JUSTICE COMMITTEE

PRE-BUDGET SCRUTINY OF THE SCOTTISH GOVERNMENT’S DRAFT BUDGET 2019-20

SUBMISSION FROM MISCARRIAGES OF JUSTICE ORGANISATION SCOTLAND

Overview

We wholeheartedly endorse and support the impetus to place victims at the heart of our criminal justice system, and to recognise and address the needs and interests of victims at every stage of the criminal justice process.

If we are serious about this, however, we must recognise all classes of victims, both of crime itself and of failures in our criminal justice system. Unpalatable as the concept may be, we must recognise that the state is on occasion the author of serious injustice. It is incumbent on the state to address the consequences of this injustice, and to recognise this class of victim. Currently, the victims of miscarriage of justice are almost entirely overlooked in the provision of victim support resourcing.

This simply should not be so. The consequences for the victim of miscarriage of justice are life changing, and commonly life-long. The needs of exonerees (and equally of those wrongly convicted but unsuccessful at appeal), released into society after incarceration, are both extreme and unique. In combination, they are unlike the needs of any other victim group. They combine the practical requirements of human existence with the emotional and medical needs of sufferers of a very specific type of post-traumatic stress disorder. Additionally, they have suffered stigma, alienation, often financial loss, loss of status and employment, anxiety, depression and, commonly, physical and sexual abuse whilst in custody.

Since 2001 we have provided support and assistance to individuals who have suffered miscarriage of justice in Scotland. Our service is holistic, in that it seeks to address the totality of the various, individual, needs of this group of people. We are the only organisation providing these much-needed services in Scotland. We have unparalleled expertise and experience in this field.

The need for the services we provide has long been recognised by the Scottish government, who have since 2004 exercised oversight of, and provided limited financial support for, our work. We fill a gap in service provision within the mainstream justice and healthcare systems. As this gap has widened, demand for our services has increased. Through this growing demand, and separately in improving our service standards to meet government aspiration, our workload has steadily and significantly increased. We have had no corresponding increase in our funding. Despite significant improvement in our efficiency, we require additional funding to enable us to continue to deliver what are essential services.

Our Services

Aftercare

We care for the wrongly convicted on their release from prison, whether this be on exoneration by the Appeal Court or on completion of sentence.
In simple terms, our approach to aftercare is holistic, comprehensive and flexible and has as its focus the successful reintegration of our service users into a society that, for most, presents challenges that they are unable to face unaided. Successful reintegration has manifest benefits both for the individual client and for society as a whole. Our experience teaches us that our service provision is often a life-long requirement.

The Miscarriages of Justice Organisation Aftercare and Support Project involves, at its initial stage, an assessment of the individual needs and expectations of each client whilst still in prison awaiting a pending appeal. An aftercare plan is then prepared to take account of specific needs in the areas of housing, benefit entitlement, medical care, psychiatric and addiction care. Once these initial needs are identified and appropriate actions taken in anticipation of release, a development plan is formulated in respect of educational, employment and recreational opportunities. In terms of everyday practical problems and needs (such as arranging bank accounts and interactions with local government, utilities providers and the like), we offer proactive support in such as escorting clients to appointments and in liaising with third party agencies. The underlying principle of our service provision is that it is personal, relationship-based and founded on trust earned through continuity of access to and service by the client’s individual caseworker. Relationship-building is at the core of our interaction with every client.

**Legal Casework**

We assist clients, both in the course of serving sentences and post release, who are maintaining an objectively demonstrable claim to factual (as distinct from legally technical) innocence of the offence(s) of which they were convicted.

Our work comprises researching, formulating and pursuing appeals against conviction. This work is undertaken entirely pro bono. There is a gap in the provision of Legal Aid which means, in simple terms, that in the vast majority of cases this is work that otherwise would not be done. This service provides access to justice which, without it, would be denied to our clients.

The most obvious objective in this is to secure the overturning of the client’s conviction.

To limit the definition of our service to this objective is, however, simplistic, and neglectful of other valuable and significant contributions both to the interests of our individual clients and to the wider interests of justice and of society. Every miscarriage of justice represents a denial of justice for everyone including the actual perpetrator - who, conversely, escapes justice. The perpetrator, the victim of crime, the wrongly convicted, their respective families, the justice system and society in general - none receives justice.

Our efforts have been hampered by a lack of access to suitable legal expertise and experience, in that they relied on the basic legal training of undergraduate volunteer caseworkers. In January 2017 we engaged the full-time (voluntary) services of an experienced enrolled solicitor, and we commenced a pilot programme of structured volunteer training and education, case management and preparation. This has had a transformative effect both on our efficiency and effectiveness. We now have a comprehensive model for effective casework delivery on the following lines:

**Support -** Our clients, when they first make contact, are almost invariably unable to access Legal Aid to enable the preparation of an appeal. They are consequently unaided by professional legal services, and they are unable to access either the case papers and
materials or the specialist expertise they require to do so. In accepting such a client’s application for assistance we provide, in the first instance, the moral and emotional support denied them by the withdrawal of their previous legal advisers. In a broader sense this initial element of personal support is the foundation of the relationship of trust on which we ultimately build our aftercare support. At the outset of our relationship with the client, however, it is, of itself, a significant comfort and a bulwark against a universally held perception of alienation, abandonment and stigma.

