APPENDIX 1

STATEMENT OF JUSTICE

1. This statement sets out JUSTICE's work on assisting victims of miscarriages of justice, examples of case work undertaken that reveal the process of investigation, and our role in the establishment of the CCRC.

JUSTICE'S CASEWORK

2. Almost from its beginning in 1957, JUSTICE received from all parts of the UK[1] requests for help by and on behalf of prisoners claiming to be victims of miscarriages of justice. Prior to the establishment of the Criminal Cases Review Commission, JUSTICE was the main, independent body receiving and reviewing allegations of miscarriages of justice. This was largely because there was, and remains, limited legal aid for appeals (although the right to legal assistance did increase in the 1960s), with few prisoners having the money to pay for privately funded work and few lawyers able to devote unpaid time to assist a client. Prisoners' abilities to investigate their claims was also extremely limited, and few other organisations were fortunate to have access to the legal and forensic help necessary to make investigation possible, that we could utilise through the *pro bono* work of members. We received an average of 200-300 requests for assistance each year until 1989, rising to 800 in 1994. In an average year, JUSTICE investigated 50 cases in some depth[2] (rising to 100 in 1994) and in about five cases, led to the preparation of grounds of appeal and/or petition to the Secretary of State for the Home Department. Those five cases could take between two and three years to investigate, although some took five or more.

3. The case files in our archives reveal the variety of enquiries JUSTICE made, the iterative process with the Home Office C3 team, and the many requests and approaches undertaken by JUSTICE staff or the solicitors acting with us seeking

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1 Our work also included Scottish and Northern Irish cases where the law and reform proposed was somewhat different.

2 JUSTICE would have liked to investigate more but had to limit the number of cases it investigated. Criteria for investigating a case were established of: (1) a sentence of more than four years imprisonment; (2) no other legal help available; (3) a claim of actual innocence and (4) the possibility that investigation would lead to referral.

documents from a variety of organisations. The cases we list below reveal the process and efforts made to obtain evidential material from the police and other bodies during this time, and the varied responses received. In all these example cases, save for one, this material was obtained either with the body providing disclosure, or by appealing to the Home Office to order the same.[3] The one case where requests for important and potentially significant disclosure were refused was joined with *ex parte Hickey*, in which Simon Brown LJ found that disclosure was necessary in the interests of fairness.[4]

(1) *EO*

4. EO was convicted in 1992 of possession of heroin with intent to supply. He was sentenced to six years imprisonment. The prosecution case at trial was that, acting on information, as officers approached EO he threw down a package wrapped in tissue paper. The package contained six packs of heroin. It was the defence case that the drugs were planted, EO having first seen the drugs at the police station when an officer showed them to him. The defence did not request that the package be tested for prints. At trial, it was confirmed that one unidentified print had been found on the packaging. As a result of enquiries by JUSTICE, it was revealed that the print was checked against EO but not against the officers in the case. On a request from JUSTICE, the Metropolitan Police Fingerprint Branch checked the prints of the officers and discovered that the unidentified print matched those of a detective sergeant. The application for leave to appeal was adjourned and legal aid granted to solicitors in order that further enquiries could be made.

(2) *Jacqueline Fletcher*

5. Fletcher was convicted in 1988 for the murder of her child in 1984. The conviction was based on two key pieces of evidence - her confession to police in 1987 (after three hours of questioning) that she drowned the baby, and expert opinion at trial suggesting the death was consistent with death by drowning. Rough Justice and JUSTICE investigated the case.

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[3] These cases were identified through summaries in our annual reports. We therefore cannot be certain that these are the only cases where requests for disclosure from public bodies were made, but from a review of our case files, the process followed in these cases appears to be typical.

[4] These summaries are taken from a review of JUSTICE reports and the case papers where available.

