

APPENDIX 2

STATEMENT OF INNOCENCE NETWORK UK (INUK)

1. The Innocence Network UK (“INUK”) makes the following statement in its intervention in the case of *Nunn v Chief Constable of the Suffolk Constabulary & Anor.*¹ In preparing this statement, we surveyed our member innocence projects and INUK advisors on their ability to obtain disclosure since the *Nunn* judgment in the Divisional Court. We have also relied on academic research conducted on the Criminal Cases Review Commission (“CCRC”) to assist the Supreme Court in understanding the CCRC’s statutory role and how it operates in practice.
2. Overall, it is submitted that as a review body with limited resources, the CCRC is generally unable to proactively identify lines of enquiry and undertake detailed investigations in every single application. As such, alleged miscarriage of justice victims continue to rely on the investigatory assistance provided by innocence projects and lawyers who have to find fresh evidence or arguments that could persuade the CCRC to refer a conviction back to the Court of Appeal.
3. To perform this investigative function adequately, lawyers and innocence projects must be able to obtain disclosure from the police or the Crown Prosecution Service (“CPS”) of vital materials that could assist in its investigation, such as laboratory records for forensic reviews and exhibits for forensic testing.

BACKGROUND

(a) *About Us*

4. INUK is an organisation that was established in 2004 to facilitate the setting up and support the subsequent operations of innocence projects in the UK. It was set up as a practical response to research findings on the limitations of the CCRC in assisting alleged miscarriage of justice victims and the consequent need to resurrect assistance in this area previously provided by organisations such as JUSTICE and Liberty prior to the CCRC’s establishment.

¹ [2012] EWHC 1186 (Admin).

5. INUK currently has 26 member innocence projects based in universities across England, Wales and Scotland and 1 member innocence project in a law firm. Innocence projects undertake investigations on cases of alleged miscarriages of justice on a pro bono basis. INUK member innocence projects generally work on cases where the convicted person has exhausted the normal appeal process. Where fresh evidence or argument is found, the innocence project will submit an application to the CCRC or the Scottish Criminal Cases Review Commission (“SCCRC”) on behalf of the applicant. Routinely, innocence projects will work with its pro bono forensic advisors to explore the possibility of DNA testing, especially in pre-DNA cases or cases where the convicted person could potentially benefit from advancements in DNA testing techniques.

(b) *Statistics*

6. INUK provides a vital public service in screening out unmeritorious applications from those that may be genuine miscarriages of justice. As of January 2014, INUK has received 1348 requests for assistance and assessed 827 full applications. Of these 827 applications, 129 cases have been deemed eligible, i.e. with further investigation by a member innocence project may fulfil the CCRC’s or the SCCRC’s referral criteria.

7. Of these 129 eligible cases, 114 have been referred by INUK to innocence projects for further investigation following a review. Around half of the applications referred to innocence projects for further investigation have had previous unsuccessful applications to the CCRC or SCCRC prior to contacting INUK.

8. 11 cases referred by INUK to its member innocence projects have been submitted to the CCRC and 1 case has been submitted to the SCCRC. Of these 12 cases, 2 cases have been referred to the Court of Appeal by the CCRC and 1 to the Scottish High Court of Justiciary by the SCCRC.

(c) *INUK’s role in highlighting the limits of the CCRC*

9. Since its establishment, INUK has also sought to initiate public debate and raise awareness of the limits of the CCRC in assisting alleged miscarriage of justice victims. In recent years, through two highly publicised symposiums, it has brought

together a range of interest groups including practitioners, campaigning and grassroots organisations, investigative journalists, academics and former CCRC Commissioners to consider how the current operations of the CCRC might fail genuine miscarriage of justice victims. It has proposed reforms to improve its operations. The findings from these two symposiums are detailed in the following publications: *The Criminal Cases Review Commission: Hope for the Innocent?* (2010) and the *Report on the INUK Symposium on the Reform of the CCRC* (2012). INUK's stance on the CCRC has been well-publicised, including coverage by *The Guardian*, *The Observer*, *BBC News*, *The Times*, *Criminal Law Justice & Weekly*, *Halsbury Law Exchange* and *The Law Society Gazette*.

