience was that the Innocence Project cases took a considerable amount of time to complete... these

students are only here for a year and could not afford to work on cases for months or years”.

In this day and age, there is no reason why different students should not get involved in the same case at different times. Indeed, there is no reason why they even need to be students at the same university. With or without analytical software like DevonThink, case files can be scanned in and digitised. Pro Bono Projects Manager Stephen Cutter at the BPP University Law School London hopes to do just this, “with a view to increasing the amount of time volunteers are able to work on a file”, and the charitable law firm APPEAL is already piloting a scheme with six universities along similar lines.

By adopting deconstructivist casework protocols, bite-sized review tasks can be assigned to individual students which contribute to, but don’t necessarily require, a holistic view of the case. We can see this approach manifested in the democratisation of mathematical discovery, in which new theorems are created by harnessing the collective efforts of individuals through the internet (e.g. Polymath [Jacob Aron, “Maths can be better together”, *New Scientist* – May 7, 2011]); in the creation of Wikipedia entries; or in the use of crowd labour to generate translations and blogs (e.g. Casting Words, Cloud Crowd, or Mechanical Turk [Jim Giles, “Silicon supervisor gets the job done”, *New Scientist* – February 5, 2011]).

If the will is there, an advanced version of the centralised databank could enable projects to upload the actual case files to the website for inter-university collaboration, subject of course to appropriate authorisation from the client for data protection purposes. This would be an innocence 'network' in the very fullest sense of the word, with the potential for real innovation in the field. The cost of development may well be prohibitive at this stage, and at any rate there is some groundwork to be done first, but I make the point only to emphasise the sense of direction this movement may take as it grows over the coming decade.

According to Gilliane Williams, a number of universities like Brighton, Cardiff, Lancaster, and Sheffield are already “considering how [they] can organise and share resources”, with discussions taking place *via* the Clinical Legal Education Organisation (CLEO) forum.

### 4) *Consistency*

Sharing data of any kind will require at least some degree of standardisation between projects, but the real reason for developing common standards and codes of practice is one of egalitarian justice. On the one hand, variant procedures make the appeal process even more daunting and confusing to the applicant, whilst making the likely success and rate of progress in his or her case something of a lottery depending on which protocols happen to be applied. On the other hand, law students need to become familiar with the concept of minimum standards and regulated conduct in their profession. What better training ground could there be than an informally (or formally) regulated innocence network?

It is worth recalling that one of Michael Naughton’s chief complaints in shutting INUK down was “that hundreds of students... can say on their CVs that they are working with an INUK innocence project when they know next to nothing

about INUK or how to work on an alleged wrongful conviction case". The pressing question would then seem to be, who are these volunteers accountable to exactly? An important starting point would be that local project Directors make their expectations clear to students, but the chain of accountability must lead up to at least the 'Innocence Committee', if not further – were the Committee amenable to regulation by a professional body like the Law Society. The CLEO Model Standards for live-client clinics recommend that a standard client care letter and retainer should set out the scope of the services being provided from the outset, and make clear "what complaints procedure is available to clients". In Professor Philip Plowden's view, "there is only one standard ultimately which the clinic can be judged by – the standard applicable to any competent practicing lawyer".

### 5) Growth & Accountability

Shared standards would make meaningful comparisons between projects possible and also encourage other universities to make the leap into what is, at the moment, an undocumented unknown. As Julie Price highlighted to me, "we have learned over the last decade that this work is fundamentally very difficult, and a lot of universities will be put off running a project because of the sheer scale of the task and the investment of resources that is needed". It cannot be sensible or efficient that each new venture has to figure things out for itself. INUK has made starter packs, first step documents, and casework protocols available, but these will not be of much use beyond the 'first steps', particularly if each project decides upon a different way of implementing them.