6. In 1990 JUSTICE wrote to the CPS requesting copies of exhibits, photographs and hospital records. The CPS replied enclosing the photographic exhibits, but could not locate the hospital records, nor did the Crown Court have the original. The CPS referred JUSTICE to the relevant hospital. JUSTICE subsequently contacted the hospital requesting the medical records and slides for pathological re-examination, and the coroner, requesting consent for these materials. The Coroner replied that it was usual policy to refuse disclosure to a non-medical organisation, but would do so on the basis that JUSTICE was instructing a pathologist. JUSTICE also wrote to ask Fletcher's probation officer for assistance with its enquiries. The probation service agreed to an interview with Rough Justice and offered to review the files of the previous probation officer.

7. JUSTICE obtained a new statement from the original pathologist stating that had he been called at trial, he would have disputed the evidence indicating drowning. JUSTICE obtained further expert opinion indicating that Fletcher had a borderline mental impairment; that her psychological profile made her vulnerable to compliance with police questioning; and that in unexpected infant deaths, mothers commonly accept blame for their babies' deaths. Further medical opinion also indicated that her child was vulnerable to cot death.

8. On the fresh evidence, Fletcher sought leave to appeal in 1992. The court held that the trial court had been seriously misled as to the strength of scientific evidence indicating death by drowning and quashed the conviction. The court also criticised the police for not having recorded Fletcher's confession in breach of PACE guidelines. Without access to the exhibits, this would not have been possible. Compensation was successfully claimed in 1992.

(3) *Mervyn Russell*

9. Russell was convicted in 1977 of murder on weak and circumstantial evidence. The Court of Appeal refused leave to appeal. Upon investigation by Rough Justice and JUSTICE in 1980s, JUSTICE wrote to the Coroner's Court requesting the post mortem report and London Borough of Bromley Department of Social Services for information regarding an alternative suspect. JUSTICE then applied to the Home Office for the case to be referred back to the Court of Appeal given the flaws in the

evidence, and, during correspondence over a number of years, requested the exhumation and examination of the alternative suspect. The Home Office refused on the basis that the hair strands had been destroyed, and in any event it would not yield a meaningful comparison with the hair due to his death. The Home Office nevertheless referred the case to the Court of Appeal on the fresh evidence JUSTICE had obtained from medical reports that Russell's ankles had previously been fractured, suggesting that he could not have jumped from the window as the perpetrator did without injury, and verification from witnesses that the alternative suspect wore a waistcoat similar to that observed following the murder.

10. Following further enquiries, the hair exhibit thought destroyed was discovered and the Court of Appeal then ordered that the body of the alternative suspect be exhumed. His hair was found to have been dyed but the experts agreed it had been grey. The Court quashed the conviction on the basis of the new evidence in 1984, which the police had entirely missed.

(4) *Paul and Wayne Darvell*

11. The Darvell brothers were convicted of murder in 1986. In 1988 JUSTICE wrote to the Home Office Forensic Science Laboratory requesting information relating to various exhibits and the Chief Superintendent for South Wales to request post-conviction access to forensic exhibits including fingerprints and hair. The CPS wrote to JUSTICE stating that it could not communicate with third parties, recommending that JUSTICE should make requests for sight of materials by liaising with the defence solicitors. The letter does however acknowledge that "it is of the highest importance that any substantive information which would in any way cast doubt on the convictions should be investigated". In a further letter to JUSTICE the CPS answered questions about the exhibits, and stated that it would contact the police to ask for release of copies of the videos and photographs to JUSTICE, as well as offering to carry out further enquiries. The Police subsequently released the requested material to JUSTICE. JUSTICE and Rough Justice's investigations led to a police investigation. Reinvestigation showed that Wayne Darvell's confession had been fabricated and a blood-stained palm print was discovered that belonged neither to the victim or Darvells. The Darvells' convictions were quashed. They were later awarded compensation and the CPS brought charges against the officers involved.

(5) *Sammy Martin Davis*

12. Davis was convicted of rape in 1987 on the basis that he was the only black man working at the premises identified by the complainant. JUSTICE's investigations yielded fresh evidence (consisting of bus route and area maps) indicating that the premises were incorrectly identified by the victim. From this, JUSTICE petitioned the Home Secretary in 1990 to refer the case to the Court of Appeal. The Secretary of State refused to refer the case on the basis that the Metropolitan Police had subsequently taken a fresh statement from the victim, and were satisfied that premises had been correctly identified.