10. In addition, INUK's Founder and Director Dr Michael Naughton, who is also a Reader at the University of Bristol and an academic expert on miscarriages of justice, has considered the limitations of the CCRC in a number of additional academic books and peer-reviewed academic articles.² These publications provide an insight into the deficiencies of the CCRC's case review approach and the continuing investigative burden placed upon alleged miscarriages of justice victims despite the establishment of the CCRC.³

AN INNOCENCE PROJECT'S CASE INVESTIGATION PROCESS

(a) *The "life cycle" of an innocence project case*

11. The case investigation process begins with an application to INUK by the alleged miscarriage of justice victim. At the first stage, INUK reviews the applicant's claim of innocence, along with core documents including the judge's summing up, previous advice on appeal, appeal judgment and the CCRC Statement of Reasons if the applicant has previously had his/her case reviewed by the CCRC.

² These publications include *The Innocent and the Criminal Justice System* (Palgrave Macmillan, 2013: Chapter 7); *The Criminal Cases Review Commission: Hope for the Innocent?* (Editor, Palgrave Macmillan, 2009: Chapters 1, 2 and 16); *The Criminal Cases Review Commission: Innocence versus Safety and the Integrity of the Criminal Justice System* (Criminal Law Quarterly, 2012); *The Right to Access DNA Testing by Alleged Innocent Victims of Wrongful Convictions in the UK?* (International Journal of Evidence and Proof, 2010); and, *Wrongful Conviction and Innocence Projects in the UK: Help, Hope and Education* (Web Journal of Current Legal Issues, 2006).

³ Copies of these articles can be provided should it be of assistance.

12. A case is deemed to be eligible for further investigation if the applicant has exhausted the normal appeal process (i.e. had a first appeal or had unsuccessfully applied for leave to appeal), is claiming factual innocence (e.g. innocence projects do not work on cases where an applicant is claiming that s/he should be convicted of manslaughter instead of murder) and whose case presents viable lines of enquiry.
 13. The eligible case is then referred to one of INUK's member innocence projects. The innocence project will review all of the case materials available to them, including witness statements, laboratory records, HOLMES records, pathology and forensic reports. It will undertake research on the evidence that led to conviction and, where appropriate, commission pro bono reviews by forensic scientists. Occasionally, the innocence project may also undertake fieldwork investigations such as crime scene visits and the re-interviewing of witnesses.
 14. After a full investigation, the innocence project may either close a case on the basis that the investigation did not yield fresh evidence capable of a referral by the CCRC, or, it may make an application to the CCRC on behalf of the applicant, presenting its investigatory findings and outlining lines of enquiry that it thinks the CCRC should follow up on.
- (b) *When do innocence projects require disclosure?*
15. In the majority of cases investigated by INUK's member innocence projects, it is not necessary for innocence projects to seek disclosure of materials from the CPS or the police. This is because innocence projects normally already have access to key documentary materials such as witness statements, forensic reports, laboratory records and HOLMES records through disclosure obtained by the client's defence solicitor at the pre-trial stage.
 16. However, there are instances where innocence projects need to seek disclosure of information or materials that had not previously been obtained by the client's defence solicitor.
 17. The following are three instances of disclosure requests pre-*Nunn* by the University of Bristol Innocence Project. For reasons of client confidentiality, all examples cited

here have been anonymised:

Example A

18. The client was convicted prior to the availability of DNA testing, disclosure from the police and the Forensic Science Service (“FSS”) was obtained on what exhibits had been destroyed or retained and a review by a forensic scientist was commissioned.

Example B

19. Since the client’s conviction, there have been advancements in DNA testing techniques. The University of Bristol Innocence Project obtained disclosure from the police of laboratory notes to enable its forensic scientist to undertake a review to determine if the client could potentially benefit from new DNA testing techniques.

Example C

20. The client alleges police impropriety in the investigation of his/her case. As part of its investigation, the University of Bristol Innocence Project sought disclosure of the specific police officer’s disciplinary records.

(c) *Our experience in obtaining disclosure pre-Nunn*

21. When an innocence project requires the disclosure of specific information or documentation to assist in its investigation, it will usually put the request in writing to the CPS and/or the specific police force concerned. The letter would typically specify the material requested, an explanation of how the material could potentially assist in an application to the CCRC and an undertaking that the material will be kept confidential should disclosure be granted.
22. Innocence projects’ requests for disclosure have yielded mixed responses, with some police forces more willing to provide disclosure than others. For example, in one case, South Wales Police was quick to disclose information pertaining to which exhibits have been retained and their respective storage locations, which greatly facilitated the University of Bristol Innocence Project’s forensic review and subsequent application to the CCRC.

