JUSTICE COMMITTEE

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

SUBMISSION FROM MISCARRIAGES OF JUSTICE ORGANISATION GLASGOW

1  Miscarriages of Justice Organisation - Approach to this Consultation

1.1 We approach this consultation from the perspective of an organisation whose function, and whose daily experience, is in the support of individuals who have suffered miscarriage of justice. Our position founds not only upon seventeen years’ experience as an organisation, but also on the personal experience of our members (two of whom are exonerees who served sentences of imprisonment following wrongful conviction) and of our many clients. We also draw on the experience of our legally qualified staff, the senior of whom is a solicitor of some thirty-five years’ standing.

1.2 We restrict our comment to those aspects of the consultation which address issues bearing on our own activity and experience. For this reason, we make no comment in response to the planned spend on the rollout of electronic monitoring, other than to observe, in general terms, that the allocation of limited resources requires careful consideration of the relative priority of competing claims to those resources.

2  Current Trends in Funding

2.1 The current emphasis on the rights and interests of victims is one which we endorse, and consider appropriate. Subject to the caveat expressed at 3 below, we welcome the provision of meaningful funding for the support of victims at every stage of the criminal justice process.

2.2 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.

2.3 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.
3 Proposals for Spending on the Crown Office and Procurator Fiscal Service

3.1 If COPFS is currently under-resourced and requires additional staffing to fulfil its function then we can have no objection to its being provided with additional funding.

3.2 We are, however, deeply concerned to note the lack of any proposal similarly to increase funding for criminal Legal Aid. It is an open secret that the current level of funding for criminal Legal Aid is wholly inadequate, that experienced solicitors are deserting this essential work - both in general and more specifically in the context of the duty solicitor schemes - and that they are not being replaced by new entrants to the profession. The consequence of this can only be the denial, to the more vulnerable, of access to justice.

3.3 We fully accept that the Faculty of Advocates, the Law Society of Scotland and the Bar Associations are entirely capable of fighting their own corner on this. For our purposes, however, the consequences of underfunding of criminal Legal Aid are manifest in the increasing numbers who seek our assistance because, simply, they have nowhere else to go. The interests of justice are not served by a widening of the gap between the theory and the reality of the concept of equality of arms.

4 Sufficiency of Funding Provided to Voluntary Groups

4.1 The funding provided to this voluntary group is insufficient to sustain the services we provide. By way of context for that statement, we detail those services below:

4.2 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.

4.3 The need for, and the value of, the services we provide has long been recognised by the Scottish government, which has 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.

4.4 Our services fall under three headings: Aftercare, Legal Casework and Education.

4.4.1 Aftercare:

a) 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.
b) 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.

4.4.2 Legal Casework:

a) 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 seeks to provide access to justice which, without it, would be denied to our clients.

b) 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 except the actual perpetrator who, conversely, escapes justice. The victim of crime, the wrongly convicted, their respective families, the justice system and society in general - none receives justice.

4.4.3 Education:

a) 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 casework 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.

b) 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.

4.5 The overarching purpose of our work is to reintegrate victims of miscarriage of justice as functioning, contributing, healthy members of society. Through our work with our clients’ families we seek, first, to reintegrate them to the stability and support of that nuclear group. Success in this wider process provides benefits for society, in the avoidance of recidivism and of dependency - in various forms - on the resources of the state. Modest investment in our work has clearly identifiable preventative benefits, in addition to the personal and family benefits enjoyed by the clients themselves.