13. JUSTICE requested the victim's statements, to see how they differed. The Secretary of State indicated the content and some quotations from the statements, but refused the disclosure request, on the basis that disclosure was a decision for the Police. A request was then made to the Police, who refused disclosure of the statements on the grounds that the Home Office had already informed JUSTICE of the results of the initial enquiries. Additionally, evidence obtained by the police is deemed confidential. JUSTICE renewed a disclosure request to the Secretary of State, who refused again on the basis that "there is no legal obligation on the Home Office to disclose", and even if discretion were exercised, there were "no grounds for departing from the normal policy in these circumstances of not disclosing statements made to the police".

14. In February 1994 judicial review proceedings commenced to seek to establish a declaration that the Secretary of State has the power to disclose statements, irrespective of the ownership of those statements; and that such statements should normally be disclosed to the applicant where it is necessary in the interests of justice. The Secretary of State argued that there was no duty of disclosure, although he accepted a general duty of fairness. This made it appropriate to give an explanation of the substance of the reasons for his refusal, subject to considerations of confidentiality. The case was joined with similar complaints and reported as *R v SS for the Home Department, ex parte Hickey and others* [1995] 1 WLR 734, in which the court was unpersuaded by the Secretary of States' arguments and held generally that disclosure of relevant material must be given prior to a decision of the Home Secretary, in order that the petitioner may have the opportunity to make further representations, in

accordance with the principles of fairness.[5] With regard to Davis' case, the Court held that there should have been disclosure of information obtained in the police reinvestigation, prior to the decision being taken not to refer the case back to the Court of Appeal. Simon Brown LJ found that the victim's statements 'cried out for verbatim disclosure'.[6] After the judgment, the defendant's solicitors sought and were granted full disclosure from the CPS in respect of documentation from the police investigation. However, the appeal was ultimately unsuccessful as the fresh evidence was deemed insufficient to overturn the conviction.

THE CASE FOR REFORM

15. Our casework revealed systemic problems and provided the impetus for setting up JUSTICE committees of investigation into the criminal justice system, which resulted in reports urging reform: *Criminal Appeals* (1964), *Home Office Reviews of Criminal Convictions* (1968), *The Prosecution Process in England and Wales* (1970), *Evidence of Identity* (1974), *Compensation for Wrongful Imprisonment* (1982), *Miscarriage of Justice* (1989) and *Remedying Miscarriages of Justice* (1994). From the outset of our work in assisting convicted persons, it was apparent that once an appeal had passed there were very limited circumstances in which a case could be investigated and this revealed the procedural desert between the Court of Appeal and Home Office power of referral or to pardon. The JUSTICE 1968 Home Office Report in particular cites the difficulties facing prisoners applying to the Home Office, such as the inability to assemble facts, documents and new statements; drafting petitions without any legal help; the need to prove innocence beyond any doubt before the Home Secretary; and the lack of knowledge as to why new evidence has been rejected, as well as institutional difficulties, namely the reliance on police investigations and reports, when the Home Office is ultimately a police authority.

16. Several reforms took place, often influenced by these JUSTICE reports. These included the Criminal Appeal Acts 1966 and 1968, Criminal Justice Act 1967, the Police and Criminal Evidence Act 1984 and the Prosecution of Offences Act 1985.

[5] At para. 744.

[6] At para. 757.

However, the changes did not result in any reduction in the volume of allegations of miscarriages of justice made to the JUSTICE office.