If the movement is to grow as a whole, it needs to make entry into the field more straightforward and cost effective. This can only be achieved if the existing projects come together and agree upon more comprehensive case management and investigative methodologies which, by consensus, they are all not only willing but actually capable of following. These minimum requirements and guidelines could be voted upon and ratified, subject to future amendment, in a way that INUK's casework protocols were not. In this way the combined knowledge and expertise of the sector can be distilled into one document or charter for the common good of all its members. This is more than INUK could achieve as a small organisation "dependent on a tiny number of people", as Julie Price put it, and represents a paradigm shift away from the Innocence Network's British incarnation.

In his final press release, Michael Naughton explained that INUK had "been spending a disproportionate amount of time... dealing with complaints from prisoners and... acting as a support service for... other universities who are either not working to the protocols that they signed up to or not doing much at all... INUK did not foresee or ever intend to 'police' its members". This model was unsustainable because INUK lacked any "democratic mandate" and there was "no accountability". If a project is falling short of the guidelines that everyone has agreed to under the Committee structure I have postulated, then the Committee clearly needs to find out why that is, but it will have the advantage of democracy to legitimise its authority in a way that INUK did not. If the

extant guidelines are unrealistic, then amendments can be tabled. Members would be part of a supportive community, rather than an autocracy, each accountable to one another without being judgmental, condemnatory, or hegemonic.

### Funding

Many of the people I spoke to in my survey cited funding as a "perennial challenge". Indeed, one respondent found INUK's membership fees so prohibitive that it discontinued its criminal appeals work altogether in favour of cheaper pro bono alternatives like employment and family law. "We used to pay about £300 for annual membership to the Network for referring cases to us. By comparison we pay an annual fee of about £45 to the Free Representation Unit" ([www.thefru.org.uk](http://www.thefru.org.uk)). As Mark Newby emphasised at the last United Against Injustice conference, "the pool of good miscarriage of justice lawyers is rapidly diminishing at a time when conversely the amount of miscarriages are increasing". In my previous article, '*Innocence Projects – a way forward?*', I touched upon the growing role of pro bono work in a criminal justice sector hit by 15 years of successive cuts to fixed fees. Innocence projects and philanthropic law firms alike play a critical role in plugging the gap left behind by a policy which prices the majority out of justice. Michael Gove however, has supported calls by think-tank Respublica that UK firms should offer a minimum of 25 hours of pro bono work *per lawyer per year*, pointing out that our American colleagues typically offer up to 125 hours. In 2014, 30 UK firms pledged to meet this target by forming the 'Collaborative Plan'.

My suggestion was that innocence projects struggling to fund their work should not only seek sponsorship from corporate law firms committed to this kind of approach, but do so through student-led bodies who will already have well-established links with such firms. White & Case LLP, for example, was a notable corporate sponsor of INUK; while Wilmer Hale, among others, currently sponsors APPEAL. Since each university will bear its own local costs, the only shared overheads for a new 'Innocence Committee' might be the development and maintenance of a centralised databank, but even this could be built in-house by student volunteers in computer science departments without spending a penny.

### Penal Reform Activism and Research

Innocence projects in the UK face more challenges than their American counterparts, whose job is made considerably easier by legislative backing to access police exhibits and prosecution files. There is a clear presumption against such assistance in the UK, as seen most recently in the case of *R (o.t.a. Kevin Nunn)*. That this undermines transparency and public confidence in the criminal justice system has yet to dawn upon parliament. Until that dawn comes, justice projects will continue to struggle against the odds in the fresh evidence sweepstake that frustrates so many appeals. As Julie Price reflected on the Justice Gap, "a decade ago, we thought all that was needed was enthusiastic students and staff, and we'd be looking at dozens of overturned convictions ... [We] had no idea how difficult it would be to access information and documentation that was key to being productive. The inertia that comes from hitting brick walls is an

understandable by-product of this work". Stephen Cutter laments along much the same lines that "many of the best changes that could be made to assist the efficiency of our projects are simply beyond our control... The availability, costs, and process of requesting court transcripts, for example, leaves much to be desired". There remains too high a price on British justice, both pecuniarily and temporally.