23. In another case, a request for files held at the Forensic Science Service (“FSS”) archives for disclosure was refused by West Yorkshire Police. The reasons for refusal given by West Yorkshire Police were that the client’s appeal opportunities have been exhausted; the papers requested were confidential relative to a criminal investigation; and, the potential harm that could be caused to the relatives and family of the victim. The refusal by West Yorkshire Police was subsequently overridden by the CPS, following a letter before claim sent to both West Yorkshire Police and the CPS in accordance with the pre-action protocol for judicial review.
- (d) *Requests for disclosure post-Nunn*
24. INUK member innocence projects at the University of Southampton, University of Greenwich, Nottingham Trent University, University of the West of England and the University of Bristol have indicated that the Divisional Court’s decision in *Nunn* has led to a general narrowing of disclosure, with their investigations on hold awaiting the outcome of the decision of the Supreme Court in *Nunn*’s appeal.

THE CCRC’S CASE REVIEW PROCESS AND ITS LIMITATIONS

25. The CCRC generally undertakes desktop reviews of applications to determine if there is a “real possibility” that a conviction, verdict or sentence would not be upheld by the appeal courts. This means that, in general, the CCRC does undertake the type of comprehensive re-examinations and re-investigations that JUSTICE envisaged. As noted by Dr Michael Naughton in his book *The Innocent and the Criminal Justice System*:

“The CCRC...does not undertake thorough investigations to determine whether claims of innocence are true...Instead, the ‘real possibility test’ means that it seeks to determine whether alleged wrongful convictions might be legally unsafe...This renders its reviews for the most part as mere ‘desktop reviews’ of applications. The CCRC seeks to determine whether there is an apparent breach of process, or whether there is any possible fresh evidence that might undermine the evidence that led to the conviction.”⁴

26. In addition, INUK member innocence projects’ experience of working on prospective

⁴ Naughton, M. (2013) *The Innocent and the Criminal Justice System* (Palgrave Macmillan): pages 170-171. For an in depth discussion, see also Naughton, M. “Introduction” and “The Importance of Innocence for the Criminal Justice System” in Naughton, M. (Ed) (2009) *The Criminal Cases Review Commission: Hope for the Innocent?* (Palgrave Macmillan): Chapters 1 and 2.

CCRC applications, accounts from lawyers and former CCRC Commissioners strongly suggest that in practice the CCRC's case review process is generally limited to a consideration of the issues presented by applicants and issues that may be spotted by the CCRC caseworker to see if there might be grounds for a referral to the appeal court.

(a) *Innocence projects' experiences with the CCRC*

(i) Circumstances where an innocence project will make an application to the CCRC

27. An innocence project will generally only make an application to the CCRC (or the SCCRC) if its investigation yields fresh evidence or arguments that might fulfil the CCRC's 'real possibility test' under s.13(1) of the Criminal Appeal Act 1995.
28. An application may also be made if the innocence project identifies a line of enquiry that could potentially produce evidence that undermines the safety of the conviction, but is unable to further pursue the line of enquiry due to the innocence project's lack of resources or investigatory powers. In such a scenario, the innocence project will outline in its application to the CCRC why it thinks it would be useful to pursue the line of enquiry and how it could potentially lead to evidence that fulfils the 'real possibility test'.
29. Representatives from the CCRC have repeatedly emphasised to INUK's member innocence projects at various INUK training conferences, the importance of presenting fresh evidence or arguments in applications to them. At the most recent INUK training conference held at the University of Sheffield in November 2013, Commissioner Ranjit Sondhi highlighted the need for innocence projects to present fresh evidence in CCRC applications:

"It may help to concentrate on the following questions: Is it new? So, for instance, new evidence will include the testimony of a witness whose evidence is newly emerged and where there is a good reason it could not have been adduced at an earlier stage. In this category we have things like changes in scientific or medical understanding, previously unknown information that affects the credibility or reliability of an important witness. As well as being 'new' in the appropriate sense, a point will also have to be significant if it is going to result in or contribute to a referral and, ultimately, to the quashing of a conviction. So

you need to focus on what seems to be significant in a case. We see a lot of cases where the applicant or their representatives, seem to have become almost fixated on a detail that is going nowhere.”