THE ROYAL COMMISSION ON CRIMINAL JUSTICE AND ESTABLISHMENT OF THE CCRC

17. Given our experiences of the flaws in the system, JUSTICE welcomed the 1993 Royal Commission on Criminal Justice (Runciman), and the Criminal Appeal Bill which incorporated most of its recommendations. However, in our view, some of these did not go far enough and during the passage of the Bill we made recommendations for further safeguards. Our position regarding the proposals was set out in detail in *Remedying Miscarriages of Justice*, September 1994 (the 1994 Report).[7]

18. We saw the setting up of a new body, independent of the courts and the Executive as an opportunity to deal with the problems of the Home Office system, in particular with regard to independence and openness of the review mechanism. At the same time we observed the need for better resources and systems earlier in the criminal justice system, with regard to pre-trial disclosure and the role of defence lawyers, as well as the availability of legal aid and advice for appeal. Our evidence to Runciman indicated our experiences of defence lawyer error and how this contributed significantly to wrongful convictions (also reported in *Miscarriages of Justice: a defendant's eye-view* (JUSTICE, 1993)). We considered that a lack of legal aid inhibited quality legal advice and representation, and was essential to enable perfected grounds of appeal where new considerations or new evidence arose.

19. We argued for guidance on the exercise of the Court's new test of safety for quashing a conviction in the 1994 Report. This drew on the experience of arguments we made on appeal or to the Home Office following JUSTICE enquiries. We considered that a check list ought to include matters such as: unreliability of confession evidence, unreliability of identification evidence; the changing nature and need for caution in dealing with forensic evidence; the need to acknowledge defence errors; the non-disclosure of unused prosecution evidence; a definition of 'fresh evidence' which

[7] The report set out proposals to establish the Criminal Cases Review Authority (which we update here to CCRC) through a working party consisting of lawyers, senior police officers and academics, as well as a seminar series in Autumn 1993 for invited experts.

includes material available but not used at trial, and matters that were not fully explored at trial.

20. We considered the role of the CCRC to be one of a body of last resort, when the appeal process has been exhausted. Nevertheless, we agreed with predictions that the volume of applications to the CCRC would be substantially more than those received by the Home Office. We considered it would receive a combination of the former applications to JUSTICE and the Home Office, which we estimated would result in approximately 1650 cases each year, based upon 1993 figures from both organisations. This would, we advised, require a fair and effective screening process and we set out what we recommended this should entail. Based upon how we developed our approach to cases, we suggested that before deciding whether a case ought to be accepted for full investigation, the CCRC must be satisfied that:

    (1) there is some new evidence, issue or consideration relevant to the case which, if proved to be true and put into the context of the case as a whole, would cast doubt on the safety of the conviction; and

    (2) that it is susceptible to further investigation.[8]

21. This is a broader test than the Home Office criterion. JUSTICE had been consistently critical of the restricted approach the Home Office took to reviewing cases, and consequently to investigation. For example, the proposed test reflected our experiences that in many cases new evidence may not be available, but the applicant may be able to point to a new line of enquiry which, if pursued, might well produce evidence relevant to the safety of the conviction. An example of this we gave in the 1994 Report would be a submission that the evidence be subjected to a new form of scientific or forensic testing.

22. The 1994 Report also records the problems JUSTICE encountered with regard to accessing documentation in the course of our enquiries on behalf of convicted persons. One of the major difficulties was the lack of any clear rules on the retention and

[8] We corresponded with the CCRC in its early years to advise as to what procedures we thought were appropriate with regard to case sifting and review. The CCRC provided detailed information as to the extensive investigatory role it intended to hold, both with regard to its powers and review, Letter from Chief Executive G. Stacey, CCRC to JUSTICE, 29th October 1997.

storage of a broad range of documents. Subject to the limited powers of retention in the Criminal Appeal Rules 1968 and health requirements, exhibits were returned to the police for retention, destruction or other form of disposal such as being returned to the owner. At that time there were no statutory provisions governing the exercise of the decision to retain and this therefore varied from one police force to another. In one example in the Report, JUSTICE considered it necessary to examine the paper on which a fingerprint was found, but the paper exhibit had been destroyed by the police 16 months after conviction, and before the determination of the application for leave to appeal. We therefore recommended a comprehensive review on regulating retention periods, which was ultimately achieved with the Criminal Procedure and Investigations Act 1996 s 23 Code of Practice.