It would be easy to fall into despondency at this point, but only for want of imagination. For those wrongly convicted like myself, the options may be limited, but we persevere in the knowledge that the cause we fight for is greater than each one of us alone. For justice projects across the UK however, more than mere symbolism can be achieved. Whilst some universities have pulled out of the race altogether in the face of perceived failure (the "final submissions to the CCRC were rejected this year and the project has now closed", being a typical response to my survey), this seems like an awful waste of valuable experience which could be put to use in a research paper or policy development. Considering that just 4% of all applications to the Criminal Cases Review Commission (CCRC) are ever successful, and that CCRC referrals make up just 0.06% of all successful cases before the Court of Appeal, failure is an occupational hazard [Michael Naughton, *'The Criminal Cases Review Commission: Hope for the Innocent?'* (Palgrave Macmillan, 2012)].

The Justice Select Committee recently drew attention to the fact that "the CCRC is in a unique position to feedback into the criminal justice system on things going wrong and the causes of miscarriages of justice", and this is no less true of innocence projects. Nearly 20 years after the CCRC's inception however, it still fails to do so. Having little by way of scholarship or resources, one can perhaps understand the CCRC's focus upon "rectifying miscarriages after the fact, rather than preventing them in the first place". By comparison, our universities seem ideally placed to fill the academic void, something Marika Henneberg hopes to achieve at the University of Portsmouth's new Criminal Justice Clinic. A number of innocence project directors gave evidence to the Justice Select Committee on the effectiveness of the CCRC, so this is not without precedent.

I believe that every innocence project should publish regular reports and academic papers about the challenges it faces and what improvements can be made to reform the present system. There is no use sitting on failed, frustrated, or delayed applications without critically assessing why these cases are falling through or taking so long to process. Nothing will change if nobody speaks up. Rather than viewing these cases as disappointments best forgotten, or time poorly invested, students should be encouraged to draw lessons from them and channel this into feedback for the wider community. The information they gather may be invaluable to other projects and the criminal justice sector as a whole. Why is the present system unable to identify or remedy so many wrongful convictions? What patterns emerge from these cases? Why are there so many of them? What can the government do to help alleviate these problems? These are the questions that innocence projects are best placed to reflect upon both individually and as a community. This is yet another reason to work together under common standards, exchange insights, and share data with one another. It is

through this vital work that students and practitioners alike may contribute to the prevention of future miscarriages of justice so that one day there may be no need for the British innocence movement to exist.

In this article I have spoken of the need for consensus on best practice; accountability and consistency between projects; the advantages of a centralised databank and of pooling resources; and the capacity for projects to spearhead reform by feeding back into the criminal justice system. It has been suggested that all of this can be achieved through a democratic 'Innocence Committee' made up of representatives from every criminal appeals project in the UK.

In the words of Stephen Cutter, "there have been some difficulties in filling some of the gaps [INUK] left. However, there remains a wealth of experience, knowledge and passion across these centres, and the students who volunteer take pride in knowing the real importance of their work". We should not miss the opportunity to capitalise on this latent potential and strike while the iron is still hot.

Organisations	Contact	Capacity
APPEAL	Room 29, City Law School, 2 – 10 Princeton Street, London, WC1R 4BH	≥10
Inside Justice – Miscarriage of Justice Unit	Louise Shorter, Inside Justice, Inside Time, Botley Mills, SO30 2GB	≥3

Universities	Contact	Capacity
University of Sheffield – Miscarriages of Justice Review Centre – (with the Centre for Criminal Appeals)	Claire McGourlay, School of Law, Bartolome House, Winter Street, University of Sheffield, S3 7ND	9
Cardiff University – Law School Innocence Project (with Inside Justice)	Julie Price, Law Building, Museum Avenue, Cardiff, CF10 3AX	≥9
University of Portsmouth – Criminal Justice Clinic	Marika Henneberg, Institute of Criminal Justice Studies, University of Portsmouth, St George's Building, 141 High Street, PO1 2HY	4
Lancaster University – Innocence Project	Georgina Firth, Law School, Lancaster University, Lancaster, LA1 4YN	4
Northumbria University – Student Law Office	Carol Boothby, Room 114, City Campus East, The Law School, Northumbria University, NE1 8ST	4
BPP University Law School London – Criminal Appeals Project	Stephen Cutter, Pro Bono Centre, New Century House, 68 – 70 Red Lion Street, BPP University Law School, London, WC1R 4NA	≥1