30. An inevitable result of this is that despite the existence of the CCRC, genuine victims of miscarriage of justice who often have little or no resources and limited legal knowledge may still be faced with a situation where they have to spend years finding the necessary fresh evidence in order to have their convictions referred by the CCRC and quashed by the Court of Appeal.
 - (ii) Examples from innocence projects that highlight the limits of CCRC’s case reviews
31. In INUK’s experience, the CCRC’s review process is not foolproof and innocence projects frequently have to raise issues and possible referral grounds missed by the CCRC in previous reviews. In order to fulfil this function, innocence projects will need to get disclosure from the police or the CPS, particularly in cases where the original defence team had failed to undertake a thorough review of all documentary evidence and comprehensively challenge the prosecution’s case.
32. Indeed, as an independent body, the CCRC does not represent applicants. Innocence projects therefore play a role in advocating for applicants and attempting to persuade the CCRC to use its investigatory powers to follow up lines of enquiry that could potentially benefit the applicant’s case. The following Example D highlights the importance for CCRC applicants to be represented either by innocence projects or solicitors:

Example D

33. The University of Bristol Innocence Project found that the failure of the original DNA tests conducted by the FSS to produce any positive results in a murder case may have been due to the unsuitability and inadequacy of the testing technique that was used. It submitted to the CCRC that the samples could be re-tested using new testing techniques which have been extremely successful in securing the exoneration of appellants in similar cases in the United States. The initial response from the Case Review Manager dealing with the case was that he could not see the relevance or

value of conducting the DNA testing proposed by the innocence project. More specifically, the Case Review Manager stated:

*“Perhaps...[the innocence project]...could assist in explaining how this is...relevant to [the applicant’s] case and how it could undermine the safety of the conviction? I am mindful that no DNA was found that related to [the applicant] and absence of DNA linking [the applicant] to the offence was a point put by the Defence to the jury”.*⁵

34. This example also illustrates how the CCRC largely confines its reviews to whether there are grounds that could fulfil the “real possibility test”, as opposed to full investigations that seek the truth of claims of innocence. In restricting its review to the credibility of the evidence that led to conviction, the CCRC, in this example, had failed to recognise that even though DNA evidence was not used in this conviction, its testing can still raise concerns about the safety of the conviction where it may be able to point to another perpetrator.
 35. Applicants such as Example D (and the other examples cited above) therefore require the assistance of innocence projects or lawyers to undertake a number of vital roles, including the investigation of their cases prior to an application to the CCRC, undertake research on new techniques that could lead to exoneration, persuade the CCRC to follow up on the lines of enquiry identified and submit grounds on their behalf on how specific evidence could fulfill the “real possibility test” for a referral to the Court of Appeal.
- (b) *Accounts on the limits of the CCRC from the INUK Symposium on the Reform of the CCRC*
36. The limitations on the CCRC in investigating alleged miscarriages of justice were highlighted by various contributors in the Report of the INUK Symposium on the Reform of the CCRC.⁶ The Symposium was organised in response to mounting concerns amongst practitioners, former CCRC Commissioners, academics and alleged miscarriage of justice victims that the CCRC was not fit for purpose and was not investigating cases in the way in which it was envisaged it would do. The following 3

⁵ Example cited in Naughton, M “The importance of innocence for the criminal justice system” in Naughton, M. (Ed) (2009) *The Criminal Cases Review Commission: Hope for the Innocent?* (Palgrave Macmillan): pp. 32-33.

⁶ Hosted by Norton Rose LLP on 30 March 2012 and funded by the Joseph Rowntree Reform Trust.

excerpts from contributors at the Symposium highlight the limitations in the CCRC's case review process:

Former Commissioner David Jessel indicated that:

“The majority of cases at the CCRC are not investigated at all. They are simply limited to a review of the application form to come to a decision that there are no grounds for referral. This means that genuine miscarriages of justice will inevitably slip through the net. There is always a balance to be struck between the analytical approach and the investigative approach. The shortage of funds and the mindset of the CCRC have skewed that balance towards the analytical at the expense of the investigative. It is a lot easier to analyse a case onto the reject pile than to investigate a case onto the referral pile. To conduct any extra investigation or proper preliminary analysis is going to mean that the CCRC needs to roughly triple its size. The alternative is a refinement of the CCRC's intake to sharpen its focus by taking out for instance, the non-custodial cases, cases based on points of law, cases where for years the applicant has not expressed any claim to innocence. This would be unfair and unjust but the upside is that it should sharpen the CCRC's focus, leading to more rigorous investigations and potentially genuine innocence cases.”⁷