Case Assessment - We will assist in the formulation and pursuit of an appeal against conviction only where we have satisfied ourselves that the potential appellant has an objectively demonstrable claim to factual innocence of the offence(s) of which they have been convicted. It follows that our first consideration is to assess the validity of that claim.

This we do by detailed interviewing of the client, recovering the case papers from the trial and appeal solicitors, deconstructing the prosecution and defence positions at trial and measuring the client’s claim to innocence against this and any other available evidence.

Our decision on whether or not to accept an application is in all cases objective and evidence based.

Appeal Preparation - Our casework team researches, formulates and pursues applications to the Scottish Criminal Cases Review Commission, with a view to securing referral of the client’s case to the Appeal Court.

Education

Education - We draw our volunteer caseworkers from the law faculties of the universities in Scotland. In the 2017-18 session we have engaged 18 such volunteers. The nature of university legal education is, by definition, theoretical. It addresses the legal system as it is designed to operate. We offer our student volunteers an insight into the practical failures of the system which result in miscarriages of justice, an important element in their development as lawyers unavailable to them in their formal education.

This is, we think, one of the most important aspects of the work of our legal department.

Its value is recognised by the university law faculties who provide our student caseworkers; course credit is awarded for the training received with us and demand for placements with us exceeds our ability to supply. We receive, however, no funding from the universities.

We hold regular seminars and study groups which examine, in detail, miscarriage of justice both in its systemic causes and implications and in case-specific manifestations. Students receive, with legally qualified supervision, hands-on experience in the assessment and preparation of appeals in our ongoing casework. At its core, our training develops skill-sets equipped to recognise and to remedy errors in legal process as they arise. In a broader sense, we are also educating the lawyers who will inherit the legal profession and the criminal justice system and who will, through their experience with us, be better placed to influence both for the better. This is of course a gradualist approach. Meaningful change will, however, only come through education of the policy-formers of the future. We consider our contribution to this as fundamental both to our ethos and to our mission.
Funding

Having developed the service delivery models asked of us by government both in aftercare and legal casework, and having developed our successful and valuable education model, we find ourselves unable to sustain these on our current level of funding.

In our submission, “our” class of victim is as deserving of state support as the other classes of victim who currently are in receipt of such support. We ask, therefore, that our services be brought within the mainstream victim support resourcing provided to, for example, Rape Crisis Scotland and the Homicide Support Service.

We respectfully invite comparison with the funding currently provided by government to other agencies working in victim support within the criminal justice system:

Victim Support Scotland: Funding £ 4,600,000 for 3 years
Homicide Support Service: (through VSS) Funding £ 400,000 for 3 years
Miscarriages of Justice Organisation: Funding £ 66,000 for 2 years

We fully endorse the support offered to the secondary victims of homicide in Scotland and we see the resourcing of this service as a positive step in victim support. By way of comparison, we draw attention to the fact that the total number of homicides in Scotland in 2016-17 was 61, and that this number is showing year-on-year decline. We currently provide ongoing aftercare support to 84 clients in the community. The emotional support needs of these clients are broadly similar to those of homicide support recipients. Their practical support needs are, perhaps, greater. Additionally, we currently have 60 casework support applications under review, and receive in excess of 200 such applications per annum.

In order to sustain our service offering we require nett funding in the sum of £180,000 per annum. We append at Annexe 1 the relative costing.

To enable us to make the commitments necessary to our provision of this service, we require a funding commitment of not less than 3 years.

We submit that the continued provision of our service at the proposed costing represents real and demonstrable value for money.
ANNEXE 1

Miscarriages of Justice Organisation

Revenue & Expenditure Forecast 2019/2020

**Revenue**

Scottish Government Funding  180,000
Fundraising/Donation/Affiliation  6,000

186,000

**Expenditure**

Staff Wages  105,000
Social Security  3,507
Rent/Rates  20,000
Indemnity Insurance  1,800
Utilities Gas/Electricity  6,000
Telephones  5,800
Postage  1,200
Stationery  3,500
Office Equipment Leasing  2,500
Web Hosting  300
Software Licences & Online Resources  300
Casework Travel  17,844
Volunteer Travel  2,500
Travel & Subsistence  1,500
Sundries / Volunteer Lunch/Cleaning products  6,000
Education Materials & Subscriptions  3,000
Bank Service Charges  588
Law Society Dues  250
Professional Fees  3,000
Depreciation 1,500
Total 186,089
Profit/Loss for period - 89