University of Abertay - Justice Project - (with MOJO) Scottish Jurisdiction	c/o Miscarriages of Justice Organisation (MOJO), 54 Carlton Place, Glasgow, Scotland, G5 9TW	≥1
University of Brighton – Innocence Project	Gilliane Williams, Business School, University of Brighton, Mithras House, Brighton, BN2 4AT	≥1
University of Cambridge – Investigating Innocence	Amy Ludlow, Faculty of Law, 10 West Road, University of Cambridge, CB3 9DZ	1
University College London (with Inside Justice)	UCL Law School, Bidborough House, 38 - 50 Bidborough Street, London, WC1H 9BT	≥1
University of Derby - Miscarriages of Justice	Tony Blockley, College of Law, Humanities & Social Sciences, Kedleston Road, Derby, DE22 1GB	≥1
University of East Anglia – Justice Project – (with Inside Justice)	Steve Heaton, University of East Anglia, Earlham Hall, Norwich Research Park, Norwich, NR4 7TJ	≥2
University of Essex – Miscarriage of Justice Review Project – (with Inside Justice)	Richard Owen c/o Inside Justice, Inside Time, Botley Mills, SO30 2GB	1
University of Birmingham (with the Centre for Criminal Appeals)	Law School, Edgbaston, B15 2TT	>1
University of Durham – Access to Justice	Christy Ng, Durham law School, Palatine Centre, Stockton Road, Durham, DH1 3LE	1
University of Leeds – Justice Project	School of Law, The Liberty Building, University of Leeds, LS2 9JT	≥1
University of Nottingham – Conviction Review Centre	Candida Saunders, School of Law, University of Nottingham, University Park, Nottingham, NG7 2RD	≥1
University of Strathclyde - Criminal Convictions Unit - (with MOJO) Scottish Jurisdiction	Paul McLaughlin c/o Miscarriages of Justice Organisation (MOJO), 54 Carlton Place, Glasgow, Scotland, G5 9TW	≥1
Sheffield Hallam University – Hallam Criminal Appeals Clinic	Faculty of Development and Society, Heart of the Campus, Collegiate Crescent, Sheffield Hallam University, Sheffield, S10 2BQ	≥1

Universities outside of the UK	Contact
The Irish Innocence Project is not experiencing the same problems as its UK counterparts. Their details are included here for Irish readers who wish to get in touch with them about cases within their jurisdiction	
Griffith College Dublin - Irish Innocence Project	Anne Driscoll, Law School, South Circular Road, Dublin 8, Ireland

Other Pro Bono Clinics	Field	Contact
A number of other pro bono clinics offer free legal advice and / or representation in specialist fields other than criminal appeals. For completeness, these are listed below:		
University of Cambridge	MacKenzie friend service for Parole hearings in prisons near Cambridge	Amy Ludlow, Faculty of Law, 10 West Road, University of Cambridge, CB3 9DZ
Sheffield Hallam University – Prison Law Clinic – (with Cartwright King)	Sentence progression, re-categorisation, HDC	Faculty of Development and Society, Heart of the Campus, Collegiate Crescent, Sheffield Hallam University, Sheffield, S10 2BQ
University of East London – Legal Advice Centre – (with the Free Representation Unit)	Contract and consumer disputes, employment law, family law, welfare benefits	University Square Stratford, 1 Salway Road, London, E15 1NF
University of Nottingham	Contract and consumer disputes, employment law, family law, welfare benefits	Candida Saunders, School of Law, University of Nottingham, University Park, Nottingham, NG7 2RD
University of Ulster – The Ulster Law Clinic	Social security and employment law	Eugene McNamee, School of Law, Jordanstown Campus, Shore Road, Newtown Abbey, Co. Antrim, BT37 0QB
University of Bristol - Law Clinic	Police complaints, tort (negligence) law	Law School, Wills Memorial Building, Queens Road, Bristol, BS8 1RJ

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