37. Laurie Elks, also a former CCRC Commissioner, highlighted the lack of thoroughness in the CCRC's review in relation to ‘fast track/Screen cases’:

“It is clear that in such Screen cases, there is a danger that process will eclipse thoroughness not least because the expectation that a case will be reviewed quickly may operate subliminally on the thinking and analytical approach of the case review manager. The CCRC is aware of this problem and has introduced a system of spot checks whereby random fast track and single member cases are selected for audit by another Commissioner. This is an excellent innovation but it does not entirely eliminate concerns that there may be a handful of fast track cases where the expectation of closure within normative time limits may limit the perception of genuine investigative issues.”⁸

38. The deficiencies in the CCRC's investigatory process are further illustrated by the case of Victor Nealon. Nealon was convicted of attempted rape in 1997 on the basis of disputed identification evidence. In 1997, Nealon applied to the CCRC to ask for a review of the forensic evidence in his case. The CCRC declined on the basis that it had been dealt with at trial. Unfortunately, had the CCRC bothered to make a more thorough enquiry, it would have discovered that no forensic examination had in fact been undertaken. In 2002, Nealon made a second application to the CCRC and requested again for forensic testing. The request was once again denied on the

⁷ Jessel, D. cited in INUK (2012) Report on the Symposium on the Reform of the CCRC (INUK), p.52.

⁸ Elks, L., *ibid*, p.55.

grounds that the CCRC ‘do[es] not undertake speculative DNA tests’. In 2009, Nealon finally managed to commission the DNA testing privately and DNA was found in intimate areas of the clothing, which was not his, but belonged to an unknown male.⁹ On the basis of this new DNA evidence, a third application was made to the CCRC. After its review, Nealon’s conviction was referred by the CCRC and quashed by the Court of Appeal on the 14 December 2013. He had served 17 years in prison, all of which could have been avoided had the CCRC been willing to investigate the case properly, or the police and CPS been prepared to permit testing of the DNA evidence earlier. Crucially, if the *Nunn* decision had been applied to Nealon’s case, there is a real chance that Victor Nealon would never have been able to access the DNA evidence for his “speculative” testing, and would still be behind bars.

(c) *Academic authorities on the limits of the CCRC’s case review process*

(i) Naughton, M (Ed.) (2009, 2012) *The Criminal Cases Review Commission: Hope for the Innocent* (Palgrave Macmillan)

39. In addition to the accounts cited above, a key academic authority on the limits of the CCRC is the edited book *The Criminal Cases Review Commission: Hope for the Innocent*.¹⁰

40. The book emphasised a range of issues with the CCRC’s case review processes. The chapter by Dr Andrew Green, Lecturer at the University of Sheffield and co-founder of United Against Injustice, a federal organisation of miscarriage of justice support groups, highlighted the CCRC’s reluctance to investigate evidence neglected by trial lawyers on the basis that such evidence is unlikely to constitute the kind of fresh evidence required for a referral to the appeal court:

“The meetings of organisations which offer to help those who believe themselves to have been wrongly convicted are frequently attended by people who say that evidence they expected to be used by the defence in the cases in which they were involved was not used. They are advised that such evidence is not to be considered by the CCRC, and that they must find fresh evidence, as the legal

⁹ Newby, M. cited in INUK (2012) Report on the Symposium on the Reform of the CCRC (INUK), pp.53-54.

¹⁰ The book comprises of 16 chapters by academics, practitioners, campaigners and investigative journalists who work in the area of miscarriages of justice and detail their experiences in dealing with the CCRC on specific cases.

system defines it. These organisations, often echoing advice from solicitors, relay the clear message from the CCRC that evidence available at trial but unused cannot constitute fresh evidence for the purpose of appeals.”¹¹

41. The chapter by Dr Dennis Eady, case consultant at the Cardiff Law School Innocence Project and Founder of South Wales Against Wrongful Convictions emphasised the CCRC’s lack of thoroughness, pro-activity and failure to investigate many of the issues raised by applicants:

“When the CCRC came into being many wrongly convicted people and their supporters expected, or at least hoped, that it would be a proactive investigative body...In practice, the CCRC responds to issues raised by applicants when they see this as appropriate. It does not, generally, review the case as a whole or delve proactively into areas not raised by the applicant, unless its enquiries specifically lead onto other areas.”¹²

42. The chapter by investigative journalist Satish Sekar highlighted the CCRC’s lack of thoroughness in its review of possible miscarriages of justice caused by Home Office pathologist Michael Heath who resigned from the Home Secretary’s Register for Forensic Pathologists after the Home Office Tribunal found several charges relating to his performance and conduct proven:

“I believe that the evidence clearly shows that the CCRC has slipped below the high standards of investigation that we have a right to expect from it. My experience of the CCRC suggests that this level of investigation has become the rule rather than the exception to it.”¹³

43. Further, the chapter by Glyn Maddocks and Gabe Tan, based on Maddock’s experience as a criminal appeal solicitor and the findings of a focus group interview with Commissioners and Case Review Managers at the CCRC, revealed a lack of consistency in the level of investigative thoroughness and co-operation with applicants’ solicitors afforded to applicants.¹⁴

¹¹ Green, A “Challenging the Refusal to Investigate Evidence Neglected by Trial Lawyers’ in Naughton, M. (Ed) (2012) *The Criminal Cases Review Commission: Hope for the Innocent?* (Palgrave Macmillan), p 51.

¹² Eady, D. “The Failure to Live Up to its Stated Values? The Case of Michael Attwooll and John Roden” in Naughton, M. (Ed) (2012), *ibid*, p 67.

¹³ Sekar, S. “The Failure of the Review of the Possible Wrongful Convictions Caused by Michael Heath” in Naughton, M. (Ed) (2012), *ibid*, p 86.

¹⁴ “....some CRMs may be more detailed and meticulous in the fact-finding process of the investigation, and may be more proactive in liaising with applicant solicitors in examining possible fresh lines of inquiry. On the other hand, others seem to take a more neutral approach and deal with cases allocated to them in what appears to be a less inquisitorial and a much more ‘mechanistic’ way, where case investigation seems to be a question of ‘going through the motions’”, Maddocks G and Tan G “Applicant Solicitors: Friends or Foes?”, p 124.

In concluding the book, Naughton observed that:

*“CCRC reviews are mere safety checks on the lawfulness or otherwise of criminal convictions as opposed to ... in depth inquisitorial investigations...that seek the truth of claims of innocence by alleged victims of miscarriage of justice”.*¹⁵

44. In light of the above, it is submitted that whilst the CCRC plays an important role in redressing miscarriages of justice, its ability to successfully identify possible genuine miscarriages of justice from the volume of applications it receives (an average of 1,050 applications per annum) is in some cases dependent on the investigatory work and grounds presented to it by appeal lawyers, innocence projects and other pro bono organisations working on behalf of applicants. It is therefore crucial that those in the area of investigating alleged miscarriages of justice are able, where necessary, to access evidence from the police and CPS in order to present a meritorious application to the CCRC and ensure that genuine miscarriages of justice do not slip through the net.

45. This is confirmed by research conducted by Professor Jacqueline Hodgson and Juliet Horne at the University of Warwick on the impact of legal representation on applications to the CCRC, who found that applicants who are legally represented have significantly better outcomes than those who are not represented.¹⁶ Represented applicants are more likely to have their cases referred to the appeal courts or to go further down the CCRC’s process, where their cases will benefit from a more thorough review.¹⁷ As Hodgson and Horne noted:

*“We found one or two examples of unrepresented applicants making strong submissions, but these were exceptional. Legally represented applicants have a significantly increased chance of a better outcome – 8% of represented applicants had their cases referred compared with 2.1% of unrepresented applicants. A referral to the Court of Appeal is the ultimate measure of success, but the further on in the CCRC review process an application gets, the better its chance of success. Legally represented applicants were less likely to have their applications rejected at an early stage (19.5% of represented applicants compared with 49.5% of unrepresented applicants) and more likely to have their case subjected to a detailed review.”*¹⁸

¹⁵ Naughton, M. “Conclusion” in Naughton, M. (Ed) (2012), *ibid*, p 222-223.

¹⁶ Hodgson, J. and Horne, J. (2008) *The extent and impact of legal representation on applications to the Criminal Cases Review Commission: A report prepared for the Legal Services Commission (The University of Warwick)*

¹⁷ *Ibid*, p 12, para 5.3.

¹⁸ *Ibid*, p 4.

