

Institution: University of Bristol
Unit of Assessment: 23 – Sociology
Title of case study: Innocence: assisting victims of wrongful imprisonment
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>This case study details Dr. Michael Naughton’s translation of his sociological research on wrongful convictions and imprisonment into practical help for alleged victims and into policy reforms in the UK and internationally. It refers to five impacts, all occurring wholly or mainly since 2008: (1) Generating a shift in thinking by the Parole Board in 2008 about prisoners maintaining innocence which in turn triggered reforms to prison policy on the treatment of such prisoners in 2010. (2) Establishing 26 innocence projects in UK universities under the banner of the Innocence Network UK (INUK) which has influenced casework and generated pro bono work equivalent to over £5 million. (3) Supporting and shaping the working practices of those innocence projects by creating mandatory protocols instituted in 2008, organising national training conferences (eleven in total between 2008 and 2013) and providing supporting materials that have been updated yearly. (4) Raising public and media awareness, both of the limitations of the Criminal Cases Review Commission (CCRC) and the issue of wrongful convictions in general. (5) Influencing criminal justice policy in the United States and Australia: in particular, helping prevent the wholesale adoption of the UK CCRC system in Australia in 2010 as Naughton’s research had demonstrated functional flaws and potential harms in that system.</p>
<p>2. Underpinning research (indicative maximum 500 words).</p> <p>The research was conducted by Naughton at the University of Bristol as a PhD candidate (2001-2004), Lecturer (2004-07), Senior Lecturer (2007-12) and Reader (2012-present).</p> <p>Crises of confidence, appeals, interventions: [3]. Naughton’s first monograph was published in 2007. It identified a tripartite connection between public crises of confidence around certain alleged miscarriages of justice, concrete evidence in the form of successful appeals against criminal convictions, and governmental intervention in terms of reforms to correct the apparent cause(s) of the miscarriages of justice [3]. This scholarly critique led on to practically-oriented research by Naughton that unearthed evidence showing the inability of the existing justice system to effect adequate corrective reforms.</p> <p>Typology of innocence claims: [1] [4]. In 2005, Naughton published on how the risk assessment method adopted by the prison service and Parole Board had resulted in what is commonly termed the ‘parole deal’, whereby indeterminate-sentenced prisoners are unable to achieve release on parole due to their innocence stance [1]. Between 2005 and 2008, Naughton sought to develop a more constructive approach to assessing prisoners maintaining innocence through continuing active engagements with the prison service and Parole Board on one hand, and alleged victims of wrongful imprisonment on the other. In 2009, Naughton published his ‘typology of claims of innocence’ as a method that the prison service and Parole Board can utilise in their assessment of prisoners maintaining innocence and assisting such prisoners who might be innocent to make progress and/or attain release [4]. The typology provides a nuanced understanding of the range of reasons why prisoners maintain innocence and has fostered a more constructive engagement with prisoners maintaining innocence by the prison service and Parole Board (see section 4).</p> <p>Failure of safeguards: [2] [5] [6]. Since 2006, Naughton has been undertaking ongoing research on the way in which apparent ‘safeguards’ of the criminal appeal system and the reviews of alleged miscarriages of justice by the CCRC can fail the innocent [2]. In particular, his publications in 2009 [5] and 2012 [6] emphasised how the statute that created the CCRC subordinates it entirely to the criminal appeal system by mandating that it can only refer cases back to the appeal courts if there is a ‘real possibility’ that the conviction will not be upheld (s.13 of the Criminal Appeal Act 1995). Consequently, the CCRC mirrors the Court of Appeal and tends to refer cases back to the appeal courts only on ‘fresh evidence’ (as required by s.23 of the Criminal Appeal Act 1968) and will, generally, not be able to assist applicants whose evidence of innocence is not deemed to be fresh if it was or could have been available at the time of the original trial.</p> <p>Casework assistance gap: [2] [3] [5]. Naughton’s research between 2006 and 2009 identified a</p>

Impact case study (REF3b)

serious gap in the provision of casework assistance to alleged victims of wrongful imprisonment. In particular, non-governmental organisations such as JUSTICE and Liberty ceased working on alleged wrongful convictions following the establishment of the CCRC on the assumption that their services were no longer necessary, and programmes such as Channel 4's Trial and Error were axed. In response, Naughton's research demonstrated that assumption to be false and underpinned the success of his work in reducing the casework assistance gap (see section 4).

