

**The Aftermath of Wrongful Convictions:
Addressing the Needs of the Wrongfully Convicted
in England and Wales**

Laura Tilt

St Hugh's College, Centre for Criminology,
University of Oxford

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ABSTRACT

Past research has demonstrated that a wrongful conviction imposes on its victims significant unjust harms, rendering it a traumatic experience. However, far less is known about what can be done to help the wrongfully convicted try to recover from this trauma and repair their lives once a conviction is overturned. This is particularly so in England and Wales, where there has been little empirical work on the lives of the wrongfully convicted to date.

Adopting a narrative criminological approach, this thesis fills the empirical and theoretical gap in the literature on wrongful convictions in England and Wales. It explores the lived experiences of those who have had a conviction quashed by the Court of Appeal at the final possible opportunity: after a referral from the Criminal Cases Review Commission (or, prior to that, the Home Secretary) or an appeal out-of-time. The thesis draws on interview data, as well as data gathered from client files of the only State sanctioned support organisation for the wrongfully convicted in England and Wales: the Miscarriages of Justice Support Service.

Using a framework of trauma and its impact on a persons' identity, the thesis seeks to further explore the impacts of wrongful convictions on various aspects of people's identities, including the emotional, social, reintegrative and financial impacts, following their journeys after their conviction is quashed. In doing so, it considers why wrongful convictions are so traumatic: it demonstrates how wrongful convictions can dislocate identities, which imposes almost impossible difficulties for those faced with rebuilding their lives after a conviction is quashed by the Court of Appeal. Conclusions are drawn from the narratives as to efficacy of post-exoneration support currently provided in England and Wales, and suggestions are made for how that might be improved to better repair the harms caused by wrongful convictions.

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LIST OF ABBREVIATIONS

CBT	Cognitive Behavioural Therapy
CCRC	Criminal Cases Review Commission
CPS	Crown Prosecution Service
DBS	Disclosure and Barring Service
DWP	Department of Work and Pensions
ESA	Employment Service Allowance
FACT	Falsely Accused Carers and Teachers
GP	General Practitioner
ICCPR	International Covenant on Civil and Practical Rights
JSA	JobSeekers Allowance
MJSS	Miscarriages of Justice Support Service
MOJ	Ministry of Justice
MOJO	Miscarriages of Justice Organisation
MP	Members of Parliament
NHS	National Health Service
PACE	Police and Criminal Evidence Act 1984
PIP	Personal Independence Payment
PTSD	Post-Traumatic Stress Disorder
RCJ	Royal Courts of Justice
UK	United Kingdom
US	United States
ViSOR	Violent and Sex Offenders' Register

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¹ Brian (pseudonym), wrongfully convicted interviewee. Pseudonyms are used throughout this thesis for confidentiality purposes.

CHAPTER ONE: INTRODUCTION

There has only ever been one public apology by the United Kingdom (UK) Government for a wrongful conviction, offered by Tony Blair in 2005. The recipients were known colloquially as the Guildford Four² and the Maguire Seven,³ both high profile cases of wrongful convictions quashed in 1989 and 1991 respectively. Years after they were released, then Prime Minister Tony Blair made a public and televised statement:

I recognise the trauma that the conviction caused the Conlon and Maguire families and the stigma which wrongly attaches to them to this day. I am very sorry that they were subject to such an ordeal and such an injustice... They deserve to be completely and publicly exonerated.⁴

This ‘trauma’ and ‘stigma’ to which Mr Blair referred are key elements of the lived experiences of the wrongfully convicted, as explored in this thesis. However, what does it mean to be ‘completely and publicly exonerated’? Is being legally ‘exonerated’ sufficient to repair the harms of a wrongful conviction, or does more need to be done to better address the harms suffered?

The narratives explored in this thesis begin, rather than end, with a legal exoneration.

I focus on the post-exoneration experience of the wrongfully convicted in England and Wales

² Gerry Conlon, Carole Richardson, Patrick Armstrong and Paul Hill, were convicted of what was known as the ‘Guildford pub bombings’, which were carried out by the Provisional Irish Republican Army (IRA) and resulted in the death of five people. Hill and Armstrong were also convicted for the murder of two people in the bombing of the Kings Arms at Woolwich, which killed two people. After a number of failed appeals, and a final application to the Home Secretary, all had spent a significant portion of their life sentences before their convictions were overturned and they were released from prison in 1989. See, for example, D Rose, *In the Name of the Law: the collapse of criminal justice* (Vintage, 1996).

³ The Maguire Seven, consisting of four members of the Maguire family (who were related to Gerry Conlon), Gerry Conlon’s father Giuseppe Conlon (who died in prison before their convictions were overturned), Sean Smyth and Patrick O’Neill, were convicted of possessing nitro-glycerine that was alleged to have been passed to the IRA to make bombs. Their convictions were quashed in 1991, after they had all served their full sentences (ranging from four to fourteen years). See P Armstrong, *Life After Life: A Guildford Memoir* (Blake, 2017).

⁴ ‘Apology by Tony Blair, then Prime Minister, to Guildford Four and Maguire Seven for the miscarriage suffered by them’ (9 February 2005) <<http://cain.ulst.ac.uk/issues/politics/docs/pmo/tb090205.htm>> last accessed 30 September 2018. Also cited in S Savage, ‘Restoring Justice: Campaigns Against Miscarriages of Justice and the Restorative Justice Process’ (2007) *European Journal of Criminology* 4(2) 195.

after a conviction on indictment has been deemed to be ‘unsafe’ and overturned by the Court of Appeal, in what can be termed the most extreme cases; those that the criminal process has failed to protect. This will typically be after the individual has spent years maintaining their innocence in prison, exhausted their direct appeal rights and had their case considered by the Criminal Cases Review Commission, or prior to its inception in 1997, the Home Secretary (explained further below). The thesis will consider whether, in these extreme cases, a legal exoneration renders that person ‘completely and publicly exonerated’. If not, why not? What are the lived experiences of those who have been wrongfully convicted; what is their trauma and how well do they recover? What are the mechanisms in place in England and Wales to help achieve this full exoneration following an unjust conviction and sentence? Are these mechanisms sufficient to repair the harms of a wrongful conviction?

Wrongful convictions in England and Wales today: a return to the 1980s?

At the time of writing, two high profile wrongfully convicted individuals⁵ are challenging the now restrictive legislation that provides for compensation eligibility in cases of wrongful conviction in England and Wales.⁶ Section 133(1ZA) of the Criminal Justice Act 1988, inserted by section 175 of the Anti-Social and Criminal Behaviour Act 2014, requires that to qualify for compensation, a person must prove ‘beyond reasonable doubt’ that they did not commit the offence for which they were wrongfully convicted.⁷ The legal quashing of a conviction is no longer sufficient to obtain this form of post-release support; not even, as the high profile cases

⁵ Sam Hallam and Victor Nealon, both of whom were convicted of serious crimes of which they maintained innocence, had a failed appeal and whose convictions were later quashed by the Court of Appeal after a referral from the Criminal Cases Review Commission.

⁶ O Bowcott, ‘Miscarriage of justice victims denied compensation, court told’, *The Guardian* (8 May 2018) <<https://www.theguardian.com/law/2018/may/08/miscarriage-of-justice-victims-unfairly-denied-compensation-court-told>> last accessed 15 July 2018.

⁷ Compensation for the wrongfully convicted is further discussed in Chapter Eight.

of Victor Nealon and Sam Hallam demonstrated, when there is corroborating evidence of an unsafe conviction.⁸

Legal challenges such as these have characterised the increasingly frantic discourse that now surrounds wrongful convictions and the precarious state of the criminal justice system, with cumulative evidence of prosecution malpractice. Campaigns such as #TheLawIsBroken have raised concerns over the rising risk of wrongful convictions in England and Wales, reflecting the fears that arose from the spate of wrongful convictions exposed in the 1980s and 90s.⁹

The 1980s and 90s revealed some of the most influential cases of wrongful conviction in England and Wales to date. These included the Guildford Four and Maguire Seven, mentioned above, but amongst the first recognised cases of wrongful conviction was the ‘Birmingham Six’.¹⁰ Six Irish men were convicted of multiple counts of murder, along with three others, for the Irish Republican Army (IRA) bombings in two Birmingham pubs in 1974. The incident caused the most deaths of any IRA incident in the UK at the time.¹¹ Irish

⁸ In the case of Nealon, the clothes of the victim were tested years later and the DNA found on her clothes did not match Nealon’s. In Hallam’s case, the police had initially failed to look into his phone that they had retained. Some years later, the phone was disclosed and photos were found on it which placed him some distance from the scene of the crime at the time of the murder. See *R v Nealon* [2014] EWCA Crim 574 and *R v Hallam* [2012] EWCA Crim 1158.

⁹ See for example J Johnson and P Heaney, ‘Miscarriage of Justice warning over CPS funding cuts’, *BBC News* (6 February 2016) <<http://www.bbc.co.uk/news/uk-wales-35496012>> last accessed 15 July 2018; D Eady, ‘Disclosure’s Catch 22’ *The Justice Gap* (2 February 2017) <www.thejusticegap.com/2017/02/disclosures-catch-22/> last accessed 15 July 2018; O Bowcott, ‘Justice system “at breaking point” over digital evidence’, *The Guardian* (12 February 2018) <<https://www.theguardian.com/law/2018/feb/12/justice-system-at-breaking-point-over-digital-evidence>> last accessed 15 July 2018; J Robins, ‘#TheLawIsBroken’, *New Law Journal* (11 May 2018) <<https://www.newlawjournal.co.uk/content/law-broken>> last accessed 20 July 2018; H Devlin and V Dodd, ‘Failing forensic science standards ‘making miscarriages of justice inevitable’’, *BBC News* (19 January 2018) <<https://www.theguardian.com/uk-news/2018/jan/19/uk-police-forces-failing-to-meet-forensic-standards-safe-regulator-miscarriages-justice-outsourcing>> last accessed 15 July 2018; see also Anonymous, *The Secret Barrister: stories of the law and how it’s broken*, (Macmillan, 2018); J Robins, *Guilty until proven innocent: the crisis in our justice system* (Biteback Publishing, 2018).

¹⁰ *McIlkenny, Hill, Power, Walker, Hunter v R* [1992] 2 All E.R. 417, (1991) 93 Cr. App. R. 287. For further discussion, see for example C Walker and K Starmer, *Walker and Starmer: Justice in Error* (Blackstone, 1994) 40.

¹¹ See D Rose, *In the Name of the Law: the collapse of criminal justice* (Vintage, 1996).

terrorism during this time had instilled a sense of fear and panic which increased pressure on police to 'solve' crimes and on the judiciary to convict. The convictions of the Birmingham Six were based on confessions later proven to be false and coerced, as well as unreliable forensic testing and highly circumstantial evidence.¹² Perpetuated through hasty prosecution, irrational decision making and professional misconduct, these cases - and others - revealed significant failings throughout the criminal justice system. Some of those cases even led to the disbandment of whole police departments, such as the West Midlands Serious Crime Squad, disbanded in 1989.¹³

The uncovering of such serious errors in the criminal justice process risked a loss of public confidence in a system once thought to be close to infallible. Royal Commissions¹⁴ were conducted in the wake of these high profile cases to identify errors in the criminal justice system, promote transparency, and propose means of reform. The Report of the Royal Commission on Criminal Procedure in 1981, otherwise known as the Philips Commission, led to the enactment of the Crown Prosecution Service (CPS) and the Police and Criminal Evidence Act (PACE) 1984.¹⁵ The Runciman Commission, set up in part to inquire into the systemic flaws in the case of the Birmingham Six, established the Criminal Cases Review

¹² *McIlkenny, Hill, Power, Walker, Hunter v R* [1992] 2 All E.R. 417, (1991) 93 Cr. App. R. 287 at [139].

¹³ C Walker and K Starmer, *Walker and Starmer: Justice in Error* (Blackstone, 1994).

¹⁴ Beginning with the 1978 Fisher Inquiry into the "Confait case" which focused on the risk of psychologically vulnerable individuals to falsely confess: see Home Office, 'Report of an Inquiry into the death of Maxwell Confait' (14 December 1977). This was followed by the Royal Commission on Criminal Procedure in 1981 (otherwise known as the Philips Report) which also investigated the risk of false confessions but focused on police fabrication. The Philips Report proposed enactment of a new Crown Prosecution Service. HMSO, 'Royal Commission on Criminal Procedure (Philips Commission) (1981). Also discussed in C Walker and K Starmer, *Walker and Starmer: Justice in Error* (Blackstone, 1994) 65. It also recommended changes to police powers which led to the introduction of the Police, Crime and Evidence Act (PACE) 1984. The Report of the Royal Commission on Criminal Justice 1993 investigated the case of the Birmingham Six amongst other failings of the criminal justice system, and proposed the introduction of the Criminal Cases Review Commission. For the report, see: Royal Commission on Criminal Justice, *Report of the Royal Commission on Criminal Justice*, Cm 223 (6 July 1993) <<https://www.gov.uk/government/publications/report-of-the-royal-commission-on-criminal-justice>> last accessed 18 September 2018.

¹⁵ This legislation now forms the backbone of regulating the police and investigatory processes, for example, requiring that all police interviews be recorded and the right to a solicitor on arrest.

Commission, a body that reviews cases that have failed at appeal and has the power to refer a case back to the Court of Appeal if it concludes the conviction or determination of sentence is unsafe.¹⁶ However, these Royal Commissions focused primarily on improving elements of the criminal justice process, as well as making it more efficient, leaving aside the question of addressing the needs of the wrongfully convicted when errors do, as they will inevitably, occur. As a result, many people who had been wrongfully convicted at that time were left to their own devices after their convictions were quashed, at risk of drug addiction and severe mental health problems, struggling to fit back into a life no longer familiar to them.¹⁷

While some of the potential causes of wrongful convictions have shifted in recent times, we are now seeing many analogous cases and there are similar concerns expressed about the dismal state of the criminal justice system as were heard in the 1980s and 90s. Cases of note have moved away from IRA bombings to those convicted under ‘joint enterprise’ laws¹⁸ as well as rising numbers of wrongful prosecutions and convictions in immigration or asylum cases¹⁹ and for historic child sexual abuse.²⁰ Funding cuts to Legal Aid for legal representation and increased bureaucracy in legal services have created conditions where lawyers might need

¹⁶ Empirical research on the CCRC has been conducted by C Hoyle and M Sato, *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission*, (Oxford University Press, 2019 forthcoming).

¹⁷ Their struggles post-release are articulated in biographies such as P Armstrong, *Life After Life: A Guildford Memoir* (Blake, 2017); R O’Rawe, *In the Name of the Son: The Gerry Conlon Story* (Merrion Press, 2017); P Hill, *Forever Lost, Forever Gone* (Bloomsbury Publishing, 1996).

¹⁸ For example, the cases of *R v Jogee* [2016] UKSC 8, [2017] 2 WLR 681; *R v Ordu* [2017] EWCA Crim 4, [2017] 1 Cr. App. R. 21; *R v Johnson* [2016] EWCA Crim 1613, [2017] 4 W.L.R. 104.

¹⁹ A number of miscarriage of justice cases have arisen whereby defendants charged with immigration offences (such as false identification) were advised incorrectly by criminal defence lawyers (who had little knowledge and experience of immigration law) to plead guilty when they in fact fell under legislation excluding those who were seeking asylum from criminal liability. The first of these cases to be successfully overturned was *R v Ordu* [2017] EWCA Crim 4, [2017] 1 Cr. App. R. 21. See M Sato, C Hoyle and N Speechley, ‘Wrongful convictions of refugees and asylum seekers by the Criminal Cases Review Commission’ [2017] *Criminal Law Review* (2) 106-122.

²⁰ A number of cases have gone through the Criminal Cases Review Commission involving historic child sexual abuse in care homes, arising from two targeted operations. For example: *R v Joynson* [2008] EWCA Crim 3049; *R v Sheikh* [2006] EWCA Crim 2625; *R v Brizgalari* [2004] EWCA Crim 310. Discussed also in R Burnett, C, Hoyle and N Speechley, ‘The Context and Impact of being Wrongly Accused of Abuse in Occupations of Trust’ (2017) *The Howard League Journal* 56(2).

to prioritise economic imperatives over quality legal representation.²¹ The number of unrepresented defendants in court is on the rise.²² Budget cuts and the privatisation of the Forensic Science Service in 2012 have arguably led to a rise in the use of ‘cheap’ and potentially unreliable forensic science techniques.²³ A number of convictions have been quashed based on faulty evidence of experts at trial, such as in the cases of Angela Cannings and Sally Clark,²⁴ or changes to medical guidelines, such as in cases of child sexual assault.²⁵ Police and forensic science agencies have mishandled and contaminated DNA and other forensic evidence.²⁶ Scientific evidence at trial has been misrepresented by barristers and expert witnesses, and misinterpreted by expert witnesses and juries, resulting in a number of quashed convictions.²⁷ The Justice Select Committee released a report in July 2018²⁸ revealing failures on the part of

²¹ J Robins, ‘Miscarriages of Justice are slipping off the public radar’, *The Guardian*, (6 June 2011) <<http://www.theguardian.com/law/2011/jun/06/commission-miscarriage-justice-scrutiny>> last accessed 18 June 2018; see also M Merchant, ‘Poor defence’ (2012) *Wrongly Accused? The Justice Gap Magazine* 51-52.

²² For example, a survey of Magistrates showed that in 2014, 25 percent of defendants who came before them in court were not represented by a lawyer: J Doward and T Dare, ‘Legal aid cuts have led to surge in DIY defence, says charity’ *The Guardian* (23 April 2016) <<http://www.theguardian.com/law/2016/apr/23/legal-aid-cuts-defendants-unrepresented>> last accessed 18 June 2018.

²³ K McVeigh, ‘Forensic Review of Sexual Assault Cases Ordered after poor practice concerns’, *The Guardian*, (17 September 2015) <<https://www.theguardian.com/science/2015/sep/16/forensic-review-of-sexual-assault-cases-ordered-after-poor-practice-concerns>> last accessed 18 June 2018.

²⁴ Donna Anthony, Angela Cannings and Sally Clark were all convicted of the murder of infant children (in Anthony and Clark’s cases, the children were their own) on the basis of ‘shaken baby syndrome’. Their convictions rested on the erroneous expert evidence of Sir Roy Meadow, who gave misleading evidence about the extremely low probability that more than one infant in a family could die of natural causes. Their convictions were later quashed. Sally Clark died of alcohol poisoning just three years after her release.

²⁵ A number of CCRC referrals have been made, and convictions later quashed, based on a change in the Royal College of Paediatrics and Child Health guidelines in relation to injury and markings indicative of sexual assault in children. For further discussion, see C Hoyle and M Sato, *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission*, (Oxford University Press, 2019, forthcoming).

²⁶ M Olney and S Bonn, ‘An Exploratory Study of the Legal and Non-Legal Factors Associated with Exoneration for Wrongful Conviction: The Power of DNA Evidence’ (2015) *Criminal Justice Policy Review* 404.

²⁷ As in the case of Barry George, where the prosecution relied heavily on fibre evidence at trial but on appeal after referral from the CCRC the fibre evidence was found to be inaccurate and unreliable: *R v George* [2007] EWCA Crim 2722. Similar issues were revealed in the cases of Sally Clark, Angela Cannings and Donna Anthony. See for example D Parkes and E Cunliffe, ‘Women and Wrongful Convictions: concepts and challenges’ (2015) *International Journal of Law* 11(3) 220.

²⁸ Commons Select Committee, ‘Disclosure of evidence in criminal cases’ (20 July 2018) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/85902.htm>> last accessed 30 September 2018.

the police and CPS to disclose crucial evidence in an alarming number of cases, reflected in the cases of Liam Allen²⁹ and Oliver Mears.³⁰ Wrongful convictions, therefore, remain as much of a concern today as they were throughout the 1980s and 90s.

Legal ‘exoneration’ and the appellate process

Everyone who is convicted on indictment has the right to appeal their conviction in England and Wales.³¹ Section 1(2)(b) of the Criminal Appeal Act 1968 requires an application for leave to appeal to be lodged within 28 days of conviction. An appeal ‘out of time’ may be allowed in extreme circumstances. If leave to appeal is granted and an appeal is successful in the Court of Appeal,³² the Court can quash the conviction and under the Criminal Appeal Act 1968 may either order an acquittal,³³ a retrial,³⁴ or substitute the conviction for another offence.³⁵

The Court of Appeal can only overturn a conviction if it decides the conviction is ‘unsafe’.³⁶ The Lord Chief Justice defined ‘unsafe’ in *ex parte Pearson*³⁷ to include:

²⁹ Liam Allen was charged with 12 counts of rape and sexual assault but his trial collapsed after it was revealed the police had failed to disclose vital phone record evidence that showed he and the complainant were in a consensual relationship. For a discussion of this case and the failure to disclose, see T Smith, ‘The “near miss” of Liam Allen: critical problems in police disclosure, investigation culture and the resourcing of criminal justice’ [2018] *Criminal Law Review* 9, 711.

³⁰ The CPS dropped its case for rape and sexual assault against Oxford University student Oliver Mears, who spent two years on bail, after failing to disclose vital diary evidence: ‘Oxford student Oliver Mears rape case dropped by CPS’, *BBC News* (19 January 2018) <<https://www.bbc.co.uk/news/uk-england-42745181>> last accessed 30 September 2018.

³¹ Criminal Appeal Act 1968, s1.

³² H Quirk, ‘Why Innocence in the UK is not the answer’ (2007) *Modern Law Review* 70(5) 762.

³³ Criminal Appeal Act 1968, s2.

³⁴ Criminal Appeal Act 1968, s7(1).

³⁵ Criminal Appeal Act 1968, s3; however, the Court of Appeal cannot substitute the conviction for another offence if the jury’s entire trial approach is found to be erroneous, as noted in the case of *R v Deacon* (1973) 1 WLR 696, [1973] 2 All ER 1145. See P Taylor (ed) *Taylor on Criminal Appeals* (Oxford University Press, 2012) 418.

³⁶ Criminal Appeal Act 1995 s2(1)(a) which amended all former Acts.

³⁷ *R v Criminal Cases Review Commission, ex p Pearson* [1999] 3 All ER 498, [2000] 1 Cr App 141.

cases which the Court, although by no means persuaded of a person's innocence, is subject to some lurking doubt or uneasiness whether an injustice has been done.³⁸

An 'unsafe' conviction has now been interpreted to occur in two broad instances: 1) when the person convicted is 'factually innocent', or 2) when the person is 'factually guilty' but there has been a 'procedural irregularity' (i.e. an error in the investigative or trial process denying the individual a fair trial).³⁹ The Court of Appeal has continuously emphasised that it is a court of review and not a venue for a re-trial. It cannot re-hear evidence put forward in the original trial and cannot speculate or know how the jury came to its verdict. Rather, it considers:

... assuming the wrong decision on law or the irregularity had not occurred and the trial had been free from legal error, would the only reasonable and proper verdict have been one of guilty?⁴⁰

While initially, the Court held that a conviction could not be determined unsafe if the defendant is factually guilty, this is no longer the case and – in exceptional circumstances – a conviction can be found to be unsafe on the basis of procedural error (although it is likely that a retrial would be ordered).⁴¹ In the case of *Davis, Rowe and Johnson*⁴² the Court held:

A conviction can never be safe if there is doubt about guilt.
However, the converse is not true. A conviction may be unsafe even where there is no doubt about guilt but the trial process has

³⁸ *R v Criminal Cases Review Commission, ex p Pearson* [1999] 3 All ER 498, [2000] 1 Cr App 141. See also H Quirk, 'Why Innocence in the UK is not the answer' (2007) *Modern Law Review* 70(5) 762-763.

³⁹ S Roberts and L Weathered, 'Assisting the Factually Innocent' (2009) *Oxford Journal of Legal Studies* 29(1) 51. For a discussion of the two interpretations, see Mantell LJ's judgment in *R v Hanratty* [2002] EWCA Crim 114, [2002] 3 All ER 534.

⁴⁰ *R v Pendleton* [2001] UKHL 66, [2002] 1WLR 72 at [132]. For discussion see H Quirk, 'Why Innocence in the UK is not the answer' (2007) *Modern Law Review* 70(5) 763.

⁴¹ Originally this was held in *R v Chalkley* [1998] QB 848, [1998] 3 WLR 146, but since the decisions in *R v Mullen* [2000] QB 520, [1999] 3 WLR 777 and *R v Toogher* [2001] 3 All ER 463, [2001] 1 Cr App R 33, it was decided that a conviction would be unsafe, regardless of guilt, if the defendant was denied a fair trial. See also H Quirk, 'Why Innocence in the UK is not the answer' (2007) *Modern Law Review* 70(5) 763.

⁴² *R v Davis, Rowe and Johnson* [2001] 1CrApp R 8, [2000] HRLR 527

been “vitiating by serious unfairness or significant legal misdirection”.⁴³

The Court can also determine a conviction to be unsafe on the basis of ‘lurking doubt’: when, considering the facts and arguments as a whole, there seems to be a ‘lurking doubt’ that an injustice has occurred. However, the Court of Appeal has stated that convictions will only be quashed based on a ‘lurking doubt’ ‘in the most exceptional circumstances... and even more exceptional if the attention of the court is confined to a re-examination of the material before the jury’.⁴⁴

The Criminal Cases Review Commission

If a conviction is appealed but unsuccessful at the first appeal, the appellant’s last resort is to apply to the Criminal Cases Review Commission (CCRC). The CCRC was introduced upon recommendation from the Runciman Commission, replacing the role of the Home Secretary in 1997. It is a non-governmental body that investigates and can refer cases back to the Court of Appeal, typically after the appellant has exhausted all appeal avenues. This includes cases where the appellant has applied for leave to appeal and been refused, granted leave to appeal but was unsuccessful at the appellate court, or can no longer appeal as the case is out of time (the latter only in exceptional circumstances).

The Criminal Appeal Act 1995 requires that the CCRC may refer a case back to the Court of Appeal if it considers ‘that there is a real possibility that the conviction ... would not be upheld.’⁴⁵ The case of *Pearson*⁴⁶ considered the definition of ‘real possibility’ in which the Lord Chief Justice determined that it:

⁴³ Ibid. at [56], see also H Quirk, ‘Why Innocence in the UK is not the answer’ (2007) *Modern Law Review* 70(5) 763.

⁴⁴ *Pope v R* [2012] EWCA Crim 2241, [2013] 1 Cr. App. R. 14, reiterated in *Thomas v R* [2002] EWCA Crim 941.

⁴⁵ Criminal Appeal Act 1995, s13.

⁴⁶ *R v Criminal Cases Review Commission, ex p Pearson* [1999] 3 All ER 498, [2000] 1 Cr App 141.

... plainly denotes a contingency which in the Commission's judgement is more than an outside chance or bare possibility but which may be less than a probability or likelihood or racing certainty.⁴⁷

The real possibility must arise from argument or evidence that was not available at the original trial, unless in exceptional circumstances (that are decided on a case-by-case basis).⁴⁸

The CCRC received 1439 applications in the 2017-18 year.⁴⁹ Concerns have been raised over the reducing success rate of the CCRC⁵⁰ (based on the number of cases referred to the Court of Appeal that resulted in a quashed conviction), which has dropped from approximately 70 percent prior to 2015⁵¹ to just 46 percent in the 2016-17 year, although it increased again to 66.7 percent in the 2017-18 year.⁵² However, with a referral rate that is now just 0.42 percent of applications received⁵³ - down from 4 percent a few years ago - many have criticised the CCRC for being overly cautious and too restrictive in its approach.⁵⁴ Others have

⁴⁷ *R v Criminal Cases Review Commission, ex p Pearson* [1999] 3 All ER 498, [2000] 1 Cr App 141.

⁴⁸ S Roberts and L Weathered, 'Assisting the Factually Innocent' (2009) *Oxford Journal of Legal Studies* 29(1) 49.

⁴⁹ Criminal Cases Review Commission, *CCRC Annual Report and Accounts 2016-17* HC 1083 p 11 <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq11/uploads/2015/01/1096_WLT_Criminal-Cases-Review-AR_WebAccessibleM-1.pdf> last accessed 30 September 2018.

⁵⁰ See, for example, J Robins, 'Miscarriage watchdog blames drop in referrals on 'low success rate' in Court of Appeal and lack of lawyers willing to take cases on', *The Justice Gap* (6 July 2018) <<http://www.thejusticegap.com/2018/07/miscarriage-watchdog-blames-drop-in-referrals-on-low-success-rate-in-court-of-appeal-and-lack-of-lawyers-willing-to-take-cases-on/>> last accessed 30 September 2018.

⁵¹ House of Commons Justice Committee, 'Criminal Cases Review Commission: Twelfth Report of Session' 2014-15 (17 March 2015) 3 <<https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/850/850.pdf>> last accessed 30 September 2018.

⁵² Criminal Cases Review Commission, *CCRC Annual Report and Accounts 2016-17* HC 1083 p 4 <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq11/uploads/2015/01/1096_WLT_Criminal-Cases-Review-AR_WebAccessibleM-1.pdf> last accessed 30 September 2018.

⁵³ Just six applications were referred to the Court of Appeal in the 2017-18 year: Criminal Cases Review Commission, *CCRC Annual Report and Accounts 2016-17* HC 1083 p 4 <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq11/uploads/2015/01/1096_WLT_Criminal-Cases-Review-AR_WebAccessibleM-1.pdf> last accessed 30 September 2018.

⁵⁴ For example, in evidence given to the House of Commons criticising this in its 2014 inquiry; see House of Commons Justice Committee, 'Criminal Cases Review Commission: Twelfth Report of Session' 2014-15 (17 March 2015) 8 <<https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/850/850.pdf>> last accessed 30 September 2018. See also E Allison, S Hattenstone and O Bowcott, 'Miscarriages of justice body is not fit for purpose, lawyers say' *The Guardian* (30 May 2018) <<https://theguardian.com/law/2018/may/30/criminal-cases-review-commission-not-fit-for-purpose-lawyers-say>> last accessed 30 September 2018.

blamed the reduced rates on the restrictiveness of the real possibility test, comparing it to the Scottish CCRC referral rate of approximately 7 percent, which operates under a different test for referral.⁵⁵

‘Miscarriage of justice’ or ‘wrongful conviction’?

Given the process of a legal quashing of a conviction outlined above and the fact there can be multiple reasons for a quashed conviction, it is not surprising that the terms ‘miscarriage of justice’ and ‘wrongful conviction’ can be used interchangeably for different circumstances of a quashed conviction.⁵⁶

The term ‘miscarriages of justice’ refers to more than just serious cases of quashed convictions, after a CCRC (or, prior to 1997, the Home Secretary) referral, described above. The term has been used in a wide range of contexts, reflected in the *Adams*⁵⁷ judgment which sought to define ‘miscarriage of justice’ for the purposes of compensation and devised a number of categories of circumstances in which one could occur.⁵⁸ A ‘miscarriage of justice’ can refer, for example, to: cases where individuals are wrongfully charged, but the error is rectified and the charges are dropped before court; procedural errors that may occur during investigation or trial, regardless of the outcome of the case; convictions that are not yet quashed but where the convicted person maintains their innocence; where the guilty are erroneously acquitted; or when convictions are quashed at first appeal. The term has such a

⁵⁵ Those gave evidence to the House of Commons criticising this in its 2014 inquiry; see House of Commons Justice Committee, ‘Criminal Cases Review Commission: Twelfth Report of Session’ 2014-15 (17 March 2015) 8 <<https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/850/850.pdf>> last accessed 30 September 2018. Cardiff University criticised the test for making the CCRC too deferential to the Court of Appeal; Glen Maddocks (solicitor) similarly noted it created an unfair and hierarchical relationship between the CCRC and the Court of Appeal, and prevented the CCRC from being wholly independent.

⁵⁶ A Grounds, ‘Understanding the Effects of Wrongful Imprisonment’ (2005) *Crime and Justice* 32(1) 2.

⁵⁷ *R (Adams) v Secretary of State for Justice* [2011] UKSC 18, [2012] 1 AC 48.

⁵⁸ For further discussion of this case and others in relation to compensation, see: H Quirk and M Requa ‘The Supreme Court on Compensation for Miscarriages of Justice: is it better that ten innocents are denied compensation than one guilty person receives it?’ (2012) *The Modern Law Review* 75(3) 399.

wide remit that its use can be vague. For this reason, I have avoided using the term ‘miscarriage of justice’ to refer to the injustice suffered by the participants in this work. Instead, I refer to wrongful conviction, a type of miscarriage of justice where a person is convicted of a crime they maintain they did not commit. Their conviction is wrongful, in the sense that it should not have occurred, evident by the fact it is quashed by the Court of Appeal.

As noted above, this thesis focuses more specifically on the most aggravated form of wrongful convictions: cases where convictions are overturned by the Court of Appeal after a failed appeal or number of appeals, or appeal out-of-time. The appeal process is designed to rectify errors made in the trial system, by providing those who are convicted with the right to appeal against their conviction or sentence. If a case is successfully overturned on appeal, the safety nets built into the criminal justice system have fulfilled their role. Thus, cases overturned on first appeal will not be considered ‘wrongful convictions’ for the purposes of this thesis. This thesis focuses on those who are failed not only by the initial trial process, but also by the ‘safety net’ of the appellate system. This is the starting point for assisting those who have been let down by the criminal justice system; if those at the extreme end of the injustice scale are not receiving sufficient support, there is little hope for the those who have suffered a miscarriage of justice in any other circumstance.

Beyond exoneration: post-release support provision in England and Wales

While research on the potential causes of wrongful convictions has formed a significant part of the literature,⁵⁹ discourse on the post-exoneration needs of the wrongfully convicted in England and Wales and the support provided after a conviction is quashed by the Court of

⁵⁹ For an overview, see R Huff and M Killias, *Wrongful convictions and miscarriages of justice: causes and remedies in North American and European criminal justice systems* (Routledge, 2013); S Poyser, A Nurse and R Milne, *Miscarriages of Justice: causes, consequences and remedies* (Policy Press, 2018) and R Leo ‘The Criminology of Wrongful Conviction: A Decade Later’ (2017) *Journal of contemporary criminal justice* 33(1) 82. However, this literature will not be extensively reviewed for the purposes of this thesis, which focuses on the aftermath of wrongful convictions rather than how or why they may have occurred.

Appeal is vague and misinformed. Scholars, lawyers and the media alike have argued that, in the absence of an accessible compensation scheme, little else is provided for the wrongfully convicted in England and Wales after their conviction is quashed by the Court of Appeal.⁶⁰ Such arguments often rely on anecdotal, rather than empirical, evidence. What little empirical data there is on the post-release experiences of the wrongfully convicted is largely from studies in the United States (US) and often focus on death row exonerees.⁶¹

I set out to fill this gap in empirical research and to explore the lived experiences and needs of the wrongfully convicted in England and Wales after a conviction is quashed, including what is available to meet their needs. I also aimed to provide a rich theoretical foundation for the research, to produce a sound contribution to a body of work that has been criticised for being theoretically limited.⁶²

⁶⁰ See for example M Newby 'Our lack of care for the wrongfully convicted is nothing short of a public scandal', *The Justice Gap* (June 2016) <<http://www.thejusticegap.com/2016/06/lack-compensation-victims-miscarriages-justice-nothing-short-scandal/>> last accessed 18 June 2018; C Mole 'Free to Go? Life on the Outside for the Wrongly Accused', *The Justice Gap* (April 2012) <http://www.thejusticegap.com/2012/04/free-to-go-life-on-the-outside-for-the-wrongly-accused/> last accessed 18 June 2018; J Robins, 'Miscarriages of justice victims are cast aside in the UK. The details are shocking', *The Guardian* (9 May 2018) <<https://www.theguardian.com/commentisfree/2018/may/09/miscarriage-of-justice-victims-uk-supreme-court>> last accessed 18 June 2018.

⁶¹ For example, B Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, (Harvard University Press, 2011); R Nobles and D Schiff, *Understanding Miscarriages of Justice*, (Oxford University Press, 2000) which look at the potential causes of wrongful convictions; while those that focus on post-exoneration experiences include S Westervelt and K Cook *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012); J Wildeman, M Costelloe and R Schehr, 'Experiencing Wrongful and Unlawful Conviction' (2011) *Journal of Reoffender Rehabilitation* 50(7) 411; H Weigand, 'Rebuilding a Life: The Wrongly Convicted and Exonerated' (2009) *Public Interest Law Journal* 18(1) 427; K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 139; A Flowers, *Exoneree Diaries: The Fight for Innocence, Independence and Identity* (Haymarket Books, 2016); which, as discussed in Chapter Two, are mostly situated in the US and focus on the experiences of death row exonerees. The work of A Grounds, 'Psychological Consequences of Wrongful Conviction and Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165 is one of the only post-exoneration research projects to be conducted in England and Wales before my own.

⁶² For example, in R Leo, 'Rethinking the Study of Miscarriages of Justice' (2005) *Journal of Contemporary Criminal Justice* 21(3); and he reiterates this again in R Leo 'The Criminology of Wrongful Conviction: A Decade Later' (2017) *Journal of contemporary criminal justice* 33(1) 82.

The Miscarriages of Justice Support Service (MJSS), discussed throughout this thesis, is the only State sanctioned service that provides direct and exclusive support to the wrongfully convicted in England and Wales. Funded by the Ministry of Justice and run by Royal Courts of Justice (RCJ) Advice, who have won the tender set by the National Offender Management Service (NOMs) since the service's inception in 2003, the organisation provides direct support from the moment a person has their case referred to the Court of Appeal by the CCRC. People can also self-refer to the service if they have served time in prison and are successful at their first in-time appeal, however, this is known as 'second tier' service provided by way of referrals to the relevant agencies (such as their local Citizen's Advice Bureau) rather than any direct support from the MJSS.⁶³

The organisation provides assistance 'immediately following release and subsequently for as long as they need it'⁶⁴ and types of support include 'finding accommodation, establishing income, applying for National Insurance credits, registering with a General Practitioner (GP) and accessing appropriate healthcare and counseling (sic)'.⁶⁵ As a Citizen's Advice service, it is limited in its remit to the provision of advice only, a limitation that has been widely criticised.⁶⁶ This thesis will draw on clients' experiences of the service to explore to what extent this limitation impacts on the post-exoneration lives of the wrongfully convicted.

The work of the Miscarriages of Justice Support Service is now more pressing than ever, given the currently restrictive compensation scheme for those who have been wrongfully

⁶³ Based on interviews with MJSS caseworkers and Chief Executive; see also C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the Promise of a Resettlement Model' (2018) *Howard League Journal*; see also B Provan, 'Housing for Victims of Miscarriages of Justice: A report for Commonweal Housing' (2015) *LSE Housing and Communities* 12.

⁶⁴ RCJ Advice, 'Miscarriage of justice' <<http://www.rcjadvice.org.uk/miscarriages-of-justice/>> last accessed 30 September 2018.

⁶⁵ RCJ Advice, 'Miscarriage of justice' <<http://www.rcjadvice.org.uk/miscarriages-of-justice/>> last accessed 30 September 2018.

⁶⁶ Gathered from interviews, discussed further in Chapter Seven.

convicted. As noted earlier in this chapter, and discussed further in Chapter Eight, litigation is currently challenging the compatibility of this legislation with the right to presumption of innocence. This places more pressure on the efficacy of other modes of support for the wrongfully convicted, such as that provided by the MJSS.

Outside these few sanctioned means of support in England and Wales, the wrongfully convicted must turn to charities for any further assistance. However, charities that specifically help the wrongfully convicted are few and far between, the most notable being the Miscarriages of Justice Support Organisation (MOJO). Set up by one of the appellants in a high profile case of the 1980s, the charity supports those who are trying to have their conviction quashed or who are struggling to reintegrate upon quashing and release.⁶⁷ While some of the wrongfully convicted individuals I interviewed had received support from MOJO, it is based in Glasgow, and predominantly assists those located in Scotland (outside of the jurisdiction of the criminal justice system of England and Wales). As such, this thesis will focus more on support provided in England and Wales, such as the compensation scheme and the Miscarriages of Justice Support Service.

The scope of the thesis

To thoroughly and accurately explore how the needs of the wrongfully convicted are met in England and Wales, I first identify what those needs are, providing an empirical basis for the impacts of wrongful convictions in England and Wales. I consider what it is that makes wrongful convictions so traumatic, and building on the existing literature, conceptualise the experience as a trauma that destroys all forms of a person's identity. It is this, I argue, that makes it almost impossible for the wrongfully convicted to recover or rebuild their lives. This

⁶⁷ See RCJ Advice, 'Miscarriage of justice' <<http://www.rcjadvice.org.uk/miscarriages-of-justice/>> last accessed 30 September 2018; see also C Mole, 'Free to Go? Life on the Outside for the Wrongly Accused', *The Justice Gap* (April 2012) <http://www.thejusticegap.com/2012/04/free-to-go-life-on-the-outside-for-the-wrongly-accused/>> last accessed 18 June 2018.

conceptual framework can also inform the way they experience available forms of support in the aftermath of a wrongful conviction.

Chapter Two explores the relevant literature on wrongful convictions: from the potential causes of wrongful convictions, to the experiences and impacts of imprisonment, and the limited research on the aftermath of exoneration. The chapter argues that research to date has been heavily focused on experiences in the US, and few researchers have focused on experiences after a conviction is quashed. I argue that this body of work is also theoretically limited. In turn, the chapter demonstrates how this thesis will contribute to filling the empirical gap in experiences of the aftermath of wrongful convictions as well as providing theoretically rich research situated in England and Wales. It is amongst the first study of its kind to be conducted in this jurisdiction.

Chapter Three outlines the theoretical framework underpinning the thesis. It discusses how the limited existing literature on the post-exoneration experiences of wrongful conviction use the notion of trauma to describe its impact and the recovery process (or attempts to recover) and considers how this thesis will build on that approach. I explore further the notion of identity – including its construction and subsequent destruction by a traumatic experience – and consider whether this might be a useful lens through which to explore the experiences of the wrongfully convicted after their conviction is quashed by the Court of Appeal.

Given that self-narratives can be powerful indications of how identities are constructed and maintained, as explored in Chapter Four, this thesis uses ‘narrative criminology’ to investigate how wrongful convictions impact on identities and how the wrongfully convicted attempt to restore their identities. It pieces together the fragmented and incomplete stories of a number of people who were convicted in the Crown Court in England and Wales, had one or a number of failed appeals, and then finally had their convictions quashed either after a

referral from the Home Secretary (prior to 1997) or CCRC, or after an appeal out-of-time. Chapter Four explains how the methodology reveals not life histories, but a cross-section of experiences, of journeys in the aftermath of wrongful conviction. The narrators – the wrongfully convicted and their support providers – have provided insight as to what restorative attempts currently exist in England and Wales, what is helpful and what is not, and the hurdles that might stand in the way of efforts to assist them. Ultimately, their stories indicate whether it is ever possible to fully recover an identity damaged by the injustice of being wrongfully convicted for a crime you maintain you did not commit (and if so, what might that look like).

Chapter Five follows a typology of different journeys of those trying to recover in the aftermath of a wrongful conviction. It opens with a discussion of the way in which wrongful convictions can produce a ‘spoiled identity’, and the resulting stigma that extends far beyond the quashing of a conviction. The chapter explores the ways in which a wrongful conviction can destroy various aspects of their identity, and the ways in which that can manifest in post-exoneration life.

Chapters Six, Seven and Eight explore the impacts of wrongful convictions on different facets of a person’s identity and the efforts to try to repair those harms. These include the harm done to the emotional self, financial self and other more practical aspects of a person’s life.

In Chapter Six I identify the emotional impacts of wrongful convictions - namely, the psychological harms endured - and demonstrate how wrongful convictions can be a trauma to the self. I then consider current attempts to address these emotional needs in England and Wales. I discuss the failings of the mental health system and the barriers faced in providing psychological or psychiatric support to this specific population. I argue that understanding the

severe impact that wrongful convictions can have on the convicted person's sense of self will better inform their post-exoneration emotional needs. These impacts must be adequately addressed to help the wrongfully convicted try to repair some of the harm caused by this traumatic experience.

Chapter Seven explores the struggles of practical integration faced by the wrongfully convicted once their conviction is quashed and they are released from prison. It includes the struggles of finding somewhere to live, the difficulty of obtaining employment, having to apply for social security benefits, and other practical challenges, such as dealing with changes in technology or opening a bank account. I then explore the current support mechanisms in place that address these practical needs, such as those provided by the Miscarriages of Justice Support Service. In turn, I consider the barriers faced by those service providers and the effectiveness of such support.

Chapter Eight focuses on the financial needs and other impacts of wrongful convictions and the mechanisms available to help address those needs. It discusses the way in which compensation is applied for and provided, including civil claim settlements and the statutory compensation scheme (for which eligibility has become increasingly limited). I then explore the experiences of those who have received financial compensation and argue that, while compensation payments in their current form may assist some wrongfully convicted people with their financial and material needs, the way it is provided can also have negative impacts on post-exoneration identity transition.

The concluding chapter reflects on the evidence gathered on the efficacy of post-exoneration support provision in England and Wales. Finally, I look ahead: at how my empirical data may be used for reform, and what further research might be necessary to best address the needs of the wrongfully convicted in England and Wales.

In summary, this thesis will provide a robust empirical and theoretical analysis of the assault to identity caused by the trauma of wrongful convictions in England and Wales, of the emotional and practical needs of the wrongfully convicted, and – in light of that evidence - the efficacy of current service provisions in meeting these needs. It aims to use the lived experiences of the wrongfully convicted to consider when, if ever, a person who is wrongfully convicted in England and Wales can be ‘truly and publicly exonerated’.

CHAPTER TWO: THE HARMS OF WRONGFUL CONVICTION

Introduction

From the lived experiences of wrongful imprisonment to the challenges of post-release life, this chapter maps the extant literature that has so far demonstrated the considerable and debilitating harms caused by wrongful convictions. Initially these harms are manifested through the ‘pains of imprisonment’, similar to the experiences of prisoners whose convictions are not overturned but exacerbated by the added stressors of maintaining innocence. A body of literature, largely produced in the US, further explores the specific impacts of wrongful convictions beyond imprisonment on post-release life.

Post-exoneration research to date has been dominated by a narrative methodological approach⁶⁸ (described further in Chapters Three and Four) and is largely produced in the US. Outside the US, there is little ‘local’ empirical research on the struggles faced by the wrongfully convicted once their convictions are overturned. However, research that does exist, both in England and Wales and the US, have conceptualised a wrongful conviction as a traumatic experience. This chapter will end with a brief discussion of this framework that sets the scene for the theoretical literature reviewed in the next chapter.

Institutionalised harms: the pains of imprisonment

Enduring a wrongful conviction for a serious indictable offence will typically involve time spent in prison, and maintaining innocence does not mean the harms of institutionalisation are not prevalent; in fact, they can be worse. Research on the experiences and traumatic effects

⁶⁸ M Zalman, ‘Official’s estimates of the incidence of ‘actual innocent’ convictions’ (2008) *Justice Quarterly* 25(1) 77.

of imprisonment has so far benefited from rich sociological and criminological engagement. This can be found in the works of Sykes⁶⁹ and Goffman⁷⁰ and has continued in more contemporary research in England and Wales, such as that conducted by Liebling⁷¹ and Crewe.⁷²

The nature and impact of imprisonment in most jurisdictions including England and Wales has changed little since the work of Sykes and Goffman. Prison remains rife with practices, conditions and routines which induce feelings of hopelessness and apathy in prisoners.⁷³ Prisoners are in a constant state of negotiating 'power relations' with other prisoners, the prison regime and the State.⁷⁴ The environment can have adverse impacts on

⁶⁹A Liebling and S Maruna summarise Sykes' 'pains of imprisonment' as 'loss of self-perception, self-worth and identity'. He characterised the prison experience as a loss of liberty, deprivation of goods and services, frustration of sexual desire, deprivation of autonomy and deprivation of security. See A Liebling and S Maruna (eds.), *The Effects of Imprisonment* (Willan Publishing, 2006) 5. See also G Sykes, 'The Pains of Imprisonment' in *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press, 1958).

⁷⁰ Goffman terms isolating environments like prisons 'total institutions', which both literally and figuratively strip away each inmate's former identity and force them to take on the institutional identity, through a process he calls 'mortification'. See E Goffman, 'On the Characteristics of Total Institutions' in E Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books, 1961).

⁷¹ For example: A Liebling, 'Moral performance, inhuman and degrading treatment, and prison pain' (2011) *Punishment and Society*, 13(5) 530-550; A Liebling and S Maruna (eds.) *The Effects of Imprisonment* (Willan Publishing, 2006); A Liebling, 'Prisons and their Moral Performance: A Study of Values, Quality and Prison Life' in *Clarendon Studies in Criminology* (Oxford University Press, 2006); A Liebling, B Crewe and S Hulley, 'Conceptualising and Measuring the Quality of Prison Life' in D. Gadd, S. Karstedt and S. F. Messner (eds.) *The Sage Handbook of Criminological Research Methods* (SAGE Publications, 2012).

⁷² For example: B Crewe and J Bennett (eds.) *The Prisoner* (Routledge, 2012); B Crewe, *The Prisoner Society: Power, Adaptation and Social Life in an English Prison* (Oxford University Press, 2009); B Crewe, 'Inside the belly of the beast: understanding and conceptualising the experience of imprisonment' (2015) in H Tubex and A Eriksson (eds.) *The International Journal for Crime, Justice and Social Democracy* 4(1), 50-65; B Crewe, A Liebling and S Hulley, 'Heavy-light, absent-present: Re-thinking the 'weight' of imprisonment' (2014) *British Journal of Sociology* 65 (3) 387.

⁷³ R Sapsford, *Life Sentence Prisoners: Reaction, Response and Change* (Open University, 1983) 65; see also L Taylor and S Cohen, *Psychological Survival: The Experience of Long-Term Imprisonment* (Penguin, 1972); A Liebling and S Maruna, *The Effects of Imprisonment* (Willan, 2006).

⁷⁴ A central theme M Bosworth's work; see, for example, M Bosworth and E Carrabine, 'Reassessing resistance: Race, gender and sexuality in prison' (2001) *Punishment & Society* 3(4) 501.

prisoners' health⁷⁵ and can induce stigma,⁷⁶ stress, shame, reduced self-esteem and discrimination.⁷⁷ Physical health risks can result from unprotected sex or sharing of needles, which significantly increases the risk of prisoners contracting Hepatitis B or C.⁷⁸ Even if a prisoner can escape the shame of imprisonment, 'the socioeconomic consequences of incarceration are perhaps severe enough to undermine health.'⁷⁹ Liebling found that social isolation, removal from family and inadequate activity causes prisoners to be more likely to commit suicide than those outside of prison.⁸⁰

Many of the harms endured in prison such as 'fear, anxiety, loneliness, trauma, depression, injustice, powerlessness, violence and uncertainty'⁸¹ are 'hidden' in a culture of masculinity,⁸² masked by hard facades which can 'undermine coping strategies and abilities, especially coping flexibility.'⁸³ Often these pains are suffered in silence⁸⁴ but are manifested

⁷⁵ See M Massoglia, 'Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illness' (2008) *Journal of Health and Social Behaviour* 49 (3) 56 which found that incarcerated individuals were more likely to suffer disease or illness.

⁷⁶ Clear, Rose and Ryder found that one of the main consequences of incarceration on a community in Florida (with a high rate of incarceration) was stigma; even in a high-incarceration neighbourhood, being sent to prison lowered your social status and was a shameful event not to be discussed. See T Clear, D Rose, J Ryder 'Incarceration and the Community: The Problem of Removing and Returning Offenders' *Crime and Delinquency* (2001) 47(3) 335. Clow and Leach also found that wrongfully convicted individuals were stereotyped more negatively than anyone who had not been convicted. See K Clow and A Leach, 'Stigma and wrongful conviction: all exonerees are not perceived equal' (2015) *Psychology, Crime and Law* 21(2) 172.

⁷⁷ J Schnittker and A John, 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) *Journal of Health and Social Behaviour* 48(2) 127.

⁷⁸ See, for example, A Taylor, A Munro, E Allen, K Dunleavy, M Hickman, S Cameron and L Miller, 'Hepatitis C Prevalence and Incidence amongst Scottish Prisoners and Staff Views of its Management' (2012) <www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName...1416 > (last accessed 30 September 2018).

⁷⁹ J Schnittker and A John, 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) *Journal of Health and Social Behaviour* 48(2) 127.

⁸⁰ A Liebling, *Suicides in Prison* (Oxford University Press, 1992).

⁸¹ A Liebling and S Maruna (eds.) *The Effects of Imprisonment* (Willan Publishing, 2006).

⁸² B Crewe, 'Not Looking Hard Enough: Masculinity, Emotion, and Prison Research' (2014) *Qualitative Inquiry* 20(4) 392.

⁸³ J Schnittker and A John, 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) *Journal of Health and Social Behaviour* 48(2) 127.

⁸⁴ A Liebling and S Maruna (eds.) *The Effects of Imprisonment* (Willan Publishing, 2006) 3.

through hatred,⁸⁵ resentment⁸⁶ and violence.⁸⁷ Crewe used the concept of ‘weight’ to describe the ‘almost palpable burden of psychological invasiveness and oppression’⁸⁸ that prison can impose upon its inhabitants. Gallo and Ruggiero concluded that aggression and depression were the two most common behavioural types in prison, and describe prisons as ‘worlds of de-communication’.⁸⁹

The violence of prison life has led to social distancing, emotional aloofness, and a lack of positive social skills. The lack of opportunity and alienation from the outside world has resulted in low self-esteem.⁹⁰

The institution can be psychologically damaging as the prisoner suffers from a loss of agency, damage to their sexual orientation, deprivation of privacy, economic exploitation and a general degradation of the self.⁹¹ As Goffman has described, institutionalisation can be a form of depersonalising a person’s former identity, and transitioning into new ones through a process of ‘mortification’: including ‘abasements, degradations, humiliations and profanations of self’.⁹² This is also described by Sykes, who referred to the stripping away of identity as one of the ‘pains of imprisonment’.⁹³ Imprisonment can also result in ‘secondary stressors’ which include traumatic events (such as rape or assault whilst inside, the loss of family members

⁸⁵ T Parker, *The Frying Pan: A Prison and the Prisoners* (Hutchinson Press, 1970).

⁸⁶ J M Barbalet, *Emotion, Social Theory, and Social Structure* (Cambridge University Press, 1998).

⁸⁷ F de Zulueta, *From Pain to Violence: The Traumatic Roots of Destructiveness* (Whurr Publishers, 1993).

⁸⁸ B Crewe, A Liebling and S Hulley, 'Heavy-light, absent-present: Re-thinking the 'weight' of imprisonment' (2014) *British Journal of Sociology* 65 (3) 388.

⁸⁹ E Gallo and V Ruggiero, 'Immaterial Prison: Custody as a Factory for the Manufacture of Handicaps' (1991) *International Journal of the Sociology of Law* 19(1) 273.

⁹⁰ Innocence Project., 'Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation' (1 December 2009) <<https://csgjustivcecenter.org/nrrc/publications/making-up-for-lost-time-what-the-wrongfully-convicted-endure-and-how-to-provide-fair-compensation>> last accessed 2 October 2018.

⁹¹ J Irwin and B Owen, 'Harm and the Contemporary Prison' A Liebling and S Maruna (eds.), *The Effects of Imprisonment* (Willan Publishing, 2006) 60.

⁹² E Goffman, *Asylums: Essays on the social situation of mental patients and other inmates* (Anchor Books, 1961).

⁹³ G Sykes, *The society of captives: A study of a maximum-security prison* (Princeton University Press, 1958).

including divorce or loss of children, job loss and financial strain).⁹⁴ It can create ‘shame and anger within families’⁹⁵ and undermine trust between prisoners and their friends on the outside.⁹⁶

An added stressor: maintaining innocence in prison

While imprisonment itself has been well documented amongst scholars as a debilitating experience and a ‘massive assault’⁹⁷ on those who endure it, maintaining innocence in prison is an added stressor, but has been the subject of far less research. In contrast to rightfully convicted offenders, where ‘the events of arrest and trial are more likely to be anticipated and expected’,⁹⁸ the wrongfully convicted are shocked by unexpected events and trauma they were not prepared for. Institutionalisation and the ‘pains of imprisonment’ may be aggravated by the effects of maintaining innocence whilst in prison, enduring repeated rejection (of appeals and applications for parole, for example) and dealing with the uncertainty of what has happened or how their case will progress. The impact of being wrongfully convicted in prison has not formed a large part of the prison literature.⁹⁹ Instead, it is generally only included in wrongful conviction research, where the journey is mapped from the point of conviction through to exoneration.