46. Indeed, as the research also found, despite the establishment of the CCRC, the onus remains on CCRC applicants and those representing them to investigate the case and present reasonable grounds that the CCRC require to progress the application beyond the initial screening stage where applications are rejected without investigation:

*“As has been mentioned previously, the CCRC aspires to identify grounds for referral even if they are not mentioned in the application. However, the ‘no reviewable grounds’ (NRG) category of case closure does, to some extent, put the onus on the applicant or their solicitor to raise reasonable grounds of application or risk the case being rejected without being reviewed (on the basis that there are no grounds which are reviewable).”*¹⁹

47. It is also significant to note that referrals in re-applications are routine. Hodgson and Horne’s analysis on 74 referrals between 2005-2007 found that in 15% of these cases, earlier applications without representation had failed, or the case was referred as a result of legal representations after a provisional decision not to refer, or even not to review because there had been no appeal and no exceptional circumstances to merit a review.²⁰ This indicates that the CCRC’s case review process is not infallible and the consequent importance of the investigatory work undertaken by solicitors, innocence projects and other pro bono organisations to identify possible miscarriages of justice that would otherwise fall through the loopholes of its case review process.

CCRC’S RESOURCES AND BUDGET

48. The way that the CCRC operates and the limitations of its case review process can be understood in the context of its limited resources and budget. Investigating alleged miscarriages of justice is a complicated and time consuming process. Such investigations require months or years of reviewing voluminous amounts of documentation and unused evidence, identifying issues and lines of enquiry, commissioning forensic reviews, analysing investigation findings, conducting client interviews and fieldwork investigations. The RCCJ recognised in making its recommendations that “[h]owever generously staffed it may be, the Authority will be faced with the same problem as the Home Office in deciding which of those many cases call for further investigation”.²¹ While the RCCJ was reluctant to set specific

¹⁹ Ibid, p 25, para 11.6; see also, p 7, para 1.7.

²⁰ Hodgson, J. and Horne, J. at p 16, para 7.1.

²¹ RCCJ (1993) Report (London, HMSO), p.185.

criteria, it recommended that “[i]n practice, the Authority will need no further justification for investigating a case than a conclusion on the part of its members that there is, or may be on investigation, something to justify referring it to the Court of Appeal.”²²

49. The CCRC’s resources and budget renders it an almost impossible task to undertake thorough re-examinations in the vast majority of cases, as stated above by former CCRC Commissioners David Jessel and Laurie Elks.
50. In 2012/13, the CCRC comprised of 38 Case Review Managers and 10 Commissioners. This is against a caseload of 1,625 applications received that year, an increase of 585 cases from the previous year.²³
51. The CCRC has expressed concerns in its Annual Reports 2011/12 and 2010/11 that it expected to see its financial situation deteriorate further and that it anticipated that it would struggle to maintain performance.²⁴ It noted that “A final set of risks deemed significant for the Commission are those concerning the retention and management of sufficiently skilled staff as number are reduced as a consequence of budgetary constraints.”²⁵
52. Although the CCRC received an increase in budget for 2013/14, it is unlikely to result in a significant change in depth and thoroughness of CCRC’s investigations. Concerns have also been expressed by Richard Foster, Chair of the CCRC, who is on record as doubting that the CCRC’s budget will be “enough to cope with these additional volumes.”²⁶
53. It is, therefore, crucial that lawyers working on alleged miscarriages of justice,

²² Ibid, p.185.

²³ CCRC Annual Report 2012/13, p.7.

²⁴ Ibid, p. 10 and CCRC Annual Report 2011/12, p 43.

²⁵ CCRC Annual Report 2011/12, page 43.

²⁶ “Money really has been tight. We had a period from 2008-09 until this year in which we had no increase in funding at all, so in real terms our budget is 25% less than it was in 2008-09; austerity came to us rather early. This year we have had a slight increase in funding of 450,000 in recognition of the fact that our volume of applications has gone up by 75% in the last couple of years. Obviously that increase which is an increase of about 8% in our budget is nothing like enough to cope with those additional volumes.” See Justice Committee (2014) “The Work of the Criminal Cases Review Commission” HC 971, 14 January, p 2.

innocence projects and other pro bono organisations are able to undertake investigations and reviews that the CCRC might not be inclined to conduct due to the lack of funding.

54. The forgoing is not a criticism of the CCRC. As highlighted above, the volume of applications to the CCRC, coupled with the highly nuanced and complex nature of many of these cases, inevitably means that not all applications can be awarded the same level of investigative resources. The CCRC is, therefore, to a large extent reliant on applicants' solicitors, innocence projects and other representatives to obtain and review the volume of material and identify grounds on which it can follow up.²⁷

²⁷ Hodgson and Horne, above, p 21, para 10.9.