3. References to the research (indicative maximum of six references)

Outputs

- [1] Naughton, M. (2005) 'Why the Failure of the Prison Service and the Parole Board to Acknowledge Wrongful Imprisonment is Untenable', *Howard Jnl of Criminal Justice*, 44(1): 1-11. DOI: 10.1111/j.1468-2311.2005.00351.x. Peer reviewed. Submitted to RAE 2008.
- [2] Naughton, M. (2006) 'Wrongful Convictions and Innocence Projects in the UK: Help, Hope and Education', *Web Journal of Current Legal Issues*, 3 [10,000 words]. <http://webjcli.ncl.ac.uk/2006/issue3/naughton3.html>. Peer reviewed. Submitted to RAE 2008.
- [3] Naughton, M. (2007) *Rethinking Miscarriages of Justice: Beyond the Tip of the Iceberg*, Basingstoke: Palgrave Macmillan. Can be supplied upon request. Nominated for the British Society of Criminology Book Prize, 2008 and The Society of Legal Scholars (SLS) The Peter Birks Book Prize for Outstanding Legal Scholarship, 2009. Favourable reviews in *Critical Social Policy*, *Criminology and Criminal Justice* and *Theoretical Criminology*. Submitted to RAE 2008.
- [4] Naughton, M. (2009) 'Does the NOMS Risk Assessment Bubble Have to Burst for Prisoners Who May be Innocent to Make Progress?', *Howard Journal of Criminal Justice*, 48(4): 357-372. DOI: 10.1111/j.1468-2311.2009.00573.x. Peer reviewed. Listed in REF2.
- [5] Naughton, M. (2009) (ed.) *The Criminal Cases Review Commission: Hope for the Innocent?* Basingstoke: Palgrave Macmillan. Favourable reviews in *JUSTICE Journal*, *Society Today*, *The Howard Journal of Criminal Justice* and *The Guardian*. Launched at a reception at the House of Commons, hosted by David Lammy MP, then Minister of State for Higher Education and Intellectual Property. Listed in REF2.
- [6] Naughton, M. (2012) 'The Criminal Cases Review Commission: Innocence versus Safety and the Integrity of the Criminal Justice System' *Criminal Law Qlty*, 58: 207-244. Can be supplied upon request. Peer reviewed.

Income generation

Almost £200,000 from INUK membership fees, training and conference fees and stand alone grants for specific capacity building projects, including Joseph Rowntree Charitable Trust, the Access to Justice Foundation and Setsquared.

4. Details of the impact (indicative maximum 750 words)

1. Changing thinking about and triggering reforms to prison policy

Since 2008, Naughton has influenced the treatment of prisoners maintaining innocence by communicating his research findings to policy makers including the Parole Board and the National Offender Management Service (NOMS). This was done by communicating his findings [1] [2] [3] [4] to these agencies at the Home Office and to the House of Commons, acting as stakeholder for the Parole Board and running a series of workshops for the Parole Board. These efforts led to an unprecedented acknowledgment from NOMS, which oversees the work of prisons and probation, and the Parole Board that some prisoners may, indeed, be innocent and that the traditional blanket label of them as 'deniers' is inappropriate [a] [b]. His research also led to a new way of assessing prisoners maintaining innocence by prison and probation staff. In particular, it heavily influenced the design of NOMS's training course 'Managing Indeterminate Sentences and Risk' (MISaR) [a], which has been delivered to circa 30,000 prison and probation officers across the UK since 2008. Naughton was consulted in the design of MISaR during a visit at the University of Bristol by NOMS's Indeterminate Sentenced Prisoners Lead in 2008. The course incorporates Naughton's research [4] and educates prison and probation staff on the reasons why prisoners may claim that they are innocent when they are not (for example, due to misunderstanding of criminal law, disagreeing that what they have done should be a criminal offence or protecting a family member). Most significantly, prison and probation staff are now trained to provide such prisoners with information about the criminal appeals system and organisations that could assist them in overturning their convictions. Another related impact of Naughton's research in this area is the amendment of Prison Service Order (PSO) 4700, implemented by NOMS in July 2010, which takes

into account the 'typology of claims of innocence' devised by Naughton [1] [4]. Acknowledging for the first time that some prisoners are likely in fact to be innocent, PSO 4700 also adopts the recommendations in Naughton's research findings [4] and provides guidance to Offender Supervisors on the management of prisoners maintaining innocence [c].