⁹⁴ For example, J Hagan and R Dinovitzer, Collateral Consequences of Imprisonment for Children, Communities, and Prisoners’ (1991) *Crime and Justice* 26(1).

⁹⁵ J Schnittker, and A John, ‘Enduring Stigma: The Long-Term Effects of Incarceration on Health’ (2007) *Journal of Health and Social Behaviour* 48(2) 117; see also J Hagan and R Dinovitzer, Collateral Consequences of Imprisonment for Children, Communities, and Prisoners’ (1991) *Crime and Justice* 26(1).

⁹⁶ D Braman, *Doing Time on the Outside: Incarceration and Family Life in Urban America* (University of Michigan Press, 2004).

⁹⁷ P Berger, *Invitation to sociology: A humanistic perspective* (Doubleday Anchor, 1963).

⁹⁸ A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

⁹⁹ Note, however, E Burt *The Prison Experience and Coping Mechanisms of Prisoners Claiming Wrongful Conviction* (unpublished thesis, forthcoming).

In one of the only comprehensive studies into the effects of wrongful conviction in the UK, Grounds considered the impact of incarceration on the suffering of 18 exonerees, 16 of whom were in the UK (discussed further below). Many reported teaching themselves to be aggressive and intimidating as self-defence while in prison, which posed problems with family and friends once they were released. Most men had remained in high security prisons for most or all of their incarceration. Two of the men psychologically assessed by Grounds described instigating 'debilitating hunger strikes' to protest their innocence.¹⁰⁰

Generally, research has demonstrated that the wrongfully convicted are not prepared for release in the same way as rightfully convicted prisoners, as by maintaining their innocence they are not eligible for - or refuse to complete - certain programs which might progress their categorisation and increase their chance of parole. If their conviction is overturned, they are often released quickly with little notice. As Shore notes:

they will face all the problems of a long period of institutionalization with none of the advantages of undergoing a phased programme of pre-release as would apply to a long-term prisoner moving towards a planned release date.¹⁰¹

Even a referral by the Criminal Cases Review Commission to the Court of Appeal will not trigger any preparation for potential release.¹⁰²

Many wrongfully convicted prisoners refuse to attend behavioural or treatment programs that focus on accepting responsibility for the crime, simply because they have no crime to admit to and will not accept responsibility for another's actions: 'Sorry! I'm not guilty! I'm not denying. I'm just telling you the truth.'¹⁰³ They also hold on to the hope that they will

¹⁰⁰ A Grounds, 'Understanding the Effects of Wrongful Imprisonment' (2005) *Crime and Justice* 32(1) 27.

¹⁰¹ P Shore, 'Resettlement Needs of the Wrongfully Convicted' (2010) *Journal of Forensic Psychiatry* 12(3) 488.

¹⁰² Ibid. 488.

¹⁰³ K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 152.

be exonerated at some point in the future. Typically, prison staff will interpret this refusal as a lack of remorse.¹⁰⁴ In Jenkins' study of wrongful conviction experiences in the UK, participants explained that their insistence on their innocence meant they were refused better prison jobs, given fewer prison visits and allowed less recreational or exercise time. They felt they were being 'bullied' by prison staff because they would not adopt the criminal label.¹⁰⁵

While the National Offender Management Service (NOMS) maintain that a prisoner's denial of their offence should not automatically prevent them from accessing the 'incentive and earned privileges scheme' (IEPS) including the 'enhanced regime',¹⁰⁶ its criteria makes it almost impossible for prisoners who maintain innocence. This may mean that prisoners who maintain innocence are unable to have increased prison visits, earn higher levels of pay, have more time outside of their cell or receive bonuses such as access to personal cash or an in-cell television.¹⁰⁷ The enhanced regime requires a prisoner to demonstrate 'that they are fully committed to their rehabilitation, seeking to reduce their risk of reoffending' which includes engaging with offending behaviour courses. Admitting guilt is a pre-requisite of prison programs such as the sex offender treatment programme (SOTP), controlling anger and learning to manage it (CALM), and the cognitive self-change programme (CSCP), the completion of which are also very helpful – if not mandatory – for successful release on parole.¹⁰⁸ Failing to attend these courses is seen as a failure to complete part of their sentence

¹⁰⁴ R Weisman, 'Showing Remorse: Reflections on the Gap between Expression and Attribution in Cases of Wrongful Conviction' (2004) *Canadian Journal of Criminology and Criminal Justice* 46 (127).

¹⁰⁵ S Jenkins, 'Miscarriages of Justice and the Discourse of Innocence: Perspectives from Appellants, Campaigners, Journalists and Legal Practitioners' (2013) *Journal of Law and Society* 40(3) 343.

¹⁰⁶ National Offender Management Service, 'Incentives and Earned Privileges' PSI 30/2013 (last updated 24 August 2015) para 6.10.

¹⁰⁷ *Ibid.* para 9.5.

¹⁰⁸ *Ibid.* para 4.16.

planning, and commit to rehabilitation.¹⁰⁹ Repeated attempts to challenge the legal validity of this – particularly as it denies those maintaining innocence the right to family life under Article 8 of the European Convention on Human Rights – have been denied.¹¹⁰ As a result, prisoners maintaining innocence are often kept in maximum facilities for longer, despite having an otherwise perfect behavioural record in prison, and may be refused parole as they are perceived as a greater risk to society.¹¹¹

Common law denotes that maintaining innocence should not be ‘an automatic bar to release’ and the case of *Oyston*¹¹² determined it illegal for parole to be refused solely based on the ground that the prisoner denies guilt. However, some have argued that political, public and financial pressure on the Parole Board and Prison Service to be ‘risk averse’ has impacted on their approach to risk assessment¹¹³ and those maintaining innocence will likely not be released on parole as failure to complete prison programs is perceived by the Parole Board to increase risk of post-release offending. According to Evans, only two prisoners have ever been

¹⁰⁹ M Evans, ‘The dilemma of maintaining innocence’ (2012) *Justice Gap: Wrongly Accused?* 63 <http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf> last accessed 15 April 2016.

¹¹⁰ In cases such as *R (on the application of Green) v Governor of Risley Prison* [2004] EWHC 596 (Admin), Prison LR 376. See also M Evans, ‘The dilemma of maintaining innocence’ (2012) *Justice Gap: Wrongly Accused?* 63 <http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf> last accessed 15 April 2016.

¹¹¹ K Campbell and M Denov, ‘The Burden of Innocence: Coping with a Wrongful Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 139.

¹¹² *R v Parole Board for England and Wales ex p Oyston* [2000] Prison LR 45.

¹¹³ For example A Hill, ‘Many offenders in jail too long, says parole chief’ (31 March 2010) *The Guardian* <<http://www.theguardian.com/uk/2010/mar/31/parole-chief-warns-overreaction>> last accessed 2 October 2018; E James, ‘Feeling the pressure on prisoner release’ (24 September 2014) *The Guardian* <<https://www.theguardian.com/society/2014/sep/24/david-calvert-smith-parole-board-head-under-prisoner-release-pressure>> last accessed 2 October 2018. This pressure has increased in recent years, with high profile cases such as that of the ‘Worboys case’: *R (on the application of DSD) v Parole Board of England and Wales* [2018] EWHC 694 (Admin), [2018] All ER 417 (DC). For discussion of this case and its impact on the parole board, see J Roberts ‘The Parole Board and the Worboys case’ [2018] *Criminal Law Review* 10 808-828.

released on parole by the Parole Board while maintaining innocence: Susan May in 2005 and John Taft in 2011.¹¹⁴

The right to an oral hearing before the Parole Board was also removed via the Parole Board (Amendments) Rules 2009; those maintaining innocence are now unable to explain their situation directly to the Board and on paper can appear unremorseful and uncooperative.¹¹⁵ The Howard League for Penal Reform estimated that in February 2015 approximately 3,620 prisoners in England and Wales remain in prison despite their tariff date having expired. The primary reason given is that they have not ‘come to terms with their crime’, which would likely include many prisoners maintaining innocence.¹¹⁶

In summary, the prison regime is so focused on addressing offending behaviour that it leaves little room for those maintaining innocence to prepare for release without admitting to an offence they maintain they did not commit. This can impede progress through prison categorisation towards release and means those maintaining innocence are generally not eligible for parole.¹¹⁷ If a prisoner maintaining innocence is successful in overturning their conviction, either through the ‘normal’ appellate process or after application to the Criminal Cases Review Commission, they are often released from prison having endured the pains of imprisonment, exacerbated by the pains of maintaining innocence in prison, without any preparation for release.

¹¹⁴ M Evans, ‘The dilemma of maintaining innocence’ (2012) *Justice Gap: Wrongly Accused?* 63 <http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf> last accessed 15 April 2016.

¹¹⁵ Ibid.

¹¹⁶ B Woffinden, ‘Institutionalising Miscarriages of Justice’ (2012) *Justice Gap Wrongly Accused?* 63 <http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf> last accessed 15 April 2016.

¹¹⁷ P Shore, ‘Resettlement Needs of the Wrongfully Convicted’ (2010) *Journal of Forensic Psychiatry* 12(3) p.488; see also M Evans, ‘The dilemma of maintaining innocence’ (2012) *Justice Gap: Wrongly Accused?* 62 <http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf> last accessed 15 April 2016.

Never-ending harms: the post-exoneration experience

The pains and losses suffered in prison do not cease with the end of the sentence, but continue to haunt the prisoner after they are released and attempt to reintegrate into the outside world.¹¹⁸ Upon release, for example, prison reduces employment opportunities¹¹⁹ not only by loss of time (reducing experience in the workforce) but with difficulties in obtaining and maintaining jobs. The mere loss of time combined with the fast-paced advancements of technology can mean that by the time of release, the person is unskilled in an area they may have been qualified in prior to their prison sentence. This is a result of public stigma and a cautiousness among many employees about hiring people with a criminal record¹²⁰ as well as legislation that prohibits individuals with specific types of criminal records from working in certain occupations,¹²¹ particularly when accused of sexual offences.¹²² In the event they are hired, the psychological and practical effects of imprisonment can impede an ex-prisoner's ability to maintain employment.¹²³ Post-release effects of prison are not necessarily dependent on the length of incarceration and Schnittker and John found that 'any contact with prison is generally more important than the amount of contact'.¹²⁴

¹¹⁸ R Jamieson and A Grounds, 'Release and adjustment: perspectives from studies of wrongly convicted and politically motivated prisoners' (2005) in A Lieblich and S Maruna (eds.) *The Effects of Imprisonment* (Willan Publishing, 2005) 54.

¹¹⁹ R Apel and G Sweeten, 'The Impact of Incarceration on Employment during the transition to Adulthood' (2010) *Social Problems* 57(3); see also B Western (2002) 'The Impact of Incarceration on Wage Mobility and Inequality', *American Sociological Review* 67(4).

¹²⁰ Criminal records suggest unreliability and thus employers are unwilling to hire ex-prisoners: see D Pager, 'The Mark of a Criminal Record' (2003) *American Journal of Sociology* 108(5); see also J Schnittker and A John, 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) *Journal of Health and Social Behaviour* 48(2) 117. However, there are a few notable exceptions to this; for example, the Clink Charity and Timpsons.

¹²¹ Regulated in the United Kingdom by the Disclosure and Barring Service.

¹²² R Burnett, C Hoyle and N Speechley, 'The Context and Impact of being Wrongly Accused of Abuse in Occupations of Trust' (2007) *The Howard League Journal* 56(2).

¹²³ D Pager, 'The Mark of a Criminal Record' (2003) *American Journal of Sociology* 108(5).

¹²⁴ J Schnittker and A John 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) *Journal of Health and Social Behaviour* 48(2) 115.

As with the ‘pains of imprisonment’, research has so far indicated that the harms instigated by wrongful conviction do not end upon release. Even after a conviction is overturned by the Court of Appeal, exonerees face many re-integration barriers and post-trauma adversity, not only immediately after release but often for the rest of their lives. However, compared to the extensive literature on prison experiences and the reintegration of ex-offenders, there is comparatively very little empirical research that explores the ‘aftermath’ experiences of the wrongfully convicted.

The sparsity of post-exoneration empirical research is particularly evident in the UK, where the oft-cited work of Grounds, noted above, stands beside just two other small studies. Of the 18 exonerees for whom Grounds conducted psychiatric assessments, 14 were classified as having ‘enduring personality change’, 12 met the criteria for Post-Traumatic Stress Disorder (PTSD), 10 suffered from depressive disorders, five had symptoms of a panic disorder, four had paranoia and three were alcohol or drug dependent, usually as a result of social isolation as self-medicating or attempting to reduce their symptoms of depression and PTSD.¹²⁵ Grounds concluded that ‘in all cases the psychiatric conditions were directly attributable to the wrongful arrests, convictions and imprisonment.’¹²⁶

Upon release, the exonerated men in Grounds’ study struggled with everyday life experiences, finding it difficult to cross busy roads or enter shops. They did not know ‘how to work central heating, TV remote controls, videos, credit cards or cashpoints at banks’¹²⁷ and were ashamed to ask anyone for assistance. Financial struggles were aggravated by inadequate

¹²⁵ A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

¹²⁶ *Ibid.* 169.

¹²⁷ *Ibid.* 171.

‘money management’ education in prisons and many exonerees found their reckless spending sent them into a spiral of insurmountable debt.¹²⁸

Grounds reported an intense feeling of loss among exonerees. Many had lost family members and friends while in prison and were unable to attend their funerals or did so handcuffed and in shackles. Some lost wives or partners and children upon release as the burden of their experience, or the mere passing of time, meant they were no longer able to connect with their loved ones. Many spoke of a ‘profound estrangement, the loss of a closeness that never returned.’¹²⁹ Exonerees not only lost people but also lost time; while ‘frozen’ in time during incarceration, those around them had grown up and moved on. Upon release, many felt as if they were the same age as when they entered prison, and attempted to buy clothes or socialise with others of that age. This only intensified feelings of isolation and detachment. Many treated their children as if they were still young, unable to adjust to the needs of their older, sometimes adult and often independent, children. Grounds likened this familial estrangement to the accounts provided by the children of soldiers of war in the 1940s, when their fathers returned home. These experiences highlighted similar themes of disengagement, loss and personality change, particularly as they returned with ‘an unrealistic, idealised view of family’¹³⁰ that was met with disappointment.

Jenkins, himself a victim of a wrongful conviction, conducted a study involving participant observation at relevant advocacy events and interviews with affected parties to wrongful conviction in the UK, 27 of whom had their convictions overturned by the Court of

¹²⁸ Ibid. 171.

¹²⁹ Ibid. 173.

¹³⁰ Ibid. 175.

Appeal.¹³¹ He found similar consequences of trauma and loss which continued upon release from prison. Participants in his study described having nightmares or flashbacks about particular traumatic events during their investigation or trial, such as police questioning. Some said that although they now devoted their lives to helping others in the same situation, they were unable to set foot in a courtroom and believed they will be unable to ever again.¹³²

Recently, researchers from Oxford University conducted a study into the effects of being wrongfully accused of sexual abuse when in a position of trust (such as teachers and care home workers), in light of a number of recent police operations focusing on historic sexual abuse allegations in care homes.¹³³ Through narrative accounts of 30 members of the FACT ('Falsely Accused Carers and Teachers') organisation who had been accused of abuse and either not been charged, charged but acquitted, or had convictions overturned, it aimed to give a voice to those suffering the harms caused by false allegations. Just two of the participants managed to maintain their employment; most were suspended and even dismissed after the allegation was made.¹³⁴ This was generally a result of enhanced Disclosure and Barring Service requirements which disclose any report of abuse made to the police and may prohibit the accused from obtaining jobs that require working with children, even if the report did not result in a conviction.¹³⁵ The participants also reported significant financial burdens from legal fees - some up to 100,000 pounds¹³⁶ - as well as damages to reputation and experiences of

¹³¹ S Jenkins, 'Families at war? Relationships between 'survivors' of wrongful conviction and 'survivors' of serious crime' (2014) *International Review of Victimology* 20(2) 246.

¹³² *Ibid.* 247.

¹³³ R Burnett, C Hoyle and N Speechley, 'The Context and Impact of being Wrongly Accused of Abuse in Occupations of Trust' (2017) *The Howard League Journal* 56(2).

¹³⁴ *Ibid.* 26.

¹³⁵ *Ibid.* 26-27.

¹³⁶ *Ibid.* 30.

stigma, personality change, loss of self-confidence, depression (in some instances suicidal thoughts), paranoia, anxiety and mistrust.¹³⁷

Apart from these few small studies, post-exoneration experiences in the UK can only be gleaned from biographical or auto-biographical works,¹³⁸ newspaper articles¹³⁹ or excerpts in reports of government and non-government agencies, such as MOJO and Commonweal Housing. Those that do identify some of the harms caused by wrongful convictions do not consider how those harms might be repaired in England and Wales, nor explore what is currently available to assist the wrongfully convicted upon exoneration. This thesis aims to bolster the so far limited empirical research on the harms of wrongful conviction located in the UK, focusing on England and Wales and considering how the wrongfully convicted might attempt to restore their lives.

This void in post-exoneration research is, however, not necessarily reflected in the US. There, wrongful conviction research and discourse has surged over the last twenty years, with particular concern to individuals subject to the death penalty. Empirical research on the potential causes¹⁴⁰ as well as the effects of wrongful conviction in the US is well established. The US has seen an increase in Innocence Projects and influential campaigning which has led to the introduction of post-exoneration support legislation and the right to post-conviction

¹³⁷ Ibid. 31-48.

¹³⁸ For example, P Armstrong, *Life After Life: A Guildford Memoir* (Blake, 2017); R O'Rawe, *In the Name of the Son: The Gerry Conlon Story* (Merrion Press, 2017); P Hill, *Forever Lost, Forever Gone* (Bloomsbury Publishing, 1996).

¹³⁹ For example, P Walker, 'Crackheads are fine. It's Asda that scares me' *The Guardian* (9 June 2009) <<http://www.theguardian.com/uk/2009/jun/09/paul-blackburn-wrongly-convicted>> last accessed 2 October 2018, G Topham, 'Wrongly jailed man Victor Nealon spends first night as free man on streets', *The Guardian* (16 December 2013) <<https://www.theguardian.com/uk-news/2013/dec/16/wrongly-jailed-victor-nealon-free-streets-postman>> last accessed 2 October 2018.

¹⁴⁰ See R Huff and M Killias (eds.) *Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems* (Routledge, 2013).

forensic testing.¹⁴¹ Unlike England and Wales, many states of the US have generous compensation schemes available to the wrongfully convicted,¹⁴² and comprehensive post-exoneration support programs.¹⁴³ A number of studies recount stories of wrongful conviction in ‘big-picture’ style¹⁴⁴ which, although suffering a lack of theoretical engagement, effectively demonstrate the debilitating harms endured after an overturned conviction.

Wildeman, Costelloe and Schehr, for example, assessed the psychological impact of wrongful convictions based on interviews with 55 exonerees in the US. Interviews were conducted by the Life After Exoneration Project at the Innocence Network conferences in 2002 and 2003.¹⁴⁵ Results indicated that 22 percent of interviewed exonerees suffered from PTSD, anxiety, depression, or a combination of all three – a similar finding to that in Grounds’ study.¹⁴⁶ A survey of 60 exonerees conducted by Vollen and Eggers showed significant levels of PTSD, anxiety and depression.¹⁴⁷ Westervelt and Cook also conducted a study of the post-exoneration experience, based on the narratives of 18 individuals in the US who had spent time on death row having been wrongfully convicted.¹⁴⁸ Drawing mostly on literature in trauma and recovery (discussed further at the end of this chapter), the study mapped their journey towards a new life, exploring the struggles faced on release. These exonerees experienced both

¹⁴¹ The US has cemented the right to post-conviction DNA testing, which is not yet provided in the United Kingdom.

¹⁴² Texas, for example, has one of the most generous compensation schemes.

¹⁴³ Such as the Life After Exoneration Program in California. See L Vollen and D Eggers, *Surviving Injustice: America’s Wrongfully Convicted and Exonerated* (Verso, 2017).

¹⁴⁴ M Zalman, ‘Official’s estimates of the incidence of ‘actual innocent’ convictions’ (2008) *Justice Quarterly* 25(1) 77.

¹⁴⁵ J Wildeman, M Costelloe and R Schehr, ‘Experiencing Wrongful and Unlawful Conviction’ (2011) *Journal of Reoffender Rehabilitation* 50(7) 416.

¹⁴⁶ *Ibid.* 425.

¹⁴⁷ L Vollen and D Eggers, *Surviving Injustice: America’s Wrongfully Convicted and Exonerated* (Verso, 2017).

¹⁴⁸ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012).

short term and long-term struggles.¹⁴⁹ Immediately upon release, most had nowhere to go (with no family left) and some were forced to stay with their lawyers for their first few nights of freedom. There was little or no reintegration planning as only a few exonerees knew when they were likely to be released (with some finding out just hours before). Even if they had made plans, it was much more difficult to carry out those plans on release than anticipated whilst in prison. Financial resources were limited, making it difficult to rent a home, and many did not anticipate the psychological effects that would frustrate their efforts at reintegrating back into society.¹⁵⁰

The practical adjustments to release have been similarly documented across most American studies, including the challenges of familiarising themselves with financial responsibilities, grocery shopping, methods of payment, mobile phones, CDs, even zippers.¹⁵¹ Exonerees experienced a wide range of intense emotions, such as anger, depression, disorientation, emptiness, and detachment.¹⁵² Weigand, who drew on her own professional experience working with exonerees,¹⁵³ wrote of similar challenges and noted how the emotional effects were often episodic and triggered by certain post-release experiences, sometimes resulting in panic attacks or unexpected rage. One exoneree in Weigand's study, for example, was participating in a panel at one of the Innocence Network events which consisted mainly of lawyers. Listening to the legalese from the other panellists discussing

¹⁴⁹ Ibid. 10.

¹⁵⁰ Ibid. 58-59.

¹⁵¹ Ibid. 64-65.

¹⁵² Found in studies such as J Wildeman, M Costelloe and R Schehr, 'Experiencing Wrongful and Unlawful Conviction' (2011) *Journal of Reoffender Rehabilitation* 50(7) 411; S Westervelt and K Cook, *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012); H Weigand, 'Rebuilding a Life: The Wrongly Convicted and Exonerated' (2009) *Public Interest Law Journal* 18(1) 427.

¹⁵³ H Weigand, 'Rebuilding a Life: The Wrongly Convicted and Exonerated' (2009) *Public Interest Law Journal* 18(1) 427.

wrongful conviction cases made the exoneree increasingly anxious and agitated, as it triggered memories of his own legal case and he felt again as if he was ‘on trial’.¹⁵⁴

While undertaking employment after release can relieve some psychological suffering, the literature has also demonstrated that obtaining and maintaining a job was inherently difficult for exonerees.¹⁵⁵ With criminal records not automatically expunged, many will be impeded in their search for employment.¹⁵⁶ Petersilia’s national US survey of 600 businesses found that most would not hire someone with a criminal record for fear they will commit another crime.¹⁵⁷ Even if they did not have a criminal record, they still had to explain the gap in employment on their Curriculum Vitae (CV) to potential employers. Many are unable to provide documentation to demonstrate wrongful conviction and subsequent wrongful imprisonment.¹⁵⁸ Those who do obtain employment have immense difficulty with trust and, coupled with adjusting to non-prison life, may be unable to maintain that employment.¹⁵⁹

This perpetuates into a vicious cycle: without employment, there are no finances, without finances, they are unable to obtain a lawyer to assist with expungement or become reintegrated into the community by being able to obtain a home and other essentials for daily life.¹⁶⁰

¹⁵⁴ Ibid. 433.

¹⁵⁵ B Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011).

¹⁵⁶ Ibid. See also J Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (Oxford University Press, 2003); R Giguere and L Dundes, ‘Help Wanted: A Survey of Employer Concerns about Hiring Ex-Convicts’ (2002) *Criminal Justice Policy Review* 13(4); J Krienert, ‘Bridging the Gap Between Prison and Community Employment: An Initial Assessment of Current Information’ (2005) *Criminal Justice Studies* 18(4) and K Clow and A Leach, ‘After Innocence: Perceptions of individuals who have been wrongfully convicted’ (2015) *Legal and Criminological Psychology* 20(1) 150.

¹⁵⁷ J Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (Oxford University Press, 2003).

¹⁵⁸ B Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011).

¹⁵⁹ Ibid.

¹⁶⁰ S Westervelt and K Cook *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012) 66-67.

Similar to those in Grounds' study, exonerees interviewed by Westervelt and Cook suffered from poor health, mentally and physically, often a result of or exacerbated by the stress of their experience. Obtaining health insurance was near impossible, as access relies heavily on employment status which, as they point out, 'is unstable and limited.'¹⁶¹ They were also overwhelmed with feelings of loss, in many aspects of their lives. They suffered the loss of loved ones who had died while they were in prison,¹⁶² cell-mates who had been executed,¹⁶³ as well as the loss of time, relationships and a sense of security. Most were forced to 'freeze' and post-pone their grief as a coping mechanism whilst in prison, or became 'unable to resolve the loss because he or she is denied the typical cultural markers of death'¹⁶⁴ such as a funeral, grieving with loved ones or visiting the grave.

Most participants in Westervelt and Cook's study had intense feelings of mistrust, reflected in other research such as Oxford University's study of those falsely accused of abuse¹⁶⁵ and Campbell and Denov's study of five exonerees in Canada.¹⁶⁶ Generally, this mistrust was directed at what would be termed by the wrongfully convicted as 'the government' or 'the system' and focused heavily on betrayal, particularly if their case had involved misconduct by the prosecution and/or police. In Campbell and Denov's study, participants similarly described 'an increased intolerance of injustice and a desire for government acknowledgement of error and compensation for harm suffered'¹⁶⁷ which includes

¹⁶¹ Ibid. 70.

¹⁶² Ibid. 73.

¹⁶³ Ibid. 74.

¹⁶⁴ Ibid. 76.

¹⁶⁵ R Burnett, C Hoyle and N Speechley, 'The Context and Impact of being Wrongly Accused of Abuse in Occupations of Trust' (2007) *The Howard League Journal* 56(2).

¹⁶⁶ K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 139.

¹⁶⁷ Ibid. 154.

‘a profound cynicism and mistrust regarding the fairness and legitimacy of authority figures.’¹⁶⁸

Feelings of mistrust did not necessarily arise at the point of conviction but could also manifest after failures were revealed during reinvestigation.¹⁶⁹

For some, this distrust also extended to specific groups or types of people who reminded them of those who had betrayed them. One exoneree in Westervelt and Cook’s study revealed a now intense distrust of women, as his wrongful conviction was based on the false testimony of two women who claimed he had sexually assaulted them. As a result, he had lost trust in women and felt that this precluded any intimate relationships.¹⁷⁰

Experiences of stigma, trauma and isolation post-release were also shared amongst exonerees and their families in American studies. Clow and Leach, for example, noted that negative stereotypes attached to the wrongfully convicted more so than non-convicted individuals.¹⁷¹ Many wrongfully convicted people have described family support being essential for their survival and appreciated their family more as a result of the ordeal.¹⁷² However, this does not necessarily mitigate the difficulty of re-building those relationships, which is a long process where both the exoneree and their family are struggling to readjust. Both must try to cope with the experience individually while also trying to connect with each other.¹⁷³

¹⁶⁸ Ibid. 155.

¹⁶⁹ Ibid. 94.

¹⁷⁰ S Westervelt and K Cook *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012) 95.

¹⁷¹ K Clow and A Leach, ‘Stigma and wrongful conviction: all exonerees are not perceived equal’ (2015) *Psychology, Crime and Law* 21(2).

¹⁷² S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012) 87.

¹⁷³ Ibid. 88.

Wrongful conviction as a traumatic experience

The harms identified so far in the literature provide an evidence base for referring to a wrongful conviction as a ‘trauma’ that disrupts the life course. The impacts, including loss of social capital, psychological harm, stigma, and isolation, are all symptoms of this trauma.

Westervelt and Cook’s research reflected briefly on the trauma literature as a framework for considering the experiences of death row exonerees. They described wrongful conviction as a ‘trauma-inducing experience’ which requires identity to be restored, through managing stigma and ‘other assaults on identity associated with being a trauma survivor’.¹⁷⁴ The traumatic event is conceptualised as one that assaults an individual’s sense of self. The stigma that accompanies the criminal label, and assumptions of guilt, conflicts with the wrongfully convicted individual’s self-belief as an innocent person.¹⁷⁵ Westervelt and Cook describe this as a state of ‘liminality’, in which an exoneree is caught in limbo between the two identities of innocent and criminal.¹⁷⁶

Grounds also recognised that wrongful convictions are traumatic experiences, but this was an inevitable finding considering most of his wrongfully convicted interviewees showed signs of (or was diagnosed with) PTSD.¹⁷⁷ In almost all his cases, people who were wrongfully convicted were taken by surprise when they were arrested, and their subsequent experiences of arrest and custody seemed ‘unreal, like a nightmare from which they assumed they would wake up’. This, he noted, is distinct from ‘rightfully convicted offenders’, whose arrest and conviction is ‘more likely to be anticipated and expected’.¹⁷⁸ He analogises the trauma

¹⁷⁴ Ibid. 10, 170, 173.

¹⁷⁵ Ibid. 173.

¹⁷⁶ Ibid.

¹⁷⁷ A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 176-177.

¹⁷⁸ Ibid. 176.

experienced by the wrongfully convicted to that experienced by war veterans.¹⁷⁹ Jenkins similarly describes the ‘trauma of wrongful convictions’ that is also felt by the families of those who are wrongfully convicted (in what he terms ‘secondary trauma’ and ‘vicarious trauma’).¹⁸⁰

It is not surprising that, given the multiple harms caused by wrongful convictions so far identified in the literature, wrongful convictions are traumatic experiences. This thesis will build on this premise, and consider whether the interviewees in this research experienced similar symptoms of trauma. However, research to date is yet to focus on how this trauma is addressed in England and Wales. I will seek to use the framework of identity, and identity transition, to explore the experiences and efficacy of support available in England and Wales that try to help repair some of the harms caused by the trauma of a wrongful conviction.

Conclusion

This chapter has mapped some of the research conducted on the prison experience and effects of wrongful conviction, demonstrating the multiplicity of harms that can be caused by convicting someone who maintains their innocence. The existing literature on wrongful convictions has identified the potential sources of conviction error and the struggles faced by the wrongfully convicted in prison and upon release. However, most post-exoneration empirical studies are from the US, where experiences are likely to be somewhat different. The retention of capital punishment in some states creates distinct experiences in death row exonerees which may not necessarily be reflected in England and Wales. State legislation across

¹⁷⁹ Ibid.

¹⁸⁰ S Jenkins, ‘Families at war? Relationships between ‘survivors’ of wrongful conviction and ‘survivors’ of serious crime’ (2014) *International Review of Victimology* 20(2) 246.

the US also provide different levels and types of support to the wrongfully convicted to that available in the UK.¹⁸¹

Although many of the harms found in the works in other jurisdictions can be generalisable, it will be necessary to identify the harms endured by the wrongfully convicted individuals in this study to provide a 'local' understanding of harm in England and Wales. In addition, while the overall harm may be briefly termed as a 'trauma' that can impact on a person's identity, research has not yet gone further to explore the role of support in the post-exoneration identity journey. It does not consider how identity might be restored, and exactly what current mechanisms are available to assist.

In order to fill this gap in the literature, this thesis aims to take a narrative criminological approach with a strong theoretical basis through which to try to understand the deeper impacts of wrongful convictions in England and Wales and the complexities of responding effectively to this particular group. Further, it will focus on how the wrongfully convicted try to manage the impacts of wrongful convictions, including how they both perceive and attempt the process of recovery; in particular, the support they seek and receive. In considering the way in which a wrongful conviction affects someone's life course, and the frustrations in trying to piece that life back together, this thesis aims to provide an evidence base upon which to demonstrate how policy makers in England and Wales might effectively address the needs of the wrongfully convicted.

This evidence base, however, requires a clear theoretical framework to explicate the challenges of post-exoneration life. The next chapter will start with the premise identified in the existing literature, that considers a wrongful conviction to be a traumatic experience, and

¹⁸¹ For example, the US now has a right to post-conviction DNA testing, more than half of the states have compensation legislation packages; many also fund post-exoneration support packages but they differ greatly from state to state. For an overview, see, for example: R Norris, 'Assessing Compensation Statutes for the Wrongly Convicted' (2012) *Criminal Justice Policy Review* 23(3).

building on that work, explore the notion of 'identity'. I consider whether this might be a useful basis to make sense of why so many of these individuals do not recover fully from their experiences, to better understand the harms done and attempts towards restoring their lives.

CHAPTER THREE: TRAUMA AND DISLOCATED IDENTITIES

Introduction

Chapter Two described some of the rich, but theoretically underdeveloped, literature on wrongful convictions. In identifying the multitude of harms caused by wrongful convictions, much of this body of work has conceptualised a wrongful conviction as a traumatic experience.

In this chapter I build on a similar framework of trauma as an assault on identity, but explore how the notion of identity destruction – which results in what I term a ‘dislocated identity’ - might influence what is needed, as distinct from what is provided, to try to rebuild their lives. Building on the work of Westervelt and Cook and Grounds, I consider how such a concept might apply to the experiences of the wrongfully convicted I interviewed. I also explore further the literature on identity restoration and transition, and consider how this framework might help us to make sense of the journeys towards recovery of the wrongfully convicted. Given that the jurisdiction of England and Wales differs from the US (most significantly, it no longer has capital punishment), it will be necessary to consider whether exonerees in this jurisdiction suffer from similar impacts on identity. If they do, how might the notion of a ‘dislocated’ identity be a helpful lens through which to consider the efficacy of post-exoneration support in England and Wales?

The notion and experiences of trauma form a large and unmanageable body of work, stretching from psychology and psychiatry,¹⁸² to sociology,¹⁸³ criminology¹⁸⁴ and the ‘hard sciences’.¹⁸⁵ This thesis, having its foundations in criminology and socio-legal studies, will not attempt to base itself solely in the psychological and psychiatric literature. Rather, it seeks to focus on the way that trauma can dislocate, even destroy, all forms of a person’s identity. I will then consider how dislocated identities may be (at least in part) repaired in the post-trauma narrative, such as through processes of role exit, identity transition or with the assistance of reintegrative rituals.

Identity

To ensure this is a robust theoretical analysis, in order to understand whether – and if so, how – the wrongful convictions of those I interviewed (and whose client files I reviewed) in England and Wales impacted on their identities, I must first consider what identity means, before exploring how it can be destroyed, and how it might be restored post-trauma.

Identities form the basis of how we think of ourselves as individuals, how others perceive us, how we place ourselves in society, and how we live according to socially defined behaviours and roles. Our identities are the building blocks of our lives; they provide structure

¹⁸² Most notably, research on Post-Traumatic Stress Disorder, which has its origins in the psychological study of American soldiers after the war on Vietnam in the 1980s, but has since expanded significantly to a range of traumatic experiences including bereavement, child sexual abuse, victims or witnesses of crime, chronic diseases and physical ailments in EM Brown, ‘Post-traumatic stress disorder and shell shock – social section’ in GE Berrios and R Porter (eds.) *A History of Clinical Psychiatry* (The Athlone Press, 1995) 100. See MA Crocq and L Crocq, ‘From shell shock and war neurosis to posttraumatic stress disorder: a history of psychotraumatology’ (2000) *Dialogues in Clinical Neuroscience* 2(1) 47. For other examples, see J L Herman, *Trauma and Recovery* (Pandora, 2001); S Furst (ed.) *Psychic Trauma* (Basic Books, 1986).

¹⁸³ For example, J Alexander, ‘Trauma: A Social Theory’ (2012) *Society and Culture in South Asia* 1(1) 102; SG Mestrovic, ‘A sociological conceptualisation of trauma’ (1985) *Soc Sci Med* 21(8) 835.

¹⁸⁴ For example, E King ‘Outcomes of Trauma-Informed Interventions for Incarcerated Women: A Review’ (2017) *International Journal of Offender Therapy and Comparative Criminology* 61(6) 667; M Johnson, ‘Trauma, Race and Risk for Violent Felony Arrests Among Florida Juvenile Offenders’ (2018) *Crime and Delinquency* 62(11).

¹⁸⁵ For example, C Kreipe and J Rafols (ed) *Cerebral Blood Flow, Metabolism and Head Trauma: The Pathotrajjectory of Traumatic Brain Injury* (Springer, 2013).

and purpose, but are also influenced by our environment and life events. Disruptions in the life course – particularly unexpected, traumatic events – can similarly affect the way our identities are constructed and perceived, causing identities to be altered or destroyed and creating the need to either: a) try to restore that identity to what it was prior to the disruption; or more likely b) transition from one identity to another.

A large portion of the literature has explored the notion of identity through its three distinct but interdependent components: personal, social, and role identity. Personal identity, sometimes referred to as the ‘self’,¹⁸⁶ is the way someone distinguishes themselves from all others as a unique individual ‘by acting, controlling, and verifying the meanings of who one is as a person.’¹⁸⁷ These behaviours and characteristics define us as unique individuals and set us apart from others.¹⁸⁸ Social identities are based on group membership and differentiation between groups, where shared meanings about the self often guide intergroup behaviour.¹⁸⁹ Role identities are based on the notion that in a ‘named or classified world’, individuals are labelled according to the role they occupy in a given context. Each role comes with shared meanings and expectations to which we define both others and ourselves, through our reflexive sense of self.¹⁹⁰ This ‘self-perception of roles and the normative behaviours associated with those roles’ is influenced and reinforced by social contexts and networks,

¹⁸⁶ Grounded in the work of William James’ work. For an overview of his work, see for example D Leary, ‘William James on the Self and Personality: Clearing the Ground for Subsequent Theorists, Researchers and Practitioners’ in W James, M Johnson and T Henley (eds.) *Reflections on The Principles of Psychology: William James after a Century* (L. Erlbaum Associates, 1991) 101-37. See also J Bruner, ‘A Narrative Model of Self-Construction’ (1997) *Annals New York Academy of Sciences* 818(1) 145-161.

¹⁸⁷ P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 127.

¹⁸⁸ S Worchel, J F Morales, S Paez and J C Deschamps (eds.) *Social Identity: International Perspectives* (SAGE Publications, 1998) 2.

¹⁸⁹ Ibid. 5; J C Turner, ‘The experimental social psychology of intergroup behaviour’ in J C Turner and H Giles (eds.) *Intergroup Behaviour* (Basil Blackwell, 1981).

¹⁹⁰ P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 26.

particularly in interactions with others, through which we learn how others react to particular behaviours attributed to specific roles.¹⁹¹

Traditionally, identity theories such as symbolic interactionism¹⁹² and perceptual control theory¹⁹³ have sought to understand the way in which identities are constructed through interactions between perceptions, behaviours and accepted norms. Individuals use common reactions of others to make sense of their own attitudes and behaviours and shape their own identities. For example, what Cooley terms ‘reflected appraisals’ – whereby ‘people see themselves reflected in the reaction of others to them’¹⁹⁴ – are one of the main ways we come to understand who we are. Based on external influences and interactions with others, social identities are constructed through people’s perceptions in relation to a particular social group, which cement their feelings of being a member of that group.¹⁹⁵ These feelings can be one of similarity or difference: feeling similar to the standards that define a particular social group but also how they differentiate their group from others.¹⁹⁶ All are based on the use of symbols which produce shared meanings or perceptions that drive our behaviours and attitudes that shape our identities. Symbols, features or pegs – referred to interdependently

¹⁹¹ B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011) 3; see also P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 114.

¹⁹² Coined by H Blumer ‘Science Without Concepts’ (1931) *American Journal of Sociology* 36(4). Symbolic interactionism focuses on the connection between perceptions and action or behaviour.

¹⁹³ Said to be coined by an engineer named William T Powers, and later applied to the behavioural sciences, perceptual control theory is based on the fact that behaviour can be guided by goals and feedback from others (particularly negative feedback).

¹⁹⁴ H C Cooley, *Human nature and the social order* (Scribner, 1902). See also H M Wallace and D M Tice, ‘Reflected appraisal through a 21st-century looking glass’ in M R Leary and J P Tangney (eds.) *Handbook of self and identity* (2nd ed, Guilford, 2012) 124-140; P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 25.

¹⁹⁵ H Tajfel, ‘Some developments in European social psychology’ (1972) *European Journal of Social Psychology* 2(3); see also H Tajfel and T Turner, ‘An integrative theory of intergroup conflict’ in Austin, W. G. and Worchel, S (eds.) *The social psychology of intergroup relations* (Brooks/Cole Publishing Company, 1979) 33-37; C A Monterey and A Sen, *Identity and Violence: The Illusion of Destiny* (Penguin Books, 2006) 4.

¹⁹⁶ S Worchel, J F Morales, S Paez and J C Deschamps (eds.) *Social Identity: International Perspectives* (SAGE Publications, 1998); see also H Tajfel, ‘Some developments in European social psychology’ (1972) *European Journal of Social Psychology* 2(3) who terms these ‘assimilation’ or ‘cognitive stereotype effect’ and ‘contrast’ or ‘cognitive differentiation effect’.

within the literature¹⁹⁷ - are attached to shared understandings or mutually agreed meanings of how people should respond to particular situations.¹⁹⁸ As Stryker notes:

Among the class terms learned in interaction are the symbols used to designate 'positions', which are the relatively stable, morphological components of social structure. These positions carry the shared behavioural expectations that are conventionally labelled 'roles'.¹⁹⁹

Roles cannot exist without counteractive or complementary positions against which to situate them: the role of a father would not exist without the role of a child, employer without employee, and so forth. Without mutual verification, individuals may not want to assume that role, and 'may withdraw from an interaction'.²⁰⁰ Similarly, mutual verification is needed for a positive social identity, which is only gained if the group someone has identified with compares 'favourably to other groups'.²⁰¹ If not favourable, a social identity can be stigmatised, or what Goffman terms a 'spoiled identity', characterised by 'stigma'.²⁰²

Goffman defines 'stigma' as 'an attribute that is deeply discrediting'²⁰³ experienced through relationships with others in social contexts. It sets the person apart from the characteristics attributed to a 'normal' category of persons. Stigma can come in different forms: for example, by way of physical deformity, through 'blemishes of individual character' or by reference to race, religion or nationality.²⁰⁴ Most commonly, the stigmatised will be self-aware,

¹⁹⁷ Goffman termed them 'pegs' which make everyone unique in E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963) 57; these markers, features or pegs are also discussed in the work of George Mead, Charles Cooley and W. I. Thomas.

¹⁹⁸ P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 20, 116.

¹⁹⁹ S Stryker, *Symbolic Interactionism: A Social Structural Version* (Benjamin-Cummings Publishing Company, 1980). 54.

²⁰⁰ Ibid. 117.

²⁰¹ H Tajfel, 'Some developments in European social psychology' (1972) *European Journal of Social Psychology* 2(3).

²⁰² E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963) Hall 19.

²⁰³ Ibid. 3.

²⁰⁴ Ibid. 4.

but in some instances not.²⁰⁵ Goffman describes occurrences of ‘mixed contacts’ – interactions between the ‘normal’ and the stigmatised – noting the way in which stigma is confronted and dealt with on both sides. Common to this are feelings of self-consciousness, judgement, exposure, misinterpretation and uneasiness.²⁰⁶

Prisoners and ex-prisoners are often considered classic examples of Goffman’s ‘spoiled identities’,²⁰⁷ who experience stigma from the moment of conviction but also long after release.²⁰⁸ Westervelt and Cook noted that experiences of stigma also resonate with death row exonerees.²⁰⁹ The notion of stigma is reflected in the theory of ‘labelling’, also described in relation to offenders and prisoners,²¹⁰ which continues post-imprisonment.²¹¹ This labelling process is described by Erikson as ‘a sharp rite of transition at once moving him out of his normal position in society and transferring him into a distinct deviant role’.²¹²

A common theme throughout the literature holds that humans maintain multiple identities for different social contexts and interactions. Identities are not solid but can be

²⁰⁵ As Goffman explains, ‘insulated by his alienation, protected by identity beliefs of his own, he feels that he is a fully-fledged normal human being’ E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963) 6.

²⁰⁶ Ibid. 15 – 19.

²⁰⁷ For example, A Harris, ‘Race, commitment to deviance, and spoiled identity’ (1976) *American Sociological Review* 41(3); D Moran, ‘Prisoner reintegration and the stigma of prison time inscribed on the body’ (2012) *Punishment and Society* 14(5); C Rade, S Desmarais and R Mitchell, ‘A Meta-Analysis of Public Attitudes Towards Ex-Offenders’ (2016) *Criminal Justice and Behaviour* 43(9).

²⁰⁸ D Pager, *Marked: Race, crime and finding work in an era of mass incarceration*. (University of Chicago, 2007); J Travis, *But they all come back: Facing the challenges of prisoner re-entry* (The Urban Institute Press, 2005); T Chiricos, K Barrick K, WW Bales, ‘The labeling of convicted felons and its consequences for recidivism’ (2007) *Criminology* 45(3) 547–581.

²⁰⁹ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012) 175.

²¹⁰ See for example H Becker, *The Outsiders: Studies in the Sociology of Deviance* (The Free Press, 1963) and E Lemert, *Human Deviance, Social Problems and Social Control* (Prentice-Hall, 1967).

²¹¹ See for example N Leong, ‘Felon re-enfranchisement: political implications and potential for individual rehabilitative benefits’ (2006) *SSRN Working Paper Series* [1556-5068]; D Pager, *Marked: Race, crime and finding work in an era of mass incarceration*. (University of Chicago, 2007); J Travis, *But they all come back: Facing the challenges of prisoner re-entry* (The Urban Institute Press, 2005).

²¹² K Erikson, ‘Notes on the Sociology of Deviance’ (1962) *Social Problems* 9(4) 311.

‘fluid’, changing over time and dependent on different social settings.²¹³ Generally, however, individuals will have a ‘primary identity’ which acts as their main set of standards held hierarchically above all other identities. This hierarchy is formed either through salience (by which an individual chooses the identity that will be most advantageous in each situation; these can be fluid and change with the context) or through prominence (that is, what the person perceives as most valuable or important to them).²¹⁴

The next section will consider the literature on how trauma can impact all forms of identities. Given that wrongful convictions can be described as a traumatic experience, it will set the scene for the next chapter which explores further the notions of trauma, identity, and trauma recovery in the post-exoneration journey.

Trauma and its impact on identity

The word ‘trauma’ is originally derived from the Greek term ‘traumatizo’ (meaning ‘to wound’) and related to a direct blow or shock that damaged bodily tissue, resulting in physical injury.²¹⁵ However, its definition has since expanded into psychological and sociological meaning referring to the state of mind after shock, ‘which disconnects the person involved from their relationship with the world’.²¹⁶ As Erikson described:

Something alien breaks in on you, smashing through whatever barriers your mind has set up as a line of defence. It invades you, possesses you, takes you over, becomes a dominating feature of your interior landscape, and in the process, threatens to drain you and leave you empty ...²¹⁷

²¹³ K J Gergen, ‘Interactions goals and personalistic feedback on the presentation of self’ (1965) *Journal of Personality and Social Psychology* 1(1) 413; K J Gergen, *Toward transformation in social knowledge* (2nd ed, SAGE Publications, 1991).

²¹⁴ P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 40.

²¹⁵ K Rogers, S Leydesdorff and G Dawson, *Trauma and Life Stories* (Routledge, 1999) 1.

²¹⁶ Ibid. 17.

²¹⁷ K Erikson, *Identity and the Life Cycle* (Norton, 1994) 228.

Research has since been conducted in relation to a range of ‘traumatic experiences’: from physical trauma (such as a head injury),²¹⁸ to one of loss (losing a loved one),²¹⁹ violent encounters (such as being a soldier²²⁰, subject to political violence²²¹ or the victim of child sexual abuse²²²) or natural disasters.²²³ However, regardless of the form they take, research has demonstrated that traumatic experiences significantly impact on a person’s life; sometimes, without repair.

Ultimately, trauma is an instigator for change: it contradicts how people view the world, themselves, and what they assume to be true about life. Giddens referred to traumatic events as ‘fateful moments’ which ‘disturb routines, often in a radical way. An individual is thereby forced to rethink fundamental aspects of her existence and future projects.’²²⁴ Becker described how trauma can shatter the routineness and complacency of life, destroying a person’s sense of ‘normality’ and what it means to lead a ‘normal’ life.²²⁵ Trauma is an external force that imposes an unjustified, unexpected event that is said to disrupt the life narrative. Their life narrative as they once constructed it is no longer; it has diverged, and they are forced to try to reconstruct a whole new narrative. Leydesdorff emphasises that narratives of

²¹⁸ For example, C Kreipe and J Rafols (ed) *Cerebral Blood Flow, Metabolism and Head Trauma: The Pathotrajjectory of Traumatic Brain Injury* (Springer, 2013).

²¹⁹ For example, J Bowlby, *Loss: Sadness and Depression (Attachment and Loss vol. 3)*, (Hogarth Press and the Institute of Psychoanalysis, 1980).

²²⁰ For example, E Lomsky-Feder, ‘The meaning of war through veterans’ eyes: A psychological analysis of life stories’ (1995) *International Sociology* 10(4) 463–82; M Denov ‘Coping with the trauma of war: Former child soldiers in post-conflict Sierra Leone’ (2010) *International Social Work* 53(6) 791.

²²¹ For example, M. McCallin, (ed.) *The Psychological Well Being of Refugee Children: Research, Practice and Policy Issues*, (International Catholic Child Bureau, 1992); *Reconstructing trauma and meaning: life narratives of survivors of political violence during apartheid in South Africa* (Cambridge Scholars Publishing, 2015).

²²² For example, L Koenig, *From child sexual abuse to adult sexual risk: trauma, revictimization, and intervention* (American Psychological Association, 2004); D Finkelhor, ‘The Trauma of Child Sexual Abuse: “Two Models”’ (1987) *Journal of Interpersonal Violence* 2(4) 348.

²²³ For example, M Mills, ‘Trauma and stress response Among Hurricane Katrina Evacuees’ (2007) *American Journal of Public Health* 97(1) 116.

²²⁴ Ibid.

²²⁵ G Becker, *Disrupted Lives: How People Create Meaning in a Chaotic World* (University of California Press, 1997).

traumatised individuals ‘rarely reflect continuity ... a trauma is not an isolated event in a life story but may in itself often play a decisive role in a person’s perception of life afterwards, interpretations of subsequent events, and consequently, memories of preceding experiences’.²²⁶

The sudden nature of traumatic events means there is a ‘lack of psychological preparation’, adding to the intensity and terror of the experience.²²⁷ It results in ‘loss and disintegration’; the old, known narrative is ‘gone, and a new one must be constructed.’²²⁸ Trauma also fragments the sense of self.²²⁹ The emotional impacts of trauma can be intense and often instigate significant feelings of fear, uncertainty and anxiety, opening up the individual to an unpredictable future.²³⁰ Giddens noted that this is part of the self being a ‘trajectory of development’, whereby ‘the individual appropriates his past by sifting through it in the light of what is anticipated for an (organised) future’.²³¹

The literature has also identified a link between trauma and the damage, loss or destruction to people’s identities. The notion of ‘identity’ has played a role in a wide range of

²²⁶ K Rogers, S Leydesdorff and G Dawson, *Trauma and Life Stories* (Routledge, 1999) 17.

²²⁷ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 63; see also R Tedeschi and L Calhoun, ‘The posttraumatic growth inventory: measuring the positive legacy of trauma’ (1996) *Journal of Traumatic Stress* 9(3).

²²⁹ M Horowitz, ‘Effects of Trauma on Sense of Self’ (2015) *Journal of Loss and Trauma* 20(2) 189-193; J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002). Also stated in S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012).

²³⁰ These are explored in the works reviewed in Chapter Two, for example, S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012); A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice* 166(1) 176-177.

²³¹ A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991) 75.

research into significant and traumatic life events, such as alcoholism,²³² drug addiction,²³³ sexual abuse,²³⁴ imprisonment and offender rehabilitation,²³⁵ bereavement,²³⁶ as well as experiences of migration, racism and citizenship in an increasingly globalised world.²³⁷ Authors describe the symptoms of trauma as impacting identity such that it becomes ‘dislocated’ in some way; disconnected, out of place, no longer as it was. Trauma can shape, often negatively, how we perceive ourselves, the world, others within the world, and it can also affect how we are perceived by others. Wickie and Marwit, for example, noted that, when a child dies, the parent not only loses that child but also loses ‘a portion of the self’; their identity as a parent.²³⁸ Klauss and Marwit similarly noted this trauma instigates a loss of some form of the parent’s identity similar to an amputee.²³⁹ Nurius took a feminist perspective, emphasising the link between traumatic experiences and self-definition, and applying this to goal-striving

²³² For example, L B Young, ‘Alcoholism and Identity: How an alternative framing of identity can facilitate Alcoholics Anonymous research’ (2011) *Addiction Research & Theory* 19(3); J White, ‘Alcoholism and Identity Development: A Theoretical Integration of the Least Mature Status with the Typologies of Alcoholism’ (2000) *Alcoholism Treatment Quarterly* 18(1).

²³³ For example: K Etherington, *Trauma, drug misuse and transforming identities: a life story approach* (Jessica Kingsley Publishers, 2008); D Best, M Beckwith, C Haslam, S Alexander, J Jetten, E Mawson and D Lubman, ‘Overcoming alcohol and other drug addiction as a process of social identity transition: the social identity model of recovery’ (2016) *Addiction Research & Theory* 24(2); K Hughes, ‘Migrating identities: the relational constitution of drug use and addiction’ (2007) *Sociology of Health and Fitness* 29(5).

²³⁴ For example, impacts that child sexual abuse has on gender or sexual identity: see E Krause, S Roth, ‘Child Sexual Abuse History and Feminine Gender-Role Identity’ (2011) *Sex Roles* 64(1); M Walker, A Hernandez and M Davey, ‘Childhood Sexual Abuse and Adult Sexual Identity Formation: Intersection of Gender, Race, and Sexual Orientation’ (2012) *The American Journal of Family Therapy* 40(5) 385-398.

²³⁵ For example, B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011); see also T Ward and B Marshall, ‘Narrative Identity & Offender Rehabilitation’ (2007) *International Journal of Offender Therapy and Comparative Criminology* 51(3).

²³⁶ J Gillies and R Neimeyer, ‘Loss, Grief and the Search for Significance: Toward a Model of Meaning Reconstruction in Bereavement’ (2006) *Journal of Constructivist Psychology* 19(1); see also R Neimeyer and A Anderson, ‘Meaning Reconstruction Theory’ in N Thompson (ed) *Loss and Grief* (Palgrave, 2002) 45-64.

²³⁷ Examples are seen throughout M Bosworth, A Parmar and Y Vazquez (eds.) *Race, Criminal Justice and Migration Control: Enforcing the Boundaries of Belonging* (Oxford University Press, 2018).

²³⁸ S Wickie and S Marwit, ‘Assumptive World Views and the Grief Reactions of Murdered Children’ (2000) *Omega- Journal of Death and Dying* 42(2) 102.

²³⁹ D Klass and S Marwit, ‘Toward a model of parental grief.’ (1988) *Omega - Journal of Death and Dying* 19(1) 31–50.

amongst women.²⁴⁰ Herman, although focused on PTSD, noted that repeated or prolonged trauma instigates identity change, such that the ‘survivor’ is no longer able to assume the identity they held prior to the trauma.²⁴¹

The notion of ‘identity’ appears dotted throughout miscarriages of justice literature and has been used by a few authors to describe experiences after a conviction is overturned. As noted in Chapter Two, Westervelt and Cook argued that wrongful convictions are a trauma that creates a need for identity to be restored. Angela Flowers also used narratives of exonerees to follow the search for identity after a conviction is quashed.²⁴² However, neither work delves into what ‘identity’ might mean and why, or how, wrongful convictions might - in a conceptual sense - impact on someone’s identity. Presumably, in the case of Flowers’ work, this is because the book, much like most of what Leo terms ‘big picture’ studies²⁴³ on wrongful convictions, is written by a journalist rather than a criminologist or other social scientist.²⁴⁴

The work of Westervelt and Cook, as well as that of Flowers, suggests that the maintenance of identity is so fundamental to a structured and functional life experience that its dislocation, by way of a wrongful conviction, can leave a person unable to recover. Identity therefore can provide a useful lens through which to explore the core of post-exoneration journeys, when their identities are dislocated, and to assess the prospects for restoration. Westervelt and Cook briefly explain what restoring this identity might entail:

²⁴⁰ P Nurius, ‘Assumptive worlds, Self-Definition, and Striving Amongst Women’ (1994) *Basic and Applied Social Psychology* 15(3) 311-327.

²⁴¹ J Herman, *Trauma and Recovery* (Pandora, 1998).

²⁴² A Flowers, *Exoneree Diaries: The Fight for Innocence, Independence and Identity* (Haymarket Books, 2016).

²⁴³ R Leo, ‘Rethinking the Study of Miscarriages of Justice’ (2005) *Journal of Contemporary Criminal Justice* 21(3); reiterated in R Leo, ‘The Criminology of Wrongful Conviction: A Decade Later’ (2017) *Journal of contemporary criminal justice* 33(1) 82.

²⁴⁴ R Leo, ‘The Criminology of Wrongful Conviction: A Decade Later’ (2017) *Journal of contemporary criminal justice* 33(1) 82.

... restoration of identity and community comes in many forms, of the financial self, the physical self, the psychological self, and the spiritual self. Restoration requires acknowledgement of the exoneree as a person of worth and value, a person who is no longer invisible, no longer expelled from humanity.²⁴⁵

While the work acknowledges that wrongful convictions are a trauma, and briefly how identity might be restored,²⁴⁶ it does not explore how these needs are met, focusing very much on the individual and not on the perspectives and experiences of external support mechanisms. The next section will consider some of the current mechanisms explored for recovering from trauma, including how identity might be restored.

Recovering from Trauma

Given that trauma can assault peoples' identities including, for example, the sense of self, how then should victims of trauma try to recover from their traumatic experience? There is a need to reconstruct and realign themselves, their attitudes and perceptions in light of their new experiences; and to rebuild a new self-narrative.²⁴⁷ Bateson noted that 'you cannot adjust to changes unless you can recognise some analogy between your old situation and your new situation.'²⁴⁸ It is a balancing exercise between the old and the new; trying to work out how the old self and other identities fit with the new ones, which ones to retain, which to remove and replace, and how to reframe the structure of beliefs to allow for a new view of the world and sense of self.

While theorists have explained how identities can be formed through the construction of symbols with shared meanings, and how perceptions can influence people's behaviour in

²⁴⁵ S Westervelt and K Cook, *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012) 221.

²⁴⁶ Ibid. 188 – 192.

²⁴⁷ For examples, see J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002).

²⁴⁸ MC Bateson, 'Composing a life' in C Simpkinson and A Simpkinson (eds.) *Sacred Stories* (Harper Collins, 1993) 45.

different social contexts, the early literature rarely suggested a way out of identities, nor did it follow the process of identity transformation. Some have rejected the idea that identities can change at all or considered that they transform very slowly.²⁴⁹ Goffman's work suggests he thought it impossible to escape a spoiled identity and therefore a stigmatised individual was forced to hide the source of the stigma, despite the risk that it might be uncovered.²⁵⁰

Burnett, Hoyle and Speechley's report exploring the experiences of being wrongfully accused of sexual offences while being in a position of trust speaks similarly to the ongoing stigma that has to be managed following a false accusation. Some of their research participants described having to tell 'white lies' as to why, for example, they had not been at work. Others feared telling potential partners about the accusation, which could end a relationship that had barely begun, but had to weigh this against being honest to avoid the risk of that person finding out from others.²⁵¹ Burke and Stets also argue that identities are resistant to change:

Identities act to change the situation to bring situationally relevant meanings into alignment with the meanings in the identity, thus verifying and supporting the existing self-meanings. Because of this resistance to change, there is stability.²⁵²

However, other research has sought to follow the process of identity transitions and argued that as social contexts change, suddenly or voluntarily, so too may the construction and understanding of an individual's identity. Maruna, for example, has relied on the notion of 'rites of passage': memorable, meaningful events²⁵³ that shape the self-narrative and personal

²⁴⁹ For example, see P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009).

²⁵⁰ See E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963); also noted in B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011) 4.

²⁵¹ R Burnett, C Hoyle and N Speechley, 'The Impact of Being Wrongly Accused in Occupations of Trust: Victim's Voices' (15 May 2016) <https://www.law.ox.ac.uk/sites/files/oxlaw/the_impact_of_being_wrongly_accused_of_abuse_hoyle_et_al_2016_15_may.pdf> last accessed 30 September 2018.

²⁵² P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 182.

²⁵³ R Collins, *Interaction Ritual Chains* (Princeton University Press, 2004) 43.

identity.²⁵⁴ Rites of passage, termed initially by Arnold Van Gennep,²⁵⁵ are what accompany life transitions; for example, marriages and funerals. Such rituals, he argued, 'followed a tripartite processual scheme involving separation from everyday reality, a period of liminality, then reintegration as a new person.'²⁵⁶ Liminality, as Maruna described, is the transition between 'two distinct stages where old configurations of certainty and identity are no longer present but where there is as yet no new configuration'.²⁵⁷ This, I would argue, is describing a state of identity transition. Maruna argued that rites of passage can cause alienation, through a loss of connection with 'moral frameworks and to elemental questions about human existence.'²⁵⁸

While the literature has followed the experiences of identity transition or role-exit as a result of particular life events, little emphasis has been placed on entry into a new role or identity, particularly for those exiting highly stigmatised identities such as ex-offenders or newly exonerated individuals. As Ebaugh noted, 'in some cases, exiters have little or no idea of what they will do after a major role exit; they focus exclusively on getting out of undesirable present roles'.²⁵⁹

Ebaugh explored the process of identity transition, prompted by her transition away from being a nun. She focused on one particular component of identity - the process of identity transformation as a form of 'role exit'. Her book is the result of extensive qualitative interviews with a number of individuals who had exited particular social roles and thus experienced this

²⁵⁴ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 9.

²⁵⁵ A Gennep, *The rites of passage* (University of Chicago Press, 1960).

²⁵⁶ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 8; see also M Deflem, 'Ritual, Anti-Structure, and Religion: A Discussion of Victor Turner's Processual Symbolic Analysis' (1991) *Journal for the Scientific Study of Religion* 30(1) 1.

²⁵⁷ Ibid. See also V Turner, *The Ritual Process: structure and anti-structure* (Aldine Publishing Company, 1969).

²⁵⁸ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 4.

²⁵⁹ H Ebaugh, *Becoming an Ex: The Process of Role Exit* (Chicago University Press, 1988) 8.

process of 'role exit'.²⁶⁰ Experiences ranged from leaving familial roles (becoming an ex-wife or ex-mother, for example) to individuals who underwent significant career changes (ex-police officers, ex-doctors) or those who had transitioned from stigmatised roles, such as former alcoholics and former drug users. Ebaugh defined 'role exit' as 'the process of disengagement from a role that is central to one's self-identity and the re-establishment of an identity in a new role that takes into account one's ex-role'.²⁶¹ When someone attempts to assume their new role, an 'ex' will inevitably be entangled in what Ebaugh termed their 'role residual' or 'hangover identity', where past identities linger and 'exiting individuals' struggle to incorporate these hangovers into their new sense of self.²⁶²

Although Ebaugh did not research the wrongfully convicted, her notion of a 'hangover identity' may be useful to make sense of post-exoneration experiences of stigma. However, her work focused on those who exited roles voluntarily, often through a process of planning and transition, not on those who are forced into such changes, who feel they have no agency. She characterised role transition as:

... a period of dissatisfaction with the current role, weighing of alternative roles, a preliminary testing of a new role and the transition into the new role.²⁶³

She paid little attention to any role change that occurs quickly and with little time for preparation, such as the overturning of a conviction and subsequent release from prison. Thus, this thesis will build on her notion of role exit and 'hangover identities' through processes of quick, unexpected and uncontrolled change which define the post-exoneration experiences of

²⁶⁰ Ibid.

²⁶¹ Ibid. 1.

²⁶² Ibid.

²⁶³ Ibid. 10.

the wrongfully convicted. This will provide an original contribution to the existing literatures in both identity theory and wrongful conviction.

Certain strategies have been known to help with effective transition and the next chapter explores whether similar strategies are used by the wrongfully convicted. Giddens stated in his work on modernity and the self that ‘personal integrity, as the achievement of an authentic self, comes from integrating life experiences within the narrative of self-development’.²⁶⁴ Janoff-Bulman also explained how a trauma survivor must process new, powerful data by integrating the negative data gained from their traumatic experience with the creation of new positive data.²⁶⁵ Integrating the old negative data will inevitably involve strategies such as denial or numbing²⁶⁶, as well as re-experiencing (such as through nightmares, flashbacks and other PTSD symptoms). There is a need to approach and confront the trauma whilst at the same time trying to avoid it, to reduce or evade unnecessary pain.²⁶⁷

Westervelt and Cook identified coping techniques used by death row exonerees in an attempt to ‘reclaim their identity or reconstruct a new one based on their status as an innocent person.’²⁶⁸ They discussed coping techniques including the avoidance approach (‘reducing or avoiding the negative consequences of the trauma’ such as through withdrawal or use of numbing agents)²⁶⁹ and incorporation approach (whereby the trauma is integrated into their new, post-trauma life through techniques such as telling their story or attaching some meaning

²⁶⁴ A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991) 80.

²⁶⁵ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 95.

²⁶⁶ Referred to in, for example: S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012); A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

²⁶⁷ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 95.

²⁶⁸ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012)199.

²⁶⁹ *Ibid.* 139.

to their traumatic event).²⁷⁰ They explored the factors that may influence an exoneree's post-exoneration experience and coping style, such as community acceptance of their innocence.

Janoff-Bulman also indicated that avoidance strategies are positive and adaptive efforts to help with trauma recovery, ensuring the person processes the negative data in small and manageable doses. However, when these tactics become too extreme and continuous, this precludes the sufficient processing of the traumatic evidence and is 'likely to become maladaptive'.²⁷¹ Further, re-experiencing of events may also assist with recovery, as a person might be less and less affected the more they are exposed to the trauma (for example, the more they talk or think about it).²⁷² However, again, when these intrusions are deeply damaging, imposing severe levels of fear and anxiety, the person's ability to recover and rebuild new identities can be compromised.

It is suggested that giving positive meaning to trauma can help a person to recover from it.²⁷³ This includes considering the lessons they have learnt from the traumatic experience, the benefits gained and giving some meaning or purpose to the trauma. The person must decide how best to re-frame or re-align those old senses of self with new ones given their new traumatic experience. Part of this is about engaging in new experiences - from a new job to simply making appointments or driving their car - which helps them to gather 'new data' that can form different, and perhaps more positive, identities.²⁷⁴

²⁷⁰ S Westervelt and K Cook, *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012) 136.

²⁷¹ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 95.

²⁷² Ibid. 105.

²⁷³ For example, R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 95; S Westervelt and K Cook, *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012).

²⁷⁴ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 143.

Another useful framework may be found in the studies of ‘identity transformation’, typically following sudden changes of context such as a period of imprisonment. Veysey, Christian and Martinez, for example, studied the way in which offenders were rehabilitated and underwent a transition to a new non-criminal identity post-release.²⁷⁵ They described the process of transformation requiring changes in all elements of identity (the personal, social and roles), stating that:

Transformation of core identities require substantial shifts in self-understanding as well as significant effort in re-negotiating interpersonal interactions.²⁷⁶

Asencio and Burke similarly noted the interaction of social and personal identity transformation when exploring the identity change of offenders with substance abuse issues participating in a rehabilitation program:

Thus, for this identity, verification is obtained not so much by changing meanings in the social environment to be consistent with self-definitions, but by changing the self-definitions to match the way others view the self. This is an instance, therefore, of an identity being defined by others but taken on and internalised within the individual and maintained over time.²⁷⁷

As the previous chapter demonstrated, the literature shows that prison itself comes with a number of specific challenges such as the loss of family and friendship networks, restricted employment prospects and the experience of stigma associated with criminality and imprisonment. Maruna et al explored what these challenges meant for the post-release identity transformation process and how that can be particularly difficult in a number of ways. Firstly, the need to establish entirely new support networks means ex-prisoners can often no longer

²⁷⁵ B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011).

²⁷⁶ Ibid.

²⁷⁷ E K Asencio and P Burke, ‘Does incarceration change the criminal identity? A synthesis of labeling and identity theory perspectives on identity change’ (2011) *Sociological Perspectives* 54(2); also discussed in P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 193.

associate with old friends and family members who may have distanced themselves both physically and emotionally or may not be healthy for their identity transition. Secondly, ex-prisoners are limited in their choice of alternative roles to assume post-release, either by lack of experience or from stigma or general societal reluctance to assist them.²⁷⁸

Moreover, criminal records impose limitations on some employment prospects, particularly for those convicted of sexual offences (even when they have been exonerated).²⁷⁹ Reflecting the work of Goffman, discussed earlier in this chapter, the stigma of criminality is a ‘visible blemish on the fabric of moral character’²⁸⁰ which can mean some members of the public leap to assumptions and connect immorality and untrustworthiness to those with histories of imprisonment. This can place limitations on identity transition or restoration as many ex-prisoners find their behaviour heavily scrutinised by state agencies, private organisations and individuals in work, family and social contexts.²⁸¹ While the wrongfully convicted might share with the rightfully convicted similar post-release adversities from imprisonment, as demonstrated in the literature reviewed in Chapter Two, it remains to be seen whether the same struggles of identity transition also apply.

As noted above, Maruna has also explored identity transition through the lens of ‘reintegration rituals’ which he argued are non-existent when a person is released from prison. While the process of punishment – particularly imprisonment – is wrought with ritual (from the elaborate investigative process, to the drama of trial and institutionalisation), the re-entry

²⁷⁸ S Maruna, T LeBel, M Naples and N Mitchell, ‘Looking-glass identity transformation: Pygmalion and golem in the rehabilitation process’ in B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011) 30–55.

²⁷⁹ D Pager, ‘The Mark of a Criminal Record (2003) *American Journal of Sociology* 108(5); J Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (Oxford University Press, 2003).

²⁸⁰ E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963).

²⁸¹ B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011).

of prisoners is, in contrast, without ritual at all.²⁸² We all know the conviction process ‘by heart’,²⁸³ which ‘plays a key role in shaping public morality’, however, it is rare for the reintegration process to be well-known and in the public eye.²⁸⁴ With the reintegration of prisoners, ‘we typically forgo all such ritual and try to make the process as stealthy and private as possible, if we make any effort at all.’²⁸⁵ This, he says, is why society appears to accept the imprisonment of individuals, but the reintegration of those individuals post-imprisonment ‘is the cause of often inordinate concern’,²⁸⁶ leading to ‘anti-reintegration sensibilities’²⁸⁷ across the general public. It would be interesting to see how this might apply in relation to the wrongfully convicted individuals interviewed for this work.

Maruna²⁸⁸ and Braithwaite²⁸⁹ both emphasise the need for ‘meaningful’ reintegration or re-entry to be ‘more than just physical resettlement into society’, such as housing or an income; but ‘also includes a symbolic element of moral inclusion’.²⁹⁰ Successful reintegration, Maruna argued, is ‘a two-way process, requiring both effort on the part of the former prisoner (eg. Desistance, repentance), but also on the part of some wider community (eg. Forgiveness, acceptance)’.²⁹¹ This reflects notions of Giddens’ work that the self is a ‘reflexive project’, one

²⁸² S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 204; see also C Bennett, *The apology ritual: A philosophical theory of punishment* (Cambridge University Press 2008); J Braithwaite and S Mugford, ‘Conditions of successful reintegration ceremonies: Dealing with juvenile offenders’ (1994) *British Journal of Criminology* 34(2) 139–171.

²⁸³ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 18.

²⁸⁴ Ibid.

²⁸⁵ Ibid. 4

²⁸⁶ Ibid.

²⁸⁷ Ibid. 18.

²⁸⁸ Ibid. See also S Maruna, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (American Psychological Association, 2001).

²⁸⁹ J Braithwaite, *Crime, Shame and reintegration* (Cambridge University Press, 1989).

²⁹⁰ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 5.

²⁹¹ Ibid. 13; see also T Ward and S Maruna, *Rehabilitation: Beyond the risk paradigm* (Routledge, 2007); R Collins, *Interaction Ritual Chains* (Princeton University Press, 2004).

where the individual is just as important to the formation – and reformation – of the self, as the role of others (in his example, the role of the therapist).²⁹²

The interviews of falsely accused individuals in positions of trust by Burnett, Hoyle and Speechley revealed recounts of coping mechanisms that also demonstrated the importance of seeking support from others. This included the role of group therapies, counselling, support groups and the assistance of others in similar situations.²⁹³ Corr similarly emphasised that strategies for overcoming trauma require the assistance of others.²⁹⁴ Herman has also noted that, as traumatic events destroy the bond between an individual and their community, the strength of the community is key to their survival:

The solidarity of a group provides ... the strongest antidote to traumatic experience. Trauma isolates; the group re-creates a sense of belonging. Trauma shames and stigmatises; the group bears witness and affirms. Trauma degrades the victim; the group exalts her. Trauma dehumanizes the victim; the group restores her humanity.²⁹⁵

By this logic, if the community do not accept or assist in the aftermath of trauma, the traumatised individual may never recover. The aim of reintegration rituals, Maruna argued, is to foster ‘inclusion and engender solidarity’. In order to do so, for it to be most effective, the community must play a key role in reintegration.²⁹⁶

The literature above suggests that external support, provided by the community, is key to repairing some of the impacts of trauma. Additional support gives some legitimacy to the trauma; if the State, for example, recognises the trauma is legitimate and seeks to help those

²⁹² A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991) 75.

²⁹³ R Burnett, C Hoyle and N Speechley, ‘The Context and Impact of being Wrongly Accused of Abuse in Occupations of Trust’ (2007) *The Howard League Journal* 56(2).

²⁹⁴ C Corr, ‘Coping with challenges to the assumptive world’ in J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002) 137.

²⁹⁵ J Herman, *Trauma and Recovery* (Pandora, 1998) 214.

²⁹⁶ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 18.

affected, individuals feel acknowledged and included in the community. In the context of wrongful convictions, while Westervelt and Cook argued that restoration of identity is required to restore all forms of the self, they also note that restoration requires ‘acknowledgement of the exonerate as a person of worth and value’.²⁹⁷ As Maruna noted in relation to prisoner reintegration, ‘reintegration rituals would need perceived legitimacy outside of small, therapeutic pockets inside the criminal justice system.’²⁹⁸ Such external support would also help those whose identities have been dislocated by trauma to find new identities. Building on this literature, this thesis considers the experience of support received by the wrongfully convicted, and explores what more the wrongfully convicted seek to try to repair some of the impacts of the trauma of being wrongfully convicted.

Narratives of identities

Identities are often connected with the human narrative, described by Sarbin as ‘a way of organising episodes, actions and accounts of actions; it is an achievement that brings together mundane facts and fantastic creations; time and place are incorporated.’²⁹⁹ Neimeyer et al, for example, considered that someone’s ‘narrative construction of identity’ lies at the core of their ‘ethnobiography’.³⁰⁰ These self-narratives, or ‘life stories’, are generally used to carve out our identities;³⁰¹ they order our experiences and allow us to find meaning in these experiences, giving our lives order and direction.

²⁹⁷ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012) 221.

²⁹⁸ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 17.

²⁹⁹ T R Sarbin, ‘The narrative as root metaphor for psychology’ in T. R. Sarbin (ed.) *Narrative psychology: The storied nature of human conduct* (Praeger, 1986) 3-21.

³⁰⁰ R Neimeyer, L Botella, O Herrero, M Pacheco, S Figueras, and L A Wildner, ‘The meaning of your absence: Traumatic loss and narrative reconstruction’ in J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002) 31-47.

³⁰¹ K Gergen, *Realities and Relationships: Soundings in Social Constructionism* (Harvard University Press, 1994).

Typically, the concept and use of narrative has also gone hand in hand with identity literature and research.³⁰² Bruner, for example, has argued that what we recognise as the ‘self’ is ‘convertible into some form of a narrative’,³⁰³ which can conform to or be influenced by a ‘cultural’ narrative. The narrator’s sense of self - in other words, their identity - lies at the core of self-narratives; as Giddens stated, ‘self-identity, as a coherent phenomenon, presumes a narrative.’³⁰⁴ Narratives are not only about reflecting upon a person’s past and relaying life events, but they are also seen as a presentation of one’s self to the researcher and to the world at large.³⁰⁵

Narratives have increasingly become a common tool for exploring lived experiences and how people make sense of their lives.³⁰⁶ They can come in many different forms: the written and the spoken, the autobiographical and the biographical, the long-term life history and the short story. Stories are not only a mechanism for connecting with others; they are the way we construct and communicate our life histories, articulating our experiences and in doing so, identifying who we are and how we place ourselves in the social world.³⁰⁷ In this way, we have become ‘storied selves’, seeing life not as objective experiences but as a series of stories,

³⁰² See for example D McAdams, R Josselson and A Lieblich, *Identity and Story: Creating self in narrative* (American Psychological Association Press, 2006) 4.

³⁰³ J Bruner, ‘A Narrative Model of Self-Construction’ (1997) *Annals New York Academy of Sciences* 818 I (June) 152; see also J Bruner, *Making Stories: Law, Literature and Life* (Harvard University Press, 2002).

³⁰⁴ A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991) 76.

³⁰⁵ S Sandberg, ‘What Can Lies Tell Us About Life? Notes towards a Framework of Narrative Criminology’ (2010) *Journal of Criminal Justice Education* 21(4) 455.

³⁰⁶ M Bamberg, ‘Who Am I? Narration and its contribution to self and identity’ (2001) *Theory and Psychology* 21(1) 7.

³⁰⁷ L Presser and S Sandberg, (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) 2. See also L Presser, ‘The narratives of offenders’ (2009) *Theoretical Criminology* 13(2) 178–179; M Bamberg, ‘Who Am I? Narration and its contribution to self and identity’ (2001) *Theory and Psychology* 21(1) 12.

to be told with various purposes in different contexts.³⁰⁸ Our identities are formed and expressed through these stories of our life experiences.

Stories are therefore one of the most insightful forms of qualitative data when it comes to the exploration of lived experiences, particularly obscure experiences that researchers would not otherwise be exposed to. This has been recognised and developed in a subset of qualitative criminological research referred to as Narrative Criminology. The approach was derived from a number of schools of thought, including ethnomethodology,³⁰⁹ postmodernism³¹⁰ and narrative psychology,³¹¹ the latter term, coined by Sarbin³¹² and further developed by theorists such as McAdams, through his theory of the 'life story identity'.³¹³

Narratives can look forward, at what one perceives of their future; or back, at what they have experienced previously; or at the present, at how they perceive themselves and their place in the world. Such stories can be used:

³⁰⁸ M Bamberg, 'Who Am I? Narration and its contribution to self and identity' (2001) *Theory and Psychology* 21(1) 12.

³⁰⁹ L Presser and S Sandberg, (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) 9.

³¹⁰ See for example J F Lyotard, 'The Post-Modern Condition: A Report on Knowledge' (1984) *Australasian Journal of Philosophy* 63(1) 520 who described narratives as having no ontological value and thus are open to many different interpretations. See also F Polletta, *It was like a fever: Storytelling in Protest and Politics* (University of Chicago Press, 2006).

³¹¹ See, for example, D McAdams, *The Stories We Live By: Personal Myths and the Making of the Self* (Guildford Press, 1993) and M Crossley, 'Narrative Psychology, Trauma and the Study of Self/Identity' (2000) *Theory and Psychology* 10(4).

³¹² See T Sarbin, *Narrative Psychology: The Storied Nature of Human Conduct* (Praeger Press, 1983) where he argued that 'we live in a story-shaped world; that our lives are guided by a narratory principle.' Also cited, for example, by M Bamberg, 'Who Am I? Narration and its contribution to self and identity' (2001) *Theory and Psychology* 21(1) 7.

³¹³ For example, D McAdams, *Power, intimacy, and the life story: Personological inquiries into identity* (Morrow, 1985); D McAdams, 'Personal narratives and the life story' in L Pervin and O John, (eds.) *Handbook of personality: Theory and research* (Guilford Press, 1999) 478 – 500; D McAdams, 'Identity and the life story' in R Fivush and C A Haden (eds.) *Autobiographical memory and the construction of the narrative self: Developmental and cultural perspectives* (Lawrence Erlbaum Associate Publishers, 2003), 187-207.

- a) To gain insight into how a person’s narrative has shaped their views or emotions, and how it can be affected by their experiences;
- b) To investigate how individuals justify or make sense of actions such as offending³¹⁴ or drug addiction³¹⁵;
- c) To explore how external factors may impact on a person; and/or
- d) To consider the collective values and norms of individuals and social groups, or understand social structures within a particular environment (for example, the exploration of ‘gendered narratives’ where stories of the self are based on categorisations and perceptions of gender,³¹⁶ or research into experiences of prison, such as Ugelvik’s work on ‘narratives of exclusion’ relating to rapists³¹⁷).

Research has explored how people construct their own narratives; how others, both individually and collectively, construct narratives for themselves, for others and as a social group; but also how narratives are disrupted, diverted or destroyed. As noted in Chapter Two, most empirical research on wrongful convictions to date - such as that by Westervelt and Cook - has used a narrative methodological approach.

‘Identity’ has been heavily associated with stories, as stories can be used to express the ‘internal narrative’.³¹⁸ Identities are developed through a cyclical process of constructing and

³¹⁴ L Presser, ‘The narratives of offenders’ (2009) *Theoretical Criminology* 13(2) 177-200.

³¹⁵ For example, H Cope, A Hochstetler and S Sandberg, ‘Using a Narrative Framework to Understand the Drugs and Violence’ (2015) *Criminal Justice Review* 40(1) 32.

³¹⁶ For example, J Miller, K Carbone-Lopez and M Gunderman ‘Gendered Narratives of Self, Addiction, and Recovery among Women Methamphetamine Users’ in L Presser and S Sandberg (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) 69; see also H Garfinkel, *Studies in ethnomethodology* (Polity Press, 1967).

³¹⁷ T Ugelvik, ‘The Rapist and the Proper Criminal: The Exclusion of Immoral Others as Narrative Work on the Self’ in L Presser and S Sandberg, (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) 37.

³¹⁸ See L Presser and S Sandberg, (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) viii; see also D McAdams, ‘Narrative Identity’ in S Schwartz, K Luyckx and V L Vignoles (eds.) *Handbook of Identity Theory and Research* (Springer Science and Business Media, 2011) 99—115. See also L Presser,

re-constructing, and telling and re-telling their narrative.³¹⁹ McAdams has described how narratives are constructed to give people's lives unity, a sense of purpose and meaning.³²⁰ His research has explored the way in which people understand themselves, both personally and as 'social beings', and how they make sense of their lives within the confines of socially defined categories such as class and gender.³²¹ In turn, stories have been considered important data sources in exploring the construction and development of identities through time and space over the life course.³²² As Singer notes:

To understand the identity formation process is to understand how individuals craft narratives from experiences, tell these stories internally and to others, and ultimately apply these stories to knowledge of self, other and the world in general.³²³

It is therefore fitting that I use narratives to explore the lived experiences of the wrongfully convicted in England and Wales. This methodology is described further in the next chapter.

Conclusion

The existing wrongful conviction literature is, as outlined in the previous chapter, theoretically impoverished.³²⁴ It clearly describes the debilitating effects of wrongful conviction from the point of imprisonment to far beyond exoneration and release from prison. Inevitably, it produces a rather dismal picture of harmed individuals who continue to suffer, most without

'The narratives of offenders' (2009) *Theoretical Criminology* 13(2) 177; S Sandberg and T Ugelvik, 'The past, present and future of narrative criminology: A review and an invitation' (2016) *Crime Media Culture* 12(2).

³¹⁹ D McAdams and K McLean, 'Narrative Identity' (2013) *Current Directions in Psychological Science* 22(3).

³²⁰ D McAdams, 'Unity and purpose in human lives: The emergence of identity as a life story' in A I Rabin, R Zucker, A Emmons and S Frank (eds.) *Studying persons and lives* (Springer Publishing Co., 1990) 148-200.

³²¹ Cited in J Singer, 'Narrative Identity: Meaning Making Across the Adult Life Span' (2004) *Journal of Personality* 72(3) 438.

³²² L Presser and S Sandberg, (eds.) *Narrative Criminology: understanding stories of crime* (New York University Press, 2015) viii; see also L Presser, 'Violent Offenders, Moral Selves: Constructing Identities and Accounts in the Research Interview' (2004) *Social Problems* 51(1) 84.

³²³ J Singer, 'Narrative Identity: Meaning Making Across the Adult Life Span' (2004) *Journal of Personality* 72(3) 438.

³²⁴ See, for example, R Leo 'The Criminology of Wrongful Conviction: A Decade Later' (2017) *Journal of contemporary criminal justice* 33(1) 82.

recovery. However, little reference is made to how these individuals might move towards recovery and why that may be so difficult or even, for some, impossible. There has been little attempt to analyse the process of trying to repair the harms caused by a wrongful conviction or to understand why this population may not be able to restore their lives to their pre-conviction selves. This work is imperative to understand how the post-exoneration journey might be better managed and supported, to try to restore the wrongfully convicted to where they were prior to the conviction or to set them on a new, more functional life path. This thesis aims to fill this gap.

The notion of trauma and identity will be used as a framework through which to make sense of the experiences of the wrongfully convicted once their conviction is quashed and they are released from prison. It will consider the impacts of wrongful conviction as an assault on a person's identity, developing the work of Westervelt and Cook, Grounds, Ebaugh, Veysey et al. and Maruna. In doing so, it will explore how wrongful convictions in England and Wales might create a contradiction between criminal social identities and the 'innocent' sense of self, or how a wrongful conviction can consume someone's identity such that it leaves little room for anything else.

The thesis will explore whether the wrongfully convicted must manage their old sense of self (otherwise known as their 'hangover identities'), and old narratives, or whether their experience calls for the need to transition into new identities, rebuild a new life narrative and exit from particular roles. Further, building on the work of Ebaugh, it will focus on how these individuals transition or restore their identities and self-narratives, if at all, and what, or who, influences their efforts to do so. In turn, the thesis will consider the efficacy of remedies in England and Wales in repairing these harms, in light of Maruna's work, which may inform suggestions for more effective post-exoneration responses to wrongful convictions in England and Wales, but also further afield. At the heart of this work are the stories - or 'narratives' - of

those who have been wrongfully convicted, or supported someone who has; the 'lived experiences' of wrongful conviction after a conviction is quashed.

CHAPTER FOUR: GIVING A VOICE TO THE VOICELESS

Aims of the Project

This thesis contributes to the literature and discourse on wrongful convictions by focusing on the lived experiences of the ‘aftermath’ and providing much needed empirical data on England and Wales. In doing so, it considers whether the notions of trauma and its impact on identity can provide a theoretical framework through which to better understand the harms caused by wrongful convictions and attempts to recover.

Therefore, the aims of this project are:

- a. To adopt a narrative criminology approach to produce rigorous empirical evidence of the harms caused by wrongful conviction in England and Wales, and attempts to recover or restore affected lives;
- b. To fill the theoretical gap in the literature by explaining why wrongful convictions are so injurious, how the impacts are exacerbated and the potential for recovery, drawing on the literature on trauma and identity;
- c. To identify the support options available that may help to restore the lives of the wrongfully convicted in England and Wales, defined as those who have had convictions overturned by the Court of Appeal after a referral from the CCRC³²⁵ or appeal out of time; and
- d. To use the resulting empirical data to provide an evidence base as to the efficacy of post-exoneration support options in England and Wales, with a view to identifying potential improvements or reforms.

³²⁵ Or, prior to the establishment of the Criminal Cases Review Commission, the Home Secretary.

In order to achieve these aims, this thesis sets out to answer the following research questions:

1. What harms were suffered by those who have had their convictions quashed in the most extreme cases³²⁶ in England and Wales in the past 20 years, and how long do those harms last?
2. How does a wrongful conviction impact on a person's identity and how might these be restored?
3. What post-exoneration support is provided to the wrongfully convicted in England and Wales and what additional support is sought or needed?
4. Are current remedies provided to the wrongfully convicted in England and Wales sufficient to repair the harms caused by the wrongful conviction?
5. Is it possible to restore someone's identity after a conviction is quashed by relying on the currently available support mechanisms in England and Wales?

The project considered all sources of help sought by or provided to the wrongfully convicted, both monetary and non-monetary, in an attempt to repair the harms caused by their wrongful conviction. This included financial support (such as social security benefits, compensation and budgeting assistance); legal support (such as claiming damages through civil claims or having details removed from the Violent and Sex Offender Register (ViSOR)); material provisions (including housing and employment assistance); health services (mental and physical), counselling and individual efforts to reintegrate into society (which might include community support initiatives, sharing their story with the public, or contacting the original victim of the crime they were convicted for).

³²⁶This is defined, as discussed in Chapter One, as where a conviction is quashed after a referral from the CCRC (or, prior to the establishment of the CCRC, the Home Secretary) – most of whom have had failed appeals - or quashed after an appeal out of time.

Recruiting wrongfully convicted interviewees

The primary means of exploring narratives of the wrongfully convicted was through semi-structured qualitative interviews, a well-used research tool to investigate the construction of the private self and how people make sense of their lived experiences.³²⁷ Face-to-face interviews give a voice to the voiceless; they allow those who may be vulnerable and who were not heard for so long to articulate, make sense of, and share their experiences.³²⁸

While there may be ideal recruitment and interview techniques in empirical research, pragmatism and chance are somewhat inevitable when researching vulnerable or hard-to-reach populations and so recruitment routinely occurs on an ad-hoc basis. As this population tend to stay private and ‘under the radar’, it was largely the participating organisations that made recruitment of interviewees possible. Participants in this project were identified and recruited through ‘snowballing techniques’ with established contacts and through relevant organisations, including MOJO, the MJSS, Innocence Projects and civil and criminal appeal lawyers.

MOJO initially agreed to reach out to their clients and contacts for willing participants and provided a wealth of information on their own support service. A pilot study was conducted involving interviews with six wrongfully convicted clients and their family members or friends in Glasgow and the surrounding area as well as with the two lead staff members of the charity and three psychologists who had worked with some of their clients. Initially it was

³²⁷ D Silverman, ‘Beginning Research’ in *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction* (SAGE Publications, 1993) 19. See also T Rapley, ‘Interviews’ in C Seale, D Silverman, J Gubrium, and G Gobo (eds.) *Qualitative Research Practice*, (SAGE Publications, 2007); P Atkinson and D Silverman, ‘Kundera's Immortality: The interview society and the invention of the self’ (1997) *Qualitative Inquiry*, 3, 304-325.

³²⁸ T Rapley, ‘Interviews’ in C Seale, D Silverman, J Gubrium, and G Gobo (eds.) *Qualitative Research Practice*, (SAGE, 2007); see also M Bamberg, ‘Who Am I? Narration and its contribution to self and identity’ (2001) *Theory and Psychology* 21(1) 8 who said: ‘As interaction, and the dialogue and conversation that extends from interactions, is the primary means by which people differentiate themselves from others and cement their membership to certain groups (ie. Constructing and maintaining both their personal and social identities – and the same could be said of role identities), narratives through interviewing is the most effective means of exploring identities.’

thought that all participants for the research would be recruited from MOJO. However, this changed after a number of issues were raised by the pilot study. Firstly, MOJO's criteria for its clients were not limited to those referred by the CCRC but also included individuals whose convictions had been overturned on first appeal. As a result, some participants did not fit within the remit of the study, and although they were interviewed for the pilot study, they could not be included in the main research sample.³²⁹ Further, some MOJO clients were convicted and imprisoned in Scotland, while others were convicted within the separate jurisdiction of England and Wales. Due to differences in the legal system, trial processes³³⁰ and compensation legislation, it was decided that this thesis could not comprehensively cover both jurisdictions.

Once it became apparent that MOJO is not the only service providing post-exoneration assistance to the wrongfully convicted in the UK, as I had previously assumed, the alternative organisation - the MJSS (described in Chapter One) - became a key source for the data. More conveniently based in England and Wales, the remit of the MJSS aligns with the aims of the research; it provides assistance to all individuals whose convictions are quashed after being referred to the Court of Appeal by the CCRC in England and Wales, or after being granted leave to appeal out-of-time. The MJSS facilitated access to its clients and allowed its employees to be interviewed. It also provided quantitative data from its client database, discussed further below. As a result, with access to a much larger pool of data, the jurisdiction of the thesis was limited to England and Wales.

³²⁹ Additionally, the response rate was not sufficiently high to ensure a robust empirical sample and this meant that the net had to be cast wider.

³³⁰ In Scotland, for example, witnesses must be corroborated and the courts may hand down a third type of verdict of 'not proven'.

Recruiting participants through these organisations, along with other individuals prepared to act as contacts, meant that no wrongfully convicted person was ‘cold-called’ and I was introduced to them by someone they knew and trusted. This helped to build rapport with participants who are likely to mistrust those deemed to be part of the ‘system’, as noted by Westervelt and Cook.³³¹ My attendance at relevant events, such as those run by FACT (Falsely Accused Carers and Teachers), MOJO, or the CCRC, and the MJSS annual client events, increased exposure of the research and allowed me to become a familiar face amongst stakeholders.

However, building trust among this group was a difficult process. There are many strong personalities in this niche field – particularly among the more high profile exonerees – with specific views and affiliations. Seeking data from one organisation or individual, at times, caused tension with others. It is perhaps inevitable that this population is going to be hard to find and somewhat unwilling to reveal their personal lives, fears and experiences to strangers. This is a population of people who have had their trust destroyed, and find it difficult to believe in others (described further in Chapter Six). It was necessary to go through support organisations, to access those who had been wrongfully convicted and be trusted by them (generally, if they trusted the organisation, they trusted me). However, some individuals did not want to speak to me if they thought I was affiliated with a certain organisation.

To overcome this challenge, it was important to emphasise to participants that, as a researcher, I am an independent figure, and as part of that independence I seek to explore all aspects of the field, rather than just a few individuals or one organisation. This was sometimes difficult to explain, particularly when I would be conducting a portion of fieldwork with one organisation at one point in time, but given time and good communication skills, I managed

³³¹ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012).

it. Navigating some difficult personalities and volatile emotions – no doubt a result of the trauma they had suffered – was challenging. However, given the chance to tell their story, they were all willing to share their experiences and feelings.

A Narrative Criminological Inquiry

The empirical work drawn on in this thesis adopts a narrative approach to collecting data on the lived experiences of people who have been wrongfully convicted. It uses what Bamberg termed the ‘small story approach’,³³² which analyses smaller sets of interactions, rather than the extended life history narrative, to build a picture of how individuals position themselves in the grand context of their life narratives and how their identities have been shaped and altered. This picture is built from qualitative interviews with wrongfully convicted individuals and their support providers, as well as from client files of the MJSS (discussed further below).

This small story approach to interviews was largely shaped by practical necessities, notably timing and funding constraints (I was unable to travel to, and interview, each participant a number of times over many years during their life course). In using a mixed methods approach, I aimed to provide a snapshot of a variety of experiences and identities in depicting post-exoneration life and support throughout England and Wales. Further, the MJSS client files analysed represent almost all wrongfully convicted people supported by that service, providing more of an overview of the population and increasing the generalizability of the thesis.

One of the limitations of this approach was the inability to obtain the ‘full’ story. I interviewed each person once. Those who had been wrongfully convicted were sharing their narratives only after the fact; stories of what they were like prior to their wrongful conviction,

³³² M Bamberg, ‘Who Am I? Narration and its contribution to self and identity’ (2001) *Theory and Psychology* 21(1) 5, 17.

and their experiences throughout prison and upon release before meeting me, were told retrospectively. There can be some inaccuracies in this approach – unlike a longitudinal study, for example, I could not accurately track changes in view and attitude, or even lifestyle, but instead had to rely on their stories; they were often also fragmented in their storytelling, shaped by their own focuses and frustrations, or even their mood at the time of interview.

Identities and narratives of trauma can be fragmented and evolve.³³³ For vulnerable people subject to horrific life events, such as a miscarriage of justice, an unstable narrative is even more apparent and this is something that has to be managed – but also accepted – during the interview process. It was expected that the stories explored for this thesis would be unchronological, tangential, and at times distracted by seemingly irrelevant topics. The semi-structured interview format allowed for deviations from the questions to explore unexpected paths and for interviewees to introduce their own themes.

Some interviewees, for example, focused on the injustice they suffered at the hands of the police. While the causes of their wrongful conviction may not be directly relevant to the aftermath, selected stories reveal what the interviewee perceives as the reason for their inability to move past that injustice (in this example, perhaps due to the failure of the authorities to prosecute the officers they believed to have been culpable).

The selective nature of storytelling can be a helpful analytical tool: what an interviewee selects as relevant or meaningful to express in a research interview can reveal something about their priorities, values, how they perceive their experiences and what is most salient or significant to their identity. Regardless of the ‘truth’ of stories in narrative criminology, the purpose of using stories is not necessarily fact-finding but to explore perceptions of

³³³ As stated in K Rogers, S Leydesdorff and G Dawson, *Trauma and Life Stories* (Routledge, 1999) 15, studies of trauma ‘entails investigating discontinuities and fragmentation’.

experiences and how the story-teller makes sense of those experiences. In an approach that takes seriously how people present themselves and their experiences, it is their truths that the researcher is interested in; their worldview.

Dean and Whyte argued that instead of asking whether or not a participant is telling the truth in their stories, researchers should be asking ‘what does the informant’s statements reveal about his feelings and perceptions and what inferences can be made from them about the actual environment or events he has experienced?’³³⁴ The stories as explored in this thesis, while not necessarily complete, are a true reflection of the participants’ sense of selves and their journey of identity construction and transition. It is the stories, or elements of their stories, that the narrators focus on – however ‘true’ – that provides a lens through which we understand how they see themselves and construct their identity. It does not matter whether participants’ stories contain only objective truths; stories will inevitably ‘reflect, and help us understand, the complex nature of values, identities, cultures, and communities’.³³⁵ Given this, through a semi-structured approach, I allowed the people I interviewed to control the storytelling as much as possible.

Despite having a schedule for each interview, they rarely went to plan, and often it was necessary to simply listen to what the participant had to say before beginning on my list of interview questions. Valuable insights could be gleaned from these initial narrations, revealing what they felt was most important in their stories, such as the injustice of their trials or the fault of the police or their lawyers. It also gave some context to their narratives, as sometimes they would want to demonstrate particular features of their stories, or provide some background, or discuss recent events (such as civil claims or compensation applications). In

³³⁴ J P Dean and W F Whyte, ‘How do you know if the informant is telling the truth?’ (1958) *Human Organization*, 17 (38).

³³⁵ S Sandberg, ‘What Can Lies Tell Us About Life? Notes towards a Framework of Narrative Criminology’ (2010) *Journal of Criminal Justice Education* 21(4) 448.

this sense, the interviews were interviewee-led. Literature on qualitative interviewing often does not focus on this listening space, which in my experience proved to be an important part of the interview. It was sometimes crucial to setting the mood, gave rise to some questions I may not have considered asking, and allowed the interviewee to feel comfortable and more in control, which helped to establish trust.

However, each interview schedule still had to be carefully planned and tailored to the individual. While each interview had the same general aims - in exploring their background, case, prison experience and their post-exoneration life - each interviewee had a different amount of information freely available (from media searches, for example) about their case and life, which allowed me to tailor the questions and topics for discussion. For more high profile cases, previous research³³⁶ was used as a platform from which to probe in-depth. For lesser-known cases, it was necessary to collect more basic information about the person and their case before delving any further. There were distinct differences between those who had engaged with the media and perhaps had written books and those who had not. The more high profile wrongfully convicted people would use similar 'buzzwords' and descriptions; the stories they shared, that had been shared hundreds of times before, became almost formulaic. Others spoke in a more unique manner; their stories faltering, yet clearly individual. This provided an interesting insight into the way in which narratives can become fixed over time through their repeated telling and re-telling.

³³⁶This included newspaper articles, recordings of news or other media shows (such as *Trial and Error*), autobiographical and biographical works, trial and appeal judgements, civil claim judgments, blog posts, websites, and so forth.

Our narratives are ‘not and can never be wholly personal’,³³⁷ but rather, influenced by our culture, social context, experiences and the reactions of others.³³⁸ Narrative criminologists should recognize that narratives are enacted and identities constructed through ‘shared narrative formats’³³⁹ and we must be mindful of these different contexts which inform meaning and identity.³⁴⁰ For my purpose, this meant aiming not only to explore experiences through verbal responses in interviews, but also to get a sense of the interviewees’ lives from observing where they were living, any interactions between family members and/or friends, how they acted in public environments, and their tone or body language when they spoke. It also made it helpful to interview other people who featured in their narratives; not just family members but also relevant support workers and professionals.

The interviewed sample and their narratives

A total of 21 wrongfully convicted individuals were interviewed for this work, including those in the Scottish pilot study. Four of the pilot interviews were deemed to be outside of the remit, following a decision to focus only on England and Wales, leaving 17 interviewees who had been convicted of serious indictable crimes in England or Wales to be analysed. All were found guilty in the Crown Court, were unsuccessful in their direct appeal or application for leave to appeal, had their case referred to the Court of Appeal by the CCRC or the Home Secretary,³⁴¹ or after an application for leave to appeal out of time. In all cases, their conviction was found to be ‘unsafe’ and quashed. Some quashed convictions resulted in a re-trial, but for those that

³³⁷ M Andrews, S Day, C Squire and M Tamboukou, ‘Narrative Research’ in C Seale, D Silverman, J Gubrium and G Gobo (eds.) *Qualitative Research Practice* (SAGE Publications, 2007).

³³⁸ This reflexivity is also discussed in Chapter Three

³³⁹ P Atkinson, A Coffey and S Delamont, *Key Themes in Qualitative Research: Continuities and Changes* (Altamira Press, 2003).

³⁴⁰ S Sandberg, ‘What Can Lies Tell Us About Life? Notes towards a Framework of Narrative Criminology’ (2010) *Journal of Criminal Justice Education* 21(4) 455.

³⁴¹ Prior to the establishment of the CCRC, cases could only be referred back to the Court of Appeal by the Home Secretary after all appeal avenues were exhausted.

did, either the Prosecution chose not to proceed, or the re-trial resulted in an acquittal. As discussed in Chapter One, this sample comprises individuals who have suffered serious injustice through a failure not just of the initial trial system, but also of the safety net of the appellate process, having had to seek relief through post-appeal review procedures.

While researchers need to be pragmatic, with snowball samples that rely in part on others' assistance, this research aimed to gather a sample of exonerees to reflect variation in experiences based on socio-economic factors, gender, age, and ethnic background. This was to reflect, as Loseke³⁴² explains, the interaction between different aspects of identities (based on different cultural, institutional, organizational and personal factors). My interviewees came from all corners of England and Wales including London, Birmingham, Cardiff, Eastleigh, Lincolnshire and Northampton. However, some aspects of the interviewed population were not so diverse: all but one of the wrongfully convicted individuals interviewed were male, all were over the age of 40 years, and majority were at the lower end of the socio-economic spectrum. Twelve participants were British-born, two were born in Northern Ireland, and three were of non-British backgrounds. This homogeneity was further reflected in analysis of MJSS client files, discussed further below.³⁴³

Interviews with the wrongfully convicted included asking what their life was like prior to the wrongful conviction, the harms suffered since, and their current situation, including the types of support they sought and received as well as their experiences of the different forms of support. The interviewees were invited to reflect on what their lives might have been like had the wrongful conviction not occurred as well as what support or services might help them to repair the harms done and restore lives. All interviewees, except one, consented to being

³⁴²D Loseke, 'The Study of Identity as Cultural, Institutional, Organizational, and Personal Narratives: Theoretical and Empirical Integrations' (2007) *The Sociological Quarterly* 48(4).

³⁴³See also C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

recorded and pseudonyms are used throughout this thesis where necessary to protect confidentiality.

The majority of participants were interviewed in the presence of a support person. This included a MOJO or MJSS employee, social worker, partner, friend or member of their family. This presence tended to make participants feel more comfortable and allowed for clarification where necessary, either due to accents and language barriers or related to community or personal history. It also provided both perspectives on the same issues and allowed for observation of their significant relationships. However, in some cases – particularly when a family member was present – the supporting person at times dominated the interview by trying to answer questions for them or intervening with ‘what they really meant was...’. This required some management to encourage the exoneree to contribute their own perspective, but on the other hand, provided insight into their relationship and the nature of support the family member or support person provided to the wrongfully convicted participant.

Inevitably, as noted above, the narratives of those I interviewed were not complete. Particularly, in relation to what their life was like prior to their wrongful conviction, many were vague in their response. More was revealed about their ‘prior’ lives when they discussed the impacts of their wrongful conviction, in terms of what they had lost, rather than answering direct questions about their life prior. But their narratives – however fragmented – gave real insight into the trauma they had experienced; the way in which it impacted on their lives; what they thought of themselves now, and of others who had tried to give them support. It is from these stories, memories, views and woes, that I gathered a sense of their experience and what it meant for who they were at the time I interviewed them.

It must be noted that the stories that were shared were ones of trauma. Many cried. Some chose not to discuss certain aspects of their experiences. Some had built a ‘strong’ façade through much of their life in prison, an essential technique for simply getting by. I had to be sensitive, non-judgmental, while also protecting myself from what has now been termed in the literature as secondary trauma.³⁴⁴

Each interviewee had, unsurprisingly, unique biographies; but there was always a clear difference between their lives prior to their wrongful conviction and their lives in the aftermath. While a handful of interviewees had prior criminal convictions – at least two were what is often termed ‘persistent offenders’ – they had still perceived their offending as a part of a linear life narrative; describing their prison experiences as positive, almost like their ‘home’ (which differed vastly from their prison experience as a wrongfully convicted person, described further in Chapter Five). While they may have been alienated by the rest of society in their lives prior, they were still accepted within their immediate community (in prison, or among other ex-offenders). Their social identity matched their personal sense of self. This, however, differed greatly from their life afterward, described further in Chapter Five, where their social identities no longer matched their sense of self. All but one of those with prior convictions did not offend after being wrongfully convicted (one was convicted for a minor shoplifting offence while homeless), another reflection of the contrast between life ‘before’ and life ‘after’.

For those who did not have prior convictions, their life narratives – while rarely middle or upper class – were also very different beforehand. Often, they perceived their lives prior as relatively ‘normal’. Whether or not this was in fact the case is irrelevant; the fact that they perceived their prior narratives and identities to be normal and rather uneventful, placed this

³⁴⁴ For more discussion around secondary trauma and the way it can be experienced through conducting qualitative research, see J Canfield, ‘Secondary traumatization, burnout, and vicarious traumatization’ (2005) *Smith College Studies in Social Work* 75(2) 82-101 and A Gerlach, ‘Researching vulnerable women: Sharing distress and the risk of secondary and vicarious trauma’ in A Fili, S Jahnsen and R Powell (eds.) *Criminal Justice Research in an Era of Mass Mobility* (Routledge, 2018).

in direct contrast to their experiences of wrongful conviction, making that experience a particularly poignant disruption of their life narrative. They often narrated their lives prior in terms of their social capital or role identities; as fathers, husbands or wives, employees, or party-goers. Most interviewees, for example, had stable careers or at least worked jobs to pay the bills; for example, as a bus driver, a nurse, a builder, security guard, owner of a telephone company, store owner. Almost all my interviewees were married or in long-term relationships in the years immediately preceding their wrongful conviction, but rarely afterwards. This differed greatly to their narration of their lives after being wrongfully convicted, which were often characterised not in terms of social capital but through the use of emotional descriptors (feelings of anger, for example) and in terms of what they had lost. This difference in expressing their narratives was a powerful indicator of the way in which their wrongful conviction had truly disrupted their life narrative.

The nature of their pre-exoneration lives, however, did not necessarily affect their ability to recover from their wrongful conviction in the aftermath, as the following chapters will demonstrate. For example, those who had been to prison before did not necessarily fare 'better' than those who had not. Those who had more social capital prior were not necessarily worse off in the aftermath. Their prior lives, and different narratives, simply provided the building blocks to uncover the trajectory of their post-exoneration experience, and understand the harms they had each suffered as a result of being wrongfully convicted.

The importance of location

It is important to remember that, while qualitative interviews can be used to appreciate and analyse identities, interviews are also social interactions whereby identities can be shaped or composed. Thus, it was important for wrongfully convicted participants that interviews were located in places where they felt most comfortable, to ensure the least interference with their narratives. Many of the participants wanted to do the interview on their terms; choosing the

venue, for example, or choosing where we sat in the venue. This sense of empowerment, it seemed, came from a history of oppressive treatment and their need to regain some agency in their lives. It was important to be open and allow for this agency in their narrative, rather than imposing any preconceived plans or notions about appropriate venues, or interview style.

As a result, interviews were conducted either at a place (such as a quiet café) near to the home of the interviewee and familiar to them, or in their home in the presence of a support person (family member, friend or professional). This helped to build trust between us and ensured that they felt comfortable during the interview. It also provided context, as I was able to gather information about where the person was living, the type of community and their home, their relationship with the community and their family, and whether or not they felt safe. If the interview was conducted at their home, oftentimes there would be interruptions from family members (including children), phone calls (some participants would take calls if their phone rang during the interview), and even workmen, but these interruptions provided a rich picture of the participants' lives. Attending their home also sent a message that I, as a researcher, felt comfortable with them; most had a history of suffering stigma and been treated with intense mistrust, and it was important for participants to know that as well as them trusting me, I also trusted them. That said, due to the obvious safety and other ethical issues that might arise here, home interviews were only conducted when another person (usually a family member) was home with them.

Locations reflected certain aspects of their identity construction and transition: for example, many who felt empty and lacking purpose had sparse homes, with little furniture or ornaments. Those who clearly longed for the family they had lost as a result of the ordeal often still had framed photos of their family on the walls and would reference them during the interview. Two participants had their homes fitted with bars on the windows and CCTV cameras; one when I visited had workers installing a large security gate for his driveway. This

provided an insight into their anxieties and sense of unsafety and mistrust. Many were convinced the police were still out to get them, and fearful they would be wrongfully imprisoned again. Two interviewees were visited by the postman during the course of the interview and reacted with suspicion and caution. One specifically told me to be quiet when this happened; peeking through the curtains and waiting for the postman to leave before starting the interview again (his reaction is quoted in Chapter Six). His anxiety and distrust were palpable.

Interviews conducted at the premises of a third party could still provide insights into the lives of the wrongfully convicted. For example, I interviewed Alan at his social worker's office, where he spent most of his time, as he was technically homeless (his homelessness application resulted in his placement in a group home, but he did not cope well in group situations and was consequently evicted).³⁴⁵ I met Ronald at his local coffee shop, where he went every day, sometimes twice a day. He was very familiar with the workers, who knew his regular order and his preferred barista (he didn't think the others made his coffee so well). It was a safe space for him and a place to come to everyday; also, if he did not turn up, he knew someone there would ask questions or see where he was. This routine gave him a daily purpose, and he felt that people there cared about him, though providing only a professional service. Daniel, also homeless, lived in a mosque where I interviewed him. He was well-known to the mosque's members and workers, and it was clear that he felt safe inside. However, he still felt threatened by anything or anyone beyond its walls, demonstrated each time he anxiously went out and questioned any visitor who came to the front gate of the mosque during the course of our interview.

³⁴⁵ Since interviewing him, Alan was referred to the Miscarriages of Justice Support Service and placed in a council home. However, he was found passed away in his apartment about six months after I interviewed him.

Managing expectations

It quickly became pertinent that I needed to manage expectations while interviewing wrongfully convicted individuals. Many of them were at first unsure of the exact nature of the project, and why they were being interviewed, and it was important to establish this verbally prior to any interview questions, as well as providing them with the participant information sheet. It could not be assumed that the participants had read the participant information sheet and so each section was explained verbally in order to ensure initial and continued informed consent to interview. Some participants asked for personal help with their case, such as with obtaining compensation. More than one asked me if I would write a book about their life experiences.

Vulnerable participants may misunderstand the role of a researcher, and where they have insufficient support, their aspirations for the interview may go well beyond what is reasonable. Managing this required honest and direct explanations of my role as a researcher, the purposes of the thesis, and their role in sharing their stories with me, to clear up any misinterpretation and avoid unrealistic expectations. This, of course, presented me with the well-known tension experienced by empirical researchers; caught between wanting to help the people you speak to, but – beyond offering sympathy – being powerless to effect change. Managing expectations is then not only about those of the participants, but also your own expectations of your role as a researcher.

Providing context with stakeholder interviews

A person's narrative is characterised and shaped by both social and personal components. As such, it was necessary to obtain insight from a range of stakeholders in order to understand how wrongful conviction can impact on identity and the life narrative, and how people may try to restore their original identity once a conviction has been overturned.

Interviews were conducted not only with people who had themselves been wrongfully convicted, but also any other individuals or organisations who provided support to them after exoneration. This included compensation and civil claim lawyers, psychologists, social workers, charity workers (such as those at MOJO), family members, friends, employees of the MJSS and campaigners who assisted in the aftermath. A total of 23 professionals and ten family members or friends were interviewed, as outlined in the following table:

Support Role	No. interviewees
Family members or friends	10
MJSS employees	3
Psychiatrists/psychologists	5
Lawyers	7
Campaigners	4
Charity workers (eg. MOJO)	3
Employment expert (compensation)	1

At first, I was concerned that I was embarking on two separate projects: one focused on the experiences of the wrongfully convicted themselves, and another focusing on the support providers. However, it quickly became apparent that the two are so intertwined in the post-exoneration experience that both perspectives are essential for a thorough narrative enquiry.

Much insight was gleaned from the narratives of the supporters, and it was beneficial to collate the narratives of both ‘insiders’ (those who had been wrongfully convicted) and ‘outsiders’ looking in (the supporters). In some cases, supporters could better articulate some aspects of aftermath experiences, perhaps because they were less clouded by trauma. In other cases, they provided different perspectives on the same experience; for example, providing some reasons that might explain the way in which the wrongfully convicted felt, or how they

acted, in the aftermath. This gave a more complete picture of their narrative, and the disruption caused by the wrongful conviction.

Compensation and civil claim lawyers, for example, demonstrated detailed knowledge not only of the legal challenges but also of the impacts of wrongful convictions and the ways in which the wrongfully convicted try to cope. This was a result of the application process which requires a detailed inquiry into the impacts of a wrongful conviction on the individual in order to prove eligibility and to quantify a claim. Some civil lawyers had kept in touch with clients whom they had spent years fighting for, which meant they were able to share how their clients' lives had changed (or not changed) over time. It was an interesting perspective often not revealed in a professional legal context; generally, many lawyers do not keep in touch with their clients once their instructed legal duties are complete. This says something about the nuanced nature of these types of clients that sets them apart from others, and the way that those who assist, at whatever stage of the process, build and maintain a unique connection.

Other organisations who provided assistance to the wrongfully convicted, most notably MOJO and the MJSS, as well as (a limited number) of specialised clinical practitioners, were able to speak to the frustrations of the post-exoneration experience from the perspective of a support provider. This may include the difficulties with having to fit the wrongfully convicted into existing frameworks not designed for their needs (consider in Chapter Eight, for example, the 'priority need' criteria for homelessness) or the lack of resources and support for them as providers.

Interviewees were asked to consider the nature of the support they provided to the wrongfully convicted, the struggles faced as service providers and their experience of how their support is received by the wrongfully convicted. This included whether they felt their support

had a positive impact on the lives of those released following a successful appeal and what more could be done to effectively address the needs of this specific group.

Database research

During the course of qualitative interviews with the staff at the MJSS, it became clear that while they had retained client data since the organisation's inception, it had not been collated or analysed. They agreed to allow access to these client files, both active and archived, for the purposes of providing a quantitative report outlining the nature of MJSS clients and the effectiveness of the service. This analysis was conducted for a separate but related study, funded by the University of Oxford John Fell Fund,³⁴⁶ and formed the basis of an article written by Carolyn Hoyle (the PI) and myself.³⁴⁷ These data were further analysed for this thesis.

All MJSS clients sign an initial service agreement, the terms and conditions of which state that their data may be reviewed and used for the purposes of research. Any resulting data was kept strictly confidential and anonymised in this thesis. The 305 client files were largely paper files consisting of a range of documents, including client contact notes, psychological reports, applications for state benefits, letters from government agencies or other organisations (such as those confirming or declining benefits or awarding community grants), court judgments, documentation from tribunal hearings or compensation assessments, and so forth.

Of the files surveyed, 61 clients were included for the purposes of the research.³⁴⁸ All files were analysed with a mixed methods approach; some quantitative analysis was done to

³⁴⁶ 'State Compensation and Support for the Wrongfully Convicted', John Fell Fund project ref: 162/032.

³⁴⁷ C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

³⁴⁸ This eliminated clients who were not 'within remit' (for example, had convictions quashed at first appeal or were appealing against sentence and not conviction) as well as those who did not engage with the service.

get a sense of the circumstances of a typical MJSS client as well as to measure some elements of success of the service (for example, the number of clients who had received priority need housing after their conviction was quashed, been successful in social security benefits applications, or received mental health assistance). Further, qualitative analysis of the files explored client experiences of the service and any frustrations encountered by its employees. Not all data could be obtained for all clients and so where reference is made to the 'valid sample', it includes the sample of those client files for whom that particular information was available. These data provide a larger sample of the wrongfully convicted in England and Wales and therefore increases the generalisability of the research.

Conclusion

This thesis is not only a contribution to the body of literature relating to identity, but also aims to demonstrate the way in which 'lived experiences' of trauma, in this case a wrongful conviction, can be voiced through narrative. In doing so, it voices the experiences of those who may not otherwise have the opportunity to share their story. The narrators contributing to this work are not only those who have directly experienced a wrongful conviction, but also those who have experienced it from the outside looking in, and attempted to help them throughout their journeys in the aftermath. In addition, the MJSS database provides further context to these narratives, and can be used to present a more collective lived experience, or at least find some commonalities across narratives.

Despite the hurdles described in this chapter, the stories shared have provided me with rich insight into how their experiences have affected them, how they perceive themselves and their lives now - as compared to their lives prior to the wrongful conviction - and how they see their journey towards reparation both now and in the future. In doing so, these narratives reveal the destruction and attempts at reconstruction of their identities. The following chapter provides an overview of this journey after exoneration, focusing on the identity narrative.

CHAPTER FIVE: THE AFTERMATH OF A WRONGFUL CONVICTION: JOURNEYS OF A SPOILED IDENTITY

Introduction

For a person to be deprived of his or her liberty, perhaps for many years, on account of a crime which was in fact committed by someone else is both an individual tragedy and an affront to the standards of a civilised society.³⁴⁹

This chapter draws on the literature reviewed in Chapter Three on dislocated identities and applies it to the experiences of the wrongfully convicted. While each individual I interviewed had their own unique story to tell, there were clear similarities in the way the wrongful conviction had impacted on each of their lives, including the three components of their identities (the personal, social and roles). The wrongful conviction was clearly a traumatic experience for all: one that disrupted their lives, careers and relationships; shifting everything that defined them or gave them purpose.

Their journeys in the aftermath, although differing slightly amongst the interviewees, were often stilted. The legal quashing of their conviction was not an automatic remedy for the damage that had been done to their self-narratives. It was up to them to try to re-build their dislocated identities that had been ‘spoiled’ by the injustice. Most interviewees became ‘trapped’ in their identity as a wrongfully convicted person, and frustrated when their personal ‘innocent’ identity did not match how others perceived them. For some, this meant they were unable to let go of their battle with ‘the system’. Others simply gave up.

³⁴⁹ Royal Commission on Criminal Justice, *Report of the Royal Commission on Criminal Justice*, Cm 223 (6 July 1993) <<https://www.gov.uk/government/publications/report-of-the-royal-commission-on-criminal-justice>> last accessed 18 September 2018.

However, two of the interviewees were able to build positive narratives that suggest some hope of recovery for the wrongfully convicted. This will set the scene for the chapters that follow, which analyse the different types of needs arising from a wrongful conviction and how those needs are addressed in England and Wales, including what might be done to increase the number of positive narratives in the aftermath of wrongful convictions.

Experiences of trauma

While the literature referred to in Chapter Three describes how identities can be ‘fluid’ and change over time, as Grounds has noted, a wrongful conviction is a sudden and unexpected disruption, requiring extreme change that most are unprepared for. This was clear in those I interviewed: from the moment of wrongful arrest, they had endured an entirely unjustified, unanticipated and irreconcilable experience. There was no room for the gradual development of new identities and life narratives. As Gary described:

I’m not like I was before. I know people change, but it’s gradual: we all change when we get old, that’s part of normal life. But in my case, it was more extreme to change...

While many of those I interviewed may have been sceptical about the criminal justice system and other systems of governing prior to their wrongful conviction (a view shared by many within the general public), none of them anticipated that they would be wrongfully convicted and imprisoned for a crime they maintain they did not commit. Even those I interviewed who had prior convictions found their wrongful convictions shocking and unexpected, different to prior arrests which could be justified. One of the participants, who had a history of youth convictions, wrote of his wrongful arrest in his autobiography:

I couldn’t take in what this officer was saying. I was shocked, terrified and angry... I was scared... I knew we were innocent so what were we doing here?³⁵⁰

³⁵⁰ M O’Brien, *The Death of Justice: Guilty Until Proven Innocent* (Y Lolfa Cyf, 2008) 23.

The trauma to a person's identity can arise at the point of the wrongful accusation and continue throughout the investigation, trial, conviction, and appeal. At each subsequent stage of the criminal process, fear increases and the damage becomes greater; as Richard put it, 'it was horrible. Yeah it just went bad and worse and worse and ... unbelievable'.

Once a person is wrongfully convicted, their predictable world is replaced by a world of mistrust, unfairness, inaccuracy and unjustifiable actions. They can no longer rely on the police and other agents of criminal justice, nor on the strength of friendships and family relationships, which can be shattered (for example, if family members or friends 'take sides' or, in some cases, testify against them). No longer do they know how their life will pan out; particularly, whether anyone will believe them, and whether they will be exonerated. This continues until finally, after a failed direct appeal, the wrongfully convicted person is left with a life void of purpose and stable narrative. Their identity has become dislocated. This renders these individuals helpless, as the process is out of their control. As Richard described:

And it's like ... and all of a sudden ... No one's ... your complaints go in the shredder. They shut you off completely ... they act like you don't exist.

They are left thinking 'why me?' and wondering how their conviction could have occurred. Even when the conviction is quashed, they are left wondering how it happened in the first place, where it all went wrong. For example:

I do think that somebody should nit-pick it and go through it and say "that's not right", "that's not right", "that should never have happened"...

Most wrongfully convicted interviewees in the aftermath saw the criminal justice system as corrupt and unjust. While some may have held these ideals prior to their wrongful conviction, there was a heightened sense of caution and scepticism about police and the criminal justice system at large that related directly to their wrongful conviction. For example:

... when I see a police car or anything ... I don't respect it. I have this question mark. As much as I want to love and trust the police uniform, the understanding of justice, means nothing. There is no accountability, no justice. It's wrong, on every level. So how do I trust anything? They fucked my head up.

I don't think there's any justice out there anymore.

There were also vindictive statements such as:

... they're just shitting us because we're working class, and they³⁵¹ know we can't get the money to fight them.

It was clear from the interviews that most continued to feel alienated, alone and abandoned after release, despite having their conviction quashed. It is difficult, almost impossible, for the wrongfully convicted to accept the consequences of punishment while maintaining their innocence of the offence. It is this unjustifiable nature of the experience that makes wrongful convictions a 'trauma'. This trauma disrupts the life course and, on survival (after their conviction is quashed and they are, in many cases, released immediately from prison), they are left to pick up the pieces of their lives. The impact of this trauma begins with the imposition of a 'spoiled identity', described further below.

Impact of wrongful convictions on the social identity: Stigma and the trap of a spoiled identity

... it really hasn't made a difference, being cleared. It really hasn't made any difference.

Reflecting Goffman's work on 'spoiled identities' described in Chapter Three, it is inevitable that convictions, regardless of accuracy, stigmatise the prosecuted. This stigma was commonly experienced by the wrongfully convicted people I interviewed. From the moment of being falsely accused, the person is mislabelled: a criminal identity is attached to them that

³⁵¹ 'They' is a term often used by people who have been wrongfully convicted. It can be interpreted as 'the system', primarily the criminal justice system but also any officials related to government.

does not match their innocent sense of self. The Prosecution constructs a case against them³⁵² which aims to portray them as monsters; many interviewees spoke of the ‘horrible’ things that were said about them during trial, in the press and within their communities. Private details of their lives were often used against them at trial, including experiences of depression or intellectual difficulties, as suggestive of guilt. They were called murderers, rapists, criminals, even - as one Irish interviewee described – a ‘terrorist’. This contradicts with their personal identity, whereby they feel that they are innocent, and they want everyone to know they are innocent.

However, the fact that they’ve had their conviction overturned by the Court of Appeal does not necessarily mean they will be perceived or treated as innocent people by others. A lawyer described this ‘paradox’ that can occur when a person’s conviction is quashed:

I think part of that is being able to enjoy freedom but not being able to enjoy innocence. And there’s a contradiction or paradox there that kind of makes things really difficult for them.³⁵³

This ‘spoiled identity’ can be exacerbated if the person spends time wrongfully imprisoned before their conviction is quashed, which was the case for all those I interviewed. As Gary described:

... you are in prison, you’ve been convicted of a horrible murder, everybody looks down on you, everybody thinks you’re a monster. How do you live with that? And... you’re trying to persuade everybody you’re innocent. Nobody believes you... So in actual fact it’s [a] fight.

This conflict of identity, reflected in the literature,³⁵⁴ can have a significant effect on those maintaining their innocence in prison and on the ‘outside’. Often it is regarded as

³⁵² For further discussion, see M McConville, A Sanders and R Leng, *The Case for the Prosecution* (Routledge, 1991).

³⁵³ Interview with Lawyer A.

³⁵⁴ Westervelt and Cook, for example, describe the trauma of ‘liminality’; a state of limbo between two or more identities. Goffman also describes this conflict between the spoiled identity as a person’s social identity and their personal identity. Both works are discussed in Chapter Three.

additional punishment, particularly if you have been convicted of an especially heinous crime, such as in the case of Abdul, who was wrongfully convicted of the manslaughter of an infant:

...living with that and you know you haven't done anything wrong, but everyone says you've killed a baby and you're charged with manslaughter, that's enough punishment itself...

As discussed further in Chapter Eight, the Court of Appeal determines only the safety of a conviction and is not expected to declare a person innocent. This can be frustrating for those who hope for a public declaration of their factual innocence. It can leave the person feeling underwhelmed and abandoned by the State. As Gary explained:

I was not exonerated. That's a big misconception. The Court of Appeal does not exonerate. The Court of Appeal is only there to focus on evidence that undermines. They don't make a judgement by innocence or guilt...

As a result, the wrongfully convicted continue to feel branded as criminals and alienated after their conviction was quashed and they were released from prison.

Some felt this was because of a lack of knowledge or belief that unsafe convictions could happen in the criminal justice system, characterised by common assumptions such as 'no smoke without fire'. Not many people will know that wrongful convictions exist and may be sceptical, as their assumptions about the accuracy of the criminal justice system remain intact:

What can you say to people who don't know what's going on. They say really? I say yeah. "But it's not possible. The police don't do things like that." What do you say to those people? You just say "yeah". You know I was one of those, I was quite deviant and [sceptic] about a lot of things before I went to prison. But what I've been seeing, your perceptions become different, in that everybody's against me and you're continually having to fight the tide. And you go in on yourself.

Stanley similarly recounted how his colleagues reacted when he told them:

... when I told her, she went "oooh I've never heard of any sort of thing like this! I thought because you've been convicted, you were

guilty. The courts don't make mistakes!" And that's what a lot of people [think] – no smoke without fire, or the courts don't make mistakes, or something like that. They don't see the bigger picture.'

This could reflect Maruna's argument that there is no 'reintegration ritual' after release, described in Chapter Three.³⁵⁵ In this context, while the wrongfully convicted suffer greatly with a well-known process of trial and conviction, they are not necessarily afforded the same publicly acknowledged process upon exoneration. Far less publicity is given to the overturning of a conviction. No party involved will acknowledge any fault, or that any error occurred. Indeed, the Court of Appeal itself is reluctant to acknowledge error, instead only noting that the conviction was 'unsafe', not necessarily wrong. As a result, as one psychiatrist described, it can seem an impossible struggle to convince others of your innocence even after your conviction has been quashed:

... people often are quite punitive. So, if you're innocent it's not always that easy to actually fight injustices. To persuade people that you are really a good person, you're not that evil person, you didn't really do it. And often the goal posts change, in that you get DNA showing for instance he wasn't the murderer. Then the prosecution still insisting well he could've done it, maybe there were two of them. That's not uncommon. So, there is the fight that miscarriages of justice – often the prosecution and the police fight hard, it's like they can't accept that they did wrong.³⁵⁶

One family member described a similar scepticism that was prevalent in his community, after his brother's conviction had been quashed:

...in the local area, the opinion was always he got off with it then, got away with it then. You can't go round and explain to everybody what actually happened and that he didn't get away with it, he served three years for doing nothing... obviously at the time the police went to talk to everybody and gathered evidence, so his employers, neighbours, you can't put that right. You cannot put that right.³⁵⁷

³⁵⁵ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 5.

³⁵⁶ Interview with Psychiatrist B.

³⁵⁷ Interview with Lawyer B.

This stigma is often exacerbated by the media who contribute to reinforcing the spoiled identities of the wrongfully convicted as criminals (but, on release, rarely rectify that). When a conviction is quashed, it is rarely the centre of media attention. Some attention was given to high profile cases of the 1980s and '90s but waned shortly after. For most of the wrongfully convicted people I interviewed, while their conviction received media attention, their exoneration was rarely in the news. However, it must be noted that there is a possibility that wrongful convictions may be more widely publicised in the coming years, given the discourse around failure to disclose and other threats to criminal justice.

Many interviewees described being followed, badgered, photographed, or had journalists knocking on their front door in the lead up to their initial trial. This was the case with Amelia, who was wrongfully convicted of grievous bodily harm in the course of her profession:

Somebody leaked it to the local press... somebody gave my address. So they came knocking. They sat outside the house for a year. They found my family... it was awful... Reporters putting bits of paper through the letterbox, with a 50 pence piece, 'phone me'... it was really, really hard.

Her personal information was all over the internet; her possessions were labelled with a crime number, and she has felt 'branded' since. She recalled incidents of harassment by the police and the media:

I'd come out one evening and go to my car and there were two police officers stood at the car. "Hi, you alright?" "Is this your car?" "Yes" "Is your name [anonymised]?" "Yes" "Can you open the boot?" "Ok." [They] opened the boot. And then they went.

The internet is a particularly unmanageable source of continued stigma post-exoneration. Once a story is posted on a news website or social media, it most likely remains in cyberspace for life. Some of those I interviewed had searched for themselves on the internet,

only to find old articles about their guilt remaining, despite their conviction being quashed, with some containing important inaccuracies. As Richard noted:

...even today I'm still on Google that I killed or bludgeoned, however they worded it in the press, with a hammer. The guy wasn't even killed with a hammer!

This, of course, does little to help with public acknowledgement of the fact he was wrongfully convicted, nor does it help him to convince others of his innocence.

Amelia said she continued to Google herself now because 'I want it to go. It shouldn't be there. I'm the first thing that comes up... Pages and pages and pages and pages.' However, she did say that at least with the conviction now being quashed, 'the first thing that comes up is "[anonymised] clears her name".' She has kept all the newspaper clippings from throughout her ordeal – something that was common amongst many of the exonerated interviewees - though she does not peruse them:

I don't need to reinforce the fact that people thought I'd murdered, you know, tens of people. You know all those [people] and those relatives, my family, let alone me ... before it used to really upset me, thinking about the relatives and they thought I'd done something horrible...

Sometimes this stigma meant experiencing confrontation, even after exoneration. For example, in the years after her conviction had been quashed, Amelia was confronted by a builder doing work on her home. The builder recognised her from media coverage of her case. His reaction was indicative of how the public can continue to see someone as a guilty criminal despite their conviction being quashed:

He came to the house one night and threatened me at the back door and grabbed hold of me. Called me a murderer. Told the lady down the road I was a murderer, and asked "what's it like having a murderer on the street?" Told the young lad at the bottom of the road ... [then] he grabbed hold of me. I've never been grabbed like that apart from in prison, to be honest. It was like he was going to hit me ... Well the police came, and I was in the kitchen, I was crying. I never used to cry. And they went out and spoke to him and

they cautioned him and said he must keep away ... what he's saying isn't true, and he's not to repeat and he's not to go around saying – because it's a very small place ... he's not to go around repeating these things, slandering me.

This is a classic example of stigmatisation, in this case branding her as a 'murderer', someone who should be excommunicated from the neighbourhood. However, the fact she had been legally exonerated, and wanted others to know and share her innocent sense of self, made this confrontation particularly impactful. It is difficult to move beyond a spoiled identity that is constructed, and maintained, through interactions and reactions from others.

Experiences of positive public reaction were rare, found in just two of my cases. In the first case, the wrongfully convicted man's sister Tracy explained:

But I mean he had people coming up to him in the street – including women – wanting to shake his hand, you know, so this is the man that police tried to say was a real danger to women, you know it's unbelievable. I was there with him when people came up to shake his hand ... And, of course, he was worried. Who's this person coming up towards me? What are they gonna do? You know, am I gonna get a punch, what's gonna happen? And they said "you're [anonymised], aren't you?" "Eugh, yeah" "Can I shake your hand?" [He was] shocked ... very, very shocked. When he first arrived in my home town ... there was a gang of youth. And you never know what they're going to do. And they saw him walking with me through the village – because it was just a small village we lived in – and the next thing, they shouted his name, and again you don't know what's gonna happen. And they just said, 'you're a legend! He didn't even know that was a good thing!

In the other case, where three wrongfully convicted individuals came from an already marginalised community, their friend and campaigner felt that they represented resistance, and as a result were well received upon re-entering their community:

... they're – anti-heroes, is that the right word? Anti-heroes? Well, within the community they get that status. They're kind of heroes, but they're heroes because they represent resistance, and because we know what the State tried to do to [them], and the fact they ... wanted to scapegoat [them] ...³⁵⁸

³⁵⁸ Interview with Lawyer A.

This reflects Maruna's notion that 'reintegration rituals' must be a two-way process, requiring input from both the individual as well as their community,³⁵⁹ described in Chapter Three. Such collaborative input allows the wrongfully convicted to feel included into moral and social frameworks, by acknowledging and accepting that they have been subject to an injustice; attaching to them an identity that is separate from an ex-offender.

However, in the absence of additional comprehensive support, such positive stories did not necessarily help the wrongfully convicted individuals with closure or identity transition. In the latter case, for example, two of the co-defendants became heavily dependent on drugs and disengaged, an impact on the life narrative explored further in the section below. Instead, this community acknowledgement helped to maintain their identity as a wrongfully convicted person which, although their experience will be a part of their life narrative, makes it difficult to incorporate new identities. I term this the 'stuck' identities of the wrongfully convicted.

Arrested Development: the 'stuck' identities of the wrongfully convicted

But I can't – I mean I – I just don't understand that – I can't – I don't know if it's I can't let it go or I won't let it go.³⁶⁰

There was a general feeling among the interviewees that the impacts of the wrongful convictions on their identities were permanent; often likened to a 'stain and taint'³⁶¹ or a 'scar'³⁶² that would continue to affect their quality of life. There was a sense of hopelessness; that 'it's just not gonna change.'³⁶³ Their wrongful conviction remained a strong part of their sense of self - otherwise known in the literature as their 'personal identity' - no matter how much time had passed. Almost all those I interviewed retained their trial and appeal documents, diaries

³⁵⁹ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 5.

³⁶⁰ Interview with Amelia.

³⁶¹ Interview with Lawyer A.

³⁶² Interview with Psychiatrist B.

³⁶³ Interview with Richard.

and letters from prison, and newspaper articles about their case, and it consumed them as they tried to make sense of what had happened to them:

The problem is I still replay a lot of things in my head. I mean whether it was right or wrong, I shouldn't have experienced that in the first place, and because of that I keep going over it and trying to understand in my own head ... I have to live with it every day. Every single day I have to live with it. I don't do anything ...³⁶⁴

Many interviewees showed signs of trying to cling onto their past identities (those prior to being wrongfully convicted), unable to move on or transition to new identities despite having their conviction legally quashed. Richard, for example, still had his family portrait on his wall, though his wife had played a significant part in bringing about his wrongful conviction and he was no longer in contact with his children (some of whom had been placed in care at the time of his imprisonment).

Interviewees' wrongful convictions lingered in their post-exoneration life as their primary identities; almost all did not feel they had fully moved on, with statements such as: 'I'm not getting over it',³⁶⁵ 'the fact is that what happened to us doesn't go away',³⁶⁶ 'it's almost like I'm still in there',³⁶⁷ and 'you can't get rid of it'.³⁶⁸

Amelia admitted to having visited the prison she spent time in a few times since being released. She felt that she was 'more drawn to that than my future'.³⁶⁹ She described to me how she had contacted some of the people she met in prison, including a prison officer, on Facebook. While this suggests an inability or reluctance to move on from her experiences, it

³⁶⁴ Interview with Ralph.

³⁶⁵ Interview with Abdul.

³⁶⁶ Interview with Amelia.

³⁶⁷ Interview with Richard.

³⁶⁸ Interview with Amelia.

³⁶⁹ Interview with Amelia.

also demonstrates a continued effort to re-establish an ‘innocent’ identity. For example, she messaged one of her former prison officers on Facebook to thank her ‘for being so neutral, and not treating me horribly’. The officer replied and acknowledged that she saw on the news that she’d been cleared. Amelia’s response was ‘you just tell them I was telling the truth, I wasn’t lying’, clearly a concerted effort to show others from that time that she was in fact innocent and truthful. She explained to me how the officer’s acknowledgement, and the fact they said they had suspected something was wrong with her case, provided some emotional relief. She also described one article that highlighted her innocent sense of self:

I read that article a lot... and every week I’ll share it [on social media] and I’ll put it at the top and read it again. Because she doesn’t know me... but she writes something that’s quite frank and it’s truthful. I was unpopular, and I was outspoken, but that doesn’t make me a murderer.

This also demonstrates an effort to maintain an innocent sense of self and re-establish an innocent social identity. Amelia compared herself to some of the other women she met in prison, many of whom had admitted and accepted their guilt. She said that now they have been released, they appear to be able to move on with their lives, unlike her, and she envied them:

... people that are guilty seem to be able to get on... it was a long time ago but still, every day and all night and you think about it – and the slightest thing reminds you ... you can’t get rid of it.

The above example is indicative of ‘re-experiencing’, the coping strategy described by Janoff-Bulman and discussed in Chapter Three, but demonstrates that over-exposure can become damaging and frustrate the ability to recover from the trauma. Amelia said that compared to one woman who admitted to her crime in prison, ‘the roles are reversed. I’m still like a prisoner and Carol’s getting on with her life.’ Her residual identity, of being wrongfully convicted and a prisoner maintaining her innocence, remained significant in her mind; poignant in her statement that opened this chapter. This ‘stuck’ identity further spoiled identities in many cases, as their obsession led to further alienation from their families, friends

and rest of society, who did not understand the depth of impact that their wrongful conviction may have had on them.

For some, the inability to move on meant they continued to fight: if not for their exoneration, for compensation or some evidence of accountability on the part of the authorities responsible for their plight. Their case consumed their lives and minds, and they were unwilling to let go of the sense of injustice. As one compensation lawyer put it:

... a lot of them are kind of obsessed with their case ... Inability to move on with life, kind of like obsessing over what you've been through. Because that's become habit for you, that that's what you've lived with. And maybe other people in their life are not really that – kind of like well, it's all over now, you've won your case, can't you just move on, put it behind you, it's not good for you, people don't like to do that.³⁷⁰

However, although they remain trapped in their identities as wrongfully convicted people, the continued fight gave these interviewees a purpose in life. As a psychiatrist explained:

...some of them carry on fighting to help others ... it gave them a mission, it gave them a sense of purpose, and the thing is that when you're released from prison after a miscarriage of justice, you have to find a sense of purpose in life...³⁷¹

Having fought for so long, it was difficult to let go once their conviction had been quashed. Often this meant years of continued litigation. This litigation was not necessarily about particularly serious matters; indeed often it seemed relatively minor when compared to the considerable trauma of wrongful conviction. Paul, for example, described to me his lengthy appeal process against a fine for non-payment of council tax, while Richard wrote several letters to his Housing Association and protested to me at length about a small crack above his window that needed to be fixed. One lawyer described:

³⁷⁰ Interview with Lawyer C.

³⁷¹ Interview with Psychiatrist B.

... they want to settle their case and move on, but they want to keep fighting, they want to go back and bring another challenge and another challenge ... years of obsession with a legal case and transposing that to taking a legal case forward and forward and forward ...³⁷²

This was clearly the route taken by Harry, whose charity continues to support and campaign for victims of miscarriages of justice. His organisation is heavily involved in parliamentary debate; he has appeared in numerous documentaries and spoken at various conferences.³⁷³ One psychiatrist described Harry's endeavours as giving him a 'sense of purpose' and I agree: considering prior to his wrongful conviction, Harry served a 'rightful' life sentence for murder and had spent most of his life in and out of prison, his efforts in setting up and maintaining his charity have no doubt been to his benefit. Since his wrongful conviction, he has desisted from crime and never returned to prison. However, he continues to re-experience his trauma and it is clear he is still intrinsically damaged. His anger is at the core of his continued need to fight. As a psychiatrist described:

...he was screaming and shouting as loud as he could.... So, he was directing it all on the outside being very angry, very, very bitter.³⁷⁴

Like his presentations at conferences or other events, my interview with Harry was characterised by rich accounts of his traumatic experiences in prison and at the hands of the police. He continues to want to fight against the Government or the 'system', despite having his conviction quashed, receiving compensation and having his case discussed at length by the Runciman Commission, which led to the establishment of the CCRC as noted in Chapter One.³⁷⁵ He is continuously dissatisfied with any new legal or policy developments. Perceiving

³⁷² Interview with Lawyer C.

³⁷³ This information is in the public domain.

³⁷⁴ Chapter Six will further explore the emotional impacts of wrongful convictions, including anger.

³⁷⁵ Royal Commission on Criminal Justice, *Report of the Royal Commission on Criminal Justice*, Cm 223 (6 July 1993) <<https://www.gov.uk/government/publications/report-of-the-royal-commission-on-criminal-justice>> last accessed 18 September 2018. See Chapter One for further discussion.

the world as an inherently evil place, and the police as ultimately corrupt, Harry's identity remains dislocated after his wrongful conviction; his new experiences in setting up and operating his charity have not rebuilt a new identity or created a positive self-narrative. His identity is cemented as a wrongfully convicted person.

Harry is not alone in his persistent war against the 'system'. About a third of my interviewees had similar aftermath narratives, where their dislocated identity trapped them as a wrongfully convicted person, characterised by a persistent need to continue fighting. Their efforts to have their conviction quashed cemented their primary purpose for many years. They were perhaps afraid of what they would be left with if they were to let go of this purpose and this primary identity as a wrongfully convicted person.

Brian was another interviewee whose fight continued throughout his time in prison, and after his convictions were quashed, when his focus was on obtaining compensation. Though he has now received a civil claim settlement, he remains determined to keep fighting, this time for an apology for his wife and children:

We only won because I would not stop campaigning and I never did, and I never will. And now we're fighting and my fight goes on now to get an apology for my wife and my children.³⁷⁶

In the years since his release, he prepared flyers about his wrongful conviction, giving them to 'anyone who would listen. Anyone. Everyone and anyone.' He told the world his story and protested loudly because he felt he wasn't provided with any assistance upon release:³⁷⁷

No one dared to help. No one. You can't go to a solicitor because you can't get Legal Aid...when I went for compensation, I had solicitors and barristers saying I need 100,000 pounds up front. How can I – when I'm on fuckin' social – where am I gonna get 100,000 pounds?

³⁷⁶ Interview with Brian.

³⁷⁷ Note that this was prior to the establishment of the Miscarriages of Justice Support Service.

I got an old van, and I signposted it, and I've put a coffin on top of it, and I went around the country, and I said your government wants me in that fuckin' coffin before they give you justice. And I went everywhere with that.'

But he still feels nothing has been done; that no one else will help him despite his relentless protests:

... the thing is, people listen to you for half an hour or so, but they won't write to their MPs, they won't support ...

When Brian was refused statutory compensation,³⁷⁸ 'I went outside in the Ministry of Justice in London and I went on a hunger strike outside. I took very ill...' This appeared to have some effect, as he was invited to meet the Minister for Justice, who advised Brian to sue the Chief Constable involved rather than continue trying to obtain compensation from the government.³⁷⁹ Eventually, Brian did instigate a civil claim against the Chief Constable, who made an offer to settle out of court. However, he remains dissatisfied:

[I am not satisfied], because I'm very hurt. They haven't said sorry. But the people that suffered was my wife and children, not me ... they haven't said sorry to my wife and they haven't said sorry to my children ... why the heck can't they say sorry and how can they get away with doing what they're doing? And they shouldn't be allowed ... It just goes on and on and on.

Perhaps, if those such as Brian and Harry ceased to fight, they would lose all sense of purpose. They would become like those described in the next section; those who are trapped in a wrongfully convicted identity, but have lost all sense of purpose.

³⁷⁸ See Chapter Eight for an outline of the statutory scheme and its now reduced availability for the wrongfully convicted.

³⁷⁹ See also Chapter Eight for a discussion of civil cases and how this is now an alternative to the statutory scheme given its now very restrictive test.

Trapped and disengaged: a loss of purpose and sense of self

For interviewees such as Harry and Brian, fighting maintained their sense of purpose. Others similarly trapped in their identities as a wrongfully convicted person experienced a loss of purpose when their conviction was quashed and simply gave up. They felt they had no need to continue to protest and yet they could not find an alternative purpose or role identity. The ideal coping process may be, as described in Chapter Three,³⁸⁰ to rebuild new identities by integrating the old and the new; however, these interviewees found that to be impossible. Feeling isolated and apathetic,³⁸¹ they rarely left their homes. Some turned to alcohol or drugs to numb the pain.

Two interviewees illustrate this experience in different ways. Although each had led very different lives prior to their wrongful conviction (Alan was what could be termed a ‘career criminal’, while Amelia, described briefly above, had a stable background, career, house, and partner), both had their identities dislocated by their wrongful convictions. Their stories demonstrate how, despite the stability of life prior to a wrongful conviction, exoneration can provoke the same loss of purpose that makes it difficult to move forward and re-build a new, positive narrative.

While in prison, Alan actively campaigned to have his and his co-defendant’s convictions overturned. He wrote to judges, Members of Parliament and others, and went on hunger strikes to protest against his wrongful imprisonment. In fact, he fought so much when he was in prison, that when his conviction was quashed – something he had longed for and fought for so long – he lost a sense of purpose. As he said:

³⁸⁰ For example, J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002); R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

³⁸¹ These emotional impacts and needs of the wrongfully convicted are further explored in Chapter Six.

I fought for everyone, alright. And as soon as I was out of that jail – what’s going on now? ... I’ve lost something rather than gained something.

The world as he knew it had changed, and he found it difficult to cope in his new-found environment:

I’d worked for years to get out, but I was looking at the world like it was back then. Not now.

He explained that now he needs ‘something to keep me going. I need something to keep me ticking’ but our conversations showed that he was struggling to find that. At the time of our interview, Alan was homeless and living on social security benefits.

Alan’s journey is interesting because, despite the fact that prior to being wrongfully convicted he spent most of his time in prison, his purpose in life shifted at the point of being wrongfully accused. He for the most part desisted from crime after being wrongfully convicted, apart from one minor shoplifting offence, a distinct difference to his persistent offending prior. His account emphasised that the sense of unfairness is not necessarily alleviated if the person has previously been convicted and spent time in prison, and wrongful convictions still dislocate the identities of the less fortunate. While he admitted that his prison experience may not have been as harrowing as for others who had never been to prison before, he nonetheless described spending every moment of his wrongful prison sentence fighting for his innocence. As his caseworker described:

I actually think that when he got falsely convicted, there was a change because then he had a purpose. He then became the student, the law student, the detective, everything that he needed to be to get himself released ... That actually – going through that process – also changed him. So then the petty crime thing was no longer enough to tick his boxes ... Sussing out the injustice and going down the legal route to prove that what was wrong ... I guess that’s what actually just made his life worth something. And then achieving it was a double edge sword. Because he achieved it, but now, it’s gone. And it’s the replacing that (sic) with something constructive that really will save him.

Without comprehensive support tailored for the wrongfully convicted, Alan was unable to find a new purpose or build a new identity. He remained trapped as a person once wrongfully convicted. As a consequence:

... because there was no purpose he spent his days either in the bottom of a bottle, drugs and alcohol, because there was no purpose, so I might as well do anything, what's the point, I might as well enjoy what I've got. And enjoying what I've got was actually really not enjoying it all, because he will tell you that the good times weren't even that good because he had no purpose, what was missing was a purpose.³⁸²

Sadly, it is now too late for him to find this purpose; he was found deceased in his apartment about six months after I interviewed him. He joins the likes of Sally Clarke as a particularly tragic example of the impact of wrongful conviction; those who lost hope and could not recover.

Amelia's story, on the other hand, is a compelling example of how wrongful convictions can severely impact on an individual's role identity. During our interview, Amelia discussed what she was like prior to being wrongfully convicted. At the pinnacle of her career, she was confident in who she was and where her life was going. She had a partner, a house and a profession that gave her self-esteem; there was purpose and direction to her life: 'I didn't feel afraid when I was at work, nothing would surprise me... I just wanted to be good at my job'. While her 'prior' life was characterised by her dedication to her career, it was in the context of her employment that she was wrongfully convicted, of causing grievous bodily harm with intent.³⁸³

Not only did Amelia lose her job, which was clearly a core part of her identity, but she lost many other aspects of her life including her relationship and the home she once shared

³⁸² Interview with Alan's caseworker.

³⁸³ She was also charged with other counts of causing grievous bodily harm, as well as murder, of which she was cleared.

with her partner, who left her soon after her conviction. After she was released from prison and her conviction was quashed by the Court of Appeal, Amelia's life felt empty and directionless. As she described:

... it's just the total invasion of your life, publicly ... and then they throw you in prison and they empty your body and mind and soul and leave you empty, leave you as nothing.

Amelia spent the first three months working on her house, the one she had owned with her ex-partner, which had been stripped and trashed by him. She would spend the rest of the day walking or on her bike because she 'couldn't stand being in the house'. She then moved in with a friend because she was unable to live alone. She no longer works. She owns half a house with a friend, who is a good source of support. She recounted spending lots of time on the internet because she can interact with people without needing to meet, face to face.

Amelia made every effort to ensure that her professional status was restored after her conviction was quashed. She lamented her loss of social capital:

It was bad enough as it was you know, everything you work for, you start – you start with nothing, you build yourself up a nice career, being good at your job and being respected, and you end up with nothing.

However, she had no intention of returning to her prior career, on the basis that she felt not 'mentally capable' of doing so. This may, therefore, not necessarily be an effort to cling onto her pre-conviction role identity, but more of an attempt to restore her innocent social identity to re-align with her innocent sense of self. This was evident in the following statement:

It's so important to clear my name so people would know I didn't do anything disgusting and horrible. And then it became to have 'removed' removed from the register ... To have [colleagues] that knew me know that I didn't ... it's the principle ... Because the law says I was exonerated.

Her exoneration was not enough to help her transition to a new identity and re-build a new life narrative. She realised, at some point after exoneration, that she was no longer the person she was prior to her conviction: 'When I look in the mirror, those eyes are mine, but nothing else belongs to me.' While acknowledging change, or what Giddens might call the 'fateful moment' that has disrupted her life narrative, she could not transition into a new, positive identity, and instead felt stuck and profoundly unhappy with who she was, saying she hated to say her name aloud. She seemed unable to know how to be a 'new' person, to carve a new identity that might help re-establish the stable life narrative she once had.

Amelia's loss of role identities was similarly reflected in my interviews with others, as well as in the data gathered from the MJSS. None of my interviewees re-entered the same profession they were in prior to their wrongful conviction. Few of them remained married to, cohabiting with, or romantically engaged with, their previous partners. Of the valid MJSS client sample,³⁸⁴ while just over three quarters of clients were employed prior to their wrongful conviction, only a third were employed in some capacity after their wrongful conviction. Further, 61 percent of the valid client sample were married or with a co-habiting partner prior to their wrongful conviction compared to less than a third after their conviction had been quashed. As Hoyle and I have argued elsewhere,³⁸⁵ such statistics demonstrate that wrongful convictions not only result in a loss of social capital, but they can destroy people's role identities such that, by the time their conviction is quashed, they have lost their life purpose. Without a role or a number of roles to fulfil, they lose their position in the world and the centre of their life narrative becomes void. As a result, they become disengaged and unable to move on from their wrongful conviction.

³⁸⁴ As noted in Chapter Four, not all data could be gathered for the entire sample of client files; in the case of employment, data was known for 75 percent of all engaged clients in remit.

³⁸⁵ C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

Finding new identities: the ‘success stories’

Just two of my interviewees appeared to be ‘success stories’, having found new directions and built new self-narratives characterised by identity transition. For Tim, this transition took some years and the tragic death of his infant son. For Andre, it was almost instant, when he became employed within a year of being released. The process of integrating and rebuilding the new and the old is reflected in these two journeys of the wrongfully convicted in the aftermath of exoneration.

Ideally, if someone who has been wrongfully convicted is able to create a new post-exoneration identity - one that integrates their pre-conviction self with their experiences of the wrongful conviction as well as new positive experiences - this may help them to adjust to their new world and to try to recover from what they have suffered. To achieve this, they must find a new purpose, the importance of which was described by one of the psychiatrists I interviewed, who emphasised:

... you’ve got to adjust to new things in the community, got to find a new role for yourself, a sense of purpose ... Without a sense of purpose in life, life doesn’t work out. You know because if it’s just aimless, you’re drifting all over the place.³⁸⁶

There are a number of similarities between Tim and Andre. They each have new purposes in life distinct from their wrongful conviction. While they agreed that their wrongful convictions were initially traumatising and that they still experienced the same impacts, they now looked upon their experiences with positivity and attribute some meaning to them (that this was somehow ‘fate’ or at least helped them to become the individuals they are now). Further, they benefitted from supportive relationships – both are married with children – which are added role identities that contribute to their sense of purpose. Lastly, they have accepted the need for further assistance, such as clinical treatment for the psychological

³⁸⁶ Interview with Psychiatrist B.

impacts of their wrongful convictions. They are both now, not just people who were wrongfully convicted, but also husbands, fathers, authors, professionals, homeowners, travellers, advocates. In building a new sense of self and new role identities, they are also able to manage their social identities, despite the fact that some stigma remains.

Andre

Andre could certainly be thought of as a ‘success story’ of this work. He is an example of someone who was wrongfully convicted and who has managed to transition into a new, positive identity, carving a narrative for himself that is not solely focused on his pre-conviction or wrongful conviction status. This is not to say that Andre’s wrongful conviction was less traumatic than any other: he recounted his time in prison as a daunting experience, describing himself as ‘militant’ and ‘volatile’. Andre was convicted of murder and spent twelve years in prison before his conviction was quashed by the Court of Appeal. He too suffered from a dislocated identity, and did not trust anyone or any form of authority. He spoke of how he felt alienated from other prisoners, feeling that it was him against the world:

I was young, and I was angry, and I was fighting the system, thinking that the prison was a conspirator in my wrongful conviction and the continuous holding of me in prison, surely everybody could see through the trees that this was wrong.

He knew that he was not on the same journey as most of the other prisoners, and buried himself in his case paperwork. He refused to work in prison or to engage in any steps that ‘guys do in order to move along the system’ and he said he was ‘always quite grumpy and miserable’. Eventually, however, a double page spread in a newspaper about him and his case, which highlighted the inaccuracies between the prosecution evidence that secured his conviction and the testimony of an eye-witness, changed the attitude of others in the prison towards him. His social identity in prison became less of a stigmatised criminal and moved towards someone who had been wrongfully convicted. As he explained:

... having an article like that published, the prison guards, the screws, the prison officers, also became aware ... Reading something in the newspaper independent of me, made them realise hold on, this guy might well be innocent, so they looked at me differently ... it made a difference because if a prison officer caught me doing something I shouldn't be doing; i.e., something that was to do with my campaign, for example, [as] I refused to work in prison ... There was a turning point because they'd come, they'd open my door, they see me sitting on my bed looking at my paperwork or my case papers which completely consumed my cell, and they'd close the door again. So, it made those kind of differences. The extra letter I would get to send to a campaigner.

However, not everyone agreed with this new social identity: the Court of Appeal seemed somewhat equivocal about his conviction, though they quashed it, and even today, stories on the internet portray him as a 'convicted criminal'.³⁸⁷ However, he did not appear to be concerned and is not worried about trying to portray his innocent sense of self. Rather, his innocence seems cemented into his new personal identity. As he discussed:

... in the grand scheme of things, I've been free for sixteen years, I don't give a fuck what they say, they called me a murderer, so saying that I'm not innocent or that my conviction is a technicality and not a declaration of innocence is neither here nor there to me. Bottom line is, those judges knew we were innocent, the court knew we were innocent, the police knew we were innocent that were involved in the conspiracy... and we were able to get the conviction overturned. So it's not had any bearing on my career or my life moving forward... it was unfair, and we should've got an apology and we were never gonna get an apology.

This confidence in his sense of self is likely largely due to the fact he has been able to build new social capital, and create a new identity beyond his wrongful conviction. His wrongful conviction is now an element of his past rather than the core of his current identity. A significant aspect of this was the fact he was able to begin, and sustain, a career after being released. This was not an immediate change; he described how he used his interim compensation payment to travel extensively upon his release. Interestingly, his reason for

³⁸⁷ Unable to reference websites to maintain confidentiality.

doing so was that he was desperate to build ‘new memories’ and feel like he was more part of society. These new memories ‘filled some of the void’ in that it allowed his life to extend beyond his time in prison which, he said, enabled him to better connect with others and in turn build substantial social networks. As Andre described:

... twelve years of prison. I had no conversation in me, I had no social life. I couldn’t – when you’ve done that kind of amount of years in prison, you have no life, you have no social conversation. I couldn’t string a conversation together because it would quickly turn to something that happened in prison, because that was all I knew... being able to go to various places on holiday, I was building new memories. Not deliberately, I didn’t realise I was doing it, but I was doing that, you know. It was giving me something I never had. So, I was building these new memories and I could have more than a five minute conversation without referring to a prison cell and all of that. And that’s important, it’s really important.

He understood the need to gather new data about the world, and himself, in order to rebuild his life narrative and identity that was not defined solely by his wrongful conviction and time in prison. It was after this period of travelling that he decided ‘I had to find what I was going to do for the rest of my life’, however, ‘I decided quickly that I’d spent twelve years of my life campaigning that I was not going to do it as a career’. He decided on a profession and through contacting some people in the field, was offered a job. This was the real beginning of him carving a new identity; it cemented his sense of self, creating new social networks and social capital, and his career gave him a role to play in society, a purpose. He acquired other role identities when he married and had children, which further played a part in building his post-exoneration identity. As he said, ‘my relationship with my kids has brought a different dimension to my life’. Indeed, a psychiatrist also explained that when he saw improvement in some of his wrongfully convicted patients, it was likely ‘to do with a change in life

circumstances; it's the people who for example may form new close family relationships, or partnerships'.³⁸⁸

A new career provides a meaningful change in life circumstance. As an employment expert³⁸⁹ noted: 'work isn't just about money; it's how you define yourself in society. "What did you do?" "Oh, I'm an ex-con unemployed person." It's just different, your presentation of self is different.' No longer is Andre only an ex-prisoner and a wrongfully convicted person, but he now has another dimension to his life that allows him to move forward and to integrate his past experiences into a new identity context. This new existence helped him to manage some of the emotional impacts of his wrongful convictions (discussed further in the Chapter Six).

He explained that although he is angry about what happened to him, 'it's in the past' and he is determined to channel that anger into his career and new identity rather than let his residual identity take over his life. This afforded him the ability to manage his emotional damage, something that many other wrongfully convicted people struggle with every day:

I am angry, of course I'm angry deep down inside but it is in the past, and I've been fortunate, I mean— others who have come out from a miscarriage of justice and had nothing in their life, that anger will consume them every day. I've had a lot of distraction, mainly because of my career, that it never manifested itself, and luckily there's been a big enough gap that I don't think it ever will now. Yes, I would have liked to have seen the police officers who deliberately conspired with witnesses and I would like to see the witnesses who deliberately conspired with the police, I would like to have seen them punished for what they did, and I would have liked to have seen them held to account, but I think I was bitter for too many years and I was not going to allow the bitter and angerness (sic) to sort of dominate my life on the outside. It was a deliberate effort.

³⁸⁸ Interview with Psychiatrist A.

³⁸⁹ This expert assesses the impact on earning capacity, and career prospects, of wrongful convictions for the purposes of compensation applications.

His employment gave him a role identity beyond being a person who had been wrongfully convicted. This also helped him to avoid some of the particularly damaging effects of wrongful conviction, and made him an inspiration to others, as he said:

I think you're absolutely right in saying that you know I am unique in the sense that I came out of prison and became a [professional] and have done things that nobody's ever done with the background that I have, or that I'm aware of, and I now use that, I use that when I publicly speak to people, you know and when I go into prisons and talk to prisoners about you know, you're not just a prisoner, convicted or not convicted, and I try to convince them that their life experiences is worth something when they come out.

Interestingly, he continuously referred to his employment post-exoneration as a 'distraction'. He believed distraction was very important for people that have suffered wrongful convictions:

You know I think the greatest benefit any miscarriage of justice victim can have is a distraction... And if that distraction is a job, it will prevent them becoming – you know, they are compensated financially and they were and aren't exposed to taking drugs and whatever. And that happens doesn't it.

Andre's story emphasises the importance of changes in life circumstances such as family connections and career prospects to assist with identity transition. However, this 'distraction' is not enough on its own to help the wrongfully convicted recover from their experiences and fully transition to new, positive identities. While he maintained that his employment may have helped him to avoid some very damaging impacts of wrongful convictions such as drug addictions, he was also careful to admit that he himself needed to address some of the emotional impacts of his experience, which did not necessarily occur to him until once that 'distraction' – his job – was no longer there. As he described:

I got a distraction, my job, career as a journalist was a great distraction, but deep down inside me there was still something manifesting itself that needed to be and should've been addressed, and I didn't realise it until all of a sudden that distraction was gone again, and I had this void...

Here he is referring to when he was made redundant from his job, a year prior to our interview. He explained how when he was first released, he didn't attend counselling, but he regretted that now. He didn't think he needed it because 'I was making all these new memories and experiences and it was washing away, I thought, all those memories of prison.' However, it was when he was made redundant that he realised there was a 'void' again:

There was void because I was no longer employed... although I've built, I've got children and stuff and all sorts of things have come in between... I was not doing what I was always doing and realised that a lot of the suppressed memories and what not were resurfacing. And I needed to go have counselling.

While initially, his career acted as a distraction which helped him to cope simply by avoidance (a technique described by Westervelt and Cook,³⁹⁰ referred to in Chapter Three), it also masked the true emotional damage that had been caused by his experiences. Thus, all aspects including the emotional impacts of wrongful convictions must be directly addressed in order for identities to be fully recovered. The process of building new identities must be accompanied by professional support. Andre recognised this and decided to attend counselling (discussed further in Chapter Six) which helped him to make sense of the role his wrongful conviction had played in the development of his character and personality. While he regretted not doing this immediately after release, this support further helped him to deal with his residual identities and to ensure a more complete and beneficial transition to his new identity (which is, of course, forever developing and changing with time and context).

Tim

Tim is another example of a wrongfully convicted person who has been able to transition into a new identity, while incorporating residual identities from his past experiences. Tim was

³⁹⁰ S Westervelt and K Cook, *Life After Death Row: exonerates' search for community and identity* (Rutgers University Press, 2012).

convicted along with two others for murder and spent eleven years in prison before his conviction was quashed after being referred to the Court of Appeal by the Home Secretary (prior to the enactment of the CCRC). Similar to most wrongfully convicted prisoners, he felt alienated from other prisoners during his time in prison: 'I didn't fit in anywhere in the prison system, I stood out like a sore thumb.'

On release, he was extremely damaged. His compensation lawyer, who he sought help from a year and a half after his release, explained:

He was very, very, raw, you know his PTSD was terrible, he was squeamish and anxious, he was in a terrible state. I mean compare him to the person he is now!³⁹¹

Tim had a similar desire to continue fighting following release to that of Brian or Harry; he likely has more litigation in his name than any other wrongfully convicted person in England and Wales. The need to fight against 'the system', he explained, would manifest in volatile ways:

I put posters of ... the copper who framed me all over the police stations, all on the police vans, all on the windows, I mean I didn't give two monkeys, I put: 'Wanted in connection with framing [Tim], phone police headquarters...' and I slapped them on... I even had phone calls from some of my friends saying 'Tim it's all up the Grand Avenue... I said yep I know, I fucking done it!

This, he recounted, went on for years before he agreed to undertake counselling, which allowed him to confront and to manage the emotional impacts of his wrongful conviction and begin to see the possibility of moving forward.

Similar to Andre, who encouraged other wrongfully convicted people to use the skillsets they had gained through their experiences, Tim said 'you gotta focus on what you can do, rather than what you can't do. I think that's what I'd say to any victim of miscarriage of

³⁹¹ Interview with Lawyer C.

justice when you come out.’ With little prior formal education, he educated himself in prison, participating in a number of courses. Some years after his release he enrolled in a law degree by correspondence, but had to withdraw due to health issues. He revelled in the fact he has now written books (‘what’s the chances of me writing one? I couldn’t write letters before I went into prison’) and helped to change aspects of the law through a number of judicial reviews.

Tim was heavily involved in campaigning for other victims of miscarriages of justice for the first six years after having his conviction quashed and being released. He wrote three books and released a musical recording to benefit a charity. However, his journey differs somewhat from Andre’s in that he was compelled towards identity transition after another, different tragedy occurred in his life. Tim stepped away from campaigning for miscarriages of justice when his infant son died in 2012 of Sudden Infant Death Syndrome. This was a turning point for the way he approached himself and his life. He explains how this forced him to choose to move away from wrongful convictions:

When [my son] died in 2012, I had two choices. I still had a court case going on then, about the CPS ... And I had two choices. I could have gone after these doctors, carried on with these cases and it could’ve been another twelve years or something down the line with the doctors, or do something positive. And it was that time I decided to retire. And that’s what I did. Well I say retired, semi-retired... I’m still doing some but I’m not doing the level I was doing before.

Through his grief, Tim decided he ‘wanted to do something positive’ and set up a charity with his wife in the name of their son. He said:

It gave me a new impetus. It sort of give me (sic) a new lease of life ... I now call myself an author and a motivational speaker and I’m the chairman of the [anonymised] Foundation.

Similar to Andre, this allowed him to create new identities for himself. He is no longer the wrongfully convicted person, but something more. He said that this has helped him to move on: 'I'm slowly letting go of the past.'

This was evident in his social interactions since the change in trajectory (the death of his son); for example, as evidenced by his response when he had recently seen one of the investigating officers from his trial. While 'before I would've punched him one', at that point Tim explained, 'I said to my wife, he's not even worth it, he's pathetic. And I laughed. And it was at that moment that I realised that he wasn't taking up any more head space.' He said that his son's death really 'changed my perspective' and 'that put the end then for miscarriages of justice for me because I needed to focus on doing something for [my son]. It was the only way to keep me going.' He no longer wants to be known as a victim of a wrongful conviction:

I want Tim, author and motivational speaker, now we're talking. I did write to the BBC a little while ago and said why don't you recognise me as an author and motivational speaker? They never replied.

Most recently, he joined a political party with aspirations to run for office in the next elections.³⁹²

Tim's civil lawyer discussed how the death of Tim's son was a turning point in his life, and how different his transition has been from other clients who had been wrongfully convicted:

I think in a way that was what broke the chain, kind of looking back to what happened to him. And now he's campaigning around all the health issues around the condition his son had, he set up a charity, so as I said that is what's helped him move on ... he in an extraordinary way created something very, very positive out of his experience. Whereas I think pretty much everyone else I've worked with has never really come back to being even the person they were

³⁹² Cannot name source to maintain confidentiality.

or could've been. They [are] either kind of a shadow of themselves, very, very bitter, very angry, very reclusive.³⁹³

In a new relationship, with children, and new career prospects, Tim has transitioned his identity to something positive. This, following the approach identified by Janoff-Bulman³⁹⁴ referred to in Chapter Three, allowed him to rebuild an identity that incorporates his residual identities but allows him to live as a functional member of society. Tim acknowledged he had gone through a personality and identity change, but hinted it was for the better. This positive meaning attached to his wrongful conviction is key to successfully incorporating that experience into his new identity. He has rebuilt a life narrative that was destroyed by the injustice he suffered.

The journey after exoneration: seeking new identities

You've released me but I'm not free, I'm now in another prison
...³⁹⁵

The literature described in Chapter Three suggests that efforts to recover from a traumatic event require a transformation of fundamental assumptions, which helps to build a new, more positive self-narrative. As a psychiatrist I interviewed noted, 'you have to re-frame everything, re-frame your self-concept.'³⁹⁶

While Veysey, Christian and Martinez discuss the ways in which ex-offenders transition to new identities through desistance narratives after release,³⁹⁷ most of the wrongfully convicted participants in this research were not so successful in rebuilding their lives and transitioning into new identities after their convictions were quashed. As explained

³⁹³ Interview with Lawyer C.

³⁹⁴ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

³⁹⁵ Interview with Richard.

³⁹⁶ Interview with Psychiatrist B.

³⁹⁷ B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011). See Chapter Three.

above, the quashing of a conviction does not automatically restore the self to what it was; most people's identities are never fully restored. The lives of most of the wrongfully convicted I interviewed were still shattered by the injustice they had suffered. They remained vulnerable, helpless, and fearful of the criminal justice system and the world at large. Reflecting the 'reintegration ritual' approach of Maruna referred to in Chapter Three,³⁹⁸ there was not the same publicly acknowledged 'ritual' surrounding their exoneration and resettlement that was experienced when they were convicted.

However, much is to be learnt about the success stories in this work, which will carry through the next three chapters. It is important for the wrongfully convicted to incorporate all facets of their past and present, and combine these with new experiences and outlooks, to rebuild new identities beyond their wrongful conviction. This allows them to become functional citizens and avoids them becoming consumed by their identity as a wrongfully convicted person. This process involves managing the 'hangover identities' of who they were prior to, and during, their conviction. This might, for example, involve accepting the fact that they may never pick up the career they left as a result of the conviction; that their family and relationships will be different; that they may have suffered severe injustice, but such experiences can form the basis of a new, more informed sense of self. They can become a person that has realised the failings of the criminal justice system, but is not defined by their frustrations. Such a process may create a more 'meaningful' reintegration to which Maruna³⁹⁹ and Braithwaite⁴⁰⁰ refer (discussed in Chapter Three).

The following three chapters will consider why most of the wrongfully convicted people I interviewed have found themselves to be stuck in their identity, with little hope of

³⁹⁸ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 5.

³⁹⁹ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 5.

⁴⁰⁰ J Braithwaite, *Crime, Shame and reintegration* (Cambridge University Press, 1989).

rebuilding and recreating new narratives and new identities that incorporate both their past experience but also new and positive data and experiences. It will delve further into how a number of facets of the sense of self and social or role identities (including the emotional self, financial self and social capital) are affected and whether current support provided for the wrongfully convicted sufficiently meets their multiple needs.

CHAPTER SIX: ADDRESSING THE EMOTIONAL NEEDS OF THE WRONGFULLY CONVICTED

Introduction

Drawing on the literature reviewed in Chapters Two and Three, this chapter considers the emotional impacts of wrongful convictions recounted by the interviewees. It also looks at current attempts to address their needs in England and Wales. All the wrongfully convicted people I interviewed, and the files on MJSS clients that I reviewed, provided evidence of the severe psychological impacts of wrongful conviction discussed in the literature. This included experiences of depression, apathy, PTSD, personality change and anxiety, as well as emotions such as anger, fear and guilt. It was clear from their accounts that the trauma begins at the point of arrest, and continues well after release.

This chapter will demonstrate that understanding the severe impact that wrongful convictions can have on the convicted person's sense of self will better inform what needs to be provided to address their post-exoneration emotional needs and repair some of the harms caused by such a traumatic experience.

Psychological impacts of the trauma of wrongful convictions

The psychological impacts of a wrongful conviction, evident in my interviews and MJSS client file data, tell a harrowing tale of trauma. As Chapter Five demonstrated, wrongful convictions disrupt a person's life narrative, impacting on their mindset, their sense of self, and their purpose in life. It can disrupt the life course, from a somewhat stable life to one of fear, anger, mistrust and loss. This can have a number of significant psychological impacts that continue far beyond the quashing of the conviction. One psychiatrist described his patients as having

their ‘whole psyche’⁴⁰¹ affected, as there are ‘so many different components’⁴⁰² to their trauma.

He went on:

I’ve seen such pain, such horrors, such difficulties these people have in terms of adjustment. Life isn’t easy for these people. The assumption is, we give you a million pounds and you’re ok. You’re out and what’s being assessed is “do you have a psychiatric condition”. But it’s all this suffering in prison, the suffering when they’re outside, you know, “will people believe me that I’m innocent” and things like that ... is underestimated; the overall impact because it’s got so many different components.⁴⁰³

It was no surprise – given the findings in Grounds’ research⁴⁰⁴ - that almost all the wrongfully convicted interviewees had been diagnosed with PTSD, anxiety and depression. This significantly impeded their daily lives: the majority were unable or wary to leave their homes; more than one commented that they ‘don’t do anything’; one even likened himself to a ‘zombie’. Their sleep was affected by what many termed ‘intrusive thoughts’ and more than half of the wrongfully convicted people I interviewed described having nightmares and flashbacks from horrific experiences during their time in prison or throughout their trial and appeal. This reflects the harmful re-experiencing of trauma described by Janoff-Bulman, discussed in Chapter Three.⁴⁰⁵

More than half of the interviewees described the way in which their wrongful convictions had caused a fundamental change in their personality. One caseworker from the MJSS spoke of how her clients never really ‘get re-settled’ or ‘recover’ and, understandably, can never get their life back to what it was prior to the moment it changed forever. This was reflected in the interviews with the wrongfully convicted: one said he went from being ‘fun

⁴⁰¹ Interview with Psychiatrist B.

⁴⁰² Interview with Psychiatrist B.

⁴⁰³ Interview with Psychiatrist B.

⁴⁰⁴ A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

⁴⁰⁵ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

loving' to 'dull'; another from 'gentle' to 'nasty'. Ralph, for example, no longer wanted to be around children, due to the nature of his conviction. Amelia described how it affected her confidence:

I was a very different person than I am now ... I was – not arrogantly confident, but I was very confident, competent ... it was not long after I'd been released and I travelled down to [where her family lived], and [my brother] said to me, "you're not the [Amelia] I remember". And when I look in the mirror, those eyes are mine, but nothing else belongs to me. And I'm not a confident person. I don't answer the telephone - I've only just started answering this phone. If somebody knocks on the door ... I knew you were coming, and I knew what you looked like because I had to look you up on the internet.⁴⁰⁶

This personality change had a significant effect on the ability of the wrongfully convicted to build and maintain relationships. Immediately upon release, as noted above, there is an expectation that their identity and role in their relationships will be the same as prior to being wrongfully convicted. However, the emotional impacts of wrongful convictions render that impossible. It is this realisation that can be a source of frustration in their connection with others, described here by one of the compensation lawyers:

So, you're just recognised to actually not be the same person that you were, and that can take quite a long time both for that to dawn on the person and also for that to dawn on their family and friends, and then they kind of might find that they're having problems starting new fresh relationships as relationships collapse and the difficulties in interacting normally.

This change in personality can be a symptom of trauma that has forced a sudden change in identity, cemented now as victims of wrongful conviction: the 'arrested development' described in Chapter Five. The unjustifiable experience has destroyed who they are; their sense of self. This can put distance between them and others, creating feelings of alienation, as the lawyer continued to describe:

⁴⁰⁶ Interview with Amelia.

People kind of accept it for a while, but then after a while it's like why you still going on about it, you're free now, why don't you – put it behind you, just get on with your life now, why are you making it worse for yourself, why you going on and on about it all the time.⁴⁰⁷

Case workers at the MJSS highlighted that a significant part of their job once the conviction is quashed at the Court of Appeal is to manage the expectations of the exoneree's family. As one noted:

There's different times I've waited at the RCJ at the cells for them to be released. One [time] is, them with a whole group of family and friends, so you're waiting with everybody and when that happens, what I used to do was really do two things is manage the family's expectations, because they're all in euphoria mode ... you know, just to say that the person that is released is gonna be different to the person that you used to know, give them some time you know they're probably going to have a bit of sensory overload so if anybody wants to see them and then they withdraw is just to give them space, and make sure they get help. And for you if you're worried about anything you can contact us because they lose contact as well.⁴⁰⁸

However, it is difficult for others to understand the fact that the wrongful conviction has shattered all that this person knows about themselves and the world. They continue to be affected by the unexpected trauma such that it changes who they are. The psychological impacts are left as a token of their trauma. The trauma of wrongful imprisonment can so deeply affect a person's self-confidence they can become somewhat incapacitated, as explained by one psychiatrist:

There certainly have been people who were so damaged by their experience, traumatised by being wrongfully put into prison, that when – one person – a highly competent individual, been thrown into prison for a few years and then released, he lost his sense of

⁴⁰⁷ Interview with Lawyer C.

⁴⁰⁸ Interview with MJSS Caseworker A.

capacity, became kind of disabled, he lost his confidence ... So, people may kind of lose their confidence.⁴⁰⁹

This incapacitation was reflected not only in their oral accounts but also in their home environment: many homes were cold, dark and bare. No doubt this is also a reflection of the damage to their identities; with very little belongings, photographs or other expressions of who they are beyond simply being wrongfully convicted, their environments reflect their ‘arrested development’.

Early trauma: maintaining innocence in prison

The emotional impacts of a wrongful conviction can often be sourced back to the prison experience, if the wrongfully convicted person spent time in prison. Chapter Five described the ‘spoiled identity’ created by a conviction (despite it being wrongful) and the stigma experienced by the wrongfully convicted throughout trial, often while in prison on remand.

The prison experiences of the wrongfully convicted people I interviewed were characterised by feelings of betrayal and hopelessness. Maintaining innocence in prison is a long, hard, and often hopeless fight, particularly when no one else seems to believe in your innocence, as Amelia described:

...it becomes apparent quite quickly that it doesn't matter what you say. Even in the interviews, I mean I've got the tapes of the interviews, and the transcripts. And everything you say is turned around and there's no point – at one point I said, “why is it that everything I say is a lie and everything anybody else says is truth?” “I don't know, why is that [Amelia]?” so you can't – there's no point.

It is a time of anguish and confusion:

I was put in a B Cat⁴¹⁰ where they lock behind the doors. We're out an hour maybe and I wouldn't go out anyway, just shut the door, I don't wanna know. I'm stuck in a place where I shouldn't be, and I

⁴⁰⁹ Interview with Psychiatrist B.

⁴¹⁰ Category B prison.

know I shouldn't have been there, but nobody wanted to listen to me and I was hurting. And if anybody come near me all I wanted to do was knock 'em out, you know. And the officers were abrupt. I found them very, very abrupt. I think abrupt is probably the better word to use than anything else!⁴¹¹

As the above implies, maintaining innocence in prison also creates a sense of isolation. Most interviewees said they did not want to associate with other prisoners, feeling that they were not 'like them'. This feeling extended to the staff as well:

I was away from everyone, you know, I didn't go out of my cell 'cos I didn't wanna associate with the likes of the people that were there. I was put on the VP⁴¹² ward, you know, so vulnerable prisoners, and I didn't want to know them. And the officers were – you know, [you] couldn't really talk to them. They're there if you need them. Well I didn't want to need them. I didn't want to know them, they didn't want to know me, they didn't treat me as a human, as a person, just a number and you're to do this and that's their attitude. So, it was quite hard, and I just withdrew from everything, and because of that I've got problems now in associating with people...⁴¹³

Ralph, who had been wrongfully convicted of sexual offences against a young girl, had to move out of the main cell block after being put in grave danger from fellow inmates. He explained how this added to his isolation and vulnerability:

... especially in the first couple of weeks, I didn't know if I was coming or going, I wouldn't leave the cell, not even to eat. I just didn't want to know, I shut down by then. And the fact that I was accused of that and – sorry I don't wanna speak too loud, too many company⁴¹⁴ – because of the accusations of why I was there, it left me very, very - vulnerable would be a better word.⁴¹⁵

⁴¹¹ Interview with Ralph.

⁴¹² 'Vulnerable prisoner'.

⁴¹³ Interview with Ralph.

⁴¹⁴ The interview was conducted in a public café, and Ralph's wariness to speak too loudly about his conviction speaks to the stigma he continues to experience long after his conviction was quashed.

⁴¹⁵ Interview with Ralph.

Not wanting to specifically refer to the offence for which he was wrongfully convicted, or speak about his experiences too loudly, demonstrates the way in which Ralph is still dealing with a spoiled identity and has been unable to transition to a new, less stigmatised identity (both in his sense of self as well as socially).

The 'shut down' mechanism described by Ralph, used to cope with the trauma of being wrongfully imprisoned, was similarly described by Andre:

If you're a victim of a miscarriage of justice like I was, you build up a mechanism of shutting down, closing off and becoming isolated. And because you're not the same as 90 percent of other prisoners that are guilty and convicted and so they're embarking on this – I need to jump through this hoop, that hoop, get this box ticked, get that certificate. I wasn't on that journey, so you become even more isolated. You become more singular. And I did. You know, my answer was I'd turn and go in my cell and look at my case papers. And so that was my coping mechanism on the outside ... But it is damaging. It is damaging. And if you don't deal with it, or have it unlocked and dealt with in some way – and I don't think I still have – it has a longer lasting effect. My default mechanism is to shut down.

These experiences in prison also have a detrimental effect on their relationships with those on the 'outside', which can lead to challenges in maintaining those relationships after their conviction is quashed and they are released from prison. These challenges were described by one of the lawyers I interviewed:

... both sides are trying to be sort of strong for the other one. So, actually, although they're both still going through a lot, and there is kind of resentment building up, the one inside, whatever they're going through, whether they're being beaten up by people or massively coming to terms with being wrongfully convicted, they're trying to present a kind of 'I'm ok' face to the family ... And then you've got the family who try and go in and support them and be ok there and everything's falling apart at home and they're trying to sort everything out. But then when the conviction is overturned, and actually then it's almost a letting go or processing that whole long period of time before you really start to then get back on track. And for the person who's been in prison, learning to kind of let down the barriers that you have to do particularly in a kind of

counselling way to be able to then start healing and the anger and loss and all the rest of it.⁴¹⁶

The prison experience of the wrongfully convicted, while not the focus of this thesis, can be the source of much of the trauma and highlights the need for these emotional impacts of wrongful convictions to be addressed, to avoid its unremitting effect. This will be discussed further in the following sections of this chapter. First, I explore further the unremitting emotional impacts of wrongful convictions that extend beyond wrongful imprisonment in the years after quashing and release.

The initial euphoria upon exoneration

The existing literature described in Chapter Two made references to an initial state of ‘euphoria’ experienced in the days immediately following the quashing of a conviction and release from prison.⁴¹⁷ The wrongfully convicted people I interviewed were no different. They described the elation of having their convictions quashed, of being finally free and having the opportunity to embark on a new lease of life. However, false expectations of life on the outside and a misunderstanding of the way in which the wrongful conviction affected their lives and of those around them can take its toll in the medium to long-term, described here by one of the lawyers I interviewed:

There’s this whole sort of euphoric thing, the sense that being released, you know this is the final, now my life is going to be brilliant because I’ve been released, go back to my family and the family are all going to think this is gonna be brilliant too. And the reality is there’s now this person has been absent for a long time who’s damaged, and how on earth do we deal with this, this is not what we spent our lives campaigning for.⁴¹⁸

⁴¹⁶ Interview with Lawyer B.

⁴¹⁷ Note that, in most cases of the population considered for this thesis (the most serious cases tried in the Crown Court), the wrongfully convicted will be in prison at the time of having their conviction quashed, thereby being released at the time as exoneration. However, there are some – including some individuals I interviewed – who served their whole sentence and were released prior to having their conviction quashed.

⁴¹⁸ Interview with Lawyer D.

Euphoria therefore tends to cease just a year or two after exoneration, and the wrongfully convicted are left with a sense of maladjustment and abandonment. There is a realisation that life on the outside is not going to be as easy as they expected, nor will it ever be the same again. The reality of living situations, employment and financial need become apparent, as does their loss of identity and place in the world. They are having to adjust to new things in the community; are having to find a new role for themselves, a sense of purpose. As Andre described:

Well, my release, that was superb, you know. I'd finally got where I needed to be. I was on such a high, [but] within a couple of days I was hitting a low again because the high goes away and you're just left with this sad, soppy, sorrow, sorry state that you've been left in. And everything just floods back, and you can't get it out of your head.

It is when this 'high' comes to an end that the negative emotions take hold: the fear, anger, and mistrust, described further below.

Descending into an Unexpected World of Fear, Anger and Mistrust

I live in fear still. Why should I live in that fear? Back then I never done that and I never had to live in fear like that.⁴¹⁹

Three main emotions dominated discussions I had with those who had been wrongfully convicted: fear, anger and mistrust. They were fearful of the outside world and of other people; but more importantly, they were afraid of being wrongfully convicted again. This fear reflects the helplessness and vulnerability that comes with their dislocated identities. When unjustified events such as wrongful convictions occur, that a person is unable to fully understand or explain, the world becomes a fearful place: full of uncertainty and the unjustified. The interviews showed that the quashing of a conviction did not automatically

⁴¹⁹ Interview with Amelia.

remove this fear and that in the aftermath, feelings of fear continued to affect their everyday lives. Amelia described how this often prevented her from leaving her home:

... even when I hear the police sirens and the helicopter, all that brings everything up ... I think that's why I don't really go out that much. I try to stay indoors. If I do go out, I wear a hat or something and try to disguise myself. It's really difficult.'

Many interviewees reported – and showed - that they lived in a heightened state of alert, often afraid to respond to the doorbell or phone. In one interview, someone knocked on the door of Paul's home and he reacted with sudden paranoia, 'see now – don't look out the window, don't look out the window! Who the fuck's that?!' After peeking out through the curtains, there was a sigh of relief as he realised it was his neighbour as he said, 'oh it's alright, it's only them.'

This sense of fear was apparent in the demeanour of those I interviewed, but also in their home environment. Some of the homes I visited, as described briefly in Chapter Four, had visible security appliances: bars on their windows, security gates, even CCTV cameras fitted around the property (in the case of two interviewees). One psychiatrist echoed my own experiences when speaking of his clients' homes being fitted with security measures:

... he'd put up an enormous heavy-duty iron gate at his ... back kitchen door to the garden, completely surrounded by high iron fencing, and it was because he was paranoid. There are others who have cameras outside. There was a man [with] this absolutely immaculate area of earth outside his window, and he told me he raked it every day ... he was paranoid because he thought if someone came to watch him – look through his windows – he'd see the footsteps. Another man who was ... in a tall building, a door slammed downstairs quite faintly, and he jumped ... you just see what their symptoms are and what their worries are that you wouldn't otherwise.⁴²⁰

⁴²⁰ Interview with Psychiatrist A.

Most interviewees alluded to the paradoxical desire to be alone, after years of being unable to be alone in prison, but then feeling vulnerable and fearful once they were on their own. Amelia described this feeling on her first night after release, when she went back to her home which was empty, as her partner had left her and taken all their possessions:

I didn't have a bed or anything, I just wanted to be by myself ...
[but] it was really awful. I was afraid; I was afraid of the silence.

One MJSS caseworker noted that this fear led many wrongfully convicted people to hoard their case files, in the event they found themselves wrongfully arrested again:

... fear was really high, so ... the amount of people that I've seen, you're trying to go through forms and applications and they want to talk about the case, the injustice, and the amount of people that kept all their folders ... and that was a) to show you, you know, could you believe this could happen, and the police's involvement, and the other aspect would be the fear that they could be just snatched again so they need to keep all of this ...⁴²¹

Often, this fear would be directed towards the police, born from their experiences of unjust arrest and treatment. Some described experiences of police brutality and feeling victimised by the police; others spoke of feeling criminalised by the police even before they were convicted. This led to deep and unremitting fear of the police even though their conviction had been quashed; they were particularly fearful that the police may come knocking again:

When I first got out and for two or three years after, every time I hear a police siren I'd think they were coming for me. If I see a police van in the street I don't know whether to punch it or to run.⁴²²

Stanley felt that his fear had even increased since his conviction was quashed, which was some time after his release from prison. He explained that he was more afraid of being convicted again:

⁴²¹ Interview with MJSS Caseworker A.

⁴²² Interview with Gary.

I don't like travelling on the tube, I don't like getting on buses, and I used to drive the damn things! And it's actually got worse since going to the appeal court. I'd managed to deal with things to a degree being convicted, but since I've been unconvicted, it's sort of – it's made me more cautious. If I think someone's following me, I'll drive around the roundabout two or three times just to make sure. Silly things like that.

Almost all interviewees also expressed some feeling of anger and resentment in the aftermath of their wrongful conviction. Although Andre's journey can be seen as something of a success story (as described in Chapter Five), he described how he continues to struggle with anger, though he is focused on managing his emotions and not to letting those emotions ruin his post-exoneration life:

Listen, I was bitter for twelve years. I was bitter when I first got out, for the first two, three, four years. And I'm probably still bitter now deep, deep, deep down inside. But it consumed me in the ways that I've been trying to explain to you, and I didn't want it to consume me in this world where I'm free, and I can experience a whole new existence. Of working, having a family, living my life, not being restricted by the things that I was being restricted by in prison, in all shapes and forms ... There is an anger inside me that manifests itself in my relationships and my everyday existence which is so unfair because I don't want to be that person, but I am that person at various times and it seems to bounce on those I love more than the people it should be directed at, which is really unfair, but it is what it is. And I'm trying to address that by having the counselling, because I recognise it. I am angry about what happened to me. But it's in the past. I've been very fortunate in my career ... that I've been able to channel that anger and the experience I had into my newfound skill.

This anger was often directed more widely at what interviewees termed the 'system' or the 'establishment'. Many described being 'let down really badly by the system'⁴²³ or that they 'have no faith in the system because of what they've [the authorities in the criminal justice system] done and what they can do to you'.⁴²⁴ However, there can be confusion as to who to blame, as one psychiatrist pointed out:

⁴²³ Interview with Richard.

⁴²⁴ Interview with Amelia.

Who do you direct the anger at? Do you direct it at yourself? Or at the establishment? If you direct it at yourself, you become depressed and miserable. If you direct it at establishment, you know, there may be repercussions.⁴²⁵

This perhaps reflects the fact that wrongful convictions are sometimes blameless acts, the result of numerous failings rather than the direct fault of one person or organisation. This blamelessness can add to the trauma of wrongful convictions and can also mean the anger is released in volatile outbursts with no specific target. Stanley, for example, admitted he had smashed the windows of a stranger's van without reason a few years after his release. However, in contrast, other interviewees did try to point the blame at criminal justice actors they felt were responsible for their wrongful conviction. In some cases, this was directed towards the police, as explained by one psychiatrist:

...that bitterness and anger, which can drive people, because obviously people are very angry with the police that they feel they were tricked, they were deceived, they were bullied, they were coerced, and they feel bitter and angry about that. And that anger eats at them.⁴²⁶

Some interviewees, such as Brian, blamed lawyers, displaying mistrust that was sometimes misguided:

Barristers and solicitors, who are being paid by the Crown, to give everything when the people who they're going against are paying them. So where does their loyalties lie? They're only interested in their fees. And that is a shocking part of it.

In the quote above, Brian's belief that lawyers are paid by the Government is an example of how this mistrust can shape the views of the wrongfully convicted and exacerbate their negative emotions. A lack of trust was evident across all the wrongfully convicted people I interviewed. Indicative of the trauma and assault to their identity, the wrongfully convicted no

⁴²⁵ Interview with Psychiatrist B.

⁴²⁶ Interview with Psychiatrist B.

longer recognised the integrity of professionals and others they once trusted. Reflecting Janoff-Bulman's work,⁴²⁷ if the traumatic event is caused by humans (as opposed to, for example, a natural disaster) it can seriously disturb the person's trust in others. The wrongfully convicted have been betrayed by people they thought were protectors; such as friends or family; lawyers who they thought would be competent but let them down; police they thought would be honest but were not.

When I asked Brian why he had CCTV cameras around his house, his reply was simple: '[I] don't trust people.' As discussed in Chapters Two and Five, wrongful convictions destroy notions of safety and security. Even if they felt 'insecure' at some point in their pre-wrongful conviction life (those, for example, who may not have had stable lives) wrongful convictions still disrupt a person's life narrative. This can mean losing faith in life narratives and agencies within it. As one lawyer described it:

It's that sort of burning sense of injustice; this is wrong, that shouldn't have happened. I guess that's why people are so mistrustful when they come out because they just think well if this can go wrong, how can I have faith in anything, really.⁴²⁸

A psychiatrist described how this mistrust, exacerbated by the experiences of stigma – as described in Chapter Five - can be anxiety-inducing:

... there is anxiety you know... they don't trust anybody. If they see a policeman: "is he going to come after me?" So, there's anxiety when they see policemen, they see a police car... there is the reminder. So there are all these things that trigger off anxieties in the community.⁴²⁹

⁴²⁷ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

⁴²⁸ Interview with Lawyer D.

⁴²⁹ Interview with Psychiatrist B.

This mistrust can affect their ability to maintain long term relationships. One interviewee, who provided support to his wrongfully convicted friend in the aftermath, described the difficulties faced by his friend who no longer could trust anyone:

...I think it's left him not being able to trust people. [He] doesn't understand people's motivation, because the whole entire world was supposed to hate him. Then people who he didn't know previously who don't hate him, he doesn't necessarily automatically open up to. Because he doesn't understand their motivation, thinks that they are trying to use him or trying to do something so they can expose him. So obviously that's had a significant impact.⁴³⁰

Most of the wrongfully convicted people I interviewed felt betrayed by certain organisations, and suspected corruption amongst them. Danny, for example, didn't trust the Government:

The Government or Council don't abide – they make the rules. But one rule for them, and one rule for us. And so, how do you resolve that?

Richard thought the media was culpable in his wrongful conviction and no longer trusted it:

So, I'm sceptic to what I hear about anything ... anything that's in the newspaper is propaganda, and anything on the telly well it's just brainwash. So I don't bother with it, I've heard it all on there.

He also felt that generally 'people' in authority had let him down:

Once you realise that you're ruled and governed and moralised by people that you can't trust, then you know you're finished.

The different ways in which this mistrust is directed shows the individuality of their experiences, but also further demonstrates the blamelessness of wrongful convictions described above.

The intersection of fear, anger and mistrust experienced by the wrongfully convicted - in addition to the psychological impacts identified earlier in this chapter - clearly do not

⁴³⁰ Interview with Campaigner S.

disappear upon the quashing of a conviction. Upon quashing and release, the people I interviewed felt disconnected from the world, and realised they had lost their sense of self: it is difficult to see their lives beyond being wrongfully convicted. This vulnerability, and perception that their 'new' post-exoneration life is unpredictable, reflects the findings of Grounds,⁴³¹ as well as Westervelt and Cook.⁴³² Their lives are further shattered when they re-enter the world after exoneration, and in many cases release from prison, when they are confronted with the fact they have emotionally changed quite significantly, and that they can no longer simply slot in to the life and personhood that they once were. This could also refer to the state of liminality described by Westervelt and Cook, as well as Maruna (see Chapter Three), where the wrongfully convicted upon exoneration are trapped between 'two distinct stages where old configurations of certainty and identity are no longer present but where there is as yet no new configuration'.⁴³³ They have lost connection with the world's moral frameworks and are having to reconfigure what they know of the world, and of themselves.

These emotional needs must be further addressed and require comprehensive support in the aftermath of a wrongful conviction. Support is needed to help to repair these harms and encourage the wrongfully convicted to transition into new, more functional identities that take into account their experiences while also allowing for new ones. The following sections of this chapter will identify how this is currently done in England and Wales and explore the barriers faced in providing such support.

⁴³¹ A Grounds, 'Psychological Consequences of Wrongful Conviction and Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

⁴³² S Westervelt and K Cook, *Life After Death Row: exonerees' search for community and identity* (Rutgers University Press, 2012).

⁴³³ S Maruna, 'Reentry as a rite of passage' (2011) *Punishment and Society* 13(1) 8; see also V Turner, *The Ritual Process: structure and anti-structure* (Aldine Publishing Company 1969).

The benefits of psychiatric support for the wrongfully convicted

The interviews and MJSS client data indicated that a large portion of people who had convictions quashed would at least attempt to seek psychological and/or psychiatric support, usually after the initial period of euphoria had ceased (between six and twelve months after release). Generally, this is initially to obtain assessments for the purposes of applying for compensation and benefits, with treatment following much later, often two years or more after release. The benefits of counselling and other psychiatric support were clear in many interviews with wrongfully convicted people. It allowed them to make sense of their experiences, improved their outlook and helped them to develop a positive sense of self. As Tim said of his psychiatrist:

She has propped me up so many times and when you feel like giving up and don't wanna go on no more, she can manage to persuade me to look at the positive things.

One clinician felt that their support allowed patients to feel understood:

Occasionally I think just the interaction they have with me – some later on will tell me has been very helpful. And I think that it's partially that they have a sense of being understood, their experience is that it's helped them make sense of their experience.⁴³⁴

Gary also described the benefits of psychiatric support, but noted the importance of being treated by someone with experience in wrongful convictions:

It helps me to emote. He knows me now, he knows the way I feel ... all of it is useful, it can build a person to get him or her back into a normal state of mind. The function of that – I need it. I need it. I still need that help. After 17 years, I look for someone who's had experience with what I've done, rather than people who just wanted to give me advice that I didn't need. That wasn't the right time for me. I wanted somebody to understand what I was going through.⁴³⁵

⁴³⁴ Interview with Psychiatrist A.

⁴³⁵ Interview with Gary.

Two of the five psychiatrists interviewed for this study were considered to be rare experts in psychological impacts of wrongful convictions, providing assessments and treatment to this specific population based on one-off referrals from the MJSS or lawyers rather as part of a tailored support system. One would provide support to individuals after providing expert testimony at their successful appeal; the other was on the advisory board of the MJSS whose clients were referred to him, primarily for assessments (but in most cases this resulted in a number of sessions). The remaining three psychiatrists I interviewed had treated a limited number of wrongfully convicted people working within a general trauma centre and were not specialised in wrongful convictions. Due to resource limitation⁴³⁶ and a lack of specialists in the field of wrongful convictions, most wrongfully convicted interviewees who sought help had been referred to general psychiatrists or psychologists through the National Health Service (NHS). This was sometimes in addition to the two more specialised psychiatrists described above, who usually only provided one-off assessments and not continuous treatment. Mainstream clinicians were not interviewed for this work; however, experiences of this more generalised treatment were gleaned through the accounts of the wrongfully convicted.

Interviewee's experiences of the individualised treatment offered by the two specialist psychiatrists, who had considerable experience of working with the wrongfully convicted, were positive and better received than treatment offered by non-specialist clinicians under the regular NHS referral process. The following two sections will explain the differences in those experiences and emphasise the need for more specialised treatment with professionals that have expertise and training in wrongful convictions and imprisonment.

⁴³⁶The two specialist psychiatrists often worked on a pro-bono basis and were unable to delegate as much time compared to their paid work; prior to this year, the MJSS did not have the funds to provide specialist psychiatric services to their clients exclusively. However, that is now changing, and they have now secured funding to hire a team of specialist psychiatrists that will provide support to their clients.

Specialist psychiatric support provided for the wrongfully convicted

The two specialised psychiatrists had both professional and academic expertise in the impacts of wrongful imprisonment. As a result, it was clear that those who received treatment from them thought those experts could understand their experiences in a way that was not possible for many mainstream clinicians. Their treatment focused on allowing patients to explain the state of their mind and conceptualise what had happened to them, how they deal with what happened and what more they could do, but was tailored to allow for their very specific emotional state, including their sense of mistrust. Daniel, who had received treatment from one of these specialists, described his experience:

So, it's like what [he] does; "these are the effects from two to five years, one to two years"; he broke it down. And what was the state of my mind ... he went through the process of all the shit I was dealing with and what have I done to deal with it or what can I do.

He went on to explain how this more specialised contact allowed him to better communicate to his family how his wrongful conviction impacted on him; that 'I suppose he saved me fifteen years of trying to explain the state of my mind to my wife and kids.'

One of the specialised psychiatrists described how his sessions focused on relaxation and anxiety management. This, he said, aimed to help wrongfully convicted people manage being out in the community after a period of imprisonment, facilitating adjustment to life outside prison, while also helping them to deal with the resentment and anger – as described earlier in this chapter – that, he said, 'eats at you like cancer'.⁴³⁷ Helping the wrongfully convicted to manage the anger described earlier in this chapter, that can affect their quality of life and the way they can interact with others, may in turn help them to better adjust to life beyond their wrongful conviction. As the psychiatrist described:

⁴³⁷ Interview with Psychiatrist B.

I think bitterness and resentment – if they can't get rid of that, that gets a hold of them. So, it's getting rid of that bitterness and hatred and being more functional.⁴³⁸

He felt that his expertise and true understanding of the impacts of wrongful convictions was key to building trust with those who sought assessments and treatment from him:

And he trusted me and nobody else, because he had known about my career being involved in miscarriages of justice. He perceived me as a man who's fair. A man who could be trusted. A man who had integrity. So, it was that trust that he had in his own mind that actually I could be trusted.⁴³⁹

There were clear positive experiences about support offered by specialised clinicians. More than one wrongfully convicted interviewee explained their appreciation for the research and care undertaken by the experts, saying that this helped them to feel more understood. However, these experts are few in number and therefore it is hard for those in need to secure appointments with them. One of the specialist psychiatrists highlighted the need for streamlining more wrongfully convicted people to mental health services, including drug and/or alcohol misuse treatment, as soon as they are released from prison or when their conviction is quashed (whichever is later). He described the tragic death of one of his clients because of the lack of comprehensive and dedicated psychiatric support:

A man who was coerced to confessing to murdering two elderly ladies and he was a drug addict. Then he was released into the community and not long thereafter he killed himself from an overdose. Now that's tragic. But he was discharged a drug addict really without any support. So, what I'm getting at is it could be death. That these people need support, you know because you're taking people- if they've got problems in prison, in actual fact, miscarriages of justice cases work in that you're just let out immediately. But there should be a system where psychologists could be instructed within two or three weeks or something ... and

⁴³⁸ Interview with Psychiatrist B.

⁴³⁹ Interview with Psychiatrist B.

if people have substance misuse problems they need substance misuse treatment.⁴⁴⁰

Without streamlining or providing a sufficient number of specialised clinicians, at present most wrongfully convicted people are referred to general mental health services under the NHS. The next section explores wrongfully convicted people's experiences of this more mainstream psychiatric support and how they differ from the specialised support described above.

Mainstream Mental Health Support

Ten wrongfully convicted interviewees said that they had been referred to psychological or psychiatric treatment with mainstream services under the NHS at some point after their conviction was quashed (either in addition to or instead of specialised support, as described above). Indeed, one of the initial tasks of the MJSS when a client is referred to them is to help them to get registered with a General Practitioner (GP). The GP would then, in principle, make referrals to psychiatric services where required.

Wrongfully convicted people referred to mainstream mental health services tended to be dissatisfied with their treatment. This was evident both in my interviews as well as qualitative analysis of the MJSS data. Some clients ceased to accept treatment after a few sessions, while others were deterred from receiving treatment after the first consultation. Although there were some positive experiences of generalised psychiatric support, it was common for referrals to mental health services to fail, either at the initial point of referral or shortly after being referred. This failure could be for a range of reasons, as one of the specialised psychiatrists noted:

... referral procedures are unduly complicated; conventionally they put a lot of reliance on the individual being referred to confirm that

⁴⁴⁰ Interview with Psychiatrist B.

they're going to attend, or they're asked to fill in pre-assessment questionnaires, it's kind of a laborious process. And many of them just won't do that.⁴⁴¹

Wrongfully convicted people would often fail to attend appointments, be unable to fill in the required forms, and face hurdles such as trying to obtain their medical history from the prison (or a number of prisons) where they spent time. The MJSS attempted to assist their clients with form completion, but were often unable to obtain medical records and could do little by way of ensuring they attended appointments. As an advice body that provides more practical support, they are unable to provide comprehensive emotional support, such as attending the home of the client and ensuring they are able to get to appointments.

In the event that they were able to cope with the administration of the referral system, and participate in psychiatric treatment, the wrongfully convicted faced various hurdles in generalised service provision. They may, for example, be seen by different professionals each time they attend an appointment. For these individuals who have particular difficulty with trust, this presents a barrier to cooperation and is often why they ceased to continue with psychiatric treatment, as Stanley described:

I did see a psychologist, they referred me to a psychiatrist, I went to a psychiatrist, within maybe a month or so of going to them that psychiatrist left and I got a new psychiatrist, and then within about maybe another two months, the government decided it was shutting the centre I was going to, and they told me I'd have to go back to my GP and reapply. And I just gave up on it. I mean it was hard enough dealing with the change in psychiatrist, without dealing going back to [the GP].

Furthermore, mainstream clinicians appeared to lack understanding or expertise in wrongful convictions, which also deterred the wrongfully convicted from participating in psychiatric treatment (described further below). This was both perceived and reflected in actual

⁴⁴¹ Interview with Psychiatrist A.

experience. One MJSS client, for example, was told by his doctor to ‘put it behind you’.⁴⁴² Unsurprisingly, he did not return to a GP after that. A psychiatric report conducted for another MJSS client in 2012 made no mention of the fact that he had suffered a wrongful conviction at all, but rather stated he had a ‘conviction for murder which led to ... subsequent years in prison while he appealed against his conviction and then re-trial.’⁴⁴³ There was no mention that his conviction had been quashed or of the psychological effects of this injustice.

Another MJSS client was referred to a clinician who refused to see him and, as a caseworker’s notes described, ‘as he had been released for some time ... [the clinician] thought his main problems were health related’.⁴⁴⁴ Another client was seen by a consultant psychiatrist and social worker after being admitted into a psychiatric unit and arrested for breach of the peace. Both professionals, according to the notes in the MJSS client file, felt his symptoms were ‘exaggerated’ and said they were unable to offer him any support services. The discharge summary stated that:

We do not believe his current state warrants crisis intervention even though it is possible he may have some psychological distress secondary to being in prison.⁴⁴⁵

Just one month later, the client attempted to commit suicide. This demonstrates the significant consequences of a severe lack of understanding (or willingness to understand) the impacts of wrongful convictions. It can also exacerbate stigma, and emphasises the need for professionals to be aware that the wrongfully convicted want to re-establish their ‘innocent identities’; to align their social identity with their innocence sense of self.

⁴⁴² MJSS client file 1.

⁴⁴³ MJSS client file 5.

⁴⁴⁴ MJSS caseworker notes from client file 18.

⁴⁴⁵ MJSS client file 2.

Tim also recounted how his initial psychiatrists (before he sought help from one of the specialists) seemed unaware of his circumstances and the way they conducted his sessions showed they were not sensitive to the trauma caused by wrongful imprisonment:

... these normal psychiatrists, they couldn't cope with me. They just didn't have the knowledge. They were out of their depth. They took me to a room which had bars on the window; that was the first thing they took me to! They had a mattress on the floor. That's like a prison cell, like a strip cell. I said "are you for real?" And my head went. I went off as, you know, seeing a mattress on the floor with a pillow and the bars, I said "you bring me here, you're supposed to help me, and you want me to see that?!"

This kind of misunderstanding can increase experiences of stigma and do little to assist the wrongfully convicted in re-building their lives and transitioning into new, functional identities. Not feeling understood by a medical professional can exacerbate mistrust, frustration and loneliness, which must be managed by those providing support to the wrongfully convicted (discussed further below).

Additionally, while psychiatric conditions including PTSD and depression were common diagnoses received by wrongfully convicted people after their conviction was quashed, 'they do not come across as acutely and severely mentally ill in a way that would demonstrate they are priority cases for mental health services'. Richard felt that the lack of obvious indicators of the emotional impacts of being wrongfully convicted had contributed to his experiences of not being understood:

...to turn around and say 'oh, you've been in jail for a miscarriage of justice, who gives a shit? Just – look, just get out there and pretend it never happened. Function. Function.' And because there's no – and this is the worst thing for me, this is a worry for me as well – the fact there's no physical signs. So, people look at me and think what's wrong with you? You can walk, you can talk, you seem perfectly sensible to me ... So yeah, that's the biggest worry, the fact that there's no physical signs.

As the resource-limited NHS must prioritise those who are acutely ill, the wrongfully convicted may not be seen as priority clinical cases. This can delay their treatment or, in some

cases, mean they do not receive treatment at all. Many were critical of the time limits on referred NHS sessions, which were considered to be insufficient for their needs. MJSS caseworkers also highlighted inadequate mental health services more generally, particularly for those living in rural areas:

I've got one client who was accessing just a general psychological support drop in service in one place, moved to a more rural area and there isn't really anything. Now, we have now given him contacts and he is now going to speak to his local mental health support team, he's got an appointment with them, but looking around there were very limited availability of any sort of services in a rural area, let alone anything very specialised for his needs.⁴⁴⁶

Trying to fit the wrongfully convicted into a generalised mental health system can affect the quality of support for this population. Such generalised services are not designed to meet the specific needs of this group and the experiences of mainstream psychiatric support stood in stark contrast to provision by expert forensic psychiatrists. There is no framework to allow for long-term, ongoing treatment; many wrongfully convicted people will need more than the generally provided limited number of sessions. Stanley spoke of how he finished one 'course' of Cognitive Behavioural Therapy (CBT), was discharged, but his psychiatric issues arose shortly after and he had to undertake the laborious process of re-engaging with the NHS:

Well I'm supposed to be seeing someone up here, I've done the course – the five-day group, yeah but I've done that in a roundabout way on my own with a psychologist. But that was years ago. But I don't think it really helped, I need a bit more than what they seem to be willing to give at the moment. But I'm waiting to see someone else to do this CBT, and this is what I done before. And I don't think it helped – it did help a bit, but only for a little while. I mean when I first come up here it was really brilliant, I loved it straight away, and it's just – but it's them ghosts that keep coming back and haunting you, sort of thing.

⁴⁴⁶ Interview with MJSS Caseworker B.

Caseworkers at the MJSS, frustrated by inadequate services for the wrongfully convicted within general health pathways, have tried to persuade the NHS to create a specific pathway for their clients:

... I think any service that works with people who've had a miscarriage of justice, it's always been a real challenge to integrate them with the health pathways that exist. So we've had lots of meetings with the NHS, we've had the MOJ⁴⁴⁷ go with us to the NHS to ask for a very specific pathway, because one of the things we're currently working on is trying to encourage everybody to at least go to their GP to kick-start that pathway, and that's a real barrier, and we've long said this needs a different approach and we've failed miserably to argue that.⁴⁴⁸

This caseworker went on to argue for a more specific and dedicated NHS pathway that could be created for the wrongfully convicted. She also noted that increasing awareness of the impacts of wrongful convictions amongst clinicians could help to ensure their mental health needs are better addressed:

... it's the entry points not recognising the needs of the clients. So those services might be available, it's about the speed of pathway ... our thought was that you had even just a basic level, some awareness, of GPs in terms of the common conditions and common issues that might impact on our clients, and then a more dedicated route through ... To open up a pathway in the NHS ... They just don't hear anything that fits their needs ... Even the language and the terminology that some of them prefer to use, doesn't then fit into the pathways; so we've got a number who do not like the term "mental illness", and therefore that has an impact.⁴⁴⁹

There were rare recounts of positive experiences with mainstream psychiatrists, who tried to understand their clients' trauma and be empathetic to their circumstances. Stanley, for example, explained how he felt his GP had understood his difficulties with mistrust and adjusting to sudden changes. When he moved out of the GP's catchment area, his GP allowed

⁴⁴⁷ Ministry of Justice.

⁴⁴⁸ Interview with MJSS Caseworker C.

⁴⁴⁹ Interview with MJSS Caseworker C.

him to return as one of his patients after Stanley said he had difficulty getting used to, and particularly trusting, another doctor. This made him feel understood:

... he knew what I was going through and for me not to trust someone it – especially a doctor, it's sort of like he knew.

The above quote is a good example of how increasing awareness of wrongful convictions amongst general clinicians will help to better address their needs; however, such instances are rare. Without awareness of generalised clinicians or a framework of more tailored services, the wrongfully convicted will be deterred from seeking help at all and certainly from continuing to draw support from professionals.

An unwillingness to receive mental health support after exoneration

Some of the wrongfully convicted people I interviewed – particularly the older men – recounted how they did not want any mental health support after their conviction was quashed. Six of the wrongfully convicted people I interviewed had never received counselling, despite their wrongful convictions having had notable emotional and psychiatric impacts. Among those included Mark, who was wrongfully imprisoned for twenty years and said he did not have any contact with psychological or psychiatric support other than for the purposes of applying for compensation. At the time of the interview, some 17 years after his release, he maintained that such support would be of no assistance to him. Those like Mark that were reluctant to engage in any mental health support felt there was nothing wrong with them, or at least, nothing that a clinician would be able to 'fix'. In some such cases, family members and other supporters – who thought they would benefit from help - found it difficult to encourage the wrongfully convicted person to seek or accept it, as described by one interviewee about his brother:

I don't think he would have accepted psychiatric help because in his eyes there was nothing wrong and I don't think he would listen to family.

This unwillingness to accept mental health support reflected a reluctance to accept the severe impacts that their wrongful conviction has had on them, as explained by one of the specialised psychiatrists:

Those who fought in a really, absolutely focused way and have been completely self-reliant in fighting their cases have a certain pride in what they've done, in their own strength, in their own resilience. And that they've succeeded in what they want. And to see a psychiatrist like me worthy, the question is, "has the criminal justice system - has their experience of it - succeeded in damaging them", [which] is something that completely goes against the grain. And I've had one or two people that at the outset have protested vehemently that 'I'm fine', 'I don't want you to tell me that there's anything wrong with me.' And they just don't want to accept the possibility that they've been harmed and in a way that might be very long term and permanent.⁴⁵⁰

As described in Chapter Five, in the years immediately after his release, Andre rejected psychological help because he felt he was 'fine', and heavily involved with his work. However, he realised years later – when he left his job – that he had used employment to distract himself from the psychiatric impacts of his wrongful conviction. It was only when he took redundancy that he was confronted with the need for psychiatric support. As he recounted:

At the time I felt mentally strong enough that I didn't need counselling, and I was not going to use my compensation to pay for counselling ... a percentage of that compensation was to cover the cost of counselling, and I thought I just was not ready for it or needed it. So no, when I first came out, I didn't go for counselling ... I should've done, and I know that now. I didn't go for it. I thought I could cope and deal with it, and I did. I did, in all the time that I was [working], I was distracted.

He described how useful he found psychological support once he confronted the need for it and sought help:

... it was only during the conversations with this counsellor, that I realised that all those years in prison have had a significant role on my character and personality that I still need to deal with and I haven't dealt with. And we worked through some of that ... And, bottom line, I never addressed it when I first come out of prison

⁴⁵⁰ Interview with Psychiatrist A.

which is when I should've addressed a lot of the issues ... I needed it for different reasons, you know I thought I'd have counselling to deal with all kinds of things, but the core root according to my counsellor is my time in prison and the impact, and trust issues – I have real big issue with trust. I should've addressed those kinds of things and I never did.

There may also be a resistance to accepting psychiatric support due to a perceived risk of being further stigmatised as someone who is mentally ill. Having already been forced to manage an identity spoiled by conviction, being mentally ill could further spoil their identities. The mainstream system is perhaps insufficiently sensitive to the fact a wrongful conviction is a trauma, as described by a MJSS caseworker:

... you have some people who are – don't want to access help because it's defined for people who have mental health problems, and people prefer to use words like trauma. And so, some people just resist.⁴⁵¹

This concern about being labelled 'mentally ill' led some wrongfully convicted people to fear that their experiences would be invalidated. They worried that, if they were assessed by a psychiatrist or receiving psychiatric treatment, their emotional turmoil might be seen as a mental illness rather than an understandable direct result of being wrongfully convicted. This was clearly evident with one individual, whose psychiatrist explained how it was difficult to gain his trust:

... he was someone who was extremely concerned that I shouldn't regard his ideas as indicative of mental illness, because he would see that as a way of dismissing the legitimacy of his view of things... at some point he got very suspicious that I was in a kind of alliance with his lawyers to demonstrate that he was mentally ill, and that would be a way of taking out of the equation his view as to why he was wrongly convicted. In other words, the beliefs that he had, that he absolutely wants to pursue, would be invalidated. He feared that they'd be invalidated through my intervention.⁴⁵²

⁴⁵¹ Interview with MJSS Caseworker B.

⁴⁵² Interview with Psychiatrist A.

Some of the wrongfully convicted were reluctant to accept psychiatric help because they feared the re-traumatising impact of talking through their experiences. Even Andre, who had found psychiatric treatment to be beneficial, admitted that he needed a 'break' from it:

I needed a break from going and talking to someone about all these past experiences ... about the things that I witnessed and suppressed in prison and all that kind of stuff.'

The emotional burden of psychiatric help was shared by many interviewees. Paul explained that he was unsure whether talking through things helped:

I have two lots of counselling now, and it's alright. You know, you just want to be left alone, you want your life back. Really, I think that's the best cure, talking about it doesn't really help me. And it can get quite upsetting and that. Especially when you go into a lot of detail. But it's better than nothing, I suppose.

Ralph said he stopped going to his psychiatrist because of its re-traumatising effect, particularly when he was asked to continuously read pages of the diary he wrote while in prison:

I'm not gonna go back and put myself through that again, because you know I don't need it. I really don't. I've been through enough don't you think? I need something that's gonna help me, not put me back in the spot.

This similarly deterred Richard from engaging in a course of PTSD treatment:

I was seeing one and she wanted me to start the treatment for PTSD but she said that for treatment we'd have to go back into the case from when it started and dig deep and that, and things open up, I would do that, if I was getting some certainty then I would do that, but part of me is going to talk about that and go through that, if I'm not going to get anywhere with this then so it's like talking to a brick wall or something.

For some, talking to another person who had been in the same situation was most helpful as that person could better understand their emotional journey and experiences. However, many wrongfully convicted people will attempt to cope with the emotional impacts by themselves, as they had done throughout their trial and appeal. Most interviewees described or revealed a need to keep control of their emotions, to ensure they didn't 'feel' too much; a

classic ‘avoidance’ strategy in coping with trauma described in Chapter Three.⁴⁵³ Often this was because they feared any consequences in the event they allowed their emotions to overtake them. Richard described how he had to ‘switch off’ to avoid any adverse consequences:

All the damage that was caused in between going in and coming back out, I’ve had to learn to control it and not let it control me. Because otherwise, you’re gonna go down the wrong way, you’re gonna start shouting and having an attitude with police and social workers. When I’ve had meetings with them and they’ve said things that I don’t like or things that are untrue and I’ve just sat there and said I would love to get you lot in court because you’re all a bunch of lying fucking cunts. And it’s coming out of ya. And you know that they’re just thinking, we’re gonna lock you – we’re gonna take even more notes. So you have to turn around and think, you know ... you can’t even let your emotions come out, you’ve just got to accept the fact that they’ve got ya, they’ve had ya, they’ve had you over. You can’t even moan about it and if you can learn to switch off from it and not – and get through the day.

Further, the absence of comprehensive emotional support means that in some cases the wrongfully convicted rely on drugs to numb their emotions and ‘take the pain away’.⁴⁵⁴ One interviewee told me that he used heroin because he was ‘too afraid to feel’. In some cases, this dependency continued following release, which, as one lawyer highlighted, was detrimental to any chance of resettlement despite being exonerated, even if they are compensated:

... the people that I think have been the most seriously, seriously damaged have been [from] drugs. So, people turn to drugs in prison as a coping mechanism, are just messed up for ever, basically. They never bounce back because once they come out ... even if you’re found innocent and you get lots of money and stuff, if you’re addicted to heroin, you’re addicted to heroin and that’s never gonna go away.⁴⁵⁵

She spoke of one client who became so severely addicted to drugs and alcohol that, some years after release, he was found deceased in a friend’s garden shed. Another, she said,

⁴⁵³ S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012); R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

⁴⁵⁴ Interview with Alan.

⁴⁵⁵ Interview with Lawyer C.

... was so badly damaged by drugs that you know he couldn't even leave the house. The only way to take instructions was to physically go to Cardiff. And even then, he wouldn't open the door at certain times. Couldn't speak to him on the phone, could never get him to come to London ... he died shortly after we got him compensation.⁴⁵⁶

This reluctance to seek or accept support that might help address their mental health needs demonstrates the need for tailored emotional support for the wrongfully convicted, or an improvement in the awareness and sensitivities among general psychiatric services provided by the NHS. A significant aspect of this is managing the anger identified above, and rebuilding the trust that is lost. This can only be achieved if the clinician is aware of the underlying trauma caused by wrongful convictions; the damage to their identity. Treating them as a specific group with very specific symptoms of trauma might help to avoid the stigma that is created by associating them with spoiled identities such as ex-offenders. Without this approach, and instead imposing very generalised frameworks of psychiatric assistance onto the wrongfully convicted, the damage to their identities will likely not be repaired. They will continue to be 'stuck' in a state of identity crisis, unable to move forward and transition into new identities with a more positive and functional life narrative.

Effects on the family and their role in providing informal emotional support

Veysey, Christian and Martinez describe the 'transformative' power of relationships of former prisoners with friends and family.⁴⁵⁷ They suggest this support 'contributes to a stable social base' and 'allows former prisoners to shift their self-perceived identity' to one more aligned

⁴⁵⁶ Interview with Lawyer C.

⁴⁵⁷ B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011).

with that support provider.⁴⁵⁸ It sets them on a transformative path to a more positive identity.⁴⁵⁹

The emotional support provided by family and friends was an important resource for many of the wrongfully convicted people I interviewed, despite the challenges that wrongful convictions can impose on relationships. Often, they felt they could trust their familial counterparts more than professionals, and sought more informal emotional support from them than a psychiatrist or psychologist, for example. This meant that family members and friends were at times forced into a social support role that they did not necessarily prepare for, in addition to carrying other burdens such as working to support them financially and taking the wrongfully convicted person into their home (discussed further in Chapter Seven).

As noted in Chapter Five, one of the psychiatrists interviewed emphasised that those improved psychologically tended to be those who had formed close family relationships or partnerships. The benefits of family and friends' support were reflected in the interviews with those who had been wrongfully convicted, for example:

I didn't want to go out. And actually, a friend of mine, he eventually threw me over his shoulder and took me out. And I didn't have a lot of choice. And that sort of gave me a little bit of confidence ...⁴⁶⁰

So, I still suffered a lot of that where my wife gives me a lot of care, and stuff like that, and while my wife is at work my daughter does a lot of care for me as well and stuff like that.⁴⁶¹

[My wife] will tell you, some days I got no patience at all. I get up, impatience, grrr, and she'll say calm down or whatever, but she knows what to do. And she knows when to leave me.⁴⁶²

⁴⁵⁸ Ibid. 59.

⁴⁵⁹ Ibid. 60.

⁴⁶⁰ Interview with Stanley.

⁴⁶¹ Interview with Tim.

⁴⁶² Interview with Tim.

... getting married, having kids ... I found some comfort in that, and it's been great.⁴⁶³

The interviewees who had support structures in place, either being married with children, having a partner, or being well-connected with family, appeared to be more stabilised. They were able to cope better with their experiences; they felt understood. In some cases, it also allowed them to create a new role identity, of caring for others, particularly with children as one of the interviewees described of his wrongfully convicted friend:

... it also means that he's a support for her [his daughter] which is – puts him in a different role. Rather than him always being the one that's been supported.

The benefits of family support were highlighted by another psychiatrist I interviewed:

The support of family, I've seen, if you've got support of family that's very very important, family who believe in you. And actually, having someone to believe in your innocence, and often family do, and that's good, that supports people. If you've got no family and you're all on your own, that's more difficult. Family is terribly important.⁴⁶⁴

Family members and friends could be considered what Goffman termed 'sympathetic others'.⁴⁶⁵ Goffman noted that people who are stigmatised may receive support from those who are connected to them through social structure, such as relatives who share and embrace their spoiled identities.⁴⁶⁶ He described how this 'stigma' or spoiled identity can spread to the family member or friend, who also experiences it by association, which can be challenging for the relationship.⁴⁶⁷ This was also reiterated by Jenkins in his research with families of people who had been wrongfully convicted.⁴⁶⁸ These challenges, as well as the emotional struggles

⁴⁶³ Interview with Andre.

⁴⁶⁴ Interview with Psychiatrist B.

⁴⁶⁵ E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963).

⁴⁶⁶ *Ibid.* 30.

⁴⁶⁷ *Ibid.* 31.

⁴⁶⁸ S Jenkins, 'Families at war? Relationships between 'survivors' of wrongful conviction and 'survivors' of serious crime' (2014) *International Review of Victimology* 20(2) 246.

faced by the wrongfully convicted themselves, mean that while the support of family and friends in the aftermath is beneficial, it is also very difficult to maintain relationships or create new ones. These difficulties were painfully but comprehensively described by Andre in relation to the 'shutting off' mechanism described earlier in the chapter:

It's difficult, you know, all relationships are difficult, but I do blame - and this is one of the reasons I sought (sic) counselling recently is because I do blame the shutting down mechanism that I have, the default protection that I have, the lack of trust - the - not so much non-caring and all this but I think these things that developed in me while I was in prison in order to help me cope with what I was dealing with then, are still in me, and I use them in my relationships, whether it's with my wife or children. And it has a detrimental effect - how do you shut down from a twelve-year-old kid? You know, rather than deal with it I just switch off. But it's an instinct I can't deal with and so going to get counselling to deal with that, look I don't like shutting myself off from my kids, how do I deal with that, what's going on here? "Well, it's from when you were in prison Andre, and you need to address the core issue of why you felt it was necessary." Well it's obvious, it's because I was innocent and I couldn't - well we need to unlock that and, you know - so this is what my counsellor is saying. And it's all these things are like a domino effect, aren't they. So, although my relationship with my kids have brought a different dimension to my life and it's the most enjoyable dimension, or has been, it's also a struggle because of the experiences that I went through in prison.

Andre highlights the need for psychological support to help manage the emotional impacts of his wrongful conviction such that they do not impact significantly on his relationship with his family. This also demonstrates that family members are perhaps not best placed to be a sole source of emotional support; more professional psychiatric support is required to most effectively address the harms caused by wrongful convictions.

Providing post-exoneration support with consideration of emotional needs

All support provided to the wrongfully convicted - not only mental health services, but other support such as legal advice or social work - must be provided by those who are aware of the emotional impacts described in this chapter. One of the challenges of providing support in the aftermath of a wrongful conviction is to manage these emotions and gain the trust of those

they are assisting; many interviewees, for example, noted that a significant part of their role was learning to manage the anger and resentment that severely impacted those who had been wrongfully convicted.

Professionals must understand that this anger was a result of what had happened to them; such an understanding can facilitate their ability to provide meaningful and non-judgmental support. One compensation lawyer said of one of her clients:

... I know that [he] had real issues with uncontrollable anger and that can be very difficult. I mean he was a very difficult client to have because he would fly into a rage – in later years, he was happy to admit that – so he would fly into a rage over stupid things, because he had just lived this life with this fury all the time, and that, I can imagine, is hard enough in the client-solicitor relationship; in interpersonal relationships, that must make it very difficult.⁴⁶⁹

Similarly, an MJSS caseworker said her role often involved very angry calls from clients which stemmed from the challenges of post-exoneration life:

Then there would be anger where they would speak to me - so a lot of the language in prison is swearing - so you'd pick up the phone it'd be effing this and shouting, screaming, so a lot of anger and obviously a lot of depression. Most of them, at different times, I'd say about 80 percent, used to say, "I wish I was inside".⁴⁷⁰

In addition to the anger, the inability to trust others can make it difficult for those providing support to the wrongfully convicted. As one of the specialist psychiatrists explained, this mistrust is something that also needs to be understood and carefully responded to:

They may approach seeing a clinician like me with real mistrust and scepticism, partly because they may have had bad experiences of clinicians in prison, partly because it's part of a wider disenchantment and mistrust in authorities [and] the criminal justice system generally.⁴⁷¹

⁴⁶⁹ Interview with Lawyer C.

⁴⁷⁰ Interview with MJSS Caseworker A.

⁴⁷¹ Interview with Psychiatrist A.

This was also highlighted by MJSS caseworkers:

... to get them there they have to trust you, they have to have a reason to wanting to phone you, they don't want to talk about their form and they don't want to do it, but they want to tell you about their day or the police had stopped them again or what's happened. So, you'd gain their trust, and then you'd help them that way...⁴⁷²

This need to build trust with MJSS caseworkers was reiterated by Tracy, who said the trust that her brother had in one particular caseworker meant that she could provide more effective support:

He took everything to her, because he trusted her, right up to the very last time that he saw her ... Because she proved to him that she was trustworthy. And no matter what it was that he went with, she could help him, because she'd done all the courses and she knew how.⁴⁷³

The compensation lawyers I interviewed also had to work hard to re-establish trust in legal representatives, given that the wrongfully convicted may believe that they have been let down by their legal team at trial and often at first appeal. One lawyer described how he tried to build that trust:

You just have to spend a lot of time explaining things to people and making it clear you're on their side and that you've got their best interests at heart... sometimes it involves strategic work with counsel that they trust, if they do, or an expert that they trust or a family member that they trust; you get a sense of what will help them address an issue. And each person's different so you're just trying to suss out how to best get across what the advice is or collect the evidence in a way that's sensitive.⁴⁷⁴

Psychiatric services particularly need to be provided by 'somebody that they trust'. Without trusting the support provider, the wrongfully convicted person will be unwilling to accept their help. This can also exacerbate the psychological impacts and feelings of fear and anger.

⁴⁷² Interview with MJSS Caseworker A.

⁴⁷³ Interview with Tracy.

⁴⁷⁴ Interview with Lawyer E.

Tailored psychiatric and emotional support for the wrongfully convicted

All interviews emphasised the need for tailored, continuous, informed, and flexible mental health support; a better service than that currently provided by NHS mental health services.

This was best expressed by one of the specialist psychiatrists:

...what many of them need actually is continuity of clinical support, they really need to be seen by an experienced clinician; it doesn't particularly matter if it's a CPN⁴⁷⁵ or a psychiatrist or a psychologist actually, but somebody who understands their experience and stays with them, and is flexible, and they can contact when they need to, and will see them over a long-term basis. Now again mental health services just don't work like that.⁴⁷⁶

He suggested that there needed to be a 'small network of individual clinicians who had a special interest and experience in this group and to whom you could make direct referrals.'⁴⁷⁷ This, he said, would allow for tailored psychiatric support that would reduce delays and save them having to be forced into a generalised mental health system not designed to meet their needs.

The psychiatrist emphasised that 'there at least needs to be a willingness of people to work differently with them right from the outset'; for example, to encourage wrongfully convicted people to engage with mental health services. He went on to explain the potential benefits of this:

...they need the clinician to come to them. Mental health services don't do that unless there's an emergency. So, it's really hard work getting good mental health care in place for them, and there's a job to be done I think in trying to make that better I mean really – ideally having a small network of clinicians who do understand the needs of this group and one can make sort of individual referrals to them, and they'll take them on. But it's difficult to set that kind of thing up.

Another psychiatrist suggested a potential dedicated service that could be built in to the existing structure:

⁴⁷⁵ Community Psychiatric Nurse.

⁴⁷⁶ Interview with Psychiatrist A.

⁴⁷⁷ Interview with Psychiatrist A.

I think if it could be a standard thing, if you're released from prison, you can be referred for ten sessions provided or some sort of therapy. So, I think anybody who's released from prison after many years in cases of miscarriages of justice needs psychological support. Or let's say they could benefit from psychological support. If they didn't want it then they could just say they didn't want it. But I think there are so many issues, issues to do with self-image, issues to do with resentment and bitterness, and with your future, with your family, your wife may have left you and may have married somebody else – so many issues that they need help with.⁴⁷⁸

There is scope for this specialised psychiatric support to be attached to the MJSS, as expressed here by one of the expert psychiatrists:

... what they could do with is having a good community psychiatric nurse as a full-time team member who would proactively see people, broker contact with services, keep in touch, make sure it works - if it doesn't work try again. An assertive outreaching mental health function, they would be the intermediary really between the person and the mental health services. That would be hugely valuable.⁴⁷⁹

At the time of writing, the MJSS had plans in place to provide several direct psychiatric consultants to whom clients could be referred and to provide more tailored support. However, psychiatrists can only do so much, and in addition to specialised treatment there must be long-term emotional support; a form of 'befriending service'. This would help to monitor the emotional progress of the wrongfully convicted, attend to more everyday needs, and provide a nexus between the person and other agencies such as the psychiatric service.

Emotional support should focus on re-settlement issues, helping them to deal with life on the outside, to create new social networks and find a sense of purpose. It should be someone they can trust, talk to and someone who actively visits them on a regular basis. Many wrongfully convicted interviewees also said that they wished there was someone who encouraged them to seek psychiatric support:

⁴⁷⁸ Interview with Psychiatrist B.

⁴⁷⁹ Interview with Psychiatrist A.

I think for people like me who experienced what I experienced, there should've been somebody there, for example, who made me realise that if you don't get counselling now, it could affect your life down the line, in the future. And made me believe in that. And I can't remember anybody doing that at the time.⁴⁸⁰

Existing groups in contact with the wrongfully convicted have tried to fill this gap in emotional support. In some instances, caseworkers at the MJSS attempted to provide some ongoing additional emotional support, mainly over the telephone:

But by being there - and there were dark times for people - being there, so although it's not the advice that saved their life, I think that one person that is supporting them, phoning them, so we went very much beyond advisor in terms of where you would say you need to do this and here's a letter, take that or we'll meet you at the JobCentre. We would phone people, you know, if they're here on Friday saying they're gonna go and kill themselves, you say, "think about it on the weekend" and Monday morning you phone and then you phone them all day and Monday afternoon they go "hello" and you go "yes! You're there!" and "I was really worried, you can talk to me" and here's Samaritans and here's this...⁴⁸¹

However, there is a limit to what can be expected from an advice service not qualified to provide professional emotional support, and not expected to, under its current remit. As one caseworker noted:

... we had to be very careful to keep professional boundaries and not to get involved because you do, you know, you leave the service and you go, clients change and they've got to get used to other people...⁴⁸²

Similarly, one compensation lawyer noted that one of her clients wanted her to provide emotional support because he felt he trusted her more than any mental health professional he had seen. She had to explain that she was not qualified to do this, but empathised that this type of emotional support was missing:

⁴⁸⁰ Interview with Andre.

⁴⁸¹ Interview with MJSS Caseworker A.

⁴⁸² Interview with MJSS Caseworker B.

... one of my clients at the moment, he doesn't like talking – he doesn't really want to talk to a psychiatrist and he doesn't want to talk face to face to anyone but he thinks I listen to him so he basically wants me to do his sort of counselling with him and I have to keep saying to him I can't really do that and he keeps saying "but I'm alright talking to you". So he'll phone up Samaritans on the phone because that's not face to face and he will talk to them, but otherwise he wants to talk to me about how he's feeling... and so having to say to him "it's really flattering that you can be so open with me but actually I can't really talk this sort of through with you at length". Because although there are practical things you can do ... you're trying to help them for a specific reason and it's not really anybody's job to become the kind of means of support.⁴⁸³

This piecemeal provision of emotional support by a number of agencies not qualified or available to give the time and energy needed is not sustainable. There is little understanding of the way in which the wrongfully convicted are unprepared for their future, having had everything they know about their life narrative unexpectedly destroyed. Psychiatric and emotional support for the wrongfully convicted must help them to overcome the challenges of their dislocated identities.

Many wrongfully convicted interviewees suggested that there be a specific 'retreat' set up for them for after their conviction is quashed. Paddy Hill of the Birmingham Six has campaigned tirelessly for this, and many of the interviewees agreed, for example:

When we come out, we should've had the treatment, taken away to a special unit or whatever with our families, got the help we needed, they knew our symptoms way before ... so they should've provided that. So, I think Paddy is right in that a retreat of some sort should be set up by the Government and where any costs incurred should come out of the public purse. They are supposed to put us in the same position as we would've been beforehand ... there was a duty of care. And that duty of care, the onus is on them, for what's been done. So, whatever it costs to put us right, that's what they should do. And even if you can't get that person fully functional as he was, at least get him to the best possible standard you can.⁴⁸⁴

⁴⁸³ Interview with Lawyer B.

⁴⁸⁴ Interview with Tim.

John Kamara, another high profile wrongfully convicted individual, has also emphasised that people who had been wrongfully convicted, and were now coping, need to be involved in the provision of emotional support. This might help those who have difficulties trusting ‘authority figures’ and help to bridge the current empathy gap, reflecting Janoff-Bulman’s view of the need to build trust after trauma.⁴⁸⁵

Concluding thoughts

The psychiatric and emotional impacts of wrongful convictions are founded in the person’s shattered sense of self, and are the remnants of their dislocated identities. Rebuilding the lives of this population means aiming to restore trust, distil fear and anger, and treating them as a distinct group. Specific emotional support will help those to manage the various emotional needs associated with post-exoneration life, to help them find new identities. This would help the wrongfully convicted to feel understood, believed, and supported by the State. It may help them not to be immediately considered under the spoiled identity of an ‘ex-offender’, but rather, a distinct group.

Once considered specifically as a wrongfully convicted person, perhaps then they can make sense of their experience and, with assistance, help to move forward into a new identity that takes into account their wrongful conviction but also integrate that identity with a more certain emotional future. Such assistance would need to be provided by someone they trust: as noted above, the involvement of someone who has been wrongfully convicted could increase the legitimacy of such support.

The absence of comprehensive psychiatric support, coupled with the unwillingness to accept support described above, left family members or close friends trying to provide more informal support. However, while beneficial in helping the wrongfully convicted to cope with

⁴⁸⁵ R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 69.

the emotional impacts of their experiences and to manage their spoiled identities, this can be a difficult task for families and friends, given the challenges that wrongful convictions impose on relationships.

It is also important to note that we cannot effectively address the emotional impacts of unsafe convictions without also addressing intersecting issues of being denied compensation, inadequate support for practical needs to help get their lives on track, as well as their feelings of abandonment, particularly when they feel they are not publicly recognised as innocent despite having their convictions quashed by the Court of Appeal. The next two chapters will consider these other aspects of post-exoneration life: the practical challenges of reintegration and the financial needs that arise after exoneration.

CHAPTER SEVEN: RECLAIMING A LIFE POST-EXONERATION

Introduction

There is no doubt that the world is ever-changing: technology continues to advance, people age, suburbs grow, inflation increases the prices of goods and amenities. For those who spend lengthy periods in prison, as described in the literature discussed in Chapter Two, a constantly changing ‘outside world’ can pose numerous practical challenges that make their lives particularly difficult upon release. This chapter starts from the premise that similar challenges are likely to be faced by the wrongfully convicted on release, and considers if they are exacerbated by the injustice suffered.

The second half of this chapter will describe support currently in place designed to assist with practical reintegration after a CCRC referred conviction is quashed by the Court of Appeal; the MJSS. I demonstrate how the wrongfully convicted are forced into generalised frameworks not designed for their specific needs, creating similar experiences to those described in Chapter Six. This chapter, however, focuses on experiences of attempting to build social capital, including trying to secure employment, housing and social security benefits. I consider for each the difficulties faced by the wrongfully convicted and those attempting to assist them in the aftermath. This demonstrates the need for more comprehensive tailored support in post-exoneration reintegration.

Practical adjustment after a quashed conviction

All the wrongfully convicted people I interviewed described in some form how they felt the world was a very different place on release to that they had left when they were wrongfully imprisoned. For example:

When you're in a closed environment for 17 years, you see the same faces over and over. The same routines – everything is the same. It doesn't change. You might see the odd new face come in or you might see a new prison officer, but basically the structure is the same. So, you come out and you're thrown at this train station at peak hour and it's just mayhem, and I'm lost. Completely lost. I tried to make a telephone call and I could see the telephone cost something like 60p. I couldn't believe it. Because when I went in, it was 10p. So, things just hit me, that I was in a completely different, alien world. I had not been outside the gate in 17 years, I'd been locked away for that whole time. So, you can imagine how things change. Before I went to prison a mobile phone was that size, and so I was completely lost. Penniless, 46 pounds, the train ticket, no one to go to...⁴⁸⁶

Once you come out it's a whole different world ... the traffic's changed. You go on a bus and its five pounds and then you got all this carry on with fuckin' ... benefits and all this nonsense.⁴⁸⁷

I just think it was too much for me trying to adjust to life and trying to adjust to what happened [and to communicate this] to other people.⁴⁸⁸

As discussed in Chapter Five, reflecting the literature reviewed in Chapter Two, for most exonerees the quashing of their conviction came with little warning and little to no preparation for release. Although they may have known their case had been referred by the CCRC (or prior to that, the Home Office), they rarely knew when their appeal was going to be heard, sometimes not until the day of the appeal. In some cases, they remained in a high security prison until the moment of release, having refused to go through the prison progression - from high to low security - which may have required them to admit to the crime of which they maintained innocence. This sudden release with little preparation, an experience distinct from a prisoner released on parole, exacerbates the initially daunting experience of post-exoneration life. There are new skills and customs to learn, that they had not had a

⁴⁸⁶ Interview with Gary.

⁴⁸⁷ Interview with Alan.

⁴⁸⁸ Interview with Tim.

chance to prepare for before release; there was no time to adjust or learn about daily life on the outside. As a family member of someone who had been wrongfully convicted described:

None of them would've had time to orient, to you know to get back into normal living. They don't come back and learn how to use money again. They don't get taught how to sit and eat their meal. They don't get taught how to behave with people. And – so they're put out on the street with probably a cheque, if they're unlucky, for about 40 pounds, and if they're very lucky somebody gives them cash instead. And then they're just left there.⁴⁸⁹

The feeling of being wronged – and the perception that this wrong is not recognised beyond the legal quashing of a conviction – instigates the feelings of betrayal and abandonment described in Chapter Six. As many interviewees such as Gary suggested, having your wrongful conviction recognised in a court of law is not enough; the needs that arise, that must be addressed, go much further.

As the people I interviewed had fought so hard in prison to have their conviction overturned and to be released, their perception of the world while inside maintaining their innocence was often much rosier than reality. This meant that their identities were further dislocated upon release as they were confronted with a new, changed world and a need for identity transition; a change they were neither equipped nor adequately supported for. As one of the lawyers I interviewed recounted:

I remember one client saying it was like because they had no idea what the outside world was like anymore, because they had been in prison for sort of 12 years, they got all their expectations from magazines, so he actually thought that you know life outside was much more glossier, like a glossy magazine, and thought how grey and miserable it was actually in reality, and having to adjust to “no but this is not what it's supposed to be like, it's meant to be technicolour” – that's quite interesting that that happens. The other thing is obviously as I said the technology side of things, things

⁴⁸⁹ Interview with Lawyer E.

move on, the internet, people come out that've not really had access to computers at all ... they've been kind of been left behind.⁴⁹⁰

Post-exoneration life is characterised by readjustment: to new circumstances, people, environments and technology. This raises all sorts of fundamental needs for reintegration upon release, some examples of which are described here by one of the lawyers I interviewed:

... there's all the whole sort of dealing with life on the outside, like even things like supermarkets, because there's so much choice, not being able to deal with it because they found the choice overwhelming, and uneven surfaces because in prison everywhere's flat and smooth so even pavements, not being able to cross a road because it's all kind of not done for like 12 years or 15 years. So, some really fundamental, basic things that people sort of think, "what do you mean you can't cross a road because you've been in prison?" you know. You need you know help to go shopping or you can only shop in the middle of the night when it's quiet because you can't take the sort of the noise and the crowds and that sort of thing. So, there's sort of huge practical things.⁴⁹¹

This may require them to almost start again; for example, to rebuild their social capital from nothing, to understand basic road rules and to realise their limits when it comes to anxiety-inducing tasks such as shopping in large stores. Sometimes, as one of the lawyers described, this doesn't occur to them immediately upon release but rather once the euphoria – described in Chapter Six – wears off:

I think it probably takes a year or so for someone to actually realise that they can't just slot back in to their life because everyone's moved on; the life that they thought they had isn't there anymore, especially if they've been out for more than 10 years, everybody's different ages and different stages of their life ...⁴⁹²

This destroyed assumption of what they thought life would be like after exoneration as opposed to the reality of post-exoneration adjustment is particularly damaging. Often it is

⁴⁹⁰ Interview with Lawyer D.

⁴⁹¹ Interview with Lawyer D.

⁴⁹² Interview with Lawyer C.

the primary source of the psychiatric and emotional trauma following a wrongful conviction, as described in Chapter Six.

Some of the wrongfully convicted people I interviewed, such as Alan, expressed a desire to go back to prison because it appeared easier than having to deal with the outside world:

I'd worked for years to get out, but I was looking at the world like it was back then, not now.... [prison] was just my life. And it was easier, let's put it that way.⁴⁹³

When an appellant's conviction is quashed, they are released into a world where they no longer fit. This exacerbates their feelings of alienation and having a 'spoiled identity'. For example, having to try to open a bank account, with no identification documents and no assistance with obtaining identification documents after a conviction is quashed, can exacerbate their spoiled identity, as they struggle to explain that they have been wrongfully convicted. Without the required paperwork or a stable address (see discussion of housing below), administrative needs such as setting up bank accounts, paying bills and applying for passports, are invariably difficult, as Andre described:

I remember going to the Dole office with a newspaper cutting of myself to prove who I was because I had no passport, I had no form of identification ... I didn't have a driving licence or anything that proved who I was. So, I remember showing a newspaper cutting not long after I got out and saying this is me, this is who I am, I've just been wrongly released from prison etc and I'd like to sign on.

Gary's experiences were similar:

When I came out of prison, as I said, I couldn't open a bank account because I had no identification. My identity was 20 years out of date. I had no identity card, licence, nothing. I was stripped of everything. So I was not recognised in bureaucracy. So I couldn't even sign up to get JobSeekers Allowance because I didn't have identity. So with the few pounds that I had given to me by a friend,

⁴⁹³ Interview with Alan.

they said we can't open you an account – and I was shocked by what they told me. “Where's your identity?” “What? It's me!” The thing that didn't occur to me was that I'd need something to open a bank account. So, she laughed at me. And I laughed back. Because I'd totally forgotten about reality, where I was, what I was trying to do. She laughed at me, ‘you can't open a bank account! You have to have something’. I had 5 pounds! But these are the things that really are difficult ... it's one thing how to deal with media, being recognised as a miscarriage of justice, but on the other hand, they don't do nothing about it. I have nothing.

Gary's comment that his ‘identity was twenty years out of date’, is powerful and reflects the research of Grounds and Campbell and Denov.⁴⁹⁴ Not only have such people lost much or all of their pre-conviction identity, and in some cases become stuck in their identity as a wrongfully convicted person, they can also be stuck in time: they feel as though they were frozen the moment they entered prison, and are confronted with that on release when they are expected to adapt quickly to a changed environment. Alan, for example, noted how hard it was to catch up on the advances in technology after his release, and the effort required to do so caused him to give up:

You know what, I don't want to understand how to use computers and all that ... Because I'd rather just talk to somebody on the phone or face to face. But technology – now think about it after 10 years, there's a lot of things that just – you can't catch up with. And there's no point in trying. I've tried it. And there's no point in trying at all. So I'd rather just crack on the way I'm going now. I know the information I need to know. If I need to make a phone call, I'll make a phone call.

This would no doubt alienate Alan from the rest of society and would also impact on his employability (discussed further below) as these basic needs and fundamental skills expected in modern society are not addressed or taught to the wrongfully convicted upon release.

⁴⁹⁴ Also referred to in A Grounds, ‘Psychological Consequences of Wrongful Conviction and Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165; K Campbell and M Denov, ‘The Burden of Innocence: Coping with a Wrongful Imprisonment’ (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 139.

One of the campaigners who supported some high profile wrongfully convicted individuals in the aftermath described how some very basic integrative needs – such as teaching them to use an Automatic Teller Machine - were left unaddressed:

I remember we went to Dublin two weeks after the Birmingham Six got out and Grant had no money. Me or somebody said to Grant well we've given you a card, just get some money out of the hole in the world. Grant got upset, he got really upset, we said well won't you do it, he said well nobody's shown me how to do it...⁴⁹⁵

Although the challenges of reintegration described above may be experienced by all ex-prisoners,⁴⁹⁶ they are exacerbated for the wrongfully convicted whose spoiled identity – as an ex-prisoner or, worse, an ex-offender - does not match their innocent sense of self. Although they have been exonerated, they are still thought of as the same as any other ex-prisoner. This makes it difficult for them to transition into new identities and help to repair the harms caused by a wrongful conviction. Considering this population have been wronged by the State, it seems that this more fundamental support to help with reintegration is not only needed but deserved, as a way of both acknowledging, and attempting to repair, the injustice they have unnecessarily endured.

Practical Support currently provided in England and Wales: The Miscarriages of Justice Support Service

The tender for the MJSS limits the nature of this service to providing only practical support, that is:

Provision of advice and assistance to clients for example access to accommodation, social security benefits, local healthcare services and other mainstream provision. This should also include assistance with practical day-to-day matters, such as opening bank accounts.⁴⁹⁷

⁴⁹⁵ Campaigner B.

⁴⁹⁶ As demonstrated in the literature reviewed in Chapter Two.

⁴⁹⁷ Ministry of Justice, *Descriptive document: Advice and Support for those released from custody following a Miscarriage of Justice Grant Funding 2015-16* < <https://data.gov.uk/data/contracts-finder-archive/contract/1705740/> > last

The tender does not require the MJSS to provide direct emotional support but rather address the more practical needs of post exoneration life, such as housing and benefits. This means that many resettlement struggles described earlier in this chapter, including learning to use new technology, moving into a home (acquiring furniture, cleaning, paying bills and so forth), dealing with life administration, negotiating busy public spaces such as shopping centres and complicated road junctions with heavy traffic, re-skilling and particularly obtaining and maintaining employment (discussed further below), are unfortunately not addressed by the MJSS, because the tender does not require the service to help people with these needs.⁴⁹⁸ This restriction can be the source of some frustration for their clients, as explained by one of the MJSS caseworkers:

I think the project, the service, seeing as it's delivered by the Citizens Advice Bureau it has certain features; we are there primarily to give advice in social welfare, housing welfare, social benefits etc. We're not there to give emotional support and unless we're doing social policy on a broader scale, we're not able to campaign individually for the individual clients. So, there is that degree of ... professional approach, which is quite distinguishing I think for our service. Now, because the nature of the people who are working with us that's always been a struggle; and it's quite a grey area.⁴⁹⁹

However, its work is still vital for the wrongfully convicted. The organisation provides its clients with a 'voice' in communication with other agencies, such as JobCentre, who may not be as familiar with the impacts of wrongful convictions. This can be a significant relief for a population who feel unable to express themselves and are lost in a system that can respond only to generalised needs. Richard, for example, described how helpful the MJSS was in ensuring that his practical needs were addressed by these other agencies:

accessed 2 October 2018. This is the most recent tender that is publicly available; note that RCJ Advice have now been successful for the next three years of funding to provide this service.

⁴⁹⁸ C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal* argues that this tender needs to be re-considered and take a more reintegrative approach rather than one just based on the provision of advice.

⁴⁹⁹ Interview with MJSS Caseworker C.

We all handle things, but I think if it weren't for that Miscarriage of Justice people [MJSS] speaking and saying "you can't see the physical signs of it", the people in the Jobcentre just, they would've stopped my benefits basically on the fact that they say well there's nothing wrong with you, you look fine to me, and you have to get some time to turn around ... somebody who knows a bit about you to say well this is this person, did you know, and I know [the MJSS caseworker] came to at least two meetings with different people, and they've been absolutely fascinated by what she's got to say. And they've said well we've never had anything like this before, we don't get this. And it's an eye opener for some people.

Some of the wrongfully convicted people I interviewed particularly liked the fact that the MJSS sat within the Royal Courts of Justice, believing that gave them a more authoritative voice when dealing with other agencies on behalf of their clients. As one interviewee felt, 'when people get letters off them, oh Christ, they sit up and take notes.'⁵⁰⁰

Although the MJSS is restricted to providing advice on practical aspects of post-exoneration life, some of the wrongfully convicted people I interviewed saw some emotional benefits in at least being able to talk to MJSS caseworkers and have people there that cared about their needs. As Gary described:

But they were helpful, not least because they were a friendly face. They weren't talking legal things to me. They weren't people I had to visit that I had worries or fears about. They weren't psychologists. They were just normal people. And I was so glad to get out and speak to them ... I just know that they're just a friendly face that isn't attached to parliament, I'm happy ... somebody that's there that has seen that you've been cleared, that you're acquitted and thinks this guy needs some assistance, be it a conversation or some practical help, he needs something.

However, clients need to see the benefits of practical assistance for it be effective, and many did not feel that they needed it on release, in what is often the initial period of 'euphoria', described in Chapter Six, particularly if they had a family (who would in many cases provide informal emotional support that was not provided by official sources). This could delay the

⁵⁰⁰ Interview with Paul.

realisation that they need help to build social capital and cannot simply return to life as it was prior to their wrongful conviction. While some recognised their practical needs quickly and sought help immediately, others (particularly those with family) did not recognise this straight away, one of the MJSS caseworkers described:

... there's somebody who would be really desperate to hear from you and they're ready, others – particularly if they have a family, they're staying at their brothers for three weeks or they're staying at their sisters or they've gone abroad quickly to Spain, having a break, or coming back, so the initial – if there's a family, the family will be all around them. So, they're in their little cocoon and not really realising they've got to go and queue at the JobCentre for six hours or do this ...⁵⁰¹

It was common for clients to contact the MJSS after the initial 'euphoria' period described in Chapter Six, when their practical needs set in and they realised they required help:

... so, those that didn't contact us in the beginning would, if they were released, wait a couple of weeks until obviously the money ran out, things, and it's like, "where am I going?" "Where am I living?" You know, "I can't live here for good." So, when they needed us they would contact us.⁵⁰²

Paul described their service as 'invaluable', while Tracy expressed her pleasant surprise at what was offered for her brother:

I really could not believe it. It was such a good organisation, it was headed by two people, then that went down to one. She did a great job. And she helped [her brother] in amazing ways because of his special requirements ... They actually found an apartment for him, which is fine they do that, but then he didn't have anything. He didn't have a spoon. And they made sure that they got some funding to give him items he would need ... And she was there to help him with things like setting up a bank account and there were so many different things ...

However, MJSS service provision is not without struggle. While the organisation does as much as it can within existing frameworks, those frameworks do not cater for the particular

⁵⁰¹ Interview with MJSS Caseworker A.

⁵⁰² Interview with MJSS Caseworker A.

needs of the wrongfully convicted. Later in this chapter I explore the challenges a generalised framework can impose on the MJSS and the wrongfully convicted in trying to rebuild their dislocated identities post-exoneration.

The role of family and friends in resettlement

In relation to their research on the wrongfully convicted in the US, Wildeman et. al noted that ‘without government assistance in finding either employment or safe housing, many exonerees are forced to depend on family members and friends in order to survive.’⁵⁰³ This was reflected in the experiences of those I interviewed in England and Wales. For most interviewees, their family or friends were the first and only option of housing immediately upon release from prison. As one of the MJSS workers noted:

... if the family was there, it’s the best thing ever because there’s that support network. Although there’s different problems ... the family would take them home or they’d go and stay with somebody.⁵⁰⁴

As one lawyer noted, at the time of applying for compensation:

I’ve only ever had one client who was actually homeless; other people were sort of you know living at the mercy of somebody else that had taken them in.

Family members or close friends were likely to be the ‘middle man’ or liaison with the MJSS caseworkers. Often this was because the family member or friend was more competent at email and other forms of communication; other times it was because the wrongfully convicted person was depressed or apathetic, or unable to look after their own affairs or communicate with their caseworker. The family member or friend would also help with filling out forms and attending appointments.

⁵⁰³ J Wildeman, M Costelloe and R Schehr, ‘Experiencing Wrongful and Unlawful Conviction’ (2011) *Journal of Reoffender Rehabilitation* 50(7) 414.

⁵⁰⁴ Interview with MJSS Caseworker A.

Families were clearly an essential resource of support after quashing and release from prison. However, the emotional impacts of wrongful convictions (described in Chapter Six), together with the adversities of resettlement, meant that relationships suffered when family and friends provided housing after exoneration. This led to intense frustrations and, in many cases, relationship breakdowns:

Interestingly though, I couldn't sleep in a double bed, I'd been in a single bed that had been up against the wall and bolted to the wall for so many years. I couldn't sleep in the bed, I had to push the bed up against the wall. And the girlfriends that I'd had, they couldn't stay with me overnight, I couldn't cope with that you know I'd been in a bed on my own in a single bed ... so even though we'd have sex and stuff, when push come to shove, they had to go. And it was all very awkward and very weird ... I went to stay with my girlfriend who had a place in East London, that was all very nice at the beginning, but it didn't take long before it become all kinds of frustrated and confined.⁵⁰⁵

I was living with my Mum initially, that was really difficult ... I was this 32-year-old grown man who was in this bedroom and it was like a cell to me, you know any kind of environment was like a cell. And you know I just got out of prison, I needed to fuck the world and do things that you can't, and I didn't do for twelve years.⁵⁰⁶

As one of the lawyers described:

One [client] was living with a girlfriend he'd made whilst he was in prison but then that didn't work because he had to sort of sleep facing the wall all the time because that's where his bunk was in prison ... one guy, the relationship broke down because he never locked the front door. Because in prison he was Category A, he always had people locking doors behind him, so he'd just leave the door because he thought oh well somebody else is going to do that.⁵⁰⁷

The MJSS highlighted that one of the reasons they sought to set up a housing service in collaboration with Commonweal Housing was to avoid these relationship breakdowns,

⁵⁰⁵ Interview with Andre.

⁵⁰⁶ Interview with Andre.

⁵⁰⁷ Interview with Lawyer D.

which commonly occurred as a result of the wrongfully convicted person returning to live with their family or partner and it not being the same as it was prior to their wrongful conviction:

People were returning home expecting relations to be the same, and then they'd go back and there'd be a new partner, or their children wouldn't speak to them, or whatever and then they find themselves moving away.⁵⁰⁸

While the MJSS did as much as they could to manage the families' expectations on release, this is not enough to avoid the problems that arise when the wrongfully convicted must look to their families and friends for housing support. This further emphasises the need for external housing support to be provided to the wrongfully convicted, with their resettlement needs and challenges in mind, to ensure that the impacts of wrongful convictions are more effectively addressed.

Misunderstandings within a generalised system

In mid-2015, Commonweal Housing and the MJSS produced a report with the assistance of two Professors from the London School of Economics that highlighted the need for policy change in provision of housing for victims of miscarriages of justice:

Their problems, particularly in terms of needing a period to rebuild their lives and deal with the trauma of wrongful imprisonment, are not catered for by a Jobcentre which demands 10 job applications online each week, or a housing department which provides a one offer of immediate accommodation, and little or no chance of moving on to a more appropriate next stage.⁵⁰⁹

⁵⁰⁸ Interview with MJSS Caseworker C.

⁵⁰⁹ Commonweal Housing, *Justice after release: Housing options for Miscarriages of Justice victims, A Call to Action* (2015) 5 <<https://www.commonwealhousing.org.uk/static/uploads/2015/10/MOJ-Report-FINAL.pdf>> last accessed 2 October 2018.

This assessment of the housing and employment needs of the wrongfully convicted remains accurate today, as they are forced into a generalised framework of social provision not necessarily designed for them.

While the MJSS have been partially successful in attempting to bridge that gap,⁵¹⁰ there is still misunderstanding and lack of knowledge of the impacts of wrongful convictions within the relevant agencies such as Housing Associations, Government departments and Non-Government Organisations. As one of the MJSS caseworkers noted, often their wrongfully convicted clients would continue to experience the ‘spoiled identity’ of an offender, and in most cases, being ‘wrongfully convicted’ didn’t really matter in the eyes of other agencies:

Two factors, one was the clients we were dealing with that weren’t particularly high profile, when you liaise with anybody, you used to get faced with you know, “there’s no smoke without fire, they probably did it”, so, [for] anybody who had discretion, it depended on how they thought about the person whether they would do stuff. They would add all their own prejudice and comments on them, so the fact that they were a miscarriage of justice didn’t carry any weight with officialdom. It’s very rare that that was persuasive. It could relate to somebody who’d been in prison you know for twenty-five years and is now on drugs and has got mental health [problems] obviously, but the fact that they were exonerated it was very rare to get that time when you’re talking to an official for them to be convinced.

Some agencies are not even aware the MJSS exists, and those that do may misunderstand the scope of its services. For example, a charity wrote to the service regarding one client in 2014, noting that, although they were aware that cases were referred to the MJSS by the CCRC, ‘this case concerns a housing matter and therefore appears to fall outside your remit.’⁵¹¹ Assistance with housing is in fact one of the main aspects of the MJSS’s work.

⁵¹⁰ The MJSS now have a dedicated DWP official that streamlines applications from their clients, discussed further in this chapter.

⁵¹¹ MJSS case file 12.

Whether or not this is the responsibility of the MJSS – to ensure their service is more widely known and acknowledged – the service does try to be the ‘voice’ for its clients, as noted above. Part of its job includes raising awareness of the effects of wrongful convictions, through its housing and social security benefit applications, described below. The next two sections will explore the difficulties that arise in supporting the wrongfully convicted in a framework in which they do not really fit, and which is not designed to meet the specific needs of this niche population.

“I was barred from so many jobs”:⁵¹² wrongful convictions and the ‘spoiling’ of employability

Of the 17 wrongfully convicted people whose interviews were analysed for this thesis, just two were employed at the time of interview; a troubling statistic when compared to their employment status prior to their wrongful convictions, when almost all of them were employed in some capacity. The negative effects of wrongful convictions on employment were also reflected in the MJSS client file data, which showed that just under a quarter were employed at some point after their conviction was quashed, though just over three quarters of the valid sample were working prior to their conviction.⁵¹³

The emotional or psychiatric impacts of wrongful convictions further impede on a person’s ability to undertake employment after a wrongful conviction. Tim explained how his PTSD meant he was unable to keep a stable full-time job:

I couldn’t work a nine to five job, like my wife is doing. I couldn’t do it. Because of the PTSD, and I know that I’m limited to what I can do. People like [anonymised wrongfully convicted person] will tell you, you know, can they do a nine to five job? “Fuck off! On your bike”, you know what I mean. Because you just couldn’t – you wouldn’t be able to do it. So you gotta make do, have a look, and

⁵¹² Interview with Stanley.

⁵¹³ C Hoyle and L Tilt, ‘The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model’ (2018) *Howard League Journal*.

see what you can do rather than what you can't do. And that's what I've done.

As the quote above demonstrates, there is a significant link between addressing the emotional impacts of a wrongful conviction and practical reintegration. If tailored psychiatric support was effectively provided to the wrongfully convicted, as argued in Chapter Six, it may help them to build social capital, which in turn may support them in managing their trauma and building the confidence to apply for, and maintain, a job. Rebuilding identity requires attention to all aspects: their emotional self and their role identity; and all aspects of identity will be connected with, and dependent on, one another. The employment expert I interviewed noted how a lack of confidence (an emotional impact of wrongful conviction) impeded on their ability to obtain and sustain employment:

They all have absolutely no confidence. Which has an effect on – if you're applying for a job, you've got to persuade the employer you're the best person for the job. If you can't, and there are five other people, then you're not going to get it...⁵¹⁴

Those that did work after their conviction was quashed usually worked for friends or someone that they knew, likely because it was easier to trust someone they knew or were related to, rather than having to build trust with another authority figure in an unfamiliar environment – something that, having been betrayed previously by authority figures, can be very difficult. The mistrust experienced by the wrongfully convicted, referred to in Chapter Six, can also impact on their ability to obtain employment at all.

The emotional impacts of wrongful convictions therefore need to be addressed alongside employment assistance, but in some cases prior to it. Addressing the emotional impacts first might help the wrongfully convicted to be more prepared and have the tools to manage their trauma before being placed into an uncomfortable, and at times volatile,

⁵¹⁴ Interview with Employment Expert.

employment environment. Without this, their efforts to enter employment may be unsuccessful. One campaigner, who assisted a high profile wrongfully convicted person well after release, explained what happened when that person tried to work without first having the emotional impacts of his wrongful conviction addressed:

... he didn't get any help finding employment. He got himself a job and he was rightly quite proud; he got a job as a warehouse person. But with hindsight – this was about three months after he got out, and he wasn't really ready. He's now not working ... he's on benefits and he probably will be for several years to come.⁵¹⁵

This also suggests that while employment is important for post-exoneration resettlement, people who have been wrongfully convicted should not go straight into employment after release. First, time should be taken to help with the basic needs of resettlement, and to ensure they have confronted and started to address any mental health problems, to prepare for an environment with new people to trust, new skills to learn and a new routine to get used to. This adjustment process will be difficult without dedicated emotional support, and of course requires improved support for other facets of post-exoneration life, such as direct psychological services and effective financial support.

The challenges of employment not only emerge from personal adversity but also relate to the attitude of potential employers. The 'spoiled identities' of the wrongfully convicted, mainly caused by their conviction and the inability of others to recognise that the conviction was wrongful, was said to be one of the most significant barriers in trying to obtain employment after quashing and release. One campaigner, and a friend of one high profile wrongfully convicted individual, recounted:

Who would employ them? Especially my man [name removed], we did get him placed within a church for a while, but it was controversial because then the church wanted him to work with young people so he could tell young people his story as a means of

⁵¹⁵ Interview with Campaigner B.

stopping them from – you know – being on the wrong side of things. But a lot of the places he went, council staff especially for some reason, would object him talking to young people. Which I always thought was crazy because if anybody can have an impact on these young people, if anyone would have some credibility with them, and would be listened to, you would have thought it would've been [him]. So, he really tried to do the kind of work that would enable him to become a bit of a role model in the community. But wider society didn't want to see that or hear that. And it didn't work out for him.⁵¹⁶

This continued experience of the 'spoiled identity' impeding on employment opportunities was particularly evident if their case was high profile. The fact that they would be widely known meant 'that if they'd applied for employment, the likelihood that they'd be given jobs was minimal,⁵¹⁷ largely due to the stigma around imprisonment (regardless of its wrongfulness) and, for some, scepticism as to the robustness of their acquittal. The employment expert I interviewed further described how the impacts of stigma and lack of confidence can impede upon employability after a quashed conviction. He used the example of a bricklayer, which, as he noted, may be a more viable option of employment considering their stigma than other careers, such as a teacher of children. He noted how his employment reports (produced to demonstrate loss of earnings, both past and future, for compensation applications) must be realistic, in calculating the likelihood of future earnings and about the types of job a person with such a spoiled identity is going to be offered. However, even in this type of trade, which physically the wrongfully convicted person may be capable of, they may still find their ongoing trauma makes this role difficult to maintain. It may, for example, mean they are unable to cope with constructive criticism or unable to trust their colleagues or employer. As the expert explained:

... the question there becomes will they be able to get, keep and sustain a job as a bricklayer ... will they maintain it ... now the psychologists or the psychiatrists have to tell us that. My experience

⁵¹⁶ Interview with Campaigner A.

⁵¹⁷ Interview with Campaigner A.

of interviewing them is that they're all psychologically damaged, and their confidence is shot ... although theoretically they could do that, something happens: they're doing alright, [but] the foreman comes along and says, "you've not laid that course right". All of a sudden, the confidence that they've managed to build up unravels and they're back down here again.⁵¹⁸

The trajectory described by the employment expert above was certainly reflected in the stories told by my interviewees. Amelia, for example, told me how she tried a job a few years after her conviction was overturned, and after a misunderstanding between her and her colleagues – including them finding out about her conviction – she was forced to resign because she was unable to cope with their behaviour and afraid that she would be the victim of injustice again. This demonstrates the need for identity transition, to assist the wrongfully convicted to negotiate a way out of their spoiled identities, which may include educating the general population about wrongful convictions as well as perhaps providing more public acknowledgement when a conviction is quashed.

Another barrier to employment is the Disclosure and Barring Service (DBS) criminal record check, which is most significant when an 'enhanced' certificate is required (in circumstances that might trigger child protection concerns). An enhanced criminal record check includes a box for 'discretionary information' whereby the police chief constable or his delegated officer can provide any information they see relevant. The key here is 'discretionary' information: relevance is determined by the officer completing the form. I asked lawyers whether a wrongful conviction could be included in this box. One responded:

Now your key question is, could there be a scenario where somebody has had a conviction quashed, that information appears in a discretionary box. Well working through it logically, the conviction would appear as a conviction or a caution on a standard enhanced certificate. Once it's quashed it will no longer appear in those boxes. Is it relevant information that could appear in the discretionary box? In theory, yes. And that is a determination for

⁵¹⁸ Interview with Employment Expert.

the Chief Constable or delegated officer to make ... Would it happen, could it happen? Yes, it could.⁵¹⁹

He further noted that he had seen this happen in acquittals at first instance. No doubt if this has happened in first time acquittals, it has surely also occurred for convictions overturned only after a referral from the CCRC; although none of my interviewees could confirm that fact. If this is the case, it could hinder their chances of obtaining employment, particularly if they are in competition with other candidates who won't have any markings on their DBS check.

The benefits of employment in post-exoneration life

The lack of employment assistance after a quashed conviction is disappointing, considering that employment can be highly beneficial in repairing some of the harm caused by wrongful convictions, and that clearly there are organisations that have the expertise to assist. Role identities are often strongly linked to a person's employment, providing them with a place in the world and, more practically, a routine, 'something to do'.⁵²⁰ Employment also provides a sense of purpose, of being needed, and helps to avoid a person becoming disengaged or disconnected from the world. As the employment expert I interviewed noted, having a job can be the key that cements your identity or place in society:

...work isn't just about money, it's how you define yourself in society. "What do you do?" "Oh, I'm an ex-con unemployed person." "Oh, I work with the handicapped." It's just different, your presentation of self is different.

Alan's social worker spoke of how a job might have helped to provide a sense of purpose, as his previous purpose – fighting to have his conviction quashed – had been lost. He noted that a job might help to fill the gaping hole left when his fight to have his conviction quashed was over:

⁵¹⁹ Interview with Lawyer F.

⁵²⁰ Interview with Campaigner A.

Sussing out the injustice and going down the legal route to prove what was wrong, I guess that's what actually just made his life worth something. And then achieving it was a double edge sword. Because he achieved it, but now, it's gone. And it's the replacing that with something constructive is what really will save him. That's what will save him.

Alan himself agreed:

The issue is, I need something to keep me going. I need something to keep me ticking ... I've lost something rather than gained something ... I fought for everyone, alright. And as soon as I was out of that jail - what's going on now?

As mentioned in Chapter Five, Andre's career success is an example of the way in which employment can help with resettlement after a quashed conviction. It helped him to manage some of the emotional impacts of his wrongful conviction, such as anger:

I've had a lot of distraction, mainly because of my career, that [the anger] never manifested itself, and luckily there's been a big enough gap that I don't think it ever will now.

He believed that his employment also helped him to manage his compensation money, which demonstrates the interaction between addressing the financial and other practical needs of the wrongfully convicted:

... the other most significant thing at the time was I started to work. So that probably had a major impact in how I spent my compensation, what I could do with my compensation, because I had this other form of income ...

His employment helped to stabilise his life, cementing his place in the world and rebuilding a life narrative beyond his wrongful conviction. However, his transition to employment was not without its hurdles, and – as he said – it took some re-adjustment and re-skilling:

... it was really tough because I'd never used a computer, I'd only just become familiar with a mobile phone, the facilities I was being asked to use ... here I was, fresh out of prison a year on, sitting beside them, never switched on a computer, and I mean this. I'd never used the facilities that they were asking me to use.

Andre also suffered some stigma as an ex-prisoner, his spoiled identity meaning that some colleagues didn't feel he deserved to be in his current job:

And there were people, you know, who I sat alongside, who didn't respect the fact that I was sitting beside [them] you know, "how very dare he be sitting here, we worked our way to get to this position, and this fucker's come in here and..." so there was a bit of that. But water off a duck's back, as far as I'm concerned. I'm sure I taught them a thing or two, and I learnt from them. None of them actually stuck out a hand to help me, but like I said I was toughened by my experience in prison...

He clearly felt that his prison experience gave him strength in his career that he perhaps otherwise would not have had. Further, he described how he felt that being wrongfully convicted also contributed to his insouciant attitude:

I just didn't care. When you've sat in a cell as innocent man, for a very long time, and you know that people don't care about you, people not doing anything – there were people, but I'm talking about the majority of society going about - most of these people walking around today don't know there are innocent people in prison. Anyway, I was one of those, so, as daunting as it was, I just didn't fear it, you know I'd just experienced so many horrible things, it meant nothing.

This is an interesting attitude that appeared not to be shared by many wrongfully convicted people; as noted above, some were unable to cope with their continued experience of a spoiled identity after release, while others were afraid the reactions of colleagues may lead to them suffering another injustice. However, it does show that such an attitude is possible, and perhaps could be encouraged in other people who have suffered wrongful convictions. While this research did not aim to consider techniques for building resilience, or indeed what resilience might look like in such cases, Andre's story demonstrates particularly robust coping methods.

Andre's experience emphasises the need for people who have been wrongfully convicted to be assisted in re-skilling and finding employment. It also highlights the importance of employment for the wrongfully convicted to enable them to transition into new

role identities and build social capital. Wrongful convictions can reduce a person's employability; however, support could be provided to improve their chances. This might include encouraging and helping with education and re-skilling, or assistance with finding a job, as well as providing continuous emotional support to ensure that they are coping well in their new role and to help to manage their trauma, given that trauma can affect their work and their relationship with others at work. Without this support, which organisations such as the MJSS are not at present required to provide, too many of the wrongfully convicted remained unemployed after their conviction is quashed. As a result, their identity remains stuck; they are unable to move forward from their experiences, and their lives remain shattered.

The lack of employment assistance

Tim said in his interview that 'there's not a lot of help when you're out' and, in terms of help with finding employment and navigating some of the practical challenges of resettlement after a conviction is quashed, he is right. As with the more fundamental challenges of reintegration described earlier in this chapter, the MJSS do not assist with education or employment, and indeed, their tender does not require them to.⁵²¹ As the employment expert noted:

JobCentre don't know what to do with them, they don't have the skills to assist them. Private employment agencies, a) they cost money but b) they're not really looking to place the people that they've got, and you gotta work hard to place someone with a [wrongful conviction] ... you've got to give them a bit more instruction, which is very likely to be the case for those that come out of prison for a length of time ... it's intensive careers counselling. And it doesn't exist. If anybody was there to do it, it would be us. But we're not asked to. Nobody's got any money to give us to do it. We're not a charity.

However, this is an important aspect of identity transition that needs to be addressed; without a job, even voluntary work, people can feel lost and alienated from the world, without purpose,

⁵²¹ Explained in C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

and find it hard to develop a role identity, particularly if they do not fulfil other roles such as that of a parent or partner.

Support is also needed to manage the emotional impacts of wrongful convictions and their symbiotic relationship with employment. Tim, for example, explained the need to recognise the limits of someone who has been wrongfully convicted, encouraging other wrongfully convicted people to take up jobs or tasks that they can do and are good at in their new post-exoneration state:

So, you gotta focus on what you can do, rather than what you can't do. I think that's what I'd say to any victim of a miscarriage of justice when you come out ... you gotta make do ... And that's what I've done. So, what can I do? I say I can do this, I can do this, I can do this. I'm not a motivational speaker on miscarriages of justices, this is what people gotta understand, but mental illness. Put me in front of a group of people who are suffering depression. I got a damn good reason to suffer depression. Now let me get in front of you and tell you what I've managed to achieve with the depression and then tell me why I can't inspire those people. So, there's the mental health issue I can talk about.

Tim clearly places importance on how people who have had their conviction quashed must move away from being 'stuck' in the identity of a wrongfully convicted person, and acknowledge the need to manage the effects of trauma.

Tim also thought the wrongfully convicted should focus on building on the skills they already have, and integrate those with new tools or techniques to encourage reintegration after a wrongful conviction (much like the 'integrating of the old and the new' in relation to rebuilding identities).⁵²² In fact, many of the wrongfully convicted individuals I interviewed had new skills, such as investigative skills and legal knowledge, that they did not have prior to their wrongful conviction. This means that with assistance, they might be able to pursue employment opportunities that they would not have otherwise pursued without the wrongful

⁵²² Discussed in Chapters Three and Five; for example, in R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992).

conviction. As Alan's social worker explained, although Alan would not want to go into the jobs he did prior to his wrongful conviction, 'his transferable skills, for want of a better description, is what he did for himself.' In turn, there is the potential for Alan to be able to build on the skills he developed in fighting to have his conviction overturned, and engage with new opportunities, which can help him to better reintegrate and even to try to repair some of the harms he has suffered. For example, I asked how he would feel about working for an Innocence Project or assisting in the aftercare of others who have been wrongfully convicted; he was keen on both options.

However, the wrongfully convicted need to know how to build on these skills and pursue employment options that would be right for them. As a campaigner made clear, this gives rise to a need for tailored support that helps them to:

... develop skills and capacity so they can go and get employment opportunities, or the skills that will enable them to be able to talk about what they've been through or write about what they've been through. Because again I imagine if each of them could've written a book, for example, that that would've been cathartic and may have helped.⁵²³

As he suggests, employment does not have to be a paid position, but could include more self-focused tasks such as writing a book or talking in public about their experiences. This would still provide purpose and carve a sense of role identity in a new life narrative while also helping them to make sense of their experiences.⁵²⁴

No support is currently provided in England and Wales by way of helping the wrongfully convicted to become re-skilled, re-educated or obtain employment. It falls out of

⁵²³ Interview with Campaigner A.

⁵²⁴ This could be a positive form of 're-experiencing' referred to in R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 105 and discussed in Chapter Three.

the scope of the MJSS services, which is focused on the provision of practical advice.⁵²⁵ The employment expert I interviewed also noted that some victims of wrongful conviction face challenges in being employable if the industry they worked in or expertise they had prior to the conviction no longer existed or was relevant by the time they were released. This was often because ‘the market has changed in that time’⁵²⁶ and technological advancements can limit the relevance or need for some jobs. Without providing them with opportunities to re-skill, or learn new skills and new technologies, they will remain ‘stuck’ in time and become unemployable. Such support may also help the wrongfully convicted to find new, positive identities beyond their experiences. Building social capital in the form of employment (as well as other aspects, such as housing) may help to stabilise their life narratives and to strive for a more functional and stable life narrative going forward.

Social security benefits and the wrongfully convicted

The difficulties with obtaining employment after a conviction is quashed, discussed above, and the little support provided to help them, means that most wrongfully convicted individuals must subsist on government-provided social security benefits after quashing and release. This is particularly so given the increasingly restrictive compensation scheme, described in Chapter Eight, which means that receiving compensation for a wrongful conviction is now incredibly rare.

The client data and my interviews with the wrongfully convicted strongly suggested that the MJSS are successful in providing advice on social security benefits, and assisting with applications and appeals when applications are unsuccessful. The client data showed that almost 97 percent of the MJSS client base were receiving social security benefits after their

⁵²⁵ See C Hoyle and L Tilt, ‘The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model’ (2018) *Howard League Journal*.

⁵²⁶ Interview with Employment Expert.

quashed conviction. This not only shows the great reliance on benefits by the wrongfully convicted, but also that the MJSS are very efficient in assisting with this aspect of post-exoneration life. Most angst tends to be a result of the ignorance of other agencies, and the fact that the wrongfully convicted feel they must try to fit into a generalised framework which is not designed for their specific needs.

There is obviously no specific social security payment for being wrongfully convicted. The most common benefits at the time of writing received by people who have been wrongfully convicted are JobSeekers Allowance (JSA), Employment and Support Allowance (ESA) and Personal Independence Payment (PIP, what used to be Disability Living Allowance). However, this means having to try to fit their complex needs into this very generalised framework: obtaining evidence of psychological unfitness, for example, in an application for PIP. Those who were receiving JSA found it very difficult (due to their emotional conditions and lack of reintegration) to fulfil the requirements, such as the number of hours spent seeking work and attending appointments at the JobCentre.

Difficulties with trust can impede on their ability to be assertive with relevant organisations, or engage with them at all. Struggles with the emotional impacts of their wrongful conviction, such as depression and PTSD, meant that many of the wrongfully convicted I spoke to – and those represented in the MJSS data - were unable to leave the house at all for appointments, or cope with the bureaucratic processes of completing the reams of application forms. This was often not well received by the Department of Work and Pensions (DWP) that had little knowledge of wrongful convictions and often did not see that as a reasonable excuse for missing appointments or a justification for delay in completing some required steps to obtain benefits.

Social security payments such as PIP require an up-to-date medical report from a GP, psychiatrist or psychologist, and if the wrongfully convicted person was unwilling to see a medical professional, this affected their eligibility for benefits. Some wrongfully convicted people, as the MJSS case data showed, fell into a limbo between being ineligible for disability payments while unable to fulfil the requirements of JSA. This became a source of frustration, sometimes exacerbating the emotional impacts of wrongful convictions and contributing to their alienation from the rest of society. Their identity as a wrongfully convicted person, although spoiled, is not understood by the rest of society and they feel further abandoned even though their conviction has been officially quashed.

Despite these hurdles, the majority of MJSS clients and the wrongfully convicted people I interviewed were receiving ESA after their convictions were quashed and the MJSS have sought to ensure that the wrongfully convicted are able to receive such payments. Eligibility for ESA is now determined by the Work Capability Assessment and considers whether the individual could work at all, could work at some point in the future with the right support, or whether they cannot work at all and thus require ‘unconditional State support’.⁵²⁷ An Independent Review of the Work Capability Assessment – Year Three in 2012 considered whether victims of wrongful convictions might be a specifically vulnerable population requiring special assistance under the ESA Scheme. A recommendation was made by Dame Ruth Runciman (Chair of the MJSS) in March of that year to ensure special consideration for

⁵²⁷ M Harrington, *An Independent Review of the Work Capability Assessment – Year Three* (November 2012) 8 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/70123/wca-review-2012.pdf> last accessed 2 October 2018.

the wrongfully convicted based on Grounds' research findings of psychological suffering endured by the wrongfully convicted⁵²⁸ and social adversities such as family estrangement.⁵²⁹

In May 2012, then Independent Reviewer Professor Malcolm Harrington wrote to the Minister for Employment, recommending that the MJSS should notify the DWP of details of each wrongful conviction case as they arise, which should be sent to a 'designated DWP official' who would oversee the Work Capability Assessment process for employment related benefits and assign an experienced Decision Maker in the area where the exoneree resides to manage their claim.⁵³⁰ The Minister accepted the recommendation, and there continues to be a working relationship between the DWP and the MJSS.⁵³¹ This is hugely beneficial for the MJSS clients; many told me that they would have been unable to have applied for the benefits themselves. This was often because they needed someone to assist with bureaucracy, as well as technology: social security benefits from the DWP can now only be claimed online. This can be difficult for exonerees who may have spent a significant amount of time in prison, not be technologically able, or have no access to the internet due to the financial impacts of wrongful convictions.⁵³²

Housing the wrongfully convicted

One of the MJSS caseworkers highlighted that housing was one of the most 'pressing' needs to address when they assessed a wrongfully convicted client whose case had been referred to

⁵²⁸ A Grounds, 'Psychological Consequences of Wrongful Conviction and Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice*, 166(1) 165.

⁵²⁹ M Harrington, *An Independent Review of the Work Capability Assessment – Year Three* (November 2012) 8 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/70123/wca-review-2012.pdf> last accessed 2 October 2018.

⁵³⁰ Ibid. Annex 2.

⁵³¹ Interview with MJSS Caseworker C.

⁵³² B Provan, 'Housing for Victims of Miscarriages of Justice: A report for Commonweal Housing' (2015) *LSE Housing and Communities* 15.

the Court of Appeal.⁵³³ At present, no official housing scheme is available specifically for the wrongfully convicted, and instead they must go through the general homelessness application process. Once released, an exoneree has no automatic right to State provided housing, and many find themselves living on the streets or friend's couches in their first few days, weeks or even months of freedom.

A report by the MJSS in 2011 noted that, based on a sample of its clients, 33 percent were homeless on release.⁵³⁴ Most clients reported being unable to secure accommodation that was 'appropriate' upon release, such as where they felt safe, could access local services, and away from potential negative influences or aggravators such as old friends, drugs, tense family ties, or simply large numbers of people.⁵³⁵ My own analysis of the MJSS client data similarly showed that housing is a significant problem faced by the wrongfully convicted after their conviction is quashed. Almost three quarters of the clients were facing homelessness when their conviction was quashed by the Court of Appeal. While the social housing application process could be set in motion prior to their release (applications can be done up to 28 days before they are released),⁵³⁶ the MJSS often faced delays or requirements that the client attend an appointment with the Housing Association, which of course could only be done once they were no longer imprisoned. As a result, just over half of the valid sample⁵³⁷ of MJSS clients were either homeless or living with friends or relatives six months after release. A quarter managed to be living in social housing.

⁵³³ Interview with MJSS Caseworker A.

⁵³⁴ RCJ Advice Bureau Miscarriages of Justice Support Service Paper for Commonweal November 2011, cited in B Provan, 'Housing for Victims of Miscarriages of Justice: A report for Commonweal Housing' (2015) *LSE Housing and Communities* 13.

⁵³⁵ *Ibid.* 13.

⁵³⁶ Interview with MJSS Caseworker A.

⁵³⁷ All clients who had engaged with the service, for whom such information was known.

Despite delays, the data also showed that the MJSS were very successful in securing housing for its clients in the years after they were released: within two years after release, almost 80 percent of the valid client sample were of priority need status for social housing. But this is not without struggle.

Part 7 of the Housing Act 1996 provides that a local authority must assess anyone who has become homeless unintentionally whether they (or someone in their household) falls within the category of ‘priority need’.⁵³⁸ This is based on ‘vulnerability’ and section 5(3) of the Homelessness (Priority Need for Accommodation) (England) Order 2002 provides that anyone who has served a custodial sentence should fall within this category for housing purposes. However, in practice, this rarely occurs. In 2014, just four percent of the total number of households accepted as eligible for assistance (vulnerable and in priority need) included ex-prisoners (as well as ex-force members and individuals who had been in care, so ex-prisoners were only a portion of the four percent).⁵³⁹

Commonweal Housing has advocated that vulnerability as a direct cause of a miscarriage of justice should be considered for housing purposes.⁵⁴⁰ However, the wrongfully convicted are not themselves considered a distinct population, but rather fall within the category of ex-prisoners. As many might be ‘able bodied’, their needs may not be recognised, and authorities may perceive their time in custody to be partially their own fault (which removes them from eligibility).⁵⁴¹ The housing authority will consider whether the applicant made him or herself intentionally homeless. The Court of Appeal ruling that quashed their

⁵³⁸ B Provan, ‘Housing for Victims of Miscarriages of Justice: A report for Commonweal Housing’ (2015) *LSE Housing and Communities* 19.

⁵³⁹ *Ibid.* 22.

⁵⁴⁰ Commonweal Housing, *Justice after release: Housing options for Miscarriages of Justice victims, A Call to Action* (2015) 4 <<https://www.commonwealhousing.org.uk/static/uploads/2015/10/MOJ-Report-FINAL.pdf>> last accessed 2 October 2018.

⁵⁴¹ *Ibid.*

conviction will be important here, and if the judgment makes reference to the fact they are merely quashing a conviction on the basis of a ‘technicality’, this may potentially lead to a determination of intentional homelessness, which relieves the authority of its duty to house the applicant. This not only exacerbates their spoiled identity, but can also leave them with a sense of abandonment by the State: by not acknowledging that their wrongful conviction was an injustice that left them homeless, and instead ‘blaming’ the individual, they feel unable to move forward.

Medical evidence is also required to ascertain vulnerability and applications are more likely to be successful when they are supported by a psychiatric report and letters from caseworkers and their GP, outlining the affects the wrongful conviction has had on their mental health, and how this has made them a highly vulnerable individual. These can be difficult to obtain from a generalised mental health system which has little understanding of the impacts of wrongful convictions, as described in Chapter Six. Further, the emotional impacts, including a lack of trust, may stop the wrongfully convicted from going to their GP and obtaining such a report in the first place. This, in turn, may impact on their ability to obtain social housing.

To receive housing in their previous home town, an individual must pass tests of residence which establishes a local connection with that town. The meaning of ‘local connection’ is clarified at 18.9 of the Code of Guidance and in section 199(1) of the Housing Act 1996. It includes if they were normally resident in that area, employed in that area or have family ties there. This can be difficult if the individual is unable to provide evidence of an address prior to imprisonment or was not employed,⁵⁴² or if the person’s family has moved

⁵⁴² Commonweal Housing, *Justice after release: Housing options for Miscarriages of Justice victims, A Call to Action* (2015) 23 <<https://www.commonwealhousing.org.uk/static/uploads/2015/10/MOJ-Report-FINAL.pdf>> last accessed 2 October 2018.

and they have not lived there for some time. However, as one of the MJSS caseworkers noted in interview, ‘often they wouldn’t want to go back to the same area’,⁵⁴³ likely to avoid stigma and association with the trauma they had suffered as a result of their wrongful conviction. If they wished to move to another town after release, local connection is considered above all else in housing applications according to 18.11 of the Code of Guidance⁵⁴⁴ and someone who is wrongfully convicted may have no option but to return to their old neighbourhood (as they may be unable to establish local connection anywhere else).⁵⁴⁵ This can put them at risk of stigma and exacerbate the traumas of post-exoneration, limiting or removing their choice as to where they return to try to re-build their lives.

Councils have a duty to house a homelessness applicant temporarily, such as in ‘Bed and Breakfast’ accommodation or hostel, while they make enquiries about the applicant and try to find them suitable housing. However, the MJSS data showed that this type of housing is rarely acceptable to people who have been wrongfully convicted. Most prefer to stay with family and friends or ‘couch surf’ than be housed with what they perceive will be other ex-offenders, many of whom they believe to be dependent on drugs and/or alcohol. This perception of not being understood was shared by Alan, who described what he felt when he was offered shared accommodation and why he refused to live there:

That’s just not applicable to me. Because for a start, I can’t live with anybody else ... I’m only capable of looking after myself... So now I’m basically homeless, as you can see

⁵⁴³ Interview with MJSS Caseworker B.

⁵⁴⁴ Ministry of Housing, Communities and Local Government, *Homelessness Code of Guidance for Housing Authorities*, (last updated 20 June 2018) 10.14 denotes that ‘the overriding consideration should always be whether the applicant has a connection “in real terms” with an area’. <<https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-10-local-connection-and-referrals-to-another-housing-authority>> last accessed 2 October 2018.

⁵⁴⁵ Commonweal Housing, *Justice after release: Housing options for Miscarriages of Justice victims, A Call to Action* (2015) 6 <<https://www.commonwealhousing.org.uk/static/uploads/2015/10/MOJ-Report-FINAL.pdf>> last accessed 2 October 2018.

He also perceived such shared temporary accommodation as being associated with ‘problematic’ members of society:

... it’s probably mostly for people with mental health problems, alcohol problems, drug problems, the whole shebang. There’s nobody in there to control the place. Nobody. It’s just chaos ... That place is just not up my street ...

The data showed that clients tended to refuse offers of temporary housing until more permanent and private accommodation can be secured. An MJSS caseworker recounted one experience which highlighted the inadequacies of temporary accommodation and the unwillingness of housing providers to understand that some forms of temporary accommodation may not meet the needs of the wrongfully convicted:

... a recent example of the problems of other services not understanding, is that this guy is currently homeless and staying in a Mosque in very bad conditions and has been for a long time. And he went to the local authority where he’s staying to make a homelessness application, with the request that he should be placed outside the borough because of the relationships with the police there. And the sort of phantom emergency accommodation – and actually it was sort of the end of the afternoon and they wanted to put him in a hostel in the area where he didn’t want to be and the guy who wasn’t the main homelessness officer but was the temporary accommodations officer was saying, “well we’ve assessed your needs, and this is suitable for your needs”. And it was just nonsense, he didn’t go he just stayed where he was. They had – they’d lost once and they’d had again – detailed reports from [the psychologist] as well as our involvement and all the rest of it, they had copious information about which places this guy’s particularly worried about, and they just dumped him in a hostel and in right in the place where [he was wrongfully convicted] – and said we’ve assessed your needs and this is suitable for your needs ... it was a real example of a failure of the service, of the statutory services, to respond. Now in a way they didn’t have to have emergency accommodation like that, he had a roof over his head, you know, but they just responded with a sort of straight, routine this is what we do, single homeless person this is what we do we stick them in there ...⁵⁴⁶

⁵⁴⁶ Interview with MJSS Caseworker B.

Similar to employment, housing is another aspect of reintegration support linked closely with addressing the emotional impacts of wrongful convictions. It is the additional challenges that come with housing the wrongfully convicted that the MJSS fail to, or are unable to, assist with (nor is it expected to; the service's tender requires them only to provide advice on such issues as housing and not any comprehensive assistance with resettlement).⁵⁴⁷ While the MJSS caseworkers would 'go to appointments with them and facilitate a lot of interaction with bureaucracy', it was often the problems raised once housing was obtained that were left unaddressed, mainly because it fell outside the remit of the MJSS.

The continued emotional effects of wrongful convictions can make it difficult for the wrongfully convicted to maintain their housing once obtained. Tasks like shopping, budgeting, paying bills, cleaning, obtaining furniture, dealing with neighbours and settling in to a home and community, can be difficult and at times impossible for the wrongfully convicted without support. For some clients, this meant that they lost the home that had taken so much effort to obtain, as one MJSS caseworker noted in the case of one client:

... they eventually gave him like a one bedroom flat so he wasn't in a hostel, and it kinda went wrong though ... all to do with the mental health aspects, not so much the property but people that were there and he didn't stick to the rent. It's very difficult.⁵⁴⁸

It is these 'reintegration' aspects of post-exoneration life that are left unaddressed by the MJSS, who see their role is solely to ensure housing is obtained. This is concerning considering that, without addressing these additional aspects, the wrongfully convicted may lose their home altogether, for example if they were behind on rent or unable to keep the house in a respectable state.

⁵⁴⁷ See C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

⁵⁴⁸ Interview with MJSS Caseworker A.

Other agencies may also not understand the emotional impacts of wrongful convictions, particularly, for example, if the clients do not turn up to appointments or attend but lash out at officials. In one case, such lack of understanding put a strain on the relationship with a housing agency, as an MJSS caseworker explained:

One example I had was, we were trying to get somebody some housing, and they were in a hostel which it wasn't suitable, we were arguing that it wasn't suitable. They [the client] were really angry and we had a shelter expert, we had all the housing team, and this person threw a chair because he wasn't happy, so security were called and he was kind of banned from this council office. So, I had to spend about an hour and a half pleading with them to let him back in and to say it's a symptom, and if you know or understood what he went through ...

In an attempt to circumvent these difficulties with other agencies, the MJSS sought to set up a project that provided tailored housing exclusively to their clients once a conviction was quashed. The Miscarriages of Justice Accommodation Support Project was enacted by Commonweal Housing and the RCJ Advice Bureau in 2013-2014⁵⁴⁹ based on client experience that showed exonerees were less likely to experience housing hardship if they returned to owner-occupied properties. The scheme aimed to have a property on standby to provide immediate housing to the MJSS client (with the assistance of Broadway Real Lettings), while providing advice and support on post-exoneration issues such as obtaining benefits and securing employment, as well as assisting them with their compensation application.⁵⁵⁰ The compensation would be used to purchase the home provided to them, the profits of which would be used to purchase another property for another client, and so forth.

⁵⁴⁹ Commonweal Housing, 'Miscarriages of Justice' <<http://www.commonwealhousing.org.uk/our-projects/miscarriages-of-justice> > last accessed 2 October 2018.

⁵⁵⁰ B Provan, 'Housing for Victims of Miscarriages of Justice: A report for Commonweal Housing' (2015) *LSE Housing and Communities* 32.

However, while the project successfully housed and assisted one exoneree to purchase their own home, it was severely impacted by the amendment of section 133⁵⁵¹ which reduced eligibility to obtain compensation, discussed further in Chapter Eight. The project relied on the exoneree having a decent chance of receiving compensation which would be used to purchase that home, however, this was no longer the case.⁵⁵² Further, the first property purchased was in London, an unpopular location for the wrongfully convicted, being such an expensive, crowded and anxiety-inducing city.⁵⁵³ The project ceased in 2014 because, the organisations stated, ‘it was felt that the model developed was not working as envisioned, that the solution had been over engineered’.⁵⁵⁴ The model was clearly not developed with a sound understanding of the wrongfully convicted and therefore it was not suitably tailored to their needs.

A more effective model, one of the MJSS caseworkers explained, would have been to purchase a permanent property to provide emergency accommodation to a number of clients. This would be more of a ‘halfway house’ or safe house for people who have had convictions quashed to stay while they wait for social housing, which might help to slowly resettle them back into society. Others could perhaps choose to return to that house in subsequent years when they suffered a relationship break up and were between houses or had nowhere to live. This could reduce stigma – acknowledging the wrongfully convicted as a specific group – and avoid association with spoiled identities that might occur when put in temporary housing.

⁵⁵¹ Criminal Justice Act 1988, discussed further in Chapter Seven.

⁵⁵² See A Horsey, ‘Homeless and abandoned: what happens after a wrongful conviction’ *The Guardian* (17 April 2014) <<http://www.theguardian.com/housing-network/2014/apr/17/what-happens-after-wrongful-conviction-homeless>> last accessed 2 October 2018.

⁵⁵³ Interviews with MJSS Caseworkers A and B.

⁵⁵⁴ A Ahmad, ‘Not guilty but still punished – report’ *Commonweal Housing* (30 March 2015) <<http://www.commonwealhousing.org.uk/not-guilty-but-punished-report>> last accessed 2 October 2018.

One of the high profile wrongfully convicted individuals does this very informally, allowing people to stay in his own home immediately on release after their conviction is quashed. Some of the wrongfully convicted interviewees spoke fondly of this, as a much-needed form of support where otherwise they would have had nowhere else to go. High profile exonerees Paddy Hill and John Kamara have campaigned tirelessly for this halfway house model for years since their own release. This model could adequately address the housing needs of the wrongfully convicted while the MJSS struggle through the delays and bureaucracy of the generalised system of housing provision, particularly in a climate where obtaining compensation is almost impossible (discussed further in Chapter Eight).

Concluding thoughts

The MJSS, while effective in assisting with housing and benefits advice and applications, do not address the fundamental hurdles faced after a conviction is quashed. They do not see it as within their remit to visit their clients on a regular basis; to help them to settle into their home and neighbourhood; to teach basic life skills; about new technology; re-skill or re-educate; find a job; or to help build social capital.⁵⁵⁵ These are all important aspects of managing post-exoneration life, and required for successful identity transition. Social capital helps to define role identities, which in turn can help to form positive social identities. It can improve the sense of self by providing a sense of purpose and a place in the world, and help to rebuild and stabilise their life narrative.

Without comprehensive support to address these needs, it becomes very difficult for the wrongfully convicted to rebuild themselves and for some of the harms caused by wrongful convictions to be repaired. It is left to family members, lawyers and other supporters to pick

⁵⁵⁵This is further discussed in C Hoyle and L Tilt, 'The Benefits of Social Capital for the Wrongfully Convicted: Considering the promise of a resettlement model' (2018) *Howard League Journal*.

up the pieces and provide more informal support to try to get the wrongfully convicted person back on their feet and performing as a functional member of society.

Further, the spoiled identity that can attach to a conviction, however wrongful, makes it difficult for the wrongfully convicted to choose alternative roles on release (a new job, for example). The identity conflict and experiences of stigma make practical integration almost impossible, even if a conviction is quashed by the Court of Appeal.

My interviews, coupled with the MJSS client data, also showed the 'cyclical' nature of practical and emotional support, and the fact that they are each dependant on one another. Without addressing the emotional impacts of wrongful convictions, it becomes difficult to help the wrongfully convicted with housing or benefits; attending appointments, fulfilling JobCentre requirements, obtaining psychological reports and dealing with reams of form-filling and the demands of various authorities is not easy in a state of heightened anxiety or depression. Furthermore, without a house and other resources, their emotional needs will no doubt be exacerbated. This requires a reflexive, and perhaps coordinated, response to aftercare for the wrongfully convicted; where all aspects are tended to but also provided by agencies that speak to one another to ensure a holistic and effective form of post-exoneration support.

CHAPTER EIGHT: FINANCIAL SUPPORT FOR THE WRONGFULLY CONVICTED

Introduction

This chapter will explore the financial needs created by a wrongful conviction and the mechanisms available to help address those needs. It will discuss the way in which compensation is applied for and provided, including the recent limitations on eligibility and declining success rate of applications for the statutory compensation scheme.

It will then explore the experiences of those who have received financial compensation and argue that, while compensation payments in their current form may assist some wrongfully convicted people with their financial and material needs, the way it is provided can also have negative impacts on post-exoneration identity transition. Given the vulnerabilities faced by the wrongfully convicted explored in earlier chapters, consideration must be given not only to the limitations of compensation eligibility, but also to how it is allocated. Efforts to improve the compensation regime must take into account other impacts of wrongful conviction, such as psychiatric suffering and difficulties in establishing and maintaining relationships, which could be further hindered by the provision of large lump sums directly to the vulnerable individual with no guidance or support with financial planning or management.

Why compensate? The financial needs of victims of wrongful conviction and the conflicts of purpose

By the time a conviction has been quashed by the Court of Appeal, the financial costs of the wrongful conviction have accumulated significantly. Interviewees described having spent much of whatever money they had on legal fees, innocence campaigns and providing financial support to their partners and children while in prison. In some cases, the wrongfully convicted

and their families had to sell their homes in order to secure sufficient funds to further their appeals.

When released from prison after a wrongful conviction, exonerated prisoners are provided with the same 46 pound discharge grant as those released on parole.⁵⁵⁶ As discussed in Chapter Seven, a large number of wrongfully convicted individuals are homeless upon release from prison.⁵⁵⁷ By the time they have their convictions quashed and are released, the wrongfully convicted rarely have the funds to privately rent or purchase a house. They are in debt to families, friends and banks. Those who receive compensation will likely use a significant portion of it to pay off these debts. Almost all are forced to live on state benefits for part or all of their post-exoneration lives.

Given the financial strains experienced after exoneration, part of the identity transition is attempting to restore what Westervelt and Cook term the ‘financial self’.⁵⁵⁸ In addition to housing, MJSS caseworkers noted that much of their service is focused on addressing financial needs after a conviction is quashed (such as assisting with applications for benefits and community care grants or crisis loans). Financial compensation is desired by clients and caseworkers alike, and most interviewees told me that they thought it could have been a significant help in attempting to repair lives after release. Caseworkers agreed; as one stated:

... so, it was trying to get them their money, keep them in their housing, employment forever changed so it’s very hard to get them

⁵⁵⁶ Ministry of Justice National Offender Management Service, ‘Discharge’ PSI 72/2011 (last updated 29 December 2015) 9 <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-72-2011.doc&usg=AOvVaw09RAvsnUvECdNJAHHt_P6e> last accessed 2 October 2018.

⁵⁵⁷ See Chapter Seven for data gathered from interviews with the wrongfully convicted and the Miscarriages of Justice Support Service.

⁵⁵⁸ As mentioned Chapter Three; Westervelt and Cook refer to the financial self as one part of many different aspects of the self (others include the physical self and psychiatric self). See S Westervelt and K Cook, *Life After Death Row: exonerees’ search for community and identity* (Rutgers University Press, 2012).

trained, so if they had compensation it would've immediately redressed something.⁵⁵⁹

Compensation does not only assist with addressing the practical needs of the wrongfully convicted; Campbell and Denov claimed that compensation is sought by exonerees 'more for its symbolic rather than its actual value.'⁵⁶⁰ Compensation can be seen to symbolise public accountability for the harm caused, or can act as a form of apology for what has happened:⁵⁶¹ as Dame Ruth Runciman stated, 'the payment of compensation is the closest they will come to receiving an apology from the State'.⁵⁶² Another family member described it in her interview as a 'sorry payment'.⁵⁶³ In turn, the refusal of compensation can exacerbate trauma and cause a great deal of stress to the wrongfully convicted.⁵⁶⁴ One family member (whose brother did not receive compensation, despite having his conviction quashed) described why his brother would have wanted compensation and how it could have represented an acknowledgment of wrongdoing:

Compensation would at least show that this country knows they did wrong. So, from that point of view, that's not just the police you see that's the entire justice system, that's everything that says this was wrong and therefore ... this case should not have been taken.⁵⁶⁵

⁵⁵⁹ Interview with MJSS Caseworker A.

⁵⁶⁰ K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 155.

⁵⁶¹ As noted by participants in K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 156. Similarly, in Jenkin's study, the wrongfully convicted expressed their desire for their wrongful conviction to be acknowledged by the State: S Jenkins, 'Miscarriages of Justice and the Discourse of Innocence: Perspectives from Appellants, Campaigners, Journalists and Legal Practitioners' (2013) *Journal of Law and Society* 40(3) 349.

⁵⁶² R Runciman, 'Anti-Social Behaviour Bill briefing' *The Justice Gap* (8 November 2013) <<https://www.thejusticegap.com/anti-social-behaviour-bill-briefing/>> last accessed 2 October 2018.

⁵⁶³ Interview with Ralph's partner.

⁵⁶⁴ J Robins, 'Compensation to be cut for 'loss that can't be remedied' *The Justice Gap* (November 2013) <<http://thejusticegap.com/2013/11/compensation-cut-loss-cant-remedied/>> last accessed 14 April 2016.

⁵⁶⁵ Interview with Graham.

It can be viewed as a means of restoring some of what has been lost, as described by this lawyer:

... [it's] a question of compensating somebody not for the sake of compensating them, but for giving them something back for the life that has been taken and drained from them over that period of incarceration ... there's been a major detriment to health physically, mentally, and some get to a point where they just can't take it anymore.⁵⁶⁶

Compensation can also be seen as an acknowledgement of innocence, which might restore their sense of self as an innocent person, allowing them to move away from their previously spoiled social identity.⁵⁶⁷ Andre, for example, said that he felt his compensation was 'a declaration that the Home Office knew we were innocent and paid us some compensation as a result'. In contrast, those who are denied compensation feel they are not being recognised as innocent of the offence for which they were wrongfully convicted.

However, as the sections below describe, receiving compensation did not necessarily restore their identities by restoring their innocent sense of self. Instead, the manner in which it was awarded made it difficult for the wrongfully convicted to transition to a new, functional identity, particularly when compensation was provided in a lump sum, with little financial guidance. The following sections will discuss the way that compensation is provided and how eligibility for the statutory scheme has reduced dramatically since the scheme's inception.

Historical development of the provision of compensation in England and Wales

The right to compensation for a wrongful conviction is entrenched in Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR) and ratified in the European Convention of Human Rights and UK legislation. Article 14(6) provides for the right to

⁵⁶⁶ Interview with Lawyer F.

⁵⁶⁷ As described in E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963).

compensation if a person has been convicted and had that conviction reversed or been pardoned, where:

... a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.⁵⁶⁸

A strict reading of Article 14(6) suggests that the right to compensation should be extended to all individuals who have had their convictions quashed after an application to the CCRC (or, before 1997, the Home Secretary), based on a newly discovered fact. However, Article 14(6) does not define a ‘miscarriage of justice’, leaving the scope of eligibility for compensation to domestic discretion. This led to a string of judicial reinterpretations in an attempt to define the term, resulting most recently in the restrictive definition imposed by section 175 of the Anti-Social Behaviour, Crime and Policing Act 2014 (discussed further below).

Initially, compensation for the wrongfully convicted in England and Wales was provided through both a discretionary scheme and a statutory scheme. Now, only the latter exists, albeit restricted in its application (discussed further below). The discretionary scheme was established in 1985 as an ‘ex gratia’ payment based on decisions by the Home Secretary. Criteria required the applicant to have been a) imprisoned and pardoned; b) imprisoned and had their conviction quashed by the Court of Appeal or House of Lords following a referral under section 17 of the Criminal Appeal Act 1968 or appeal out of time; c) imprisoned following a wrongful conviction or charge resulting ‘from serious default on the part of the police or some other public authority’; or d) released from a charge or conviction in

⁵⁶⁸ No. 14668 MULTILATERAL International Covenant on Civil and Political Rights, Article 14(6).

‘exceptional circumstances such as when facts emerged at trial or appeal-in-time that completely exonerated the accused’.⁵⁶⁹

On 19 April 2006, then Secretary of State for the Home Department (the Home Secretary) Charles Clarke announced the abolition of the ex gratia scheme without notice or consultation. It was described as ‘confusing and anomalous’, given the introduction of the statutory scheme in 1988, and at a cost of over two million pounds a year it seemed not to be worth the benefit to a mere five to ten applicants each year. The decision to abolish the scheme was challenged in judicial review of *Niazzi*,⁵⁷⁰ however, the Divisional Court concluded that the Home Secretary had not acted unfairly in his decision. This was further upheld by the Court of Appeal in 2008.⁵⁷¹

The statutory compensation scheme

The statutory scheme was initially provided by section 133 of the Criminal Justice Act 1988 (section 133), which ratifies Article 14(6) ICCPR. Applications for statutory compensation must be made to the Home Secretary within two years of the conviction’s reversal (or pardon).⁵⁷² If an applicant is deemed eligible for compensation under section 133, the monetary amount is determined by an Independent Assessor. The current independent

⁵⁶⁹ S Lipscombe and K Beard, ‘Miscarriages of justice: compensation schemes’ (2015) *House of Commons, Home Affairs* SN/HA/2131 <<http://researchbriefings.files.parliament.uk/documents/SN02131/SN02131.pdf>> last accessed 14 April 2016; see also H Quirk and M Requa, ‘The Supreme Court on Compensation for Miscarriages of Justice: Is it better that ten innocents are denied compensation than one guilty person receives it?’ (2012) *The Modern Law Review* 75(3) 390.

⁵⁷⁰ *R (on the application of Niazzi) v Secretary of State for the Home Department* [2007] EWHC 1495 (Admin), [2007] ACD75.

⁵⁷¹ *R (on the application of Niazzi) v Secretary of State for the Home Department* [2008] EWHC 755, (2008) 152(29) SJLB 29. For discussion see S Lipscombe and K Beard, ‘Miscarriages of justice: compensation schemes’ (2015) *House of Commons, Home Affairs* SN/HA/2131 <<http://researchbriefings.files.parliament.uk/documents/SN02131/SN02131.pdf>> last accessed 14 April 2016.

⁵⁷² Ministry of Justice, *Application for compensation after a miscarriage of justice: Annex A* (2014) para 4 <<https://hmctsformfinder.s3.amazonaws.com/forms/guidance/index.htm#jump-3>> (last accessed 2 October 2018).

assessor (as of April 2016) is Dame Linda Hobbs DBE, a former judge of the High Court.⁵⁷³ Applicants can at present receive a maximum of one million pounds when imprisoned for at least ten years (the calculation of a ten-year period is defined under section 133) or 500,000 pounds for all other cases.⁵⁷⁴

Eligibility for the statutory compensation scheme is based on the appeal court judgment, the final version of grounds of appeal, CCRC Statement of Reasons (if the case had been referred by the CCRC) and other relevant case documents.⁵⁷⁵ Initially, a lawyer will make an assessment as to whether they believe an applicant will be determined eligible for the statutory scheme before making the application to the Justice Secretary. It takes approximately four months to decide on eligibility. If an individual is determined eligible for compensation, interim payments may be given to the applicant before a final amount is determined. These are prompt and substantial, often received within four to six weeks of application and for some of my participants were as much as 100,000 pounds.

If the application is successful, lawyers begin the quantification process. The application must demonstrate the extent and nature of the impacts of the wrongful conviction on the individual, and quantify those impacts, to determine the amount of compensation required. This process generally begins with a statement from the applicant and usually also a close family member about ‘what they were like pre-imprisonment and what they’re like post-imprisonment’.⁵⁷⁶ If the family were involved in campaigning for the applicant, relevant

⁵⁷³ Ministry of Justice Press Release, *New Independent Assessor for Miscarriages of Justice* (8 April 2016) <<https://www.gov.uk/government/news/new-independent-assessor-of-compensation-for-miscarriages-of-justice>> last accessed 14 April 2016.

⁵⁷⁴ Criminal Justice Act 1988, section 133(2A).

⁵⁷⁵ The list of documents required for an application for compensation is outlined here: ‘Miscarriage of justice: claim compensation’ (last update 25 September 2018) <<https://www.gov.uk/claim-compensation-for-miscarriage-of-justice>> last accessed 2 October 2018.

⁵⁷⁶ Interview with Lawyer D.

expenses can also be included in the quantification (however this must come out of the applicant's award and is not additional to it).⁵⁷⁷ A psychiatric report would be obtained to determine the level and cost of psychological damage arising from the wrongful conviction. In some cases, an employment report will be obtained for loss of earnings or loss of opportunity.⁵⁷⁸ In cases where the applicant needs ongoing care, a care report will also be completed.⁵⁷⁹ Civil lawyers told me about the frustrations of piecing together the pre- and post-wrongful conviction lives of the applicants, which can be disjointed and at times incomplete. Prison records, for example, are 'a complete mess', inconsistent in content and rare in order. As one lawyer described:

... you're trying to find someone's employment records from 20 years ago, or you're trying to find someone's medical records, I mean sometimes the prison had just destroyed half of their medical records or half of the prison file, and that could contain valuable information, or the original criminal papers have been destroyed or lost or ... so you can face difficulties with piecing things together, sometimes it's almost sort of like a jigsaw puzzle, [you] have to sort of fill in the gaps as best you can.⁵⁸⁰

There are particular difficulties when applicants are young at the time of being wrongfully convicted or where their lives have not developed into a settled pattern; as the lawyer went on to note:

...you're trying to predict based on a real unknown, the loss could be in any direction... if someone's had some career before you can see where they would've been by now, you can get sort of forensic accountants or whatever else, but if someone's never really been or had a proper job, it's just really, really difficult.⁵⁸¹

⁵⁷⁷ Interview with Sarah (partner of Ralph).

⁵⁷⁸ The psychiatric report will also indicate whether the expert believes the applicant will be able to work in the future.

⁵⁷⁹ Interview with Lawyer D.

⁵⁸⁰ Interview with Lawyer B.

⁵⁸¹ Interview with Lawyer B.

Although the evidence gathered to quantify a compensation award is qualitative, the result is strictly numerical. Awards can allow for non-pecuniary losses such as loss of liberty ‘simpliciter’. This is a basic award for pure loss of liberty before assessing aggravating factors. These include the conditions of imprisonment; type of offence, which may increase the effect of prison on the applicant (an obvious example being sex offences, which carry significant stigma and can result in isolation or abuse within prison) and cause continuing stigma after release; the effect on the applicant’s marriage and family; the effect on reputation; stress caused by trial and prosecution; conduct of police investigation; as well as pain, suffering and loss of amenities.

Loss of liberty simpliciter is governed generally by the duration of wrongful imprisonment, however, there is no hard and fast calculation.⁵⁸² The judicial review of *O’Brien and others*⁵⁸³ argued that this basic award should be consistent for all applicants. In doing so, counsel tabled a number of compensation applications and their resulting loss of liberty simpliciter awards for different imprisonment periods (gathered from barristers). They demonstrated that awards were not consistent for time spent wrongfully in prison and argued that after calculating a monthly rate, each award varied by up to thousands of pounds. This highlighted the need for a benchmark to ensure consistency across compensation calculations and their resulting awards. As one of the solicitors who worked on the judicial review explained:

... certainly, up until the point of that judicial review ... it just seemed to be like the Assessor licking his fingers looking under the ‘X’ and he didn’t have to explain or give it as part of the [decision]

⁵⁸² Guidance was provided in *Thompson v Commissioner of Police for Metropolis*; *Hsu v Commissioner of Police of the Metropolis* (1998) QB 498, [1997] 3 WLR 403, however, this case provided a guide only based on the number of hours of wrongful imprisonment, which is not helpful when applicants have spent a number of years imprisoned.

⁵⁸³ *R (on the application of O’Brien, Hickey, Hickey) v Independent Assessor* [2003] EWHC 855 (Admin).

... you don't get explanations... and that was kind of an attempt to do some kind of standardisation.⁵⁸⁴

Despite this challenge, both the Court of Appeal and House of Lords maintained that Assessors are not bound by previous decisions and that ground of appeal was dismissed.⁵⁸⁵ As a result, quantification for loss of liberty and other amounts remains varied and inconsistent.⁵⁸⁶

Compensation awards can also include amounts for pecuniary losses, including loss of earnings (past and future, capped at equal to 1.5 times the median annual gross earnings),⁵⁸⁷ pension loss, care and assistance (for those who had to care for them after release), psychological treatment expenses and campaign expenses. Deductions from compensation amounts can be made for a number of reasons, including conduct that may have contributed to the conviction, if the applicant has a prior criminal record, or for 'saved living expenses' (as described above).⁵⁸⁸

Generally, the Assessor takes approximately six months to make a decision, and at times it can take more than a year. Decisions made by the Independent Assessor are not publicly available, eliminating the opportunity for precedent, and compensation lawyers must rely on anecdotal information to shape their applications for clients.

⁵⁸⁴ Interview with Lawyer C.

⁵⁸⁵ R (*on the application of O'Brien, Hickey, Hickey*) v *Independent Assessor* [2007] UKHL 10, [2007] 2 WLR 544.

⁵⁸⁶ For example, in the case of R (*on the application of Miller*) v *Independent Assessor* [2009] EWCA Civ 609, the 55,000-pound award for loss of liberty was found to be irrationally low; whilst in *Home Office v Stellato* [2009] EWHC 1719 (QB) a 50,000 pound award for eleven month's wrongful detention was upheld (which had actually been reduced from a higher figure due to the claimant's criminal record).

⁵⁸⁷ Median annual gross earnings are based on figures by the Office of National Statistics for the relevant year of application. This also means that potentially, those who earned above the median annual gross prior to their wrongful conviction are not sufficiently compensated for their loss.

⁵⁸⁸ S Lipscombe and K Beard, 'Miscarriages of justice: compensation schemes' (2015) *House of Commons, Home Affairs* SN/HA/2131 <<http://researchbriefings.files.parliament.uk/documents/SN02131/SN02131.pdf>> last accessed 14 April 2016.

Eligibility for the statutory scheme and its demise

Those who may apply for compensation for a miscarriage of justice must first have had their conviction ‘reversed’ or granted a Free Pardon. The meaning of ‘reversed’, for the purposes of applying for compensation, includes a conviction that has been quashed:

- on an appeal out of time without retrial;
- on an appeal out of time with a retrial granted, but the applicant was acquitted of all offences at the retrial or the prosecution indicated that it has decided not to proceed with the retrial;
- after referral to the Court of Appeal by the CCRC under section 9 of the Criminal Appeal Act 1995;
- on appeal under Section 7 of the Terrorism Act 2000; or
- on appeal under Schedule 3 to the Terrorism Prevention and Investigation Act 2011.⁵⁸⁹

Secondly, the applicant must satisfy the requirement under section 133 which states that:

... when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.⁵⁹⁰

This is very similar wording to Article 14(6) with the exception that the new or newly discovered fact has to prove ‘beyond reasonable doubt’ – rather than ‘conclusively’ – that there

⁵⁸⁹ Ministry of Justice, *Application for compensation after a miscarriage of justice: Annex A* (2014) para 4 <<https://hmctsformfinder.s3.amazonaws.com/forms/guidance/index.htm#jump-3>> (last accessed 2 October 2018).

⁵⁹⁰ Criminal Justice Act 1988, s133(1).

has been a miscarriage of justice. It also similarly does not define ‘miscarriage of justice’, which is left to judicial interpretation. In the case of *Adams*,⁵⁹¹ the Court defined this as when the new or newly discovered fact ‘so undermines the evidence against the defendant that no conviction could possibly be based upon it.’⁵⁹²

According to Lord Phillips, the aim of Article 14(6) ICCPR, and in turn section 133, was to ensure that while individuals should be entitled to compensation if convicted of crimes they did not commit, it should not be allowed for those convicted of crimes they did commit but whose conviction was nevertheless considered to be unsafe.⁵⁹³ As the quashing of a conviction does not necessarily mean the person did not commit the crime (a conviction can be quashed for breach of fair trial processes though the defendant is factually guilty), simply being exonerated cannot give rise to an automatic right to compensation.⁵⁹⁴

In *Ali*,⁵⁹⁵ the High Court reconsidered the definition of ‘miscarriages of justice’ for the purposes of section 133, through deliberation of five leading cases: Ismail Ali, Barry George, Kevin Dennis and Justin Turnbridge, and Ian Lawless. It was concerned with a lack of clarity in the *Adams*⁵⁹⁶ decision distinguishing between the different categories of miscarriages of justice, and instead proposed a new definition which they believed to be synonymous but clearer for lawyers and the Secretary of State:

⁵⁹¹ R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48.

⁵⁹² R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48 at [55]; see also S Lipscombe and K Beard, ‘Miscarriages of justice: compensation schemes’ (2015) *House of Commons, Home Affairs* SN/HA/2131 <<http://researchbriefings.files.parliament.uk/documents/SN02131/SN02131.pdf>> last accessed 14 April 2016.

⁵⁹³ R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48 at [22] to [25].

⁵⁹⁴ H Quirk and M Requa ‘The Supreme Court on Compensation for Miscarriages of Justice: is it better that ten innocents are denied compensation than one guilty person receives it?’ (2012) *The Modern Law Review* 75(3) 399.

⁵⁹⁵ R (*on the application of Ali and others*) v Secretary of State for Justice [2013] EWHC 72 (Admin), [2013] 1 WLR 3536

⁵⁹⁶ R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48.

Has the claimant established, beyond reasonable doubt, that no reasonable jury (or magistrates) properly directed as to the law, could convict on the evidence now to be considered?⁵⁹⁷

Based on this definition, the Court dismissed all applications for compensation except one (that of Ian Lawless) and ordered the Justice Secretary to reconsider his decision to refuse compensation in that case.

Section 175 of the Anti-Social Behaviour, Crime and Policing Act 2014 (section 175) came into force on 13 March 2014 and reversed the decisions in both *Adams* and *Ali*. This inserted subsection 1ZA into section 133 of the 1998 Act, defining a miscarriage of justice for the purposes of the Act as:

...if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence.

This is the current test for eligibility for compensation in England and Wales. It heavily restricts the test for eligibility to compensation and provides a very different definition to that required by the Court of Appeal to overturn a conviction. Essentially, a person who has had their conviction quashed will be ineligible for compensation unless they can prove beyond reasonable doubt that they are innocent, given that 'not committing the offence' refers to innocence rather than being not guilty. This is not the deciding criterion for the Court of Appeal, which considers the safety of the conviction rather than whether the person did not commit the offence. In practice, this suggests that unless the wrongfully convicted person can prove the identity of the actual perpetrator of the crime, or provide almost infallible exculpatory forensic evidence, he or she will now be unlikely to receive compensation.

A Ministry of Justice Impact Assessment suggested the introduction of section 175 was to ensure that compensation was only given to those who could clearly demonstrate they

⁵⁹⁷ R (*on the application of Ali and others*) v Secretary of State for Justice [2013] EWHC 72 (Admin); [2013] 1 WLR 3536 at [41].

were innocent. Further, it aimed to reduce the burden on taxpayers and ‘unnecessary and expensive legal challenges to government decisions to refuse compensation’.⁵⁹⁸ Unfortunately, it may have done the opposite, given the recent lengthy appeals of Victor Nealon and Sam Hallam,⁵⁹⁹ described below. The assessment further states:

By confirming a relatively narrow definition, the provision seeks to generate a more predictable and consistent approach to identifying cases where a miscarriage of justice has taken place. A clear definition enshrined in statute would make it easier for meritorious claimants to claim, and would make decisions on eligibility more transparent, and less likely to be the subject of legal challenge.⁶⁰⁰

But while the definition might appear narrow and concise, it is not fair in practice, and means that those who have convictions overturned by the Court of Appeal are not usually ‘innocent enough’ to receive compensation. It is difficult for the wrongfully convicted to restore their social identities to align with their innocent sense of self if they are unable to receive compensation through the statutory scheme.

The majority of the lawyers I interviewed felt that, if those who had convictions quashed were rarely compensated based on the need to prove ‘innocence’ beyond reasonable doubt, the quashing of a conviction no longer restored a presumption of innocence. This was argued in the case of *Nealon and Hallam*⁶⁰¹ where counsel for Victor Nealon and Sam Hallam argued that section 133 (as amended by section 175) is now incompatible with the presumption of innocence protected in Article 6(2) of the ICCPR. Both had convictions quashed but were denied compensation under the amended provision. The Divisional Court rejected the Article

⁵⁹⁸ Ministry of Justice, ‘Impact Assessment: Clarifying the circumstances under which compensation is payable for Miscarriages of Justice (England and Wales)’ (9 March 2013) 7.

⁵⁹⁹ *R (on the applications of Nealon and Hallam) v The Secretary of State for Justice* [2015] EWHC 1565 (Admin).

⁶⁰⁰ Ministry of Justice, ‘Impact Assessment: Clarifying the circumstances under which compensation is payable for Miscarriages of Justice (England and Wales)’ (9 March 2013) 2.

⁶⁰¹ *R (on the applications of Nealon and Hallam) v The Secretary of State for Justice* [2015] EWHC 1565 (Admin).

6(2) compatibility argument. It held that it was bound by the decisions of the Supreme Court in *Adams*⁶⁰² and the Grand Chamber in *Allen*⁶⁰³ that Article 6(2) did not apply to section 133. Leave to appeal to the Supreme Court was granted in 2017, and the case was heard in May 2018. At the time of writing, the judgment was yet to be handed down.

The new legislation has had a significant impact on the number of successful compensation applications for miscarriages of justice. Figures disclosed by the Ministry of Justice show the number of compensation applications received by the Independent Assessor each financial year since 2010 and the number of those applications that were approved under section 133 of the Criminal Justice Act 1988. These figures are set out in the table below:⁶⁰⁴

Year (ending 31 March)	Total Applications Received	Applications Approved Under s 133 (CCRC referred)
2009-10	38	2 (2)
2010-11	61	3 (2)
2011-12	38	0
2012-13	36	5 (2)
2013-14	45	1 (0)

⁶⁰² R (*Adams*) v *Secretary of State for Justice* [2011] UKSC 18, [2012] 1 AC 48.

⁶⁰³ *Allen v United Kingdom* (25424/09) (2016) 63 EHRR 10, 36 BHRC 1.

⁶⁰⁴ Data obtained from the Ministry of Justice following a Freedom of Information Request response received 7 November 2017.

2014-15	43	1 (1)
2015-16	29	2 (0)
2016-17	51	1 (0)

In the last column, the number in brackets represents the number of those approved applications that were CCRC referred cases.

Let us compare the above figures to those included in the *Adams*⁶⁰⁵ judgment. The judgment includes figures disclosed by the Ministry of Justice about the number of applications received and the number of applications approved under section 133 in England and Wales from May 2004 to 2010:⁶⁰⁶

Year	Total Applications Received	Applications Approved Under s 133
2004-05	88	39
2005-06	74	21
2006-07	39	23
2007-08	40	7
2008-09	38	7
2009-10	37	1

⁶⁰⁵ R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48.

⁶⁰⁶ R (*Adams*) v Secretary of State for Justice [2011] UKSC 18, [2012] 1 AC 48 at [75].

Comparing the two tables, it is striking to note the significant reduction in both received and successful compensation applications since the abolition of the ex gratia scheme in 2006- 07. Successful applications for compensation dropped from 39 out of 88 applications in 2004-2005 to just one out of 37 applications in 2009-10. Hoyle also sought data from the Ministry of Justice and found that while prior to April 2006, only 13 percent of applications for compensation were refused, this refusal rate rose to 79 percent after the abolition of the ex gratia scheme.⁶⁰⁷ Since 2010, successful applications have remained consistently low, with significant reductions - to just one or two successful applications each year - after 2013/14, when section 175 came into force. No convictions quashed after a referral from the CCRC have been successful in the statutory compensation scheme since the 2014-15 year.

Concern about the impact of section 175 on the success of compensation applications was expressed in qualitative interviews with civil lawyers. Many lawyers expressed their frustrations at the limitation of the new requirement; one concluded that ‘now practically you are very unlikely to be able to achieve compensatory amounts for a miscarriage of justice.’⁶⁰⁸

Another noted:

... the current state of the law is very disappointing: the door has been closed even further with just the narrowest nick of light in respect of obtaining compensation and there is no ex gratia scheme that would allow an equitable solution to the circumstances. There’s a reluctance to accept responsibility on the part of the State for the victims of miscarriages of justice. Again personally, these are my personal views not that of the firm, but I find that quite offensive in those circumstances.⁶⁰⁹

⁶⁰⁷ C Hoyle, 'Compensating injustice: the perils of the innocence discourse', in S.M. Young, J. Hunter, P. Roberts and D. Dixon (eds.) *The Integrity of Criminal Process: From Theory to Practice* (Hart, 2016).

⁶⁰⁸ Interview with Lawyer C.

⁶⁰⁹ Interview with Lawyer F.

The provisions apply not only from the day the Act came into force, but also to any applications pending at the time of enactment.⁶¹⁰ One lawyer described the impact this had on two co-defendants who were brothers: while one received a substantial award, the other did not, as his application was still pending at the time section 175 was introduced. The lawyer described this as ‘incredibly unfair’⁶¹¹ and it can be argued from this example that the test for compensation risks being applied arbitrarily.

Lawyers discussed the implications of the new test for the relationship between compensation applications and Court of Appeal judgments. The Court of Appeal is required to determine the safety of a conviction rather than whether the defendant committed the offence. This means that judgments will rarely be helpful for a compensation claim. Indeed, this is not their purpose; and yet, the Court of Appeal judgment is one of the sources used to determine eligibility for compensation, as noted above.⁶¹² In the case of Sam Hallam, the Court of Appeal denied Henry Blaxland QC’s request for a positive statement that the evidence demonstrated Hallam was innocent.⁶¹³ It was the Court of Appeal’s refusal to provide a positive statement of innocence in their judgment on the conviction of Sam Hallam that formed part of the decision by the Independent Assessor not to determine him eligible for compensation under the amended section 133.

Sam Hallam’s case also showed how evidence used in appeal can hinder eligibility based on the current test. The Independent Assessor in that case said that while evidence found on Mr. Hallam’s mobile phone placed him somewhere other than the scene of the crime

⁶¹⁰ Anti-Social Behaviour, Crime and Policing Act 2014, s175(2).

⁶¹¹ Interview with Lawyer F.

⁶¹² ‘Miscarriage of justice: claim compensation’ (last update 25 September 2018) <<https://www.gov.uk/claim-compensation-for-miscarriage-of-justice>> last accessed 2 October 2018.

⁶¹³ R (*on the applications of Nealon and Hallam*) v *The Secretary of State for Justice* [2015] EWHC 1565 (Admin) at [6]. Interestingly, the court did accept it could do so ‘in an appropriate case’.

of which he was convicted, and was accepted as such by the Court of Appeal, ‘the fresh evidence does not establish positively that your client was not at the murder scene’⁶¹⁴ and therefore the case did not pass the statutory test. Such a high bar severely restricts the likelihood of success in compensation applications, further cementing applicant’s spoiled identity. As one lawyer stated:

... the single biggest barrier to this area of work is the fact that you cannot get compensation for the vast majority of people who suffer a miscarriage of justice ... you are not ever going to be able prove that people did not commit it unless someone else came forward ... and so at the moment it’s a barrier to even get into the stage where you face the normal barriers in terms of trying to progress the cases, there’s no compensation for people and that’s really depressing and there is no way round it.⁶¹⁵

Being denied eligibility for compensation can have severe emotional impacts on the wrongfully convicted in their journeys of identity transition. As noted in the first section of this chapter, for some wrongfully convicted people, compensation is seen as an acknowledgement of innocence. Without it, they find it difficult to restore their social identity to align with their innocent sense of self. Gary, for example, felt that he had not been ‘truly’ exonerated because he had been denied compensation for his wrongful conviction. He explained:

The problem for me now is that because of this legal nightmare which doesn’t allow me to have a legal determination of innocence, I am seeking to challenge the Government because they refused my compensation. They refused it on the basis that I’m not innocent enough. But you’re either innocent or you’re not, there’s no such thing as being not innocent enough. It’s not for me to prove my innocence, it’s for the State to prove guilt to me, that’s the point.

Lawyers described the difficulty in trying to explain to their wrongfully convicted clients why they were ‘not innocent enough to get a payout’, despite, for example, the Court

⁶¹⁴ Ibid. at [7].

⁶¹⁵ Interview with Lawyer B.

of Appeal accepting that a witness lied or changed their evidence because ‘that doesn’t mean to say they didn’t do it.’ Without the tools to help build new and positive identities, their life narrative remains stilted, stuck in their attempts to prove to the world they are innocent, a world that appears to refuse to wholly acknowledge the injustice. As one lawyer recounted:

... it’s trying to explain to the clients, no that doesn’t mean to say that they’re saying you’re guilty, but ... it’s really difficult to explain to somebody. One particular client who was in that situation, every now and again, even though I’ve explained to him why he’s not eligible and that there’s nothing more that can be done, he’ll still phone me up and say can you just explain again why ... I mean obviously it just doesn’t make any sense whatsoever. He had seven years of his life taken away and, you know, it was a pretty poor investigation that was done, but it was to do with the fact that a witness had just lied.⁶¹⁶

With the statutory scheme for compensation now so severely limited, alternatives of financial redress for wrongful convictions are needed more than ever. The next section will discuss the only alternative to the statutory scheme, civil claims against public or private bodies, and consider their effectiveness in compensating the wrongfully convicted.

An alternative compensation mechanism: civil claims against public or private bodies

Civil claims for cases involving quashed convictions are most often made against the investigating police force. Cases have also been initiated against Her Majesty’s Revenue and Customs and against the CPS for failure to disclose crucial evidence during trial. However, civil claims in cases of wrongful convictions are difficult to prove and rarely successful. One lawyer explained that civil claims are seen as a ‘fall-back position ... because of the very narrow nature of section 133, but by no means is it certain that you would be able to achieve compensation on a tort basis because of the limitations you have and with causation’.⁶¹⁷

⁶¹⁶ Interview with Lawyer E.

⁶¹⁷ Interview with Lawyer F.

Limitation periods (the period of time within which a party must make a claim) are generally six years from the time the claimant discovered, or could reasonably have known about the act (such as misconduct).⁶¹⁸ Damages can only be claimed in relation to the wrongfully convicted person and not for campaigning expenses or other costs on behalf of the claimant's family, unlike with the statutory scheme. The common law principle of 'double recovery' restricts applicants from claiming damages already claimed under the statutory compensation scheme in a civil suit.⁶¹⁹

As civil claims are rarely successful, many wrongfully convicted people have felt let down by civil lawyers. Brian described how his lawyer withdrew services after 12 months because the barrister advised that their case against the police would not be successful. He described this as a 'nightmare, kick in the ass'. The MJSS client files also showed that many wrongfully convicted people are desperate to make civil claims against agencies who they believe are responsible for their conviction, however, the majority of these are turned down by solicitors.

Those I interviewed who were successful in civil claims said that it helped to address some of their reintegration needs, as was the case with money received through the statutory scheme. Brian explained how his settlement from the investigating police force helped his family:

...when [the settlement] came we were in rife financial troubles because the whole family was supporting me to try and survive, and when they eventually made the offer, I accepted it, because I wanted to get, with that I said, I'd be able to get a house. So, my first priority was my wife.

⁶¹⁸ Limitation Act 1980, section 9(1).

⁶¹⁹ As noted in *R (on the application of O'Brien, Hickey, Hickey) v Independent Assessor* [2007] UKHL 10, [2007] 2 WLR 544 at [11].

However, while the award of damages helped to relieve some of his financial struggles, the fact that it was a settlement out of court (a move that is common amongst civil claims with promise of success) made him feel as though it was not a sufficient apology for what he had suffered at the hands of police. It was seen as a way for the police to escape responsibility, and he is fighting for an apology for his wife and children:

...why the heck can't they say sorry... how can they get away with doing what they're doing? They shouldn't be allowed. It just goes on and on and on.

This grievance can be exacerbated when, despite the success of a civil case, no criminal proceedings are brought against the opposing party. Michael O'Brien, for example, spent three years after his six-year civil claim against the police trying to have the main officer in his case prosecuted for perjury. A judicial review was later made in relation to the decision of the CPS not to prosecute the officer.

This refusal to prosecute appears to support the view of the police and the CPS that a civil claim settlement is not an acknowledgement of culpability on their part, but rather an ex gratia type payment for what the claimant suffered; similar to the position taken in relation to the statutory compensation scheme. One lawyer described how this difference of opinion can cause anguish for the wrongfully convicted client:

... it would more be just them coming back saying we'll only pay that because we think your client would have been convicted anyway but we'll give you a little bit ... I guess it adds insult to injury from a client's perspective because if it's the actual people that ... has deliberately wronged them and yet there is this adversarial process because they're not just paying out they're saying hang on a minute, you did X, Y Z wrong anyway and we're not paying up and we're not admitting we did anything wrong and any payment by us will be ultimately on a no admission of liability basis unless it ends up in trial...⁶²⁰

⁶²⁰ Interview with Lawyer B.

This refusal to admit fault, by agencies who should be to some extent responsible for the criminal justice process, can further exacerbate the feelings of mistrust and abandonment experienced by the wrongfully convicted. It is an example of a lack of ‘reintegration ritual’ and can exacerbate their spoiled identities, fuelling the common perception that ‘there is no smoke without fire’. This may contribute to the fact that those who did receive payouts did not feel that it helped to repair some of the harm, or acknowledge their innocence. This is explored further in the section below.

Civil claims can only be pursued where a party can be determined to be at fault, which means they are only available in particular cases. For example, where the police have acted against rules of conduct or in contravention of PACE; where trial lawyers have been negligent; or following failures to disclose unused, potentially exculpatory evidence. Many cases where convictions are quashed based on factors that cannot be blamed on a particular agency – such as where a witness has committed perjury – have no recourse in civil claims. In such cases, the wrongfully convicted can rely only on the statutory scheme for compensation. However, with the now restricted access to compensation, almost no one is eligible for the statutory scheme. This means that financial compensation is now a rare form of aftercare support for the wrongfully convicted.

In saying that, a significant portion of the wrongfully convicted people I interviewed – explained further below – had received compensation under the statutory scheme, prior to the change in legislation, and some had received settlements from civil claims. The next section will explore the lived experiences of those who had received financial compensation, and consider the impacts – both positive and negative – that it had on their post-exoneration lives and their journey towards recovering and building a new, positive identity.

The benefits of compensation for wrongful convictions

Over half of the wrongfully convicted people I interviewed had received compensation through the statutory scheme prior to the 2014 amendment. Five wrongfully convicted interviewees had also received payouts through civil claims. In the remainder of this chapter, I will explore the benefits and disadvantages of receiving financial payments from the statutory scheme or by way of civil claims. I will argue that, while financial compensation can assist with repairing some of the harm caused by wrongful convictions, it can also cause further harm when provided as a lump sum with little financial guidance.

I asked those interviewees who had received statutory compensation or payouts from successful civil claims whether financial compensation had improved their lives or helped to repair some of the harm caused by their wrongful conviction, and if so, how. Many described the ways in which financial support assisted them to establish their ‘financial self’ by addressing immediate practical needs, such as housing and living costs. A few used their compensation to buy houses – both to live in and to invest – and to furnish those houses. As Andre explained:

I got an open payout for the beginning, something to help me settle... An interim payment, which helped me furnish that flat from IKEA, which I thought was brilliant at the time ... I thought IKEA was a terrific place because it had all this fancy stuff! You know bearing in mind that I'd been sleeping on a metal bed with a black foam mattress with holes in it you know ... So yeah then I moved into that flat. So that compensation helped ...

Many interviewees used the money to buy some luxury items such as cars, designer clothes, or a holiday. Andre also explained how he felt liberated upon receiving his statutory compensation payment:

... I remember hanging up the phone and thinking, I can buy anything in this store that I wanted. You know, there was not a pair of jeans that I didn't think I could afford. So that's the kind of mindset that it put me in. It put me in the mindset that I had enough money that I could, I could set myself up, not for the future but immediately. I could walk around the next couple of days

knowing that I could afford anything I wanted, knowing I could afford a pair of shoes at whatever the cost, not that I would, that's ridiculous, but it kinda put me in that mindset that I could probably afford to buy my own house, or at least buy a house, take out a small mortgage ... So, the compensation ... did relieve the stress of thinking how I was going to afford the next thing. I didn't have to worry about that instantly.

In some interviews, conducted at the home of the interviewee, their compensation purchases were clearly displayed. A number of interviewees, for example, had spent some of their compensation award on security apparatus for their homes such as heavy gates and CCTV cameras, described in Chapters Four and Five.⁶²¹ This also, as noted in those previous chapters, highlighted their ongoing paranoia and mistrust, which further entrenched their wrongful conviction identities and suggests a failure to address other needs such as the emotional impacts of wrongful convictions.

Negative Impacts of Compensation: Making bad choices

Despite the practical benefits of financial compensation, interviews with the wrongfully convicted highlighted some negative impacts of receiving lump sums. Currently, compensation interim payments are provided in denominations of tens of thousands, often 50,000 to 100,000 pounds at a time. Although the quantification of compensation is subject to strict rules, as explained earlier in this chapter, once an application is approved, there is no requirement for the award to be used for the purposes defined in the application. The remainder of the compensation payment will be given directly to the applicant once decided, in one or a few lump sums, with complete discretion as to how to spend the award.

Discretion to spend is not necessarily beneficial, particularly to those as vulnerable as the wrongfully convicted. Almost all lawyers I interviewed discussed the negative impacts receiving large lump sums of money had on their clients. Many were in their 20s or 30s when

⁶²¹ Interviews with Brian and Tim, for example.

they were imprisoned for their wrongful conviction and had no experience of managing large amounts of money. Further, they were often released with little or no skills in budgeting or financial planning. As one civil lawyer noted:

... I mean, I wouldn't know how you look after that sort of money. But, if you're from a poor background, you certainly don't know. You don't know anything about investments, don't know anything about financial advisors, don't know anything about what you actually do. And this is supposed to be money to last for the rest of your life.⁶²²

Claimants were therefore likely to spend their lump sums haphazardly, buying expensive cars and other luxuries, rather than investing their money for a safe and comfortable future by saving money in a savings account or buying a home, the value of which is likely to accumulate. One client of a lawyer I interviewed would buy a new luxury car each time he had crashed one because he couldn't drive. A wrongfully convicted interviewee, Brian, who was very bitter about how he had been treated by police, had his home fitted out with a number of lavish possessions including big white leather couches, extravagant fluffy rugs, clocks, statues, artwork, big screen televisions, various unnecessary appliances, and a brand new kitchen.

As a family member of a wrongfully convicted person noted:

He got his compensation, and I must admit he probably didn't use it in the best way ... it must be like a lottery win, that you're not used in life to having that amount of money, suddenly you've got this big lump of money. So, he practically didn't use it in the best way ...⁶²³

Compensation payments can exacerbate other impacts of wrongful convictions, particularly drug and alcohol dependencies. Alan admitted that he had spent 500,000 pounds

⁶²² Interview with Lawyer C.

⁶²³ Interview with Graham.

in two years solely on drugs, and was forced to move out of town due to the additional debt he had accumulated. As he explained:

I went straight out, I spent 100,000 pounds in six months. On drink, drugs and women. Because I didn't know what else to do. I thought it'd last forever, 100 grand woahhhh, you know. And I went out and I pissed it up against the wall basically. I couldn't cope with life. So, I turned to drugs again. It took me a while to get off the drugs again ...

In addition, not one interviewee told me they spent part of their compensation on psychiatric help or other type of resettlement support. Thus, their psychiatric assessment for the compensation application has no further use other than it helped them to obtain compensation in the first place. This is perhaps due to the lack of guidance to direct them to make spending choices that will best help to repair their lives (discussed further below) but also due to the lump sum approach, and the fact that money could not be directly apportioned to necessary aspects of resettlement, such as the purchase of a house, payment of bills, or psychiatric treatment.

Although it is clear that the wrongfully convicted need financial support immediately after their conviction is quashed, many supporters I interviewed felt it should not be provided in lump sums. One campaigner said he and a lawyer had together written to the Home Office requesting that the wrongfully convicted stop receiving lump sums and instead should receive compensation in periodic payments:

We put forward a proposal that they ought to be provided with annuities, they ought to be provided with an annual guaranteed income. Response: nil. The Home Office's way was to just wack the money over to them and then forget about them. I watched nearly every single prisoner fritter away the money because saying to prisoners here's a million, half a million, whatever, was a green light

to every toerag in London to decide that they wanted part of the money...⁶²⁴

But while the spending choices of the wrongfully convicted may be frowned upon by their supporters, their ability to decide what to do with their award begs a much larger question about agency: should they have discretion to spend their compensation however they wish, no matter how reckless or damaging to their future selves? Who has the right to decide what is sensible expenditure? One lawyer commented on this dilemma:

Now who's going to tell somebody that they can't do what they want with their money? I would never say – you know, after everything he's been through, I'm not gonna – well not that it would have an effect anyway, but I think well it's your money, do what you want with it ...⁶²⁵

Lawyers can provide advice, but they cannot force their clients to use their compensation awards in any particular way. As one described:

... I always kind of tread really, really carefully. It's their money, you know what I mean and you're just there to get it for them you're not there to patronise them or tell them what to do with it. If they want to blow it on buying cars and smashing them up, then you know we're not going to tell them not to. But with any case against the police you all sort of say well if you want to preserve your entitlement to benefit, this is what you can do, but I wouldn't ever see it as my role to tell people how to spend their money.⁶²⁶

Most lawyers I spoke to agreed that no one has the power to control the spending of the wrongfully convicted who, after their conviction is quashed, become just like any other member of society receiving and managing funds. However, some lawyers did find this frustrating, watching their clients waste their money with little foresight. The mere fact that they are reckless with their money is not sufficient for an application to the Court of Protection

⁶²⁴ Interview with Campaigner B.

⁶²⁵ Interview with Lawyer C.

⁶²⁶ Interview with Lawyer C.

to appoint a deputy to look after their financial affairs.⁶²⁷ One lawyer described a colleague whose client's family were concerned:

[they were] ringing [the lawyer] up, pleading with him, begging him saying please don't give him any more money he's just blowing it all on drugs. And he had to say to them look there's nothing I can do, it's his money. You know I can't stop him having it. And people were pleading saying he's just – you know – driving himself down the drain.

Another lawyer described how they managed to bring one client under the guise of the Court of Protection, as his severe drug addiction inhibited his capacity to look after his financial affairs. However, that was withdrawn soon after as his psychiatrist determined he had capacity but was merely 'feckless'. The court-appointed psychiatrist agreed, and the man spent the remainder of his compensation – which was in excess of a million pounds, prior to the cap – on drugs. The lawyer expressed her frustration:

... the problem is you're also not allowed to protect money because you think it would be in the client's best interests. So, even if you know that a client is going to overdose immediately ... if they are of sound mind, just with very bad judgement and incredibly vulnerable, there is nothing that you can do ... You can't force them to – and it's really sad, isn't it, when you get shedloads of money for someone, enough to really put their life on track ... but you know that once they get it they are just going to either be manipulated with it or otherwise spend it on possible things very quickly.⁶²⁸

While the interviews showed that others are unable to tell the wrongfully convicted how to spend their money, they did highlight the need for comprehensive financial guidance to be provided to those who receive compensation. This might help them to use their compensation in a way that could repair some of the harm caused rather than exacerbate those

⁶²⁷ The Court of Protection is considered with mental capacity, such as a result of serious brain injury or mental illness, as per the Mental Capacity Act 2005 section 2(1), which states that 'a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain'.

⁶²⁸ Interview with Lawyer D.

harms. As one civil lawyer remarked, ‘there’s no guidance given to them, they’re just suddenly sent this money with no guidance on how to use it, how to look after it...’⁶²⁹ Many of the wrongfully convicted interviewees spoke of their need for financial advice, having reflected on their experiences of spending their compensation. As Mark said:

I feel that you should – they should advise you to buy property, or they say to you ok go look for somewhere, a flat, house, whatever, if you get a reasonably priced one, we could – they could source it with the estate agent, the mortgage, because if you get your interim payment they should just take so much out and pay you monthly.

Others agreed:

And people like me needed guidance, I mean I’m not being funny, I don’t think before I went to prison I’d seen 500 pounds. You can’t – they give me 100,000 pounds, I went partying!⁶³⁰

... in my opinion, and after my experience, I think when people are released from prison under these circumstances and they’re getting big amounts of payout, ok, there should be like somebody there... saying listen, you need a wee bit of help along the way, eh. Either that or you goin’ down the same road as me.⁶³¹

Without proper financial guidance, the wrongfully convicted were at risk of making bad investments and losing money. Tim explained his experience:

I made a lot of bad investments with my compensation. That’s one of the things, we should’ve had help with investing, we didn’t, we didn’t get the proper guidance and unfortunately you know I bought properties, the properties were damaged and then it cost me more money, losing quite a lot of money in the stock market ...

There was some agreement amongst the wrongfully convicted that the provision of financial advice for compensation should also be combined with more personal advice from someone who had been in a similar situation; that is, someone who had been wrongfully

⁶²⁹ Interview with Lawyer C.

⁶³⁰ Interview with Tim.

⁶³¹ Interview with Alan.

convicted and received compensation. Advice from those with personal experiences to draw on, some said, might have made them more likely to take professional advice seriously, ‘... because if you’re not someone that’s been through that experience then you’re wasting your time.’⁶³² This also speaks to the mistrust of others (particularly of those in authority) the wrongfully convicted often experience, which must be managed to ensure that such support is both accessible and effective.

Limited financial guidance is currently provided by the MJSS. Although MJSS caseworkers are not authorised to give financial advice, they do direct clients to a nominated independent financial advisor to assist with managing any compensation they are likely to receive (by way of sending the professional’s contact details in a letter to the client). However, there is no obligation to seek this advice, and most clients I interviewed did not. This was mainly because they did not want to be told what to do, and they felt they had the right to spend their compensation as they wished. In part, this demonstrates the mistrust that characterises their post-exoneration lives, particularly of anyone in a position of authority. It also suggests that they value their new-found autonomy and do not wish to be patronised by others. As Ralph described:

... if I remember rightly, people that give advice about money, it’s always about investment, “invest it in this” and I think well I’ve just been given it and you want me to go and give it to someone else and put it to grow – grow for what? When I die it goes to somebody else? I’ve got to spend some of it and enjoy it, and the fact that I knew I could afford to buy a house, my own house, and all that kind of stuff excited me.

Narratives like those above also raise the need for compensation to be provided in conjunction with addressing other needs, such as psychological difficulties, substance dependencies and employability, so the money can more effectively help them with identity

⁶³² Interview with Alan.

transition. As noted in Chapter Seven, Andre explained that his full-time job - which he took after his conviction had been quashed - helped him to have a more sensible financial mindset and manage his compensation in a way that allowed him to create a new, more functional identity after his exoneration. As he described:

... the other most significant thing at the time was [that] I started to work ... So, that probably had a major impact on how I spent my compensation [and] what I could do with my compensation, because I had this other form of income, and this was an existence I'd never experienced before I went to prison. Obviously, when I was in prison I was living on five pounds a week for god knows how many years, so here all of a sudden I was being given money ... most people would go and say look I've got this money, I can go out and buy this, that and the other. For me, no, it was still very, very much I can, but I don't need that, I don't want that, it's not - I can afford something nice, or something cheap ...

Very few of the interviewees, however, saw the receipt of their compensation as a confirmation of innocence, contradicting the words of Campbell and Denov⁶³³ and the views of those that had been refused compensation, discussed earlier in this chapter. Just one interviewee said receiving compensation helped to remove their criminal stigma and confirmed to the public that they had been wrongfully convicted. None mentioned that compensation had assisted with the emotional impacts of their wrongful conviction. As discussed above, this may be in consequence of the fact that compensating parties rarely accept 'fault'. For example, a civil claim settlement is never an admission of culpability; there is similarly no public acknowledgement of innocence or exoneration when an applicant receives compensation through the statutory scheme. Brian, for example, shook his head when I reacted positively to the fact he had received a settlement from his civil claim, adding 'but they didn't say sorry'.

⁶³³ K Campbell and M Denov, 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) *Canadian Journal of Criminology and Criminal Justice* 46(2) 155.

Impact of financial compensation on relationships

Another detriment to receiving compensation that was common amongst the interviewees - and evident too in the MJSS client data - was the impact compensation had on their relationships with families, friends and partners. All interviewees who had received compensation commented on the way it attracted other people for the wrong reasons, particularly those who came from disadvantaged backgrounds. They described being asked continuously by family and friends for loans or payouts, being taken advantage of, manipulated into relationships and encouraged into bad investments with others. The sudden introduction of large sums of money can distort their relationships with others, presenting an additional hurdle in their attempts to build and rebuild relationships after their conviction has been quashed. This aggravated their difficulties with trust: they no longer knew who to trust, worrying that some people wanted to be with them only for their money. As a result, their lives remain void of trust and control, impacting further on their sense of self. As Stanley noted when asked whether or not the compensation was a help:

Yes and no. Yes it's helped, but in another way it's caused more arguments than what it's worth. People get jealous ...

As one civil lawyer described:

... it feeds really badly into the whole trust thing ... all of a sudden, you get this massive wad of money and people start to manipulate you. So, people are continually asking you for money, they think you're a bottomless pit, people suck up to you because they want money out of you, you've already got a problem with trust, suddenly you can't trust anybody ... either people are trying to manipulate them or they don't know whether people are trying to manipulate them or not. So, suddenly, it just kind of distorts all their relationships. So that creates a lot of problems ...⁶³⁴

⁶³⁴ Interview with Lawyer C.

As the lawyer describes above, receiving large sums of money made it difficult for the wrongfully convicted to engage in meaningful relationships. Tim, for example, commented that ‘the people I was attracting were the ones that thought “oh, he’s getting compensation”’.⁶³⁵ Others spoke of relationships that broke down once they realised the partner was financially driven. Some were ostracised for receiving compensation; Tim described how his new car was smashed by neighbours in his council estate who were cross that he had received money from the government. Stanley had some advice for others who receive compensation:

I would advise any victim of a miscarriage of justice never ever to publicise what you get. Say nothing, because it brings out the worst, and it’s not only that it’s some of your family, and you fight with your family, I know I have, you know some people say I never done nothing for my mother, I gave my mother everything she wanted. People in my family know.

One lawyer noted this anguish was because others did not truly understand the purpose of compensation, what it represents and means:

... people saying, “oh you got a lot of compensation” like it’s some kind of lottery win, without actually appreciating what that’s for and how it will never be enough to compensate somebody for the loss of that time ...⁶³⁶

Reflecting the fact that social identities are shaped by interpersonal interactions, receiving compensation - particularly when the person receiving it is part of a disadvantaged community - can impact negatively on the receiver’s interactions with others. This, in turn, can impede on their ability to build and maintain honest and meaningful social networks, thereby also challenging the rebuilding of a positive social identity. Compensation (particularly when provided in lump sums) has the potential, therefore, to inhibit identity transition. For some of my interviewees, it appeared to exacerbate, rather than help, their stigmatisation by others, and

⁶³⁵ Interview with Tim.

⁶³⁶ Interview with Lawyer B.

the fact they had money made them feel alienated and unsure how to manage their relationships.

Most wrongfully convicted people gave portions of their compensation awards to their families. Many said they felt they needed to make up for what happened, to give back, given the time, effort and money their families had put in to campaigning for their conviction to be quashed and for their release from prison. They felt guilty for putting their family through this anguish. Sharing money was a way of trying to assuage the guilt. Tim gave multiple loans to his sisters, who did not pay him back, but he has not asked for the money to be returned because he felt that ‘families should stick together’ and ‘I can put a hand on my hat and say I did everything I could for my family.’

Some wrongfully convicted people I spoke to were forced to put their money into assets or trusts to ensure that family and friends could not access it. This took the money out of their hands, so they did not have to give in to pressure from others asking for handouts. However, Stanley said that even this did not help:

... people don't believe me. I'll go tell them I'm asset rich, but basically, they still think I got loads of money. I mean my partner with the youngest boy, we done the mediation, she went in and said, "oh well I think you should pay me some money", and I went "why? I've got no income." She turned around and said, "he's got half a million pounds!" I haven't got half a million pounds. I bought this house ... I didn't actually get half a million pounds anyway ... Which I never – there was only one person I ever told how much I actually got at that time. And she sat there and went 'he got half a million pounds!' I went I never got half a million pounds.

There was a sense that many wrongfully convicted people were happier once their compensation had run out. The ‘parasites’,⁶³⁷ as one campaigner described them, retreated, and they were no longer able to make irrational financial decisions. Some noted with sadness

⁶³⁷ Interview with Campaigner B.

that some family and friends did not speak to them once their money had subsided. That said, they felt that their social identity was easier to manage, particularly within their social networks, when they did not have excess money.

Compensation and Benefits

Many lawyers I interviewed raised concerns about the way in which compensation can affect a wrongfully convicted person's eligibility for benefits. If paid directly to the claimant's bank account, compensation can impact on, or eradicate, the claimant's eligibility for certain benefits. For example, the capital limit for Income Support Allowance and Job Seeker's Allowance is currently 8,000 pounds and Council Tax benefits are subject to a capital limit of 16,000 pounds. Individuals can also be denied eligibility for social security if the DWP decides they have deliberately disposed of their compensation in order to obtain benefits. This is most often determined by the rate of expenditure, difficult for many victims of miscarriages of justice, who – as described above – will often spend their compensation rapidly due to lack of financial guidance, inexperience and vulnerability. In the event that an individual's rapid spending is a result of the repayment of debts, the local authority will consider whether there is a legal obligation (subject to enforcement by the courts) to repay those debts. If they determine this is the case, the individual cannot be held to have deprived themselves of the capital in order to gain or increase entitlement to benefits. However, informal debts such as those to family members or friends may not fall within this category and the individual is considered to have deliberately spent the capital for benefits purposes.

Perhaps due to these frustrations, some solicitors have been savvy and offered claimants the opportunity to set up special needs trusts designed to hold injury awards to ensure that clients retained entitlement to benefits. Creating a discretionary trust fund for personal injury payments is not treated as deprivation of capital and is disregarded for benefits purposes. This includes awards made through the compensation scheme as well as payments

made as a result of civil claims. Trusts were also used to protect eligibility to Legal Aid for those who intended to pursue a civil case in addition to their statutory compensation award. Since 2013, the mere receipt of benefits is no longer sufficient to be eligible for Legal Aid in civil cases, and capital is assessed regardless of whether or not the person receives benefits.⁶³⁸ Personal injury trusts could still protect capital received from the statutory compensation scheme by ensuring it is not regarded for the purposes of Legal Aid eligibility, which may be needed for additional civil claims such as cases against the police.⁶³⁹

Placing compensation in trusts can also protect the wrongfully convicted from manipulation by family and friends, as well as against reckless spending within the first few years of receipt. Ralph in particular noted how his personal injury trust assisted him, saying that ‘...otherwise I’d be stuck; it’d last me a couple of years and then it’s gone. At least at the moment it’s earning something.’ After the trust was opened in the name of his lawyer, it then moved to the names of a trusted family member and friend. Keeping someone else in charge of the money, he said, meant there was a barrier to possible reckless spending:

Ralph: [my lawyer] was giving me a couple of thousand here and there, as it went ... As long as it was for something sensible.

Ralph’s partner: he’s got to make up sensible things now because he’s got his Mum in charge of the trust fund!

However, many wrongfully convicted people are wary about solicitors setting up a trust for their compensation award. They feel entitled, as a result of the injustice suffered, to be able to receive the money freely and spend it however they like, without it affecting any other aspect of their lives. They also feel unable to trust some authority figures, including lawyers, as a result of their prior experiences. Some feel a need to retain control of their lives,

⁶³⁸ See G Grimwood, ‘Civil legal aid changes since 2013: the impact on people seeking help with legal problems’ *House of Commons Briefing Paper* No. 06645 (14 January 2016) <<http://researchbriefings.files.parliament.uk/documents/SN06645/SN06645.pdf>> last accessed 2 October 2018.

⁶³⁹ Interview with Lawyer C.

including their finances, in an effort to repair the harm caused by lost liberty. In light of these difficulties, more consideration should be given to the way in which advice on trusts is provided, as well as more general financial guidance.

Compensation should be about the state paying for the harm and injustice that has been caused and suffered, rather than for the future. It should not replace other forms of living, such as social security, as this will only exacerbate their spoiled identities, doing more harm than good.

Concluding thoughts: what should be done?

There is no doubt that money can help to address many problems for the wrongfully convicted. It could be used to purchase a house, to furnish that house, to buy possessions, to invest in order to provide for the future, or for living expenses when employment is not feasible. It could help to fund psychiatric treatment, support for substance abuse, to help with physical health or to fund training and education to increase employability and raise self-esteem. It could also assist with providing for their family.

However, compensation is now close to inaccessible in England and Wales, with recent restrictions to eligibility for the statutory scheme and the difficulties of securing civil claims. Compensation in its current form also appeared to be less effective than it could be in terms of reparation. Most notably, compensation is paid in lump sums with little financial guidance. This affected the way the wrongfully convicted spent the money and also impacted negatively on relationships. In some cases, it fuelled drug dependencies and made them ineligible for social security benefits.

The negative impacts of compensation, particularly when provided in lump sums directly to the applicant with little financial advice, impeded their ability to restore their 'financial self'. Rather than helping them to build the financial aspects of their lives, to create

functional identities not characterised by financial strain, the money became a nuisance: impacting on their ability to build and maintain social networks, exacerbating substance dependencies, encouraging reckless spending, and in some cases bringing intense disappointment through uninformed investments.

The lawyers I interviewed agreed that periodic payments, rather than large lump sums, may avoid large-scale reckless spending. One suggested that a portion of compensation should be required to be spent on purchasing a home ‘because if you buy yourself a house, that is disregarded entirely for benefits purposes, but you’ve got an asset for life.’⁶⁴⁰ If some part of that award could be directed towards addressing needs such as directly funding psychiatric treatment, the provision of financial compensation may be more effective in attempting to repair what has been lost or damaged by a wrongful conviction.

In part due to a lack of accompanying support, no one I interviewed spent their compensation money on psychiatric treatment or other forms of mental health treatment or support. None spent it on training which could increase employability and secure financial stability for the future. In addition, no interviewees felt that the compensation helped to acknowledge their innocence. In no way did it help them to rebuild their identity.

Simply providing the wrongfully convicted with a lump sum of money, with little sensitivity to their vulnerabilities, can be unprofitable when they need to rebuild their lives. The provision of periodic payments, and perhaps even an option to direct parts of their compensation directly to particular post-exoneration support, may help to improve the effectiveness of compensation. The interviews also showed a severe lack of financial guidance. Advice is needed to help the wrongfully convicted to use their compensation in the most effective way possible. However, it needs to be provided with consideration of the

⁶⁴⁰ Interview with Lawyer C.

vulnerabilities of the wrongfully convicted, such as their difficulties with trust. We should consider how the wrongfully convicted could assist their fellow peers in this matter, to help others to accept advice and to build trust.

More consideration needs to be given to the way compensation is provided, and increasing access to compensation, which will help the wrongfully convicted to transition to new, functioning identities that might help to repair some of the harms caused by the injustice they have suffered. Although compensation is desired to help restore their innocent sense of self, the way it is currently provided – and dealt with, in terms of its impact on obtaining benefits, and its provision in lump sums with little additional support – means that it does little to help with managing and restoring their destroyed identities in practice.

This could be partly due to the fact that compensation, when it is provided, is not seen as an acknowledgment of culpability but rather a payment made out of grace. This lack of acknowledgment could reflect a lack of ‘reintegration ritual’, as termed by Maruna,⁶⁴¹ that exacerbates the spoiled identities of the wrongfully convicted, rather than restore the innocent sense of self.

This is disappointing, given the enormous potential of financial compensation to help build social capital and assist the wrongfully convicted to transition into new, positive identities post-exoneration. The interviews demonstrated that financial compensation can, if provided correctly, be one of the most beneficial forms of post-exoneration support. I do not suggest that the wrongfully convicted should not be compensated in the first place. Rather, the lived experiences of those that have received compensation indicated that it is the way it is provided – that is, in lump sums, with little additional support – that must be carefully considered, to

⁶⁴¹ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 8.

ensure that this is not damaging the wrongfully convicted when indeed it should be helping to repair some of the harms caused.

CHAPTER NINE: ARE WE DOING ENOUGH FOR THE WRONGFULLY CONVICTED?

Dislocated identities in the post-exoneration experience

... it's so hard to be going back to a 'normal' person. Because you've had all this fuss around you, you've had this extraordinary experience ... then suddenly people move on and you just have to be a normal person again and you can't really be a normal person again.⁶⁴²

Against the backdrop of the literature reviewed in Chapters Two and Three, this thesis makes a unique and important contribution to a sparse body of research. It is only the second empirical project of its kind conducted in England and Wales; focused not on the sources of wrongful convictions, but the experiences of those whose convictions are quashed by the Court of Appeal. It provides a counterweight to the discourse that has been dominated by research conducted in the US.

The narrators of the varied stories told herein - the wrongfully convicted and their support providers in England and Wales - have provided insight as to what harms are caused by wrongful conviction and what restorative or reparative attempts currently exist in this jurisdiction. Their voices make clear what is helpful and what is not, and the hurdles that might stand in the way of repairing some of the harms caused by wrongful conviction. This has provided some indication as to whether it is ever possible to fully recover an identity damaged by the injustice of wrongful conviction; and if so, what that might look like.

It is evident from the research conducted for this project that a wrongful conviction dislocates all forms of identity: from 'personal' identity or sense of self, to social identity (in the form of spoiled identities or stigma) and role identities, by way of relationships with others

⁶⁴² Interview with Lawyer C.

or as an employee, for example. Most will lose almost all of the social capital they had prior to their wrongful conviction: their home, family and friends, employment, finances, sense of purpose, and place in the world.

The unexpected and irreconcilable nature of wrongful convictions make it difficult, almost impossible, for a person to make sense of such traumatizing experiences. Simply being a prisoner or ex-prisoner places a person outside many accepted social groups and into an outsider group with a 'spoiled identity'. However, being wrongfully convicted is a distinct category, albeit one that is not well understood or accepted by the rest of society. The media often portrays people convicted of serious crimes as 'monsters' who deserve the consequences, with little room for understanding those who maintain that they are innocent. This 'spoiled identity'⁶⁴³ can lead to stigmatisation that is difficult to repair even after their conviction has been quashed.

As a result, shifting self-understandings and re-negotiating interpersonal interactions⁶⁴⁴ is almost impossible for the wrongfully convicted after their conviction is quashed and they are released from prison. For most of the wrongfully convicted people I interviewed, it was clear that their sense of self had been consumed by their experiences of injustice. Their identities were further shattered, upon release, when the assumption that they could return to their 'old lives' and 'old selves' was found to be erroneous.⁶⁴⁵

As was clear by the descriptions of their journeys in Chapter Five, most participants still saw themselves primarily as victims of wrongful conviction, sometimes many years after

⁶⁴³ Reflected in E Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Prentice-Hall, 1963) 57, discussed in Chapter Three.

⁶⁴⁴ As described in B Veysey, J Christian and D Martinez (eds.) *How Offenders Transform Their Lives* (Routledge, 2011).

⁶⁴⁵ See also S Farrell, 'We just live day-to-day: A case study of life after release following wrongful conviction' in R Lippens and D Crewe, *Existentialist Criminology* (Routledge, 2009) 185.

their convictions had been overturned. They remained vulnerable, directionless, apathetic and, reflecting the trauma literature,⁶⁴⁶ unable to move on or rebuild their lives. This caused them either to continue to fight against what they termed ‘the system’, or to completely give up on themselves. They seemed unable to engage in new roles or build new identities, such as starting and continuing new careers, learning new skills, building new relationships, or attempting to have a new direction in life. Their primary identity remained that of a wrongfully convicted person: a survivor of injustice, but a person who is characterised by nothing else.

Though identities can be ‘plural’ and ‘reflexive’,⁶⁴⁷ the experience of wrongful convictions consumes these individuals, leaving room for little else, rather than being incorporated with new data as a constructive part of broader identities. Most of the interviewees could not see a life beyond their ‘wrongfully convicted’ identity.

Despite these rather dismal narratives, some of the wrongfully convicted individuals I interviewed fared better than others throughout their post-exoneration journey. The ‘success stories’, described in Chapter Five, showed that while these people experienced the same harms as a result of their wrongful conviction as others, they fared better. Successful transitions, as represented in the narratives of Tim and Andre, seemed to require an ability to manage residual identities, incorporating them into a new sense of self, with new social networks and self-understanding.

It is clearly impossible to restore a person’s identities to the state they were in prior to their wrongful conviction; too much has been lost in terms of time, skills, roles, networks and

⁶⁴⁶ For example, A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991); G Becker, *Disrupted Lives: How People Create Meaning in a Chaotic World* (University of California Press, 1997); R Janoff-Bulman, *Shattered Assumptions: Towards a new Psychology of Trauma* (Free Press, 1992) 63; M Horowitz, ‘Effects of Trauma on Sense of Self’ (2015) *Journal of Loss and Trauma* 20(2) 189-193.

⁶⁴⁷ As noted by P Burke and J Stets, *Identity Theory* (Oxford University Press, 2009) 26; A Giddens, *Modernity and Self-Identity: self and society in the late modern age* (Stanford University Press, 1991) 75.

context. They must find new identities, which take into account both their old and new experiences, old and new data, to rebuild their life narrative. Those who formed the ‘success stories’ had not fully moved away from their spoiled identities; instead they had found ways of re-framing them. Accepting what had happened, and giving positive meaning to those experiences, helped them to move forward and avoid being ‘trapped’ in the identity of being wrongfully convicted.

The harms caused by dislocated identities

The journeys overviewed in Chapter Five demonstrated the way in which wrongful convictions can dislocate people’s identities. However, the impact to identities can be broken down into smaller components that affect different aspects of their lives: from emotional harms, to challenges upon resettlement, as well as significant financial losses. These were explored in further detail in Chapters Six, Seven and Eight.

In Chapter Six, most wrongfully convicted interviewees reported that they had been damaged emotionally in some way, and said that this damage had not been repaired and will likely continue for the rest of their lives. Diagnoses of PTSD, anxiety and depression were almost inevitable, and most endured distinct personality changes. This was exacerbated by the ‘spoiled identity’ they experienced; as a convicted person, rather than someone wrongfully convicted; a taint that did not match their innocent sense of self. This was often sourced to their prison experience, where this identity crisis often caused feelings of hopelessness, betrayal, confusion and isolation. However, these emotional impacts did not end with release, but instead continued – in some cases worsened - far beyond exoneration. While the period of ‘euphoria’ immediately after release, described in the American literature, was experienced by the wrongfully convicted people in England and Wales, this typically lasted less than 24 months before the emotional harms resurfaced.

The psychological impacts of wrongful convictions were so significant that these individuals became somewhat ‘incapacitated’ upon exoneration and/or release: unable to maintain old relationships or form new ones; unable to sleep, or leave the house; trapped by intense mistrust, fear and anger. This could be a product of dislocated identities, as the unexpected and irreconcilable nature of wrongful convictions meant they were psychologically unable to explain or accept their experiences.

Chapter Seven explored some of the more practical hurdles faced by the wrongfully convicted in resettling into life after exoneration, exacerbated by a loss of purpose and sense of self. With most being released suddenly at the point of having their conviction quashed, in some cases straight from higher security prisons (as their denial of guilt made them less likely to progress through the prison system), meant they were suddenly plunged back into the outside world with very little preparation, emotionally and materially. The assumption that they could simply slot back into the life they enjoyed prior to their wrongful conviction was no longer the case.

As Chapter Seven demonstrated, the world had changed so much since their conviction, that by the time they were released, the life they re-entered was not as they had known it when they went to prison. Technology had advanced and they were unsure how to navigate a digital world, dominated by the internet. Most had lost the homes and employment they had prior to their wrongful conviction and were unable to obtain new jobs (those that did, often did not last long in these new roles). All the wrongfully convicted individuals in England and Wales who had contact with the MJSS were living on social security benefits upon release. While these are similar reintegration challenges to those faced by ex-prisoners who had not had convictions quashed, they are exacerbated by a stigma that contradicts their innocent sense of self. For example, many still retained criminal records after exoneration,

which noted their conviction and acquittal. To the untrained eye, such as prospective employers, these were criminal records which could preclude them from employment.

Most practical challenges of resettlement are associated with the emotional impacts of wrongful convictions. For example, those who were unable to obtain or maintain employment after release were unable to trust employers or other colleagues, due to the betrayal they had experienced. In Amelia's case, this was especially significant, as her wrongful conviction was partly attributable to the unreliable testimonies of her colleagues at the time. She also experienced stigma from others when attempting to start a new job on release. Many interviewees reported being unable to navigate busy places such as shopping centres, or being unable to settle in accommodation. This was often a result of the psychiatric impacts (such as PTSD) of their wrongful conviction.

Chapter Eight described the significant financial impacts of wrongful convictions, often a result of legal fees, campaigning for their innocence, loss of employment and having to support families while in prison. Financial strain continued, and even worsened, on release as they struggled to secure paid employment. This impacted on their sense of self, as they felt vulnerable and helpless when unable to support their family after release. It also affected their sense of role identity; for example, in having to confront the fact that they were no longer the 'breadwinner' in their family. This was aggravated by a sense of betrayal when denied statutory compensation, as described further below.

Is enough being done to address the harms of wrongful convictions in England and Wales?

In order to more effectively address the harms caused by wrongful convictions, summarised above, support mechanisms in the aftermath must focus on managing and re-building all aspects of identity. The evidence given throughout Chapters Six, Seven and Eight

demonstrated that the current support mechanisms available for the wrongfully convicted in England and Wales do not do this as effectively as they could.

Given the shortage of mental health professionals with specific expertise in wrongful convictions, Chapter Six highlighted that most wrongfully convicted people are left to receive psychiatric support from the general NHS framework after a referral from their GP. Although those psychiatrists I spoke to specialise in treating the wrongfully convicted and have a deep understanding of their needs, most mainstream psychiatrists do not have this specialist knowledge or understanding. Those who are wrongfully convicted reported feeling wary and mistrustful of these mainstream services.

Lessons can be learnt from the few psychiatrists who do have this knowledge and experience of the deep emotional impacts of wrongful convictions. Their techniques focus on helping people to make sense of what has happened to them; they help people to manage their anger, fear and mistrust, and help them to adapt to life after wrongful conviction. They understand that the 'pains of imprisonment' can be heightened by maintaining innocence, and the ensuing feelings of betrayal, hopelessness, anguish and isolation. These specialists understand the need to work hard to build trust, essential to ensuring the wrongfully convicted are willing to engage with such services.

Experiences, therefore, differed greatly between those who were treated by clinicians with specialist interest, knowledge and experience, and those who were attended to by general clinicians. Assistance provided by mainstream psychological or psychiatric support and treatment were, on the whole, disappointing and unsustainable. Trying to fit the wrongfully convicted into a generalised framework of support post-exoneration was rarely effective. They are, simply, not like many other patients; their emotional harms manifest in very particular ways, and stem from a very specific experience.

There seemed to be a lack of understanding about the way that wrongfully convicted people may be distinct from others with trauma-related conditions; for example, in the way they present themselves; their inability to immediately trust a professional; the specific way they like to be referred to, or have their experiences expressed (which relates to their need to confirm their personal innocent identities). This made some wrongfully convicted interviewees reluctant to seek help for their emotional harms at all, for fear of re-traumatisation or further stigmatisation for being ‘mentally ill’. In some cases, family members were left to try to provide informal emotional support, risking the negative impacts this may have on the relationship. Without additional emotional support, to help the wrongfully convicted to realise the harms they have suffered and encourage them to seek professional treatment for those harms, this population will continue to be psychologically and psychiatrically damaged with little hope of recovery.

Chapter Seven highlighted similar inadequacies of a generalised approach to support in relation to resettlement. The narratives gleaned from interviews and MJSS data showed that current frameworks in place to help with, for example, social security benefits, homelessness and employment assistance, do little to help the wrongfully convicted rebuild their identities in a positive and reparative way.

The MJSS, while designed to assist with advising on practical matters, such as housing and social security benefits, does not see its role as addressing the nuances of resettlement (and indeed, it is not within its remit, given the limitations of its tender described in Chapter Seven). While it was clearly a vital source of support – particularly in securing council housing and the necessary social security benefits, and in gaining a ‘voice’ to negotiate services and support from other agencies – much remains left to the clients’ own devices. For example, the wrongfully convicted are not supported in their efforts to settle into a new home, to re-skill, to develop resources and find a new career path. Rather than addressing the core of

resettlement challenges – such as the need to transition into new identities – the advice-focused approach of the MJSS was often only a ‘quick fix’, providing practical resources to meet the most pressing, short-term financial and practical needs.

MJSS workers also shared frustrating experiences in their dealings with other agencies involved in resettlement. Generalised agencies of support, such as housing associations and the DWP, do not perceive the wrongfully convicted as a distinct group, and often associated them with ex-offenders. For priority need housing purposes, for example, the wrongfully convicted are considered as ex-prisoners, and may be at risk of ineligibility if they are considered ‘intentionally’ homeless or unable to obtain sufficient evidence of poor mental health. They often did not fit neatly into prescribed categories; for example, being ineligible for disability benefits but unable to fulfil the requirements of JobSeekers Allowance. This can exacerbate the ‘spoiled identity’ of the wrongfully convicted and made it difficult for them to transition into new, positive identities.

There are difficulties in proving ‘residence’ in a particular area to obtain housing, and in some cases the wrongfully convicted are forced to live in their old neighbourhood where they have a ‘local connection’, despite the fact that this may mean living close to others who testified against them at trial or people who contribute to their spoiled identity. The temporary accommodation provided when there is a delay in obtaining permanent housing is often not suitable for the wrongfully convicted, who perceive such housing to be associated with ex-offenders and drug addicts. Again, this means that family members and friends are left to pick up the pieces, providing housing even where the relationship with the wrongfully convicted person may be strained or has broken down. This can put undue pressure on those who are not equipped to deal with the practical and emotional challenges of post-exoneration life and who also have to deal with emotional and practical impacts of their own.

While the MJSS has done as much it can to fast track its clients through some of these processes (for social security benefits and, in some cases, housing), this is not enough to effectively help the wrongfully convicted to rebuild and sustain new identities and lives. Some lessons can be learnt from the short-lived initiative created between the MJSS and Commonweal Housing to house the wrongfully convicted upon release. Although the scheme had its weaknesses (assuming, for example, the wrongfully convicted would obtain compensation and purchase the home provided to them), such a model provides inspiration for tailored housing provision, at least immediately upon release and until the wrongfully convicted are able to live independently. Perhaps this could be provided as more of a ‘retreat’ and in conjunction with emotional support, in a model proposed below.

As Chapter Eight demonstrated, the benefits of financial compensation to those who are wrongfully convicted - provided through the statutory scheme or by way of civil claim settlement - are undeniable: it is a direct way of helping to build social capital, to reintegrate into society by purchasing a house, supporting their families, and to make new memories. This is particularly poignant immediately following exoneration, while they come to terms with their experiences and try to manage some of the emotional impacts of their wrongful conviction before having to find employment. With these benefits in mind, the now highly restrictive statutory compensation scheme in England and Wales, where the chances of obtaining compensation are almost nil, is a turn for the worse. This is of primary concern amongst lawyers who work in this field, who are now eagerly awaiting the Supreme Court’s judgment on the legislative challenge to the statutory compensation scheme, discussed in Chapter Eight.

The data in Chapter Eight showed that, in 2016-2017, just one wrongfully convicted applicant out of 51 applications successfully received compensation through the statutory scheme. This compares to the 39 successful applications out of 88 in 2004-2005. The chapter demonstrated that being denied compensation can have significant effects on those who

thought they were, or should have been, deemed eligible. It can exacerbate their spoiled identities and leave them feeling that they have not been ‘truly exonerated’. Civil claims against the police are now seen as the ‘fall back’ option for the wrongfully convicted, although they remain rarely successful, leading to litigants feeling let down and betrayed by what they term ‘the system’.

However, given the vulnerabilities faced by the wrongfully convicted, Chapter Eight also emphasised that consideration must be given not only to the limitations of compensation eligibility, but also to how it is distributed when applicants are successful. Complete discretion to spend compensation provided in large lump sums, without financial assistance, given the lack of emotional support, meant that those who received compensation prior to the legislative amendment were unable to use it as effectively as they might have done with tailored care. In some cases, it even had negative effects on the wrongfully convicted people I interviewed, straining or destroying their relationships with others, who took advantage of their sudden windfall. For some, compensation provided in such a way exacerbated their psychological challenges and substance abuse.

Simply allowing vulnerable individuals complete discretion over such large amounts of money, without proper support to help them to manage and use it effectively, can be ineffective and counterproductive. While it is not possible to force someone who has been wrongfully convicted to spend their money in a particular way, at present there is no specific support provided alongside the provision of compensation (either statutorily or by way of civil claim settlement) that takes into account the other impacts of a wrongful conviction that might cause people to make poor decisions that fail to secure their financial health for the future. The wrongfully convicted are not likely to accept the advice of general financial advisors who would not be seen to understand their predicament. Advice and support should be given by

someone they trust, perhaps in collaboration with someone who has already been wrongfully convicted and compensated and not badly mismanaged their money.

One of the most interesting findings explained in Chapter Eight was that very few of the interviewees who had received compensation said that it helped with the emotional impacts of their wrongful conviction, or that they felt it was an acknowledgement of their innocence. Only one interviewee had mentioned that their compensation had helped to remove their criminal stigma. This may also be a result of the way in which compensation (both by way of the statutory scheme and civil claim settlement) is provided, particularly the lack of accompanying support. It also says something about the way in which financial recompense is portrayed; as a payment of grace, but not necessarily an acknowledgement of innocence, or fault of the State.

What more is needed?

Given what we now know about the impacts of wrongful convictions and the gaps in the support currently provided in England and Wales, what does this research tell us about how individuals may be able to recover from, or at least manage, the harms caused by a wrongful conviction? In turn, what should be provided to the wrongfully convicted to help them to achieve the status of ‘success stories’ described in Chapter Five?

I return to Tony Blair’s public apology that opened this thesis, and the notion of being ‘completely and publicly exonerated’. The quashing of a conviction by the Court of Appeal is clearly not enough to repair the harms caused by a wrongful conviction, and without comprehensive support following exoneration, this population will continue to suffer. Further, their suffering can be exacerbated without appropriate, specialised support, underlaid by a feeling that they have been abandoned by the State.

These individuals have been exposed to a system that has failed them. They have endured many years of trying to get help from the criminal justice system but had been rejected and abandoned. This thesis will not attempt to make a legal or theoretical argument as to whether the State has an obligation to assist. However, the fact that a compensation regime and the MJSS are both in place suggests that the State has at least acknowledged that the wrongfully convicted deserve some support after a conviction is quashed by the Court of Appeal.

This thesis has revealed that support for the wrongfully convicted must address a wide and often interrelated range of harms. At the heart of this is the need to rebuild internally what has been lost, as much as externally. To piece together what has been destroyed, to make sense of their experience, and to use that to transition into new identities that mean they are not just dislocated, not just ‘stuck’, but rather, one of the ‘success stories’.

The literature on trauma recovery in Chapter Three emphasised the important role of the community, who can help to foster inclusion, reduce stigma, and assist with reintegration after trauma. As Corr stated:

helping individuals who are coping with [trauma] may range from simple befriending – which offers the presence of a caring person who accepts and values the bereaved person, practical assistance, useful information, and/or human companionship – through various forms of professional intervention ...⁶⁴⁸

No doubt a similar ‘range’ of support is required to address the numerous and interrelating harms rising from wrongful convictions. Not only do the wrongfully convicted require individualised professional psychiatric support provided by specialists. Not only do they need increased access to statutory compensation, and a scheme that considers how such money is provided to such vulnerable individuals. They also need a form of ‘befriending’: a direct caring

⁶⁴⁸ C Corr, ‘Coping with challenges to the assumptive world’ in J Kauffman (ed) *Loss of the Assumptive World: A Theory of Traumatic Loss* (Routledge, 2002) 137.

and resettlement service, which understands their experiences, but also their unique biographies; the different sets of resources they have to draw on (for example, family or other relationship resources, financial resources or other support networks); their skill sets and their individual coping mechanisms.

This service is not just about coordinating with other agencies, but needs to have different experts on its team: an emotional support person, for the emotional impacts of adjusting to life after prison, beyond treatment for psychiatric conditions; a psychiatrist and psychologist that is specifically trained in wrongful convictions; a financial advisor, also trained and experienced in dealing with people who are wrongfully convicted; a mentor, who should be someone who has themselves been wrongfully convicted; someone who helps with settling into a new home and re-skilling; a specialised careers advisor; a house that they can come to immediately on release, and more. An integrated and tailored post-exoneration support service, which could be managed by a comprehensive resettlement service, is essential to repair the multiple and interacting harms of wrongful conviction.

This holistic model would assist the wrongfully convicted to re-engage (or engage) in a form of 'life planning'. This could involve assessing how their experiences have impacted on them, what could be done to minimise, manage or even reverse some of that impact, and how they might re-build new roles, identities, and a strong sense of self, taking advantage of their experiences and the available resources, rather than being in conflict with them.

This may be in the form of a 'refuge' that has been the centre of campaigns by high profile wrongfully convicted individuals such as Paddy Hill and John Kamara. This, they have argued, would provide a retreat immediately upon exoneration and release, for both the wrongfully convicted and their families (if they so wish) as a 'halfway house'. It would provide not only housing on release, but a space in which to assess the damage that has been done, to

consider their needs moving forward while they become accustomed to the fact that everything is now going to be very different than it was prior to their wrongful conviction. It can be a reintegration program that is the gateway of identity transition, but also a place to come back to, should some of the effects re-surface long after exoneration.

Perhaps, for example, this kind of comprehensive support could have helped Amelia to find a new career path; one that took into account the skills she had, combined with new skills developed through prison and beyond. This would entail not only a referral to an employment service, like JobCentre, but a more coordinated, complex solution; one that combines searching for the right job with trauma management and with techniques to help build back trust with others and with authority. It could have provided support to resolve the matter of the home trashed by her former partner, who left her when she was wrongfully convicted; and to help with selling this home and with finding a new, more manageable space to live.

Alan may have been saved if he had access to support that helped him to build new roles and identities; to build on the skills that he acquired throughout prison, which would have helped to give him a purpose that was lost as a result of his wrongful conviction. Upon release, he had knowledge of the law, investigative skills, and experience of drug rehabilitation; all valuable skills for potential employment. He could have worked at an Innocence Project, helping others who had been wrongfully convicted; he could have been a drug rehabilitation worker; even a legal secretary. But he would have had no idea how to secure such employment and, importantly, how to manage and maintain employment, given his trauma, inability to form and maintain relationships and intense mistrust of others. He needed help with these psychological impacts in order to effectively rebuild his identity, to be then able to move on and benefit from practical support. He also would have needed some form of financial advice, to help him to make the most of the statutory compensation he received. Perhaps, for example,

a scheme where either he received a sum per month or, if he so chose, the compensation could be allocated directly to meet specific needs, such as the purchase of a house and the payment of bills. All of these different elements are intertwined. Addressing one without the other cannot adequately repair the harms.

This approach embodies what Maruna referred to as a ‘reintegration ritual’,⁶⁴⁹ as discussed in Chapter Three. It is about recognising the harm that has been caused, understanding the very roots of that harm, and providing a recognised, legitimate ritual that may lead the wrongfully convicted onto a path of resettlement, or rehabilitation.

Reflecting the literature of Maruna⁶⁵⁰ and Braithwaite⁶⁵¹, as referred to in Chapter Three, the suggested approach would provide more than just physical resettlement, but rather ‘meaningful reintegration’. This focuses not just on the tangible harms – such as loss of employment prospects, housing, relationships and finances – but also encourages ‘moral inclusion’ into the world after exoneration. The wrongfully convicted need to feel included in their post-release world and their immediate community. They need to feel recognised as being wrongfully convicted and not tainted by the spoiled identity of an ex-offender. At the same time, they need to have the opportunity to integrate their wrongfully convicted identity with new, positive ones.

Providing this ‘ritual’ or resettlement process might also help the public to recognise the wrongfully convicted as separate from ex-offenders. Perhaps this would lessen the hostility and stigma experienced by the wrongfully convicted upon their exoneration. This is the two-way process described by Maruna,⁶⁵² the wrongfully convicted individual must be willing to try

⁶⁴⁹ S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 8.

⁶⁵⁰ Ibid.

⁶⁵¹ J Braithwaite, *Crime, Shame and reintegration* (Cambridge University Press, 1989).

⁶⁵² S Maruna, ‘Reentry as a rite of passage’ (2011) *Punishment and Society* 13(1) 8.

to rebuild their lives, including transitioning into new identities, but at the same time, the community – both those who support the wrongfully convicted but also the public at large – must also play their role in the resettlement of the wrongfully convicted. Acknowledging that the person has been wrongfully convicted, and accepting them as an exonerated person rather than viewing them through the lens of a spoiled identity, should help to legitimise the post-exoneration process. This may require more public acknowledgement of their exoneration, even an apology; at the very least, it requires recognition that the wrongfully convicted need a complete and comprehensive support structure post-exoneration.

Looking forward: what next?

Given this is only the second study of its kind in England and Wales, and the sample of participants was relatively small, there is an obvious need for further research into the experiences of the wrongfully convicted in this jurisdiction, particularly post-release. Other methodologies such as longitudinal studies could give more accurate insight into their post-exoneration journeys and how they might change over time. The theoretical framework used in this thesis suggests that the topic could benefit a great deal from more psychological, psychiatric and sociological research into how the wrongfully convicted are harmed and what might help to repair the harms. Concepts such as post-traumatic growth, resilience and coping could be points of exploration. From a legal perspective, human rights-based literature is needed to consider the obligations that the State has in providing support. Comparative research between England and Wales and other jurisdictions could also be valuable, to consider the differences and what lessons we can learn from other approaches.

Ultimately, this thesis has revealed that at present, current remedies provided to the wrongfully convicted in England and Wales are insufficient to repair the harms caused by wrongful convictions. Recognising that wrongful convictions are not just about a conviction and in some cases a prison sentence, but rather a destruction of a person's pre-conviction

identity, lies at the heart of providing more effective post-exoneration support. This is not currently provided. At present, remedies are piecemeal and, in most cases, the wrongfully convicted must rely on generalised services not catered to their specific experiences and needs.

Looking forward, agencies in England and Wales need to think carefully about how they could help to repair the lives that have been shattered by error in our criminal justice system. They must recognise that such errors produce a population of damaged individuals, who deserve support to rebuild their lives. To better repair the harms, a more holistic, integrated model of resettlement must be provided; perhaps in the form of a legitimate and recognised 'reintegration ritual'. Only then will the wrongfully convicted be, as Tony Blair described, 'completely and publicly exonerated'.

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