

HUMAN RIGHTS BEYOND THE COURTROOM

Criminal Cases: *Redress Following Conviction*

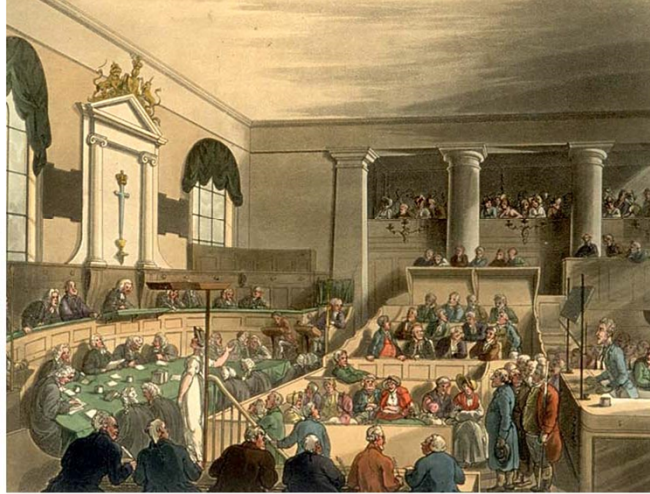
Jodie Blackstock
Director of Criminal and EU Justice Policy
JUSTICE



www.JUSTICE.org.uk

@JUSTICEhq

THE CRIMINAL TRIAL



"Old Bailey Microcosm edited" by Thomas Rowlandson and Augustus Pugin - Ackermann, Rudolph; Pyne, William Henry; Combe, William (1904) [1808] "Old Bailey" in *The Microcosm of London: or, London in Miniature*, Volume 2, London: Methuen and Company Retrieved on 9 January 2009. Licensed under Public Domain via Wikimedia Commons - http://commons.wikimedia.org/wiki/File:Old_Bailey_Microcosm_edited.jpg#mediaviewer/File:Old_Bailey_Microcosm_edited.jpg

STAGES OF A TRIAL



Southbanksteve from London, UK (<http://creativecommons.org/licenses/by/2.0>), via Wikimedia Commons

(1) Arrest



(2) Charging decision



Unknown: "Mr. Frederick E. Weatherly" on the cover of Lute (April 1895); uploaded by Tim Rley at en.wikipedia, via Wikimedia Commons



Library of Congress, originally from Bain News Service [Public domain], via Wikimedia Commons

(3) Verdict



(4) Sentence
(5) Appeal

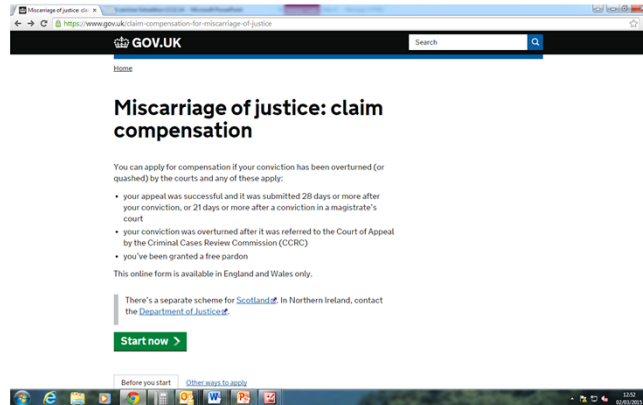


Unknown "The Commercial Court", uploaded by Leslie Ward [Public domain], via Wikimedia Commons

PROBLEMS?

- Wrongful arrest
- Bad charging decision
- Wrong verdict
- Inadequate/flawed sentence
- Appeal refused
- Action against the Police
- Judicial Review
- Appeal
- **Victim compensation**
- **Re-investigation**
- **Quashing of conviction; compensation**

SOLUTIONS?



CRIMINAL INJURIES COMPENSATION SCHEME

“We deal with compensation claims from people who have been physically or mentally injured because they were the blameless victim of a violent crime in England, Scotland or Wales.

We currently handle up to 40,000 applications for compensation each year, paying out up to £200 million to victims of violent crime.”

Is a measure of last resort – claims should be made through other means first

- Criminal Injuries Compensation Scheme 2012, pursuant to Criminal Injuries Compensation Act 1995

HOW TO RECEIVE A CICA AWARD

Eligibility

1. Criminal injury from crime of violence
2. Injury sustained while preventing/containing criminal activity
3. Injury directly attributable to witnessing a loved one sustaining an injury

Exclusions and Reductions

- Failure to report incident as soon as reasonably practicable
- Non-cooperation in bringing perpetrator to justice
- Failure to assist with consideration of application
- Unspent convictions
- Character

Payments

- Injury (maximum award of £250,000)
- Loss of Earnings
- Bereavement
- Children and dependents
- Funeral expenses

Maximum award is £500,000. For multiple injuries, payments are reduced by 30% for second highest award and 15% for third

©Wellcome Trust

CRIMINAL CASES REVIEW COMMISSION

“Our purpose is to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts.”

The Commission usually receives around 1,500 applications for reviews (convictions and/or sentences) each year. Around 3.5%, or one in 29, of all applications are referred to the appeal courts.

- Criminal Appeal Act 1995

HOW TO OVERTURN A CONVICTION

- Post appeal application for CCRC to review the case
- Often made by serving prisoners

Test

- Whether, as a result of new evidence or argument, there is a 'real possibility' that the conviction would not be upheld were a reference to be made.
- New evidence or argument not raised during the trial or on appeal.
- Absent new evidence or argument or an earlier appeal only if there are "exceptional circumstances".
- If a case is referred, Court of Appeal Criminal Division must decide whether the conviction is unsafe or the sentence unfair.

COMPENSATION FOR MISCARRIAGE OF JUSTICE

“If it can be conclusively proven that the State was not entitled to punish a person, it seems to me he should be entitled to compensation for having been punished,” Baroness Hale, *Adams v Sec State for Justice* (2011)

“In the Government’s view, a miscarriage of justice will have taken place only when someone should not have been convicted—not just because something went wrong with the trial process or with the investigation, either of which could render a conviction unsafe, but because there was a fact, unknown at the time of their conviction, that clearly demonstrates that they did not commit the crime.” Lord McNally, Minister of State in Ministry of Justice (2013)

It is not the Justice Secretary's normal practice to publish details of individual awards or to give any information about individual applications or awards.

Section 133 Criminal Justice Act 1988 (as amended)

HOW TO OBTAIN COMPENSATION

Eligibility

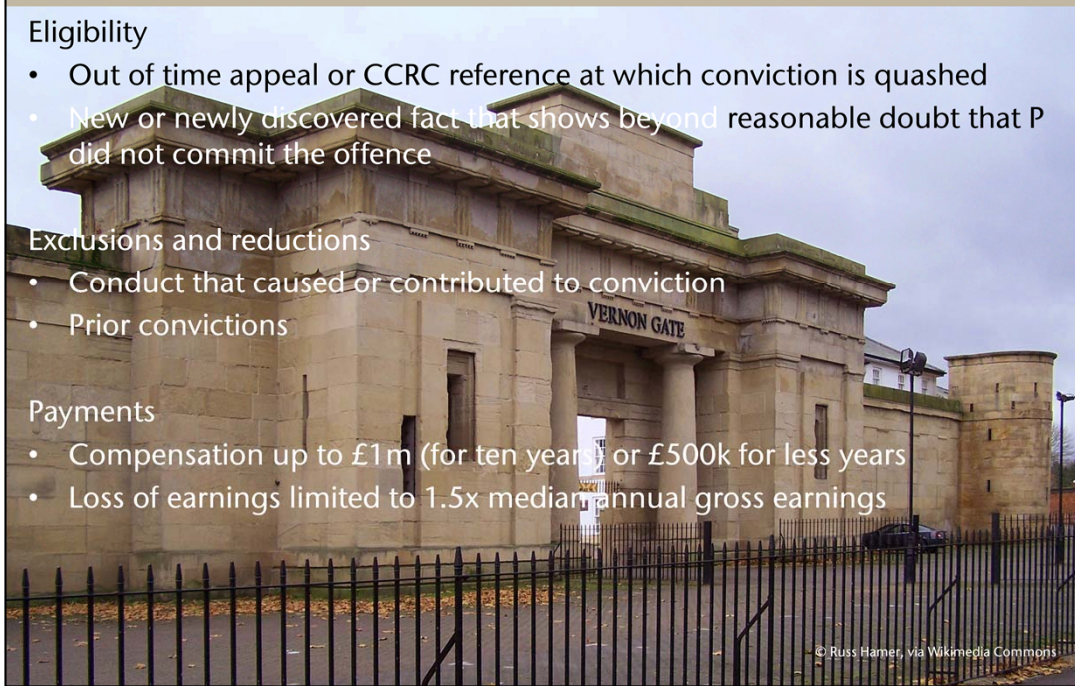
- Out of time appeal or CCRC reference at which conviction is quashed
- New or newly discovered fact that shows beyond reasonable doubt that P did not commit the offence

Exclusions and reductions

- Conduct that caused or contributed to conviction
- Prior convictions

Payments

- Compensation up to £1m (for ten years) or £500k for less years
- Loss of earnings limited to 1.5x median annual gross earnings



ROLE OF THE LAWYER

What problems may arise in these post courtroom applications?



The Law Society

Are they compliant with Article 6 ECHR? Do they have to be?

Is there a role for lawyers?



What issues can a lawyer help with?