2. Creating 26 pro bono innocence projects which have influenced casework and generated pro bono work equivalent to over £5 million

Naughton led the process of establishing a network of innocence projects in the UK through the vehicle of the Innocence Network UK (INUK) (www.innocencenetwork.org.uk) which he founded at the University of Bristol in 2004. 26 of these were operating as of June 2013. INUK was established as a practical response to Naughton's initial findings from his research begun in 2001 and published in 2007 [3]. From the outset Naughton has employed an entrepreneurial approach to funding the employment of a full time member of staff for INUK to enable its development and sustainability. INUK's innocence projects generate a conservative estimate of 100,000 hours of pro bono work per annum. This is achieved by around 500 university staff and student caseworkers each year working an average of 5 hours weekly and an additional 4,000 hours of free work provided by legal and forensic experts. At legal aid rates, this equates to a notional monetary value of £5 million per year (500 caseworkers x 5 hours x 40 weeks x £50 per hour). This increases by an estimated further £250,000 for the work that the pro bono lawyers and experts give freely to INUK projects, also based on legal aid rates for solicitors. Overall, the resources generated by INUK have enabled and improved access to justice in an area where public funding is notoriously limited [e]. As of January 2013, twelve applications have been submitted to the CCRC and the Scottish CCRC following full investigations by INUK member innocence projects. Three cases have also reached the Court of Appeal [d, page 19]. These casework impacts are unlikely to have occurred without the research that led to the establishment of INUK and that has shaped the ways in which INUK member innocence projects operate.

3. Supporting and shaping the practices of innocence projects

Since its establishment in 2004, Naughton has directed INUK as a cohesive and integrated informal body for assessing alleged wrongful convictions and referring eligible cases to member innocence projects for full investigation. The need for such an initiative to promote the review of alleged wrongful convictions stems from Naughton's research, which identified a gap in the provision of such assistance [2] [3] [5]. As of June 2013, INUK had received 1,285 requests for assistance, of which around 223 were deemed eligible for full investigation and 113 cases of those were referred by INUK to member innocence projects for full investigation [d, page 19]. INUK's central case referral system saves INUK member innocence projects many thousands of pounds per annum in administrative costs. Such efficiency savings allow limited resources to be focused on clients/prisoners and students. The absence of innocence-focused law clinics in the UK meant that prior to existence of INUK no guidance was available on how innocence projects should run to ensure that clients receive a professional standard of care [2]. Naughton instituted quality control to the services provided by devising the INUK Innocence Project Protocols in 2008, which all INUK member innocence projects are required to sign up to and work in accordance with. The Protocols were adapted from the model standards for live-client work that govern associates of the Clinical Legal Education Organisation (CLEO) and have been validated by the Attorney General's Pro Bono Protocols. The impact of this is the regulation of INUK's member innocence projects to ensure quality in the assistance and client-care provided, as demonstrated by the Annual Reports submitted by member innocence projects [e]. By sharing his research and practical experience with INUK innocence projects, Naughton has shaped their practices [f]. In particular, he has instilled an 'innocence-oriented' approach to the investigations by innocence projects, which he found lacking in the criminal appeal system and the CCRC [2] [3] [5]. This has been achieved through training conferences and materials provided to innocence projects. Since 2008 Naughton has organised eleven INUK national training conferences (two conferences per year). Consisting of high quality speakers including lawyers, forensic scientists, representatives of the criminal justice system and academics, the conferences enhance the knowledge of innocence project staff and students on wrongful convictions so that they can make better progress on their cases. These conferences (which form the principal training for student caseworkers) help innocence projects to understand the inquisitorial, impartial investigative approach they should adopt in their casework [g]. In addition, core support materials, including the INUK Starter Pack, Handbook and First Steps document, were devised by Naughton and are heavily based on his research [1] [2] [3] [h].

4. Raising awareness

(a) Raising awareness of the limitations of the Criminal Cases Review Commission:

Naughton's research – especially [2] [5] [6] - and his leadership of INUK have led to increased public awareness of the limitations of the CCRC in assisting the innocent. In December 2011, INUK launched its Joseph Rowntree Reform Trust public campaign to reform the CCRC. The campaign involved a public symposium that brought together criminal appeal lawyers, journalists, campaigners, former CCRC Commissioners, alleged miscarriages of justice victims and academics. In addition, INUK issued two public statements on the limits of the CCRC and published a dossier of 44 'cases for concern' that have been refused by the CCRC despite their possible innocence. Between January and May 2012, INUK's campaign generated five feature articles in national media (*Guardian*, *Times*, BBC News), seven articles in local newspapers and three articles in professional magazines (*Law Society Gazette*; *Lawyer 2B*). A Report from the public symposium (printed by LexisNexis) was launched in 2012 and was part of Naughton's (with Tan) invited submission to the Ministry of Justice's Triennial Review of the CCRC.

(b) Raising awareness of wrongful convictions in general: The establishment of the CCRC resulted in reduced public and media interest in wrongful convictions. Naughton's research [2] [3] [5] and related work with INUK has made a notable contribution to reigniting public and media awareness on the issue of wrongful convictions generally. Since 2008, Naughton and INUK have been featured 47 times in national newspapers, radio and TV interviews and currently (as of September 2013) generate over 42,600 hits on Google from diverse sources including the media, websites of other universities, third-sector groups, and professional/commercial bodies.

5. Influencing criminal justice policies internationally, including avoiding potential harm

Naughton's research on the limitations of the CCRC [2] [5] [6] has led to impact in Australia. In 2011, Naughton was invited to consult with the Parliament of South Australia in its Inquiry into the Australian CCRC Bill 2010, including a meeting with Hon. Stephen Wade MLC, Shadow Attorney General and Shadow Minister of Justice, who visited Naughton at the University of Bristol in 2011. Naughton's invited submissions - based on [1] and [2] - were cited many times in the Legislative Committee's final report published in 2012. The Committee accepted Naughton's submission on the limitations of a CCRC-style body and decided not to establish a body based on that model in South Australia and/or nationally [i]: hence the harm of adopting a UK approach that Naughton's research had demonstrated is deeply flawed was avoided. Naughton was also invited by the National Institute of Justice of the US Dept of Justice to participate in a two day workshop held in September 2010 to discuss best practices for preventing and dealing with wrongful convictions and to determine their transferability to the United States. Naughton's research [3] [5] was referred to several times in the final report by the US Dept of Justice and helped to shape its agenda [j].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- [a] Factual statement, National Offender Management Service (NOMS) representative. Corroborates impact on NOMS.
- [b] Judge Anthony Thornton, 'Prisoners Maintaining their Innocence', *Board Sheet* (Parole Board magazine), April 2008. Corroborates impact on prison service and Parole Board.
- [c] Ministry of Justice (2010), *Prison Service Order 4700 New Chapter 4 - Serving the Indeterminate Sentence*, PSI 16/2010, PI 11/2010. Corroborates impact on Ministry of Justice.
- [d] Case Statistics, *Inquiry: The Quarterly Newsletter of the Innocence Network UK*, Issue 7, p. 19, available at: <http://www.innocencenetwork.org.uk/inquiry>. Corroborates impact on casework.
- [e] Annual Reports to INUK from innocence projects, 2011-12. Corroborates impact on projects.
- [f] Factual statement, INUK member project Sheffield. Corroborates impact on this project.
- [g] INUK Training Conference Pack. Corroborates impact on innocence projects.
- [h] INUK supporting materials for innocence projects. Corroborates impact on innocence projects.
- [i] Parliament of South Australia (2012), *Legislative Committee Report on the Criminal Cases Review Commission Bill 2010*, available at: <http://www.innocencenetwork.org.uk/wp-content/uploads/2012/07/CCRC-for-SA-Final-Report.pdf>. Corroborates impact on Australian justice system.
- [j] Jolicoeur, Miranda (2010), *International Perspectives on Wrongful Convictions: Workshop Report*, National Institute of Justice, US Department of Justice, available at: <http://www.nij.gov/topics/courts/sentencing/international-perspective-on-wrongful-convictions.pdf>. Corroborates impact on US justice system.