23. We highlight in the 1994 Report that one of the most frustrating elements in submitting a case for review to the Home Office was the secrecy of the process of re-investigation, and recommended a duty of disclosure upon the CCRC. A petition submitted by JUSTICE on behalf of an applicant was typically backed by a substantial file of material, including witness statements, forensic evidence and analysis of the perceived flaws in the prosecution case. If C3 referred the case to the Court of Appeal, all of this information, together with the results of the police re-investigations, would be made public. However, if C3 decided not to refer, the reasons for refusal were not sufficiently detailed to indicate how and why the Home Office enquiries contradicted or undermined our evidence. The particular difficulty was that the Home Office referred all of our evidence to the police which would then claim blanket privilege for its subsequent enquiries not subject to criminal proceedings. As such it was impossible to reassure applicants that their cases had been dealt with properly, to challenge the review process, or provide further information to bolster a line of enquiry. This is illustrated by an example in the Report where the Home Office refused to refer on the grounds that a key witness had retracted evidence which was central to our petition, upon re-interview by the police. Disconcertingly, our further enquiries revealed that not only did the witness deny this, but that there was no police note of the alleged retraction. This problem was significantly improved following *Hickey.*

24. The 1994 Report also records the difficulties legal representatives face in trying to investigate a case. We observed that those receiving legal advice and assistance were

more likely to have their application taken seriously by the Home Office. We therefore argued that if an application is well prepared and drafted by lawyers, the CCRC would be better assisted. We also considered that in some cases it will be more effective for an applicant's solicitor to undertake further enquiries or clarify matters directly with the applicant prior to application. While the proposal was for legal advice to be available under the Green Form scheme, in order to help with the preparation of an application, we did not believe that the assistance ought to stop there. We identified that there were likely to be a number of occasions during the course of an investigation where the applicant might need legal advice, for example, over issues of disclosure of information, the nature and scope of the enquiries or the possibility of representations against refusal to investigate or refer. This reflected the iterative approach JUSTICE experienced in its cases with the Home Office and promoted the collaboration between solicitors and the CCRC.

25. A JUSTICE seminar held on 17th April 1997, entitled '*CCRC: what to expect'*, involved discussion as to what role legal representatives would hold. The background paper set out JUSTICE's view that this could entail finding case papers and the alternative sources to solicitors' files: "e.g. public records office/CPS/press archives". The paper further considers "preparing the submission/what constitutes adequate grounds – 'new' evidence – what counts as not 'raised' at trial or appeal. How far do you need actually to go and get it or just raise a realistic possibility of it being obtainable should the CCRC instigate inquiries?" Although the discussion is not recorded, this indicates that solicitors anticipated that their role would continue to be to conduct initial investigation to support the case as they did for appeal, and had done to the Home Office. While JUSTICE hoped that the CCRC would take up a significant portion of the investigative duty that lawyers, JUSTICE and others had until this point been conducting, the paper indicates the lingering concern that the CCRC is not a body set up to represent the convicted person, but rather an independent agency of enquiry whose decision as to what investigation is necessary may differ from that of solicitors acting upon instructions. Therefore, the CCRC would not be acting on behalf of the applicant and is not in a position to safeguard their interests.

26. In 1995, there was a decline in the number of cases JUSTICE received, although 95 miscarriage cases were still worked on in detail that year, which was a similar figure

to the previous year. By 1996, JUSTICE's internal strategic review led to a redirected focus. As the CCRC became operational, JUSTICE set out to concentrate on fewer cases in more detail, to identify cases which were important illustrations of problems with the justice system, raising general public importance, and to monitor and seek to influence the work of the Commission. Additionally we had increasingly taken on cases at initial appeal, as opposed to upon exhaustion of appeal rights. We submitted a number of cases to the CCRC as soon as it commenced operations, and continued to do so for approximately five years. We also held training courses for solicitors and others assisting applicants and produced information leaflets for prisoners and their advisers. However, a great deal of JUSTICE's time had been spent assessing and sifting claims of wrongful conviction and we were concerned that it was impossible for us to offer a service which could realistically meet the demand for legal assistance or the reinvestigation of cases, despite the establishment of the CCRC. By 2001, our casework had ended, with the prioritisation of law reform work. We now only intervene in cases where we consider it in the public interest to do so, and where we feel our expertise may add